

## **DEPARTMENT OF REVENUE**

### **Marijuana Enforcement Division**

#### **RETAIL MARIJUANA RULES**

##### **1 CCR 212-2**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### **R 100 Series – General Applicability**

##### **Basis and Purpose – R 101**

The statutory authority for this rule includes but is not limited to sections 44-12-102(2), 44-12-202(2)(b), and 44-12-901(2)(a), C.R.S. Unless such activity is authorized by the Colorado Constitution, article XVIII, Section 14 or Section 16, the Retail Marijuana Code, section 25-1.5-106.5, C.R.S., or these rules, any Person who buys, Transfers or acquires Retail Marijuana outside the requirements of the Retail Code is engaging in illegal activity pursuant to Colorado law. This rule clarifies that those engaged in the business of possessing, cultivating, dispensing, Transferring, transporting, or testing Retail Marijuana must be properly licensed to be in compliance with Colorado law.

##### **R 101 – Engaging in Business**

Except as authorized by the Colorado Constitution, article XVIII, sections 14 or 16, the Retail Marijuana Code, or section 25-1.5-106.5, C.R.S., no person shall possess, cultivate, dispense, Transfer, transport, offer to sell, manufacture, or test Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless said person is duly licensed by the State Licensing Authority and approved by the relevant local jurisdiction(s) and/or licensed by the relevant local licensing authority(-ies).

##### **Basis and Purpose – R 102**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), C.R.S. The purpose of this rule is to clarify that each rule is independent of the others, so that if one is found to be invalid, the remainder will stay in effect. This will give the regulated community confidence in the rules even if one is challenged.

##### **R 102 – Severability**

If any portion of the rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

##### **Basis and Purpose – R 103**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(c)(VIII), 44-12-103, C.R.S., and all of the Retail Code. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and is not intended to be a defined term, it is not capitalized.

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**R 103 – Definitions**

Definitions. The following definitions of terms, in addition to those set forth in section 44-12-103, C.R.S., shall apply to all rules promulgated pursuant to the Retail Code, unless the context requires otherwise:

“Advertising” means the act of providing consideration for the publication, dissemination, solicitation, or circulation, of visual, oral, or written communication, to induce directly or indirectly any Person to patronize a particular Retail Marijuana Establishment, or to purchase particular Retail Marijuana, Retail Marijuana Concentrate, or a Retail Marijuana Product. “Advertising” includes marketing, but does not include packaging and labeling. “Advertising” proposes a commercial transaction or otherwise constitutes commercial speech.

“Additive” means any substance added to Retail Marijuana Product that is not a common baking or cooking item.

“Affiliated Interest” means any Business Interest related to a Retail Marijuana Establishment that does not rise to the level of a Financial Interest in a Retail Marijuana Establishment license. An Affiliated Interest may include, but shall not be limited to, an Indirect Beneficial Interest Owner that is not a Financial Interest, an indirect financial interest, a lease agreement, secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products. Except as otherwise provided by these rules, an Affiliated Interest holder shall neither exercise control of nor be positioned so as to enable the exercise of control over the Retail Marijuana Establishment or its operations. A Retail Marijuana Establishment shall report each of its Affiliated Interests to the Division with each application for initial licensure, renewal, change of ownership or change of corporate structure.

“Agreement” means any unsecured convertible debt option, option agreement, warrant, or at the Division’s discretion, other document that establishes a right for a person to obtain a Permitted Economic Interest that might convert to an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business.

“Alarm Installation Company” means a Person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.

“Alternative Use Designation” means a designation approved by the State Licensing Authority, permitting a Retail Marijuana Products Manufacturing Facility to manufacture and Transfer Alternative Use Product.

“Alternative Use Product” means Retail Marijuana Concentrate or Retail Marijuana Product that has at least one intended use that is not included in the list of intended uses in Rule R 1003-1(B). Alternative Use Product may raise public health concerns that outweigh approval of the Alternative Use Product, or that require additional safeguards and oversight. Alternative Use Product shall not be Transferred except as permitted by Rule R 607 after obtaining an Alternative Use Designation. Rule R 607 permits a Retail Marijuana Products Manufacturing Facility to Transfer Alternative Use Product to a Retail Marijuana Testing Facility prior to receiving an Alternative Use Designation. Except where the context otherwise clearly requires, rules applying to Retail Marijuana Concentrate or Retail Marijuana Product apply to Alternative Use Product.

“Applicant” means a Person that has submitted an application for licensure or registration, or for renewal of licensure or registration, pursuant to these rules that was accepted by the Division for review but has not been approved or denied by the State Licensing Authority.

“Approved Training Program” means a responsible vendor program that received approval from the Division prior to being offered to a Licensee.

“Associated Key License” means an Occupational License for an individual who is a Direct Beneficial Interest Owner of the Retail Marijuana Establishment, other than a Qualified Limited Passive Investor, and any Person who controls or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment. Each shareholder, officer, director, member, or partner of a Closely Held Business Entity that is a Direct Beneficial Interest Owner and any Person who controls or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment must hold an Associated Key License.

“Audited Product” means a Retail Marijuana Product with an intended use of: (1) metered dose nasal spray, (2) pressurized metered dose inhaler, (3) vaginal administration, or (4) rectal administration. Audited Product types may raise public health concerns requiring additional safeguards and oversight. These product types may only be manufactured and Transferred by a Retail Marijuana Products Manufacturing Facility in strict compliance with Rule R 607. Prior to the first Transfer of an Audited Product to a Retail Marijuana Store or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit, the Retail Marijuana Products Manufacturing Facility shall submit to the Division and, if applicable, to the local jurisdiction an independent third-party audit verifying compliance with Rule R 607. All rules regarding Retail Marijuana Product apply to Audited Product except where Rules R 607, 712, 1002-1, and 1003-1 apply different requirements.

“Batch Number” means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Retail Marijuana.

“Business Interest” means any Person that holds a Financial Interest or an Affiliated Interest in a Retail Marijuana Establishment.

“Cannabinoid” means any of the chemical compounds that are the active principles of marijuana.

“Centralized Distribution Permit” means a permit issued to a Retail Marijuana Cultivation Facility pursuant to section 44-12-403, C.R.S., authorizing temporary storage of Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturing Facility for the sole purpose of Transfer to commonly owned Retail Marijuana Stores. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person has a minimum of five percent ownership in both the Retail Marijuana Cultivation Facility possessing the Centralized Distribution Permit and the Retail Marijuana Store.

“Child-Resistant” means special packaging that is:

- a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995). Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of the applicable federal regulations, which is available to the public;
- b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material; and
- c. Resealable for any product intended for more than a single use or containing multiple servings.

“Closely Held Business Entity” means an “entity” as defined in section 7-90-102, C.R.S., that has no more than fifteen shareholders, officers, directors, members, partners or owners, each of whom are natural persons, each of whom holds an Associated Key License, and each of whom is a United States citizen prior to the date of application. There must be no publicly traded market for interests in the entity. A Closely Held Business Entity and each of the natural persons who are its shareholders, officers, directors, members, partners or owners, are Direct Beneficial Interest Owners. A Closely Held Business Entity is an associated business of the Retail Marijuana Establishment for which it is a Direct Beneficial Interest Owner.

“Commercially Reasonable Royalty” means a right to compensation in the form of a royalty payment for the use of intellectual property with a direct nexus to the cultivation, manufacture, Transfer or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. A Commercially Reasonable Royalty must be limited to specific intellectual property the Commercially Reasonable Royalty Interest Holder owns or is otherwise authorized to license or to a product or line of products. A Commercially Reasonable Royalty that could cause reasonable consumer confusion or violate any federal copyright, trademark or patent law or regulation will not be approved. The Commercially Reasonable Royalty shall provide for compensation to the Commercially Reasonable Royalty Holder as a percentage of gross revenue or gross profit. The royalty payment must be at a reasonable percentage rate. To determine whether the percentage rate is reasonable, the Division will consider the totality of the circumstances, including but not limited to the following factors:

- a. The percentage of royalties received by the recipient for the licensing of the intellectual property.
- b. The rates paid by the Licensee for the use of other intellectual property.
- c. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted in terms of territory or with respect to whom the product may be sold.
- d. The licensor’s established policy and marketing program to maintain his intellectual property monopoly by not licensing others or by granting licenses under special conditions designed to preserve that monopoly.
- e. The commercial relationship between the recipient and Licensee, such as, whether they are competitors in the same territory in the same line of business.
- f. The effect of selling the intellectual property in promoting sales of other products of the Licensee; the existing value of the intellectual property to the recipient as a generator of sales of his non-intellectual property items; and the extent of such derivative sales.
- g. The duration of the term of the license for use of the intellectual property.
- h. The established or projected profitability of the product made using the intellectual property; its commercial success; and its current popularity.
- i. The utility and advantages of the intellectual property over products or businesses without the intellectual property.
- j. The nature of the intellectual property; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the intellectual property.

- k. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the intellectual property.
- l. The portion of the realizable profit that should be credited to the intellectual property as distinguished from non-intellectual property elements, the manufacturing process, business risks, or significant features or improvements added by the Licensee.

“Commercially Reasonable Royalty Interest Holder” means a Person that receives a Commercially Reasonable Royalty in exchange for a Licensee’s use of the Commercially Reasonable Royalty Interest Holder’s intellectual property. A Commercially Reasonable Royalty Interest Holder is an Indirect Beneficial Interest Owner.

“Container” means the receptacle directly containing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is labeled according to the requirements in Rules R 1001-1 *et seq.*

“Court Appointee” means a Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person; acting in accordance with section 44-12-401(1.5), C.R.S., and these rules; and authorized by court order to take possession of, operate, manage, or control a licensed Retail Marijuana Establishment.

“Denied Applicant” means any Person whose application for licensure pursuant to the Retail Code has been denied, any Person whose application for a responsible vendor program has been denied, or any Licensee whose application for any of the following non-exhaustive list has been denied: a change or transfer of ownership pursuant to Rule R 205; a change of location of the Licensed Premises pursuant to Rule R 206; a change, alteration, or modification of the Licensed Premises pursuant to Rule R 303; or a production management tier increase request pursuant to Rule R 506..

“Department” means the Colorado Department of Revenue.

“Direct Beneficial Interest Owner” means a natural person or a Closely Held Business entity that owns a share or shares of stock in a licensed Retail Marijuana Establishment, including the officers, directors, members, or partners of the licensed Retail Marijuana Establishment or Closely Held Business Entity, or a Qualified Limited Passive Investor. Each natural person that is a Direct Beneficial Interest Owner must hold an Associated Key License. Except that a Qualified Limited Passive Investor need not hold an Associated Key License and shall not engage in activities for which an Occupational License is required.

“Director” means the Director of the Marijuana Enforcement Division.

“Division” means the Marijuana Enforcement Division.

“Edible Retail Marijuana Product” means any Retail Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

“Executive Director” means the Executive Director of the Department of Revenue.

“Exit Package” means an Opaque bag or other similar Opaque covering provided at the retail point of sale, in which Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product already in a Container is placed. If Retail Marijuana flower, trim or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant. The Exit Package is not required to be labeled in accordance with Rules R 1001 *et seq.* or Rules R 1001-1 *et seq.*

“Fibrous Waste” means any roots, stalks, and stems from a Retail Marijuana plant.

“Final Agency Order” means an Order of the State Licensing Authority issued in accordance with the Retail Code and the State Administrative Procedure Act. The State Licensing Authority will issue a Final Agency Order following review of the Initial Decision and any exceptions filed thereto or at the conclusion of the declaratory order process. A Final Agency Order is subject to judicial review.

“Financial Interest” means any Direct Beneficial Interest Owner, a Commercially Reasonable Royalty Interest Holder who receives more than 30 percent of the gross revenue or gross profit, a Permitted Economic Interest holder, and any other Person who controls or is positioned so as to enable the exercise of control over the Retail Marijuana Establishment.

“Flammable Solvent” means a liquid that has a flash point below 100 degrees Fahrenheit.

“Flowering” means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes of the stem.

“Food-Based Retail Marijuana Concentrate” means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

“Good Cause” for purposes of denial of an initial, renewal, or reinstatement of a license application, means:

- a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Retail Code, any rules promulgated pursuant to it, or any supplemental relevant state or local law, rule, or regulation;
- b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local jurisdiction; or
- c. The Licensee’s Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

“Good Moral Character” means having a criminal history that demonstrates honesty, fairness, and respect for the rights of others and for the law.

“Harvest Batch” means a specifically identified quantity of processed Retail Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time.

“Harvested Marijuana” means post-Flowering Retail Marijuana not including trim, concentrate or waste that remains on the premises of the Retail Marijuana Cultivation Facility or its off-premises storage location beyond 60 days from harvest.

“Heat/Pressure-Based Retail Marijuana Concentrate” means Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of heat and/or pressure. This method of extraction may be used by only a Retail Marijuana Products Manufacturing Facility and can be used alone or on a Production Batch that also includes Water-Based Retail Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

“Identity Statement” means the name of the business as it is commonly known and used in any Advertising.

“Immature plant” means a nonflowering Retail Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling and is in a cultivating container. Plants meeting these requirements are not attributable to a Licensee’s maximum allowable plant count, but must be fully accounted for in the Inventory Tracking System.

“Indirect Beneficial Interest Owner” means a holder of a Permitted Economic Interest, a recipient of a Commercially Reasonable Royalty associated with the use of intellectual property by a Licensee, a Profit-Sharing Plan Employee, a Qualified Institutional Investor, or another similarly situated Person as determined by the State Licensing Authority. An Indirect Beneficial Interest Owner is not a Licensee. The Licensee must obtain Division approval for an Indirect Beneficial Interest Owner that constitutes a Financial Interest before such Indirect Beneficial Interest Owner may exercise any of the privileges of the ownership or interest with respect to the Licensee.

“Industrial Fiber Products” means intermediate or finished products made from Fibrous Waste that are not intended for human or animal consumption and are not usable or recognizable as Retail Marijuana. Industrial Fiber Products include, but are not limited to, cordage, paper, fuel, textiles, bedding, insulation, construction materials, compost materials, and industrial materials.

“Industrial Fiber Products Producer” means a Person who produces Industrial Fiber Products using Fibrous Waste.

“Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.

“Industrial Hygienist” means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university.

- a. The special studies and training of such individuals shall be sufficient in the cognate sciences to provide the ability and competency to:
  1. Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;
  2. Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;
  3. Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

- b. Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in the definition above.
- c. Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in the definition above.

“Initial Decision” means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing. Either party may file exceptions to the Initial Decision. The State Licensing Authority will review the Initial Decision and any exceptions filed thereto, and will issue a Final Agency Order.

“Inventory Tracking System” means the required seed-to-sale tracking system that tracks Retail Marijuana from either the seed or immature plant stage until the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is sold to a customer at a Retail Marijuana Store, Transferred to a Retail Marijuana Testing Facility, Transferred to a Sampling Manager, Transferred to an Industrial Fiber Products Producer, Transferred to a Medical Research Facility, Transferred to a Pesticide Manufacturer, or destroyed.

“Inventory Tracking System Trained Administrator” means an Associated Key Licensee of a Retail Marijuana Establishment or an occupationally licensed employee of a Retail Marijuana Establishment, each of whom has attended and successfully completed Inventory Tracking System training and has completed any additional training required by the Division.

“Inventory Tracking System User” means an Associated Key Licensee of a Retail Marijuana Establishment or an occupationally licensed Retail Marijuana Establishment employee, who is granted Inventory Tracking System User account access for the purposes of performing inventory tracking functions in the Inventory Tracking System. Each Inventory Tracking System User must have been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

“Key License” means an Occupational License for an individual who performs duties that are central to the Retail Marijuana Establishment’s operation. An individual holding a Key License has the highest level of responsibility but is not an Owner. An example of a Key Licensee includes, but is not limited to, managers.

“Kief” means the resinous crystal-like trichomes that are found on Retail Marijuana flower and that are accumulated, resulting in a higher concentration of cannabinoids.

“Licensed Premises” means the premises specified in an application for a license pursuant to the Retail Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, or test Retail Marijuana in accordance with the provisions of the Retail Code and these rules. Not all areas of the Licensed Premises are Limited Access Areas or Restricted Access Areas.

“Licensed Research Business” means a Marijuana Research and Development Facility or a Marijuana Research and Development Cultivation.

“Licensee” means any Person licensed or registered pursuant to the Retail Code or, in the case of an Occupational License Licensee, any individual licensed pursuant to the Retail Code or Medical Code.

“Limited Access Area” means a building, room, or other contiguous area upon the Licensed Premises where Retail Marijuana is grown, cultivated, stored, weighed, packaged, Transferred, or processed for Transfer, under control of the Licensee.

“Limit of Detection” or “LOD” means the lowest quantity of a substance that can be distinguished from the absence of that substance (a blank value) within a stated confidence limit (generally 1%).

“Limit of Quantitation” or “LOQ” means the lowest concentration at which the analyte can not only be reliably detected but at which some predefined goals for bias and imprecision are met.

“Liquid Edible Retail Marijuana Product” means an Edible Retail Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Marijuana-Based Workforce Development Training Program” means a program designed to train individuals to work in the legal Medical or Retail Marijuana industry operated by an entity licensed under the Medical Code and/or Retail Code or by a school that is authorized by the Division of Private Occupational Schools.

“Marketing Layer” means packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled according to the requirements Rules R 1001-1 et seq.

“Marijuana Research and Development Cultivation” means a Person that is licensed pursuant to the Medical Code to grow, cultivate, and possess Medical Marijuana, and to Transfer Medical Marijuana to a Marijuana Research and Development Facility or another Medical Research and Development Cultivation, all for limited research purposes authorized pursuant to section 44-11-408, C.R.S. A Marijuana Research and Development Cultivation is a Licensed Research Business.

“Marijuana Research and Development Facility” means a Person that is licensed pursuant to the Medical Code to possess Medical Marijuana for limited research purposes authorized pursuant to section 44-11-408, C.R.S. A Marijuana Research and Development Facility is a Licensed Research Business.

“Material Change” means any change that would require a substantive revision to a Retail Marijuana Establishment’s standard operating procedures for the cultivation of Retail Marijuana or the production of a Retail Marijuana Concentrate or Retail Marijuana Product.

“Medical Code” means the Colorado Medical Marijuana Code found at sections 44-11-101 et seq., C.R.S.

“Medical Marijuana” means marijuana that is grown and sold pursuant to the Medical Code and includes seeds and Immature Plants. Unless the context otherwise requires, Medical Marijuana Concentrate is considered Medical Marijuana and is included in the term “Medical Marijuana” as used in these rules.

“Medical Marijuana Business” means a Medical Marijuana Center, a Medical Marijuana-Infused Product Manufacturer, an Optional Premises Cultivation Operation, a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator, or a Medical Marijuana Transporter, a Marijuana Research and Development Facility, or a Marijuana Research and Development Cultivation.

“Medical Marijuana Business Operator” means an entity that holds a registration or license from the State Licensing Authority to provide professional operational services to one or more Medical Marijuana Businesses, other than Licensed Research Businesses, for direct remuneration from the Medical Marijuana Business(es), which may include compensation based upon a percentage of the profits of the Medical Marijuana Business(es) being operated. A Medical Marijuana Business Operator may contract with Medical Marijuana Business(es) to provide operational services. A Medical Marijuana Business Operator’s contract with a Medical Marijuana Business does not in and of itself constitute ownership. The Medical Code and rules apply to all Medical Marijuana Business Operators regardless of whether such operator holds a registration or license. Any reference to “license” or “licensee” shall mean “registration” or “registrant” when applied to a Medical Marijuana Business Operator that holds a registration issued by the State Licensing Authority.

“Medical Marijuana Center” means a Person licensed pursuant to the Medical Code to operate a business as described in section 44-11-402, C.R.S., and sells Medical Marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

“Medical Marijuana Concentrate” means a specific subset of Medical Marijuana that was produced by extracting Cannabinoids from Medical Marijuana. Categories of Medical Marijuana Concentrate include Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, Solvent-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate.

“Medical Marijuana-Infused Product” means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including but not limited to edible product, ointments, and tinctures. Such products shall not be considered a food or drug for purposes of the “Colorado Food and Drug Act,” part 4 of Article 5 of Title 25, C.R.S.

“Medical Marijuana-Infused Products Manufacturer” means a Person licensed pursuant to the Medical Code to operate a business as described in section 44-11-404, C.R.S.

“Medical Marijuana Testing Facility” means a public or private laboratory licensed and certified, or approved by the Division, to perform testing and research on Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products.

“Medical Marijuana Transporter” means a Person that is licensed to transport Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products from one Medical Marijuana Business to another Medical Marijuana Business or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products at its licensed premises, but is not authorized to sell, give away, buy, or receive complimentary Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products under any circumstances. A Medical Marijuana Transporter does not include a Licensee that transports its own Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Products.

“Medical Research Facility” means a Person approved and grant-funded by the State Board of Health pursuant to section 25-1.5-106.5, C.R.S., to conduct Medical Marijuana research. A Medical Research Facility is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

“Monitoring” means the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Retail Marijuana Establishment Licensed Premises, for the purpose of summoning a law enforcement officer to the premises during alarm conditions.

“Monitoring Company” means a person in the business of providing security system Monitoring services for the Licensed Premises of a Retail Marijuana Establishment.

“Multiple-Serving Edible Retail Marijuana Product” means an Edible Retail Marijuana Product unit for sale to consumers containing more than 10mg of active THC and no more than 100mg of active THC. If the overall Edible Retail Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than 10mg active THC, yet in total all pieces combined within the unit for sale contain more than 10mg of active THC, then the Edible Retail Marijuana Product shall be considered a Multiple-Serving Edible Retail Marijuana Product.

“Notice of Denial” means a written statement from the State Licensing Authority, articulating the reasons or basis for denial of a license application.

“Occupational License” means a license granted to an individual by the State Licensing Authority pursuant to section 44-11-401 or 44-12-401, C.R.S. An Occupational License may be an Associated Key License, a Key License or a Support License.

“Opaque” means that the packaging does not allow the product to be seen without opening the packaging material.

“Optional Premises Cultivation Operation” means a Person licensed pursuant to the Medical Code to operate a business as described in section 44-11-403, C.R.S.

“Order to Show Cause” means a document from the State Licensing Authority alleging the grounds for imposing discipline against a Licensee’s license.

“Owner” means, except where the context otherwise requires, a Direct Beneficial Interest Owner.

“Permitted Economic Interest” means an Agreement to obtain an ownership interest in a Retail Marijuana Establishment or Medical Marijuana Business when the holder of such interest is a natural person who is a lawful United States resident and whose right to convert into an ownership interest is contingent on the holder qualifying and obtaining a license as a Direct Beneficial Interest Owner under the Retail Code or Medical Code. A Permitted Economic Interest holder is an Indirect Beneficial Interest Owner.

“Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof; except that “Person” does not include any governmental organization.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term “pesticide” shall not include any article that is a “new animal drug” as designated by the United States Food and Drug Administration.

“Pesticide Manufacturer” means a Person who (1) manufactures, prepares, compounds, propagates, or processes any Pesticide or device or active ingredient used in producing a Pesticide; (2) who possesses an establishment registration number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; (3) who conducts research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana; (4) who has applied for and received any necessary license, registration, certifications, or permits from the Colorado Department of Agriculture, pursuant to the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S. and/or the Pesticide Applicators’ Act, sections 35-10-101 *et seq.*, C.R.S.; (5) who is authorized to conduct business in the State of Colorado; and (6) who has physical possession of the location in the State of Colorado where its research activities occur. A Pesticide Manufacturer is neither a Medical Marijuana Business, a Retail Marijuana Establishment, nor a Licensee.

“Production Batch” means (a) any amount of Retail Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of Harvest Batch(es) of Retail Marijuana; or (b) any amount of Retail Marijuana Product of the same exact type, produced using the same ingredients, standard operating procedures and the same Production Batch(es) of Retail Marijuana Concentrate.

“Professional Engineer” means an individual who is licensed by the State of Colorado as a professional engineer pursuant to sections 12-25-101 *et seq.*, C.R.S.

“Proficiency Testing” means an assessment of the performance of a Retail Marijuana Testing Facility’s methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

“Profit-Sharing Plan” means a profit-sharing plan that is qualified pursuant to 26 U.S.C. § 401 of the Internal Revenue Code and subject to the Employee Retirement Income Security Act, and which provides for employer contributions in the form of cash, but not in the form of stock or other equity interests in a Retail Marijuana Establishment.

“Profit-Sharing Plan Employee” means an employee holding an Occupational License who receives a share of a Retail Marijuana Establishment’s profits through a Profit-Sharing Plan. A Profit-Sharing Plan Employee is an Indirect Beneficial Interest Owner.

“Propagation” means the reproduction of Retail Marijuana plants by seeds, cuttings or grafting.

“Public Institution” means any entity established or controlled by the federal government, a state government, or a local government or municipality, including but not limited to an institution of higher education or a public higher education research institution.

“Public Money” means any funds or money obtained by the holder from any governmental entity, including but not limited to research grants.

“Qualified Institutional Investor” means:

- a. A bank as defined in Section 3(a) (6) of the Federal Securities Exchange Act of 1934, as amended;
- b. An insurance company as defined in Section 2(a) (17) of the Investment Company Act of 1940, as amended;
- c. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

- d. An investment adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended;
- e. Collective trust funds as defined in Section 3(c) (11) of the Investment Company Act of 1940, as amended;
- f. An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee;
- g. A state or federal government pension plan; or
- h. A group comprised entirely of persons specified in (a) through (g) of this definition.

A Qualified Institutional Investor is an Indirect Beneficial Interest Owner.

“Qualified Limited Passive Investor” means a natural person who is a United States citizen and is a passive investor who owns less than a five percent share or shares of stock in a licensed Retail Marijuana Establishment. A Qualified Limited Passive Investor is a Direct Beneficial Interest Owner.

“R&D Co-Location Permit” means a permit issued to a Licensed Research Business authorizing it to co-locate with a commonly owned Medical Marijuana-Infused Products Manufacturer, Retail Marijuana Products Manufacturing Facility, Optional Premises Cultivation Operation, or Retail Marijuana Cultivation Facility pursuant to Rule M 1901. A separate R&D Co-Location Permit is required for each location at which a Licensed Research Business seeks to share a single Licensed Premises.

“RFID” means Radio Frequency Identification.

“Remediation” means the process by which Retail Marijuana flower and trim, which has failed microbial testing, is processed into a Solvent-Based Retail Marijuana Concentrate and retested as required by these rules.

“Resealable” means that the Container maintains its Child-Resistant effectiveness for multiple openings.

“Research Project” means a discrete scientific endeavor to answer a research question or a set of research questions. A Research Project must include a description of a defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date. The description must demonstrate that the Research Project will comply with all requirements in the M 1900 Series – Licensed Research Businesses. All research and development conducted by a Licensed Research Business must be conducted in furtherance of an approved Research Project.

“Respondent” means a Person who has filed a petition for declaratory order that the State Licensing Authority has determined needs a hearing or legal argument or a Licensee who is subject to an Order to Show Cause.

“Responsible Vendor Program Provider” means a Person offering an Approved Training Program, in accordance with section 44-11-1101, C.R.S., to Licensees seeking to be designated a responsible vendor.

“Restricted Access Area” means a designated and secure area within a Licensed Premises in a Retail Marijuana Store where Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are sold, possessed for sale, and displayed for sale, and where no one under the age of 21 is permitted.

“Retail Code” means the Colorado Retail Marijuana Code found at sections 44-12-101 *et seq.*, C.R.S.

“Retail Marijuana” means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including but not limited to Retail Marijuana Concentrate, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment. “Retail Marijuana” does not include industrial hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. Unless the context otherwise requires, Retail Marijuana Concentrate is considered Retail Marijuana and is included in the term “Retail Marijuana” as used in these rules.

“Retail Marijuana Concentrate” means a specific subset of Retail Marijuana that was produced by extracting cannabinoids from Retail Marijuana. Categories of Retail Marijuana Concentrate include Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate, Solvent-Based Retail Marijuana Concentrate, and Heat/Pressure-Based Retail Marijuana Concentrate.

“Retail Marijuana Cultivation Facility” means an entity licensed to cultivate, prepare, and package Retail Marijuana and Transfer Retail Marijuana to Retail Marijuana Establishments, Medical Research Facilities, and Pesticide Manufacturers, but not to consumers.

“Retail Marijuana Establishment” means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Testing Facility, a Retail Marijuana Establishment Operator or a Retail Marijuana Transporter.

“Retail Marijuana Establishment Operator” means an entity that holds a license from the State Licensing Authority to provide professional operational services to one or more Retail Marijuana Establishments for direct remuneration from the Retail Marijuana Establishment(s), which may include compensation based upon a percentage of the profits of the Retail Marijuana Establishment(s) being operated. A Retail Marijuana Establishment Operator contracts with Retail Marijuana Establishment(s) to provide operational services. A Retail Marijuana Establishment Operator’s contract with a Retail Marijuana Establishment does not in and of itself constitute ownership.

“Retail Marijuana Product” means a product that is comprised of Retail Marijuana and other ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

“Retail Marijuana Products Manufacturing Facility” means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product only to other Retail Marijuana Products Manufacturing Facilities, Retail Marijuana Stores, Medical Research Facilities, and Pesticide Manufacturers.

“Retail Marijuana Store” means an entity licensed to purchase Retail Marijuana and Retail Marijuana Concentrate from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product and Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturing Facility and to Transfer Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product to consumers.

“Retail Marijuana Testing Facility” means a public or private laboratory licensed and certified, or approved by the Division, to perform testing and research on Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products.

“Retail Marijuana Transporter” means a Person that is licensed to transport Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products from one Retail Marijuana Establishment to another Retail Marijuana Establishment or to a Medical Research Facility or Pesticide Manufacturer, and to temporarily store the transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products under any circumstances. A Retail Marijuana Transporter does not include a Licensee that transports and distributes its own Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

“Sample” means any item collected from a Retail Marijuana Establishment that is provided to a Retail Marijuana Testing Facility for testing. The following is a non-exhaustive list of types of Samples: Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Product, soil, growing medium, water, solvent or swab of a counter or equipment.

“Sampling Manager” means an Associated Key Licensee or a Key Licensee designated by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility to receive Transfers of Sampling Units of Retail Marijuana, Retail Marijuana Product, or Retail Marijuana Concentrate pursuant to Rule R 507 and R 606.

“Sampling Unit” means a unit of Retail Marijuana, Retail Marijuana Product, or Retail Marijuana Concentrate Transferred to a Sampling Manager for purposes of quality control and product development pursuant to Rule R 507 and R 606, and sections 44-11-403(4) and 44-12-404(12), C.R.S..

“Security Alarm System” means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

“Shipping Container” means a hard-sided container with a lid or other enclosure that can be secured in place. A Shipping Container is used solely for the transport of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product between Retail Marijuana Establishments, a Medical Research Facility, or a Pesticide Manufacturer.

“Single-Serving Edible Retail Marijuana Product” means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10mg of active THC.

“Solvent-Based Retail Marijuana Concentrate” means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of a solvent approved by the Division pursuant to Rule R 605.

“Standardized Graphic Symbol” means a graphic image or small design adopted by a Licensee to identify its business.

“Standardized Serving Of Marijuana” means a standardized single serving of active THC. The size of a Standardized Serving Of Marijuana shall be no more than 10mg of active THC.

“State Licensing Authority” means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana and Retail Marijuana in Colorado, pursuant to section 44-11-201, C.R.S.

“Support License” means a license for an individual who performs duties that support the Retail Marijuana Establishment’s operations. A Support Licensee is a person with less decision-making authority than a Key Licensee and who is reasonably supervised by a Key Licensee or an Associated Key Licensee. Examples of individuals who need this type of license include, but are not limited to, sales clerks or cooks.

“Temporary Appointee Registration” means a registration issued to a Court Appointee pursuant to section 44-12-401(1.5)(b), C.R.S.

“THC” means tetrahydrocannabinol.

“THCA” means tetrahydrocannabinolic acid.

“Test Batch” means a group of Samples that are derived from a single Harvest Batch, Production Batch, or Inventory Tracking System package, and that are collectively submitted to a Retail Marijuana Testing Facility for testing purposes.

“Total THC” means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC i.e.,  $\text{Total THC} = (\% \text{THCA} \times 0.877) + \% \text{THC}$ .

“Transfer(s)(ed)(ing)” means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from one Licensee to another Licensee or to a consumer. A Transfer includes the movement of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual transfer that is reflected in the Inventory Tracking System, even if no physical movement of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product occurs.

“Universal Symbol” means the image established by the Division and made available to Licensees through the Division’s website indicating the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contains marijuana.

“Unrecognizable” means marijuana or *Cannabis* plant material rendered indistinguishable from any other plant material.

“Vegetative” means the state of the *Cannabis* plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

“Water-Based Retail Marijuana Concentrate” means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of only water, ice or dry ice.

## Basis and Purpose – R 104

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IX), 24-4-105(11), and 44-12-201, C.R.S. The purpose of this rule is to establish a system by which a Licensee may request the Division to issue a formal statement of position and, subsequently, petition State Licensing Authority for a declaratory order. Typically, a position statement or declaratory order would address matters that are likely to be applicable to other Licensees. The approach is similar to that utilized by other divisions within the Department of Revenue.

## R 104 – Declaratory Orders Concerning the Retail Code

- A. Who May Request a Statement of Position. Any person as defined in section 24-4-102(12), C.R.S., may request the Division to issue a statement of position concerning the applicability to the petitioner of any provision of the Retail Code, or any regulation of the State Licensing Authority.
- B. Division Response. The Division will determine, in its sound discretion, whether to respond with a written statement of position. Following receipt of a proper request, the Division will respond by issuing a written statement of position or by declining to issue such a statement.
- C. Petition for Declaratory Order. Any person who has properly requested a statement of position, and who is dissatisfied with the Division's response, may petition the State Licensing Authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. The petition shall be filed within 30 days of the Division's response, or may be filed at any time before the Division's response if the Division has not responded within 60 days of receiving a proper request for a statement of position, and shall set forth the following:
1. The name and address of the petitioner.
  2. Whether the petitioner is licensed pursuant to the Retail Code or Medical Code, and if so, the type of license and address of the Licensed Premises.
  3. Whether the petitioner is involved in any pending administrative hearings with the State Licensing Authority or relevant local jurisdiction.
  4. The statute, rule, or order to which the petition relates.
  5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.
  6. A concise statement of the legal authorities, if any, and such other reasons upon which petitioner relies.
  7. A concise statement of the declaratory order sought by the petitioner.
- D. State Licensing Authority Retains Discretion Whether to Entertain Petition. The State Licensing Authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the State Licensing Authority decides it will not entertain a petition, it shall notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:
1. The petitioner failed to properly request a statement of position from the Division, or the petition for declaratory order was filed with the State Licensing Authority more than 30 days after the Division's response to the request for a statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.
  3. The petition involves a subject, question or issue that is relevant to a pending hearing before the state or any local licensing authority, an on-going investigation conducted by the Division, or a written complaint previously filed with the State Licensing Authority.
  4. The petition seeks a ruling on a moot or hypothetical question.
  5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.
- E. State Licensing Authority May Adopt Division Position Statement. The State Licensing Authority may adopt the Division Position Statement as a Final Agency Action subject to judicial review pursuant to section 24-4-106, C.R.S.
- F. If State Licensing Authority Entertains Petition. If the State Licensing Authority determines that it will entertain the petition for declaratory order, it shall so notify the petitioner within 30 days, and any of the following procedures may apply:
1. The State Licensing Authority may expedite the matter by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing.
  2. In the event the State Licensing Authority determines that an evidentiary hearing is necessary to a ruling on the petition, a hearing shall be conducted in accordance with Rules R 1304 – Administrative Hearings, R 1305 – Administrative Subpoenas, and R 1306 – Administrative Hearing Appeals. The petitioner will be identified as Respondent.
  3. The parties to any proceeding pursuant to this rule shall be the petitioner/Respondent and the Division. Any other interested person may seek leave of the State Licensing Authority to intervene in the proceeding and such leave may be granted if the State Licensing Authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
  4. The declaratory order shall constitute a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.
- G. Public Inspection. Files of all requests, petitions, statements of position, and declaratory orders will be maintained by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.
- H. Posted on Website. The Division shall post a copy of all statements of position and all declaratory orders on the Division's web site.

### **Basis and Purpose – R 105**

The statutory authority for this rule includes but is not limited to section 44-12-202(2)(b), C.R.S. The purpose of this rule is to clarify that any reference to days means calendar days.

### **R 105 – Computation of Time**

The word “days” as used in these rules means calendar days.

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## Basis and Purpose – R 106

The statutory authority for this rule includes but is not limited to sections 44-11-501(4) and 44-12-202(2)(b), C.R.S. The purpose of this rule is to establish the basic fees that must be paid at the time of service of any subpoena (including a subpoena for testimony and/or a subpoena duces tecum) upon the State Licensing Authority, and for production of documents pursuant to any such subpoena. This rule also establishes additional fees for meals, mileage, and each day's testimony. The service fee is not applicable when a subpoena is served by a governmental agency.

## R 106 – Subpoena Fees

- A. Required Fees for Subpoenas. The following fees must be paid at the time of service of any subpoena on the Division or State Licensing Authority:
1. Subpoenas for records only (subpoenas duces tecum):
    - a. Responsive records - \$0.25/page. The Division and State Licensing Authority may use discretion when electronic copies are requested.
    - b. The Division or State Licensing Authority may charge \$30/hour to retrieve and review voluminous records.
  2. Subpoenas requiring any Division or State Licensing Authority employee to attend any proceeding:
    - a. \$200/day attendance;
    - b. Current state mileage reimbursement fee; and
    - c. Current state meal reimbursement fee.
- B. When Subpoena-Related Fees Are Due.
1. Subpoenas duces tecum fees must be paid before the Division or State Licensing Authority will release the records.
  2. All other subpoena-related fees are due at the time of service of the subpoena.
- C. Service Complete Only When Fees Are Paid. The Division or State Licensing Authority will not consider service to be complete unless and until all applicable fees are paid.
- D. State Employees and Private Litigation. Division and State Licensing Authority employees will not serve as expert witnesses in private litigation. In addition, the Division and State Licensing Authority may move to quash any subpoena that seeks fact testimony from Division or State Licensing Authority employees in private litigation.
- E. Not Applicable to Government-Issued Subpoenas. This Rule does not apply to subpoenas issued by any governmental agency.

## R 200 Series – Licensing and Interests

### Basis and Purpose – R 201

The statutory authority for this rule includes but is not limited to sections 44-12-102(2)(a), 44-12-202(2)(b), 44-12-202(3)(a)(I), 44-12-202(3)(a)(III), 44-12-202(3)(a)(XXI), 44-12-202(3)(c)(VIII), 44-12-303(1), 44-12-103, 44-12-306, 44-12-309, 44-12-312, 44-12-401, and 24-76.5-101, *et seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to establish that only materially complete applications for licenses, accompanied by all required fees, will be accepted and processed by the Division. The purpose of the rule is also to clarify that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.

### R 201 – Application Process

#### A. General Requirements

1. All applications for licenses authorized pursuant to subsections 44-12-401(1) and (1.5), C.R.S., shall be made upon current forms prescribed by the Division.
2. A license issued to a Retail Marijuana Establishment or an individual constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure rests at all times with the Applicant.
3. Each application shall identify the relevant local jurisdiction.
4. Applicants must submit a complete application to the Division before it will be accepted or considered.
  - a. All applications must be complete and accurate in every material detail.
  - b. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.
  - c. All applications must be accompanied by a full remittance of the application and relevant license fees for each applicant and each premise. See Rules R 207 - Schedule of Application Fees: Retail Marijuana Establishments, R 208 - Schedule of Business License Fees: Retail Marijuana Establishments, R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments, R 210 – Schedule of Other Application Fees: All Licensees, R 234 – Schedule of License Fees: Individuals, and R 235 – Schedule of Renewal Fees: Individuals.
  - d. All applications must include all information required by the Division related to the Applicant's proposed Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners and Qualified Limited Passive Investors, and all other direct and indirect financial interests in the Applicant.
  - e. At a minimum, each Applicant for a new license shall provide, at the time of application, the following information:

- i. For each Associated Key License Applicant, evidence of proof of lawful presence, citizenship, if applicable, residence, if applicable, and Good Moral Character as required by the current forms prescribed by the Division;
- ii. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, all requested information concerning financial and management associations and interests of other Persons in the business;
- iii. If the Applicant for any license pursuant to the Retail Code is a Closely Held Business Entity it shall submit with the application:
  - A. The Associated Key License applications for all of its shareholders, members, partners, officers and directors who do not already hold an Associated Key License;
  - B. If the Closely Held Business Entity is a corporation, a copy of its articles of incorporation or articles of organization; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each shareholder: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business;
  - C. If the Closely Held Business Entity is a limited liability company, a copy of its articles of organization and its operating agreement; evidence of authorization from the Colorado Secretary of State to do business within this State, and for each member: his or her name, mailing address, state of residence and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business; and
  - D. If the Closely Held Business Entity is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, a copy of the partnership agreement and, for each partner, his or her name, mailing address, state of residency and certification of Colorado residency for at least one officer and all officers with day-to-day operational control over the business.
- iv. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, documentation establishing compliant return filing and payment of taxes related to any Medical Marijuana Business or Retail Marijuana Establishment in which such Applicant is, or was, required to file and pay taxes;
- v. For each Retail Marijuana Establishment Applicant and each Associated Key License Applicant, documentation verifying and confirming the funds used to start and/or sustain the operation of the Medical Marijuana Business or Retail Marijuana Establishment were lawfully earned or obtained;
- vi. Accurate floor plans for the premises to be licensed; and

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- viii. The deed, lease, sublease, contract, or other document(s) governing the terms and conditions of occupancy of the premises to be licensed.
  - f. At a minimum, each Applicant for a Court Appointee finding of suitability required by Rule R 253(A)(2), shall provide, at the time of application, the following information:
    - i. A copy of the court order appointing the Court Appointee;
    - ii. A statement affirming the Court Appointee complied with the certification required by section 44-12-401(1.5)(a), C.R.S.;
    - iii. If the Court Appointee is an entity, a complete list of all individuals responsible for taking possession of, operating, managing, or controlling the Retail Marijuana Establishment; and
    - iv. A complete list of all Medical Marijuana Businesses and Retail Marijuana Establishments for which the Court Appointee was appointed and the respective dates during which the Court Appointee is currently serving, or has previously served, as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person.
  - 5. All applications to reinstate a license will be deemed applications for new licenses. This includes, but is not limited to, Associated Key licenses that have expired, Retail Marijuana Establishment licenses that have been expired for more than 90 days, licenses that have been voluntarily surrendered, licenses for which local licensing approval was not obtained within 12 months, and licenses that have been revoked.
  - 6. The Division may refuse to accept or consider an incomplete application.
- B. Additional Information May Be Required
- 1. Upon request by the Division, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.
  - 2. An Applicant's failure to provide the requested information by the Division deadline may be grounds for denial of the application.
- C. Information Must Be Provided Truthfully. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.
- D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code or for any other state or local law enforcement purpose or as otherwise required by law.

**E. Division Application Management and Local Licensure.**

1. The Division will either approve or deny a complete application between 45 days and 90 days of its receipt.
2. For each application for a new Retail Marijuana Establishment, the Applicant shall submit the original application and one identical copy. The Division will retain the original application for a new Retail Marijuana Establishment and will send the copy and half the application fee to the relevant local jurisdiction within seven days of receiving the application.
3. If the Division grants a license before the relevant local jurisdiction approves the application or grants a local license, the license will be conditioned upon local approval. Such a condition will not be viewed as a denial pursuant to the Administrative Procedure Act. If the local jurisdiction denies the application, the state license will be revoked.
4. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing through the relevant local jurisdiction. Should the Applicant fail to obtain local jurisdiction approval or licensing within the specified period, the state license shall expire and may not be renewed.
5. An Applicant is prohibited from operating a Retail Marijuana Establishment prior to obtaining all necessary licenses or approvals from both the State Licensing Authority and the relevant local jurisdiction.
6. Each Financial Interest is void and of no effect unless and until approved by the Division. A Financial Interest shall not exercise any privilege associated with the proposed interest until approved by the Division. Any violation of this requirement may be considered a license violation affecting public safety.

**R 201.5 – Repealed Effective January 1, 2017.**

**R 202 – Repealed Effective January 1, 2017.**

**Basis and Purpose – R 202.1**

The statutory authority for this rule includes but is not limited to sections, 44-12-104(2)(a), 44-12-202(2)(a), 44-12-202(2)(b), 44-12-202(3)(a)(I), 44-12-202(3)(a)(III), 44-12-202(3)(a)(XXI), 44-12-202(3)(c)(VIII), 44-12-306, 44-12-309(2), 44-12-103 and 44-12-312, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the process to be followed when a Retail Marijuana Establishment applies to obtain financing or otherwise have a relationship with an Indirect Beneficial Interest Owner. The rule establishes that only materially complete Retail Marijuana Establishment applications for Indirect Beneficial Interest Owners, accompanied by all required fees, will be accepted and processed by the Division. The rule also clarifies that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Retail Marijuana Establishment Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the Retail Marijuana Establishment's application may be denied. The rule sets forth requirements for the contents of the contract or Agreement between Retail Marijuana Establishments and Indirect Beneficial Interest Owners, which reflect basic legal requirements surrounding the relationship between the parties.

**R 202.1 – Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Retail Marijuana Establishments**

- A. Retail Marijuana Establishment Initiates Process. The Retail Marijuana Establishment seeking to obtain financing or otherwise establish any type of relationship with an Indirect Beneficial Interest Owner, including a Permitted Economic Interest, a Commercially Reasonable Royalty Interest Holder, a Profit-Sharing Plan Employee, or a Qualified Institutional Investor, must file all required documents with the Division, including any supplemental documents requested by the Division in the course of its review of the application.
- B. General Requirements. The Retail Marijuana Establishment seeking approval of an Indirect Beneficial Interest Owner must meet the following requirements:
1. All applications for approval of an Indirect Beneficial Interest Owner shall be made upon current forms prescribed by the Division.
  2. The burden of proving that a proposed Indirect Beneficial Interest Owner is qualified to hold such an interest rests at all times with the Retail Marijuana Establishment submitting the application.
  3. The Retail Marijuana Establishment applying for approval of any type of Indirect Beneficial Interest Owner must submit a complete application to the Division before it will be accepted or considered.
  4. All applications must be complete and accurate in every material detail.
  5. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.
  6. All applications must be accompanied by a full remittance of the required fees.
  7. The Division may refuse to accept an incomplete application.
  8. The proposed holder of the Indirect Beneficial Interest is not a publicly traded company.
  9. Additional Information May Be Required
    - a. Upon request by the Division, a Retail Marijuana Establishment applying to have any type of Indirect Beneficial Interest Owner shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after the request is made unless otherwise specified by the Division.
    - b. Failure to provide the requested information by the Division's deadline may be grounds for denial of the application.
- C. Information Must Be Provided Truthfully. A Retail Marijuana Establishment applying for approval of any type of Indirect Beneficial Interest Owner shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where any party made misstatements, omissions, misrepresentations or untruths in the application or in connection with the background investigation of the proposed Indirect Beneficial Interest Owner. This type of conduct may be considered as the basis for additional administrative action against the Retail Marijuana Establishment and it may also be the basis for criminal charges against either the Retail Marijuana Establishment Applicant or the Indirect Beneficial Interest Owner.

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- D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Medical Code, the Retail Code or for any other state or local law enforcement purpose or as otherwise required by law.
- E. Approval of Financial Interest. Each Financial Interest in a Retail Marijuana Establishment is void and of no effect unless and until approved by the Division. Any amendment of a Financial Interest is also void and of no effect unless and until approved by the Division.
- F. Ongoing Qualification and Violation Affecting Public Safety. If at any time the Division finds any Indirect Beneficial Interest Owner is not qualified, or is no longer qualified, the Division may require the Retail Marijuana Establishment to terminate its relationship with and financial ties to the Indirect Beneficial Interest Owner within a specified time period. Failure to terminate such relationship and financial ties within the specified time period may constitute a violation affecting public safety and be a basis for administrative action against the Retail Marijuana Establishment.
- G. Permitted Economic Interest Holder Requirements. At the time of application, a Retail Marijuana Establishment seeking to obtain approval of a Permitted Economic Interest shall provide evidence to establish that the natural person seeking to become a Permitted Economic Interest holder is a lawful resident of the United States and shall provide documentation verifying and confirming the funds used for the Permitted Economic Interest were lawfully earned or obtained.
- H. Permitted Economic Interest Agreement Requirements. The Retail Marijuana Establishment Applicant seeking to obtain financing from a Permitted Economic Interest must submit a copy of the Agreement between the Retail Marijuana Establishment and the person seeking to hold a Permitted Economic Interest. The following requirements apply to all Agreements:
1. The Agreement must be complete, and must fully incorporate all terms and conditions.
  2. The following provisions must be included in the Agreement:
    - a. Any interest in a Retail Marijuana Establishment, whether held by a Permitted Economic Interest or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any Agreement or other interest in violation thereof shall be void. The Permitted Economic Interest holder shall not provide funding to the Retail Marijuana Establishment until the Permitted Economic Interest is approved by the Division.
    - b. No Agreement or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.
    - c. The Retail Marijuana Establishment and the Permitted Economic Interest holder must sign an affirmation of passive investment on a form approved by the Division.

- d. The Retail Marijuana Establishment must initiate any process to convert a Permitted Economic Interest to a Direct Beneficial Interest Owner and the process to convert the Permitted Economic Interest into a Direct Beneficial Interest Owner must be completed prior to the expiration or termination of the Agreement. The holder of the Permitted Economic Interest must meet all qualifications for licensure and ownership pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder prior to conversion of the Permitted Economic Interest to a Direct Beneficial Interest Owner.
- e. At the election of the Retail Marijuana Establishment, if the holder of the Permitted Economic Interest is not qualified for licensure as a Direct Beneficial Interest Owner but is qualified as a holder of the Permitted Economic Interest, and the Permitted Economic Interest is also approved by the Division then the Permitted Economic Interest may remain in force and effect for as long as it remains approved by the Division under the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.
- f. The Permitted Economic Interest holder shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the holder no longer qualifies to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code and any rules promulgated thereunder.
- g. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which could lead to a finding that the holder is no longer qualified to hold the Permitted Economic Interest and/or that could lead to a denial of licensure pursuant to the Medical Code and/or Retail Code as applicable, and any rules promulgated thereunder.
- h. A Permitted Economic Interest holder's or a Retail Marijuana Establishment's failure to make required disclosures may be grounds for administrative action including but not limited to denial of a subsequent request to convert the Permitted Economic Interest into an ownership interest in the Retail Marijuana Establishment. Failure to make required disclosures may lead to a finding that the Permitted Economic Interest is no longer approved, and a requirement that the Retail Marijuana Establishment terminate its relationship with the Permitted Economic Interest holder.

- i. The Permitted Economic Interest holder agrees and acknowledges that it has no entitlement or expectation of being able to invest in, or have a relationship with, the Retail Marijuana Establishment unless and until the Division determines the Permitted Economic Interest is approved. The Permitted Economic Interest holder agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval. The Permitted Economic Interest holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Permitted Economic Interest or find that the Permitted Economic Interest is no longer qualified. The Permitted Economic Interest Holder agrees and acknowledges it has no entitlement to or expectation of the Division approving the Permitted Economic Interest. The Permitted Economic Interest holder further agrees that any administrative or judicial review of a determination by the Division regarding the qualification or approval of the Permitted Economic Interest will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Permitted Economic Interest holder further agrees and acknowledges that the Permitted Economic Interest holder shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. The Permitted Economic Interest holder also agrees and acknowledges that the Permitted Economic Interest holder may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest holder. Furthermore, the Permitted Economic Interest holder agrees and acknowledges that the Permitted Economic Interest holder may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Permitted Economic Interest Holder. THE PERMITTED ECONOMIC INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PERMITTED ECONOMIC INTEREST BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE PERMITTED ECONOMIC INTEREST, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.
- I. Commercially Reasonable Royalty Contract Requirements. A Retail Marijuana Establishment seeking to utilize the intellectual property of a Commercially Reasonable Royalty Interest Holder must submit a copy of the contract between the Retail Marijuana Establishment and the Person seeking to hold a Commercially Reasonable Royalty. The following requirements apply to all such contracts:
  1. The contract must be complete, and must fully incorporate all terms and conditions.
  2. The following provisions must be included in the contract:

- a. Any interest in a Retail Marijuana Establishment, whether held by a Commercially Reasonable Royalty Interest Holder or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void.
- b. No contract, royalty or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void.
- c. The Retail Marijuana Establishment and the Commercially Reasonable Royalty Interest Holder must sign an affirmation of passive investment on a form approved by the Division.
- d. The Commercially Reasonable Royalty Interest Holder shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days after occurrence of the event, that could lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty.
- e. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that the Commercially Reasonable Royalty Interest Holder is not qualified to hold the Commercially Reasonable Royalty.
- f. A Commercially Reasonable Royalty Interest Holder's or a Retail Marijuana Establishment's failure to make required disclosures may lead to a finding that the Commercially Reasonable Royalty is not approved, or is no longer approved, and may lead to a requirement that the Retail Marijuana Establishment terminate its relationship with the Commercially Reasonable Royalty Interest Holder.
- g. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Commercially Reasonable Royalty Interest Holder understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, find that the Commercially Reasonable Royalty Interest Holder does not qualify or no longer qualifies. The Commercially Reasonable Royalty Interest Holder agrees and acknowledges it has no entitlement to or expectation to approval of the Commercially Reasonable Royalty.

- h. The Commercially Reasonable Royalty Interest Holder further agrees that any administrative or judicial review of a determination by the Division approving or denying the Commercially Reasonable Royalty will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Commercially Reasonable Royalty Interest Holder further agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. The Commercially Reasonable Royalty Interest Holder also agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. Furthermore, the Commercially Reasonable Royalty Interest Holder agrees and acknowledges that the Commercially Reasonable Royalty Interest Holder may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Commercially Reasonable Royalty Interest Holder. THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE COMMERCIALLY REASONABLE ROYALTY BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE COMMERCIALLY REASONABLE ROYALTY INTEREST HOLDER, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.
- i. If the Division determines the Commercially Reasonable Royalty Interest Holder is not in compliance with the Retail Code, the Medical Code or these rules, then the Retail Marijuana Establishment shall discontinue use of such Commercially Reasonable Royalty and associated intellectual property within thirty (30) days of the Division finding. The Retail Marijuana Establishment shall not pay any remuneration to a Commercially Reasonable Royalty Interest Holder that does not qualify under the Retail Code and these rules, including but not limited to Rule R 231.2(B).
- j. The Commercially Reasonable Royalty Interest Holder shall neither exercise control over nor be positioned so as to enable the exercise of control over the Retail Marijuana Establishment. Notwithstanding the foregoing, a Commercially Reasonable Royalty Interest Holder may influence the marketing, advertising, labeling and display of any product or line of products for which the Commercially Reasonable Royalty exists so long as such influence is not inconsistent with the Retail Code, the Medical Code or these rules.
- J. Profit-Sharing Plan Documents. A Retail Marijuana Establishment offering licensed employees a share of the profits through a Profit-Sharing Plan must submit a list of all proposed participants in the Profit-Sharing Plan along with their names, addresses and occupational license numbers and submit a copy of all documentation regarding the Profit-Sharing Plan in connection with the Retail Marijuana Establishment's application:

1. The documents establishing the Profit-Sharing Plan must be complete and must fully incorporate all terms and conditions.
2. The following provisions must be included in the documents establishing the Profit-Sharing Plan:
  - a. Any interest in a Retail Marijuana Establishment, whether held by a Profit-Sharing Plan Employee or any other person, must be acquired in accordance with the provisions of the Medical Code and/or Retail Code, as applicable, and the rules promulgated thereunder. The issuance of any contract or other interest in violation thereof shall be void.
  - b. No contract or other interest issued by the Retail Marijuana Establishment and no claim or charge therein or thereto shall be transferred except in accordance with the provisions of the Medical Code and/or Retail Code as applicable, and the rules promulgated thereunder. Any transfer in violation thereof shall be void. Any distributions from a Profit-Sharing Plan must be made in cash, not in the form of stock or other equity interests in the Retail Marijuana Establishment.
  - c. The Retail Marijuana Establishment shall disclose in writing to the Division any and all disqualifying events, within ten days after receiving notice of the event, which would lead to a finding that any Profit-Sharing Plan Employee does not qualify under the Retail Code and these rules, including but not limited to Rule R 231.6(B), to participate in the Profit-Sharing Plan.
  - d. A Profit-Sharing Plan Employee shall disclose in writing to the Division and to the Retail Marijuana Establishment any and all disqualifying events, within ten days after occurrence of the event that could lead to a finding that the Profit-Sharing Plan Employee does not qualify or no longer qualifies under the Retail Code and these rules, including but not limited to Rule R 231.2(B), to participate in the Profit-Sharing Plan.
  - e. A Retail Marijuana Establishment's or a Profit-Sharing Plan Employee's failure to make required disclosures may lead to a finding that the Profit-Sharing Plan is not approved, and may lead to a requirement that the Retail Marijuana Establishment terminate or modify the Profit-Sharing Plan.

- f. The Profit-Sharing Plan Employee agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Profit-Sharing Plan Employee understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Profit-Sharing Plan. The Profit-Sharing Plan Employee agrees and acknowledges he or she has no entitlement to or expectation to Division approval of the Profit-Sharing Plan or the Profit-Sharing Plan Employee's participation in the plan. The Profit-Sharing Plan Employee further agrees that any administrative or judicial review of a determination by the Division approving or denying the Profit-Sharing Plan or the Profit-Sharing Plan Employee will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. Each Profit-Sharing Plan Employee further agrees and acknowledges that the Profit-Sharing Plan Employee shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. The Profit-Sharing Plan Employee also agrees and acknowledges that the Profit-Sharing Plan Employee may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. Furthermore, the Profit-Sharing Plan Employee agrees and acknowledges that the Profit-Sharing Plan Employee may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Profit-Sharing Plan Employee. THE PROFIT-SHARING PLAN EMPLOYEE KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE PROFIT-SHARING PLAN OR THE PROFIT-SHARING PLAN EMPLOYEE'S QUALIFICATIONS OR ACTIONS OF THE PROFIT-SHARING PLAN EMPLOYEE, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

- K. Qualified Institutional Investor Requirements. Before a Retail Marijuana Establishment may permit a Qualified Institutional Investor to own any portion of the Retail Marijuana Establishment, the Retail Marijuana Establishment must submit the following documentation to the Division in connection with the Retail Marijuana Establishment's application:

1. A description of the Qualified Institutional Investor's business and a statement as to why the Qualified Institutional Investor meets the definition of Qualified Institutional Investor in Rule R 103 and subsection 44-12-306(7), C.R.S.
2. A certification made under oath and the penalty of perjury by the Qualified Institutional Investor:

- a. That the ownership interests were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as a Qualified Institutional Investor and not for the purposes of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of a Retail Marijuana Establishment.
- b. That the Qualified Institutional Investor is bound by and shall comply with the Retail Code and the rules adopted pursuant thereto, is subject to the jurisdiction of the courts of Colorado, and consents to Colorado as the choice of forum in the event any dispute, question, or controversy arises regarding the Qualified Institutional Investor's relationship with the Retail Marijuana Establishment or activities pursuant to the Retail Code and rules adopted pursuant thereto.
- c. The Qualified Institutional Investor agrees and acknowledges that its relationship with the Retail Marijuana Establishment is contingent upon Division approval throughout the entire term of its relationship with the Retail Marijuana Establishment. The Qualified Institutional Investor understands and acknowledges that approval by the Division is wholly discretionary and the Division may, at any time, deny approval of the Qualified Institutional Investor. The Qualified Institutional Investor agrees and acknowledges it has no entitlement to or expectation to Division approval of the Qualified Institutional Investor. The Qualified Institutional Investor further agrees that any administrative or judicial review of a determination by the Division approving or denying the Qualified Institutional Investor will only occur through licensing or enforcement proceedings involving the Retail Marijuana Establishment. The Qualified Institutional Investor further agrees and acknowledges that the Qualified Institutional Investor shall only be entitled to notice of a denial or administrative action concerning the Retail Marijuana Establishment if the denial or administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. The Qualified Institutional Investor also agrees and acknowledges that the Qualified Institutional Investor may only request leave to intervene in an administrative proceeding against the Retail Marijuana Establishment, pursuant to subsection 24-4-105(2)(c), C.R.S., if the administrative proceeding is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. Furthermore, the Qualified Institutional Investor agrees and acknowledges that the Qualified Institutional Investor may only seek judicial review of an action against the Retail Marijuana Establishment, pursuant to subsection 24-4-106(4), C.R.S., if the administrative action is based upon, or directly related to, the qualifications or actions of the Qualified Institutional Investor. THE QUALIFIED INSTITUTIONAL INVESTOR KNOWINGLY, FREELY, AND VOLUNTARILY WAIVES ANY RIGHT OR CLAIM TO SEEK ANY INDEPENDENT REVIEW OF APPROVAL OR DENIAL OF THE QUALIFIED INSTITUTIONAL INVESTOR BY THE DIVISION, OR OF AN ADMINISTRATIVE ACTION AGAINST THE RETAIL MARIJUANA ESTABLISHMENT, THAT IS BASED UPON, OR DIRECTLY RELATED TO, THE QUALIFICATIONS OR ACTIONS OF THE QUALIFIED INSTITUTIONAL INVESTOR, AND EXPRESSLY AGREES THAT THE ONLY ADMINISTRATIVE OR JUDICIAL REVIEW OF SUCH A DETERMINATION OR ACTION WILL OCCUR THROUGH A LICENSING OR ENFORCEMENT PROCEEDING FOR THE RETAIL MARIJUANA ESTABLISHMENT.

- d. An explanation of the basis of the signatory's authority to sign the certification and to bind the Qualified Institutional Investor to its terms.
3. The name, address, telephone number and any other information requested by the Division as required on its approved forms for the officers and directors, or their equivalent, of the Qualified Institutional Investor as well as those Persons that have direct control over the Qualified Institutional Investor's ownership interest in the Retail Marijuana Establishment.
4. The name, address, telephone number and any other information requested by the Division as required on its approved forms for each Person who has the power to direct or control the Qualified Institutional Investor's voting of its shares in the Retail Marijuana Establishment.
5. The name of each Person that beneficially owns five percent or more of the Qualified Institutional Investor's voting securities or other equivalent.
6. A list of the Qualified Institutional Investor's affiliates.
7. A list of all regulatory agencies with which the Qualified Institutional Investor files periodic reports, and the name, address, and telephone number of the individual, if known, to contact at each agency regarding the Qualified Institutional Investor.
8. A disclosure of all criminal or regulatory sanctions imposed during the preceding ten years and of any administrative or court proceedings filed by any regulatory agency during the preceding five years against the Qualified Institutional Investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months. As to a former officer or director, such information need be provided only to the extent that it relates to actions arising out of or during such person's tenure with the Qualified Institutional Investor or its affiliates.
9. A copy of any filing made under 16 U.S.C § 18a with respect to the acquisition or proposed acquisition of an ownership interest in the Retail Marijuana Establishment.
10. Any additional information requested by the Division.

**R 202.5 – Repealed Effective January 1, 2017.**

**Basis and Purpose – R 203**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I) and (XV), 44-12-103, and 44-12-310, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how licenses can be renewed.

**R 203 – Process for Renewing a License: Retail Marijuana Establishments**

A. General Process for License Renewal.

1. The Division will send a Notice for License Renewal 90 days prior to the expiration of an existing license by first class mail to the Licensee's mailing address of record.

2. A Licensee may apply for the renewal of an existing license not less than 30 days prior to the license's expiration date. A renewal application filed not less than 30 days prior to expiration of the license is considered timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until final agency action on the renewal application.
  3. If the Licensee files a renewal application within less than 30 days prior to expiration, the Licensee must provide a written explanation detailing the circumstances surrounding the untimely filing. If the Division accepts the application, then the application is deemed timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until final agency action on the renewal application.
  4. An application for renewal will only be accepted if it is accompanied by:
    - a. The requisite licensing fees. See Rule R 209 - Schedule of Business License Renewal Fees: Retail Marijuana Establishments; and
    - b. A copy of the relevant local jurisdiction's approval.
  5. Each Direct Beneficial Interest Owner required to have an Associated Key License must be fingerprinted at least every two years, and may be fingerprinted more often at the Division's discretion.
  6. The Division shall perform a limited background check, which may include fingerprinting, regarding Qualified Limited Passive Investors and other Financial Interests that are Indirect Beneficial Interest Owners. Where warranted by reasonable cause, the Division may require additional investigation.
  7. For each renewal application, the Licensee shall submit the original application and one identical copy. The Division will retain the original renewal application and will send the copy to the relevant local jurisdiction within seven days of receiving the renewal application.
- B. Failure to Receive a Notice for License Renewal. Failure to receive a Notice for License Renewal does not relieve a Licensee of the obligation to renew all licenses as required.
- C. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required fees.
1. Administratively Continued Retail Marijuana Establishment License. In the event of a renewal application filed after the license expiration date, a Retail Marijuana Establishment may not operate unless and until the Division in its discretion informs the Retail Marijuana Establishment Licensee that the license has been administratively continued. A Retail Marijuana Establishment Licensee whose license has been administratively continued may continue to operate until final agency action on the renewal application. Review of the renewal application will include, among other factors a review of whether the Retail Marijuana Establishment operated with an expired license.
  2. Repealed effective January 1, 2019.

3. The Division will not accept a renewal application filed more than 90 days after the expiration of the license. The Division also will not renew any license that has been voluntarily surrendered, any Retail Marijuana Establishment license for which local licensing approval was not obtained within 12 months, or any license that has been revoked. A Retail Marijuana Establishment license that expired over 90 days prior to submission of the Retail Marijuana Establishment Licensee's renewal application, a license that has been voluntarily surrendered, a Retail Marijuana Establishment license for which local licensing approval was not obtained within 12 months, and a license that has been revoked may only be reinstated via an application for a new license that is subsequently approved by the Division or the State Licensing Authority.
- D. Licenses Subject to Ongoing Discipline and/or Summary Suspension. Licenses that are the subject of a summary suspension, a disciplinary action, and/or any other administrative action are subject to the requirements of this Rule. Licenses that are not timely renewed shall expire. See Rules R 1301 – Disciplinary Process: Non-Summary Suspension and R 1302 – Disciplinary Process: Summary Suspensions.
- E. Closely Held Business Entity Direct Beneficial Interest Owners. Closely Held Business Entity Direct Beneficial Interest Owners must submit a current Division certification form, signed by all Direct Beneficial Interest Owner(s) of the Retail Marijuana Establishment certifying that each Associated Key License owner of the Closely Held Business Entity has maintained, and currently maintains, United States citizenship.
- F. Indirect Beneficial Interest Owners and Qualified Limited Passive Investors. At the time of renewal, a Retail Marijuana Establishment shall disclose any and all Indirect Beneficial Interest Owners and Qualified Limited Passive Investors that hold an interest in the Retail Marijuana Establishment. Additionally, the Retail Marijuana Establishment must present updated information regarding all Indirect Beneficial Interest Owners and Qualified Limited Passive Investors at the time the Retail Marijuana Establishment submits its renewal materials:
1. Current Division Indirect Beneficial Interest Owners and Qualified Limited Passive Investors renewal disclosure forms;
  2. Current Division form allowing the Division to investigate any Indirect Beneficial Interest Owner(s) and/or Qualified Limited Passive Investor(s) if the Division deems such investigation necessary. The form shall be signed by all Direct Beneficial Interest Owner(s) of the Retail Marijuana Establishment;
  3. Permitted Economic Interest Holder, at the discretion of the Division, may be required to submit new fingerprints;
  4. Current Division certification form attesting that all Qualified Limited Passive Investor(s) and/or all Indirect Beneficial Interest Owner(s) remain qualified under the Retail Code and these rules. The form shall be signed by all Direct Beneficial Interest Owner(s) of the Retail Marijuana Establishment;
  5. For Permitted Economic Interest Holder, current Division certification form, signed by all Direct Beneficial Interest Owner(s) of the Retail Marijuana Establishment and the particular Permitted Economic Interest holder, certifying that he or she has maintained, and currently maintains, lawful residence in the United States; and
  6. For Qualified Limited Passive Investors, current Division certification form, signed by all Direct Beneficial Interest Owner(s) of the Retail Marijuana Establishment and the particular Qualified Limited Passive Investor, certifying that he or she has maintained, and currently maintains, United States citizenship.

## Basis and Purpose – R 204

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I), 44-12-202(3)(a)(IX) 44-12-202(3)(a)(XVI), 44-12-202(3)(a)(XXI), 44-12-202(3)(c)(VIII), 44-12-601(1), 44-12-103, 44-12-306, 44-12-309, 44-12-312, 44-12-901, and 24-76.5-101 *et seq.*, C.R.S. The purpose of this rule is to provide clarity regarding the nature of a Direct Beneficial Interest Owner and an Indirect Beneficial Interest Owner, and to clarify what factors the State Licensing Authority generally considers regarding the same. The Division will review all relevant information to determine ownership of a Retail Marijuana Establishment.

## R 204 – Ownership Interests of a License: Retail Marijuana Establishments

- A. Licenses Held By Direct Beneficial Interest Owners. Each Retail Marijuana Establishment License must be held by its Direct Beneficial Interest Owner(s). Each natural person other than a Qualified Limited Passive Investor must hold an Associated Key license. A Direct Beneficial Interest Owner shall not be a publicly traded company.
- B. 100% Ownership.
  1. The sum of the percentages of ownership of all Direct Beneficial Interest Owners of a Retail Marijuana Establishment and Qualified Institutional Investors must equal 100%.
    - a. Qualified Institutional Investors may hold ownership interests, in the aggregate, of 30% or less in the Retail Marijuana Establishment.
    - b. A Qualified Limited Passive Investor must be a natural person who is a United States citizen and may hold an ownership interest of less than five percent in the Retail Marijuana Establishment.
    - c. Each Direct Beneficial Interest Owner, including but not limited to each officer, director, managing member, or partner of a Retail Marijuana Establishment, must hold a current and valid Associated Key License. See Rule R 233 – Retail Code or Medical Code Occupational Licenses Required. Except that this requirement shall not apply to Qualified Limited Passive Investors.
    - d. With the exception of Qualified Institutional Investors, only Direct Beneficial Interest Owners may hold a partnership interest, limited or general, a joint venture interest, or ownership of a share or shares in a corporation or a limited liability company which is licensed.
  2. Death, Disability, Divestment, Revocation or Suspension of Less than 100% of All Direct Beneficial Interest Owners. In the event of death, disability, divestment, revocation, or suspension of less than one hundred percent of all Direct Beneficial Interest Owners, the following provisions apply.
    - a. In the event of the death or disability of a Direct Beneficial Interest Owner see Rule R 253 – Temporary Appointee Registrations for Court Appointees.

- b. A Retail Marijuana Establishment shall submit a change of ownership application within forty-five (45) days of entry of a final court order or final arbitration award, or full execution of a settlement agreement that alters the ownership structure of the Retail Marijuana Establishment. Any change of ownership application based on a final court order, final arbitration award, or fully executed settlement agreement and remains subject to approval by the Division. If a change of ownership application is not timely submitted, the Retail Marijuana Establishment and its Associated Key Licensee(s) may be subject to administrative action.
  - c. In the event of the suspension of the license of a Direct Beneficial Interest Owner, either (i) the Retail Marijuana Establishment shall comply with all requirements of Rule R 1302 – Disciplinary Process: Summary Suspensions, or (ii) the non-suspended Associated Key Licensee(s) must control the Retail Marijuana Establishment without any participation by the suspended Direct Beneficial Interest Owner.
  - d. In the event of revocation of the license of a Direct Beneficial Interest Owner, a Retail Marijuana Establishment shall have forty-five (45) days, unless extended after a showing of good cause by the Retail Marijuana Establishment, to submit a change of ownership application to the Division detailing the Licensee’s plan for redistribution of ownership among the remaining Direct Beneficial Interest Owners. Such plan is subject to approval by the Division. If a change of ownership application is not timely submitted, the Retail Marijuana Establishment and its remaining Associated Key Licensee(s) may be subject to administrative action.
- C. At Least One Associated Key License Required. No Retail Marijuana Establishment may operate or be licensed unless it has at least one Associated Key Licensee that is a Direct Beneficial Interest Owner who has been a Colorado resident for at least one year prior to application. Any violation of this requirement may be considered a license violation affecting public safety.
- D. Loss Of Occupational License As An Owner Of Multiple Businesses. If an Associated Key License is suspended or revoked as to one Retail Marijuana Establishment or Medical Marijuana Business, that Associated Key License, shall be suspended or revoked as to any other Retail Marijuana Establishment or Medical Marijuana Business in which that Person possesses an ownership interest. See Rule R 233 – Retail Code or Medical Code Occupational Licenses Required.
- E. Management Companies. Any Person contracted to manage the overall operation of a Licensed Premises must hold a Retail Marijuana Operator license.
- F. Role of Managers. Associated Key Licensees may hire managers, and managers may be compensated on the basis of profits made, gross or net. A Retail Marijuana Establishment license may not be held in the name of a manager who is not a Direct Beneficial Interest Owner. A manager who does not hold an Associated Key License as a Direct Beneficial Interest Owner of the Retail Marijuana Establishment, must hold a Key License as an employee of the Retail Marijuana Establishment. Any change in manager must be reported to the Division within seven (7) days of the change. Additionally, a Retail Marijuana Operator may include management services as part of the operational services provided to a Retail Marijuana Establishment. A Retail Marijuana Establishment and its Direct Beneficial Interest Owners may be subject to license denial or administrative action including, but not limited to, fine, suspension or revocation of their license(s) based on the acts or omissions of any manager, Retail Marijuana Establishment Operator, or agents and employees thereof engaged in the operations of the Retail Marijuana Establishment.

- G. Prohibited Third-Party Acts. No Licensee may employ, contract with, hire, or otherwise retain any Person, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit if the Licensee is prohibited by law or these rules from engaging in such conduct itself.
1. A Licensee may be held responsible for all actions and omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.
  2. A Licensee may be subject to a license denial or administrative action, including but not limited to fine, suspension or revocation of its license(s), based on the acts and/or omissions of any Person the Licensee employs, contracts with, hires, or otherwise retain, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

### **Basis and Purpose – R 204.5**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I), 44-12-202(3)(a)(III), 44-12-202(3)(a)(XV), 44-12-202(3)(a)(XXI), 44-12-202(3)(c)(IV), 44-12-202(3)(c)(V), 44-12-202(3)(c)(VII), 44-12-202(3)(c)(VIII), 44-12-103, 44-12-303, 44-12-305, 44-12-306, 44-12-308, 44-12-309, and 44-12-312, C.R.S. The purpose of this rule is to clarify the application, review and approval process for various types of Business Interests. The Division will review all relevant information to determine ownership of, interests in, and control of a Retail Marijuana Establishment.

### **R 204.5 – Disclosure, Approval and Review of Business Interests**

- A. Business Interests. A Retail Marijuana Establishment shall disclose all Business Interests at the time of initial application and at the time of each renewal application. Business Interests include Financial Interests and Affiliated Interests. Any Financial Interest must be pre-approved by the Division. It shall be unlawful to fail to completely report all Business Interests in each license issued. It shall be unlawful for a person other than a Financial Interest holding an Associated Key License to exercise control over a Retail Marijuana Establishment or to be positioned so as to enable the exercise of control over a Retail Marijuana Establishment. Except that a Qualified Institutional Investor and a Qualified Limited Passive Investor may vote his, her or its shares in the Retail Marijuana Establishment.
- B. Financial Interests. A Retail Marijuana Establishment shall not permit any Person to hold or exercise a Financial Interest in the Retail Marijuana Establishment unless and until such Person's Financial Interest has been approved by the Division. If a Retail Marijuana Establishment wishes to permit a Person to hold or exercise a Financial Interest, and that Person has not been previously approved in connection with an application for the Retail Marijuana Establishment, the Retail Marijuana Establishment shall submit a change of ownership or financial interest form approved by the Division. A Financial Interest shall include:
1. Any Direct Beneficial Interest Owner;
  2. The following types of Indirect Beneficial Interest Owners:
    - a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of more than 30 percent; and
    - b. A Permitted Economic Interest holder.

3. Control. Any other natural person who exercises control or is positioned so as to enable the exercise of control over the Retail Marijuana Establishment must hold an Associated Key License. To determine if a Person exercises control or is positioned so as to enable the exercise of control over a Retail Marijuana Establishment within the meaning of the Retail Marijuana Rules, the Division will consider the following non-exhaustive factors:
    - a. The Person bears the risk of loss and opportunity for profit;
    - b. The Person has final decision making authority over any material aspect of the operation of the Retail Marijuana Establishment;
    - c. The Person manages the overall operations of a Retail Marijuana Establishment or its Licensed Premises, or who manages a material portion of the Retail Marijuana Establishment or its Licensed Premises;
    - d. The Person guarantees the Retail Marijuana Establishment's debts or production levels;
    - e. The Person is a beneficiary of the Retail Marijuana Establishment's insurance policies;
    - f. The Person receives the majority of the Retail Marijuana Establishment's profits as compared to other recipients of the Retail Marijuana Establishment's profits; or
    - g. The Person acknowledges liability for the Retail Marijuana Establishment's federal, state or local taxes.
  4. Subparagraph 3 of this Rule does not apply where inconsistent with the Rule R 1700 Series – Retail Marijuana Establishment Operators.
- C. Affiliated Interests. A Retail Marijuana Establishment shall disclose all Affiliated Interests in connection with each application for licensure, renewal or reinstatement of the Retail Marijuana Establishment. The Division may conduct such background investigation as it deems appropriate regarding Affiliated Interests. An Affiliated Interest shall include any Person who does not hold a Financial Interest in the Retail Marijuana Establishment and who has any of the following relationships with the Retail Marijuana Establishment:
1. The following Indirect Beneficial Interest Owners:
    - a. A Commercially Reasonable Royalty Interest Holder who receives, in the aggregate, a royalty of 30 percent or less;
    - b. A Profit-Sharing Plan Employee; and
    - c. A Qualified Institutional Investor.
  2. Any other Person who holds any other disclosable interest in the Retail Marijuana Establishment other than a Financial Interest. Such disclosable interests shall include but shall not be limited to an indirect financial interest, a lease agreement, a secured or unsecured loan, or security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, Transfer, transportation, or testing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

3. If the Division determines any Person disclosed as an Affiliated Interest should have been pre-approved as a Financial Interest, approval and further background investigation may be required. Additionally, the failure to seek pre-approval of a Financial Interest holder may form the basis for license denial or administrative action against the Retail Marijuana Establishment.
- D. Secured Interest In Marijuana Prohibited. No Person shall at any time hold a secured interest in Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.

**Basis and Purpose – R 205**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(III), 44-12-202(3)(a)(XV), 44-12-303, 44-12-305, 44-12-309(2), 44-12-103, 44-12-308, 44-12-406, 44-12-407, and 24-76.5-101, *et seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish protocol for ownership transfers. In addition, the rule clarifies that a business cannot use the transfer of ownership process in order to circumvent the administrative disciplinary process and that an ongoing investigation or disciplinary action may: (1) constitute grounds to deny a transfer of ownership request; (2) constitute grounds to delay a transfer of ownership request, or (3) mandate that the new business owner is responsible for any imposed sanction.

**R 205 – Transfer of Ownership and Changes in Business Structure: Retail Marijuana Establishments**

A. General Requirements

1. All applications for transfers of Direct Beneficial Interest Owners or changes in corporate structure by licensed Retail Marijuana Establishments authorized pursuant to section 44-12-401, C.R.S., shall be made upon current forms prescribed by the Division. Each application shall identify the relevant local jurisdiction.
2. All applications for transfers of ownership and changes in Retail Marijuana Establishments must include application fees, be complete in every material detail, and be filled out truthfully.
3. All applications for transfers of ownership and changes in licensed entities by Retail Marijuana Establishments must be reported to the State Licensing Authority or its designee and relevant local jurisdiction at least 30 days prior to any requested transfer or change.
4. Each Applicant for a transfer of ownership shall provide suitable evidence as required by the Division, in accordance with these rules and the Retail Code, of each natural person's proof of lawful presence, citizenship, residence, good character and reputation and verification that funds used to invest in or finance the retail marijuana business were lawfully earned or obtained. Each Applicant shall also provide all requested information concerning financial and management associations and interests of other Persons in the business, Department of Revenue tax payment information, the deed, lease, contract, or other document governing the terms and conditions of occupancy of the Licensed Premises. Nothing in this section is intended to limit the Division's ability to request additional information it deems necessary to determining an Applicant's suitability for licensure.
5. Failure to provide such additional information by the deadline specified by the Division may result in denial of the application.

6. The Applicant shall provide the original and one copy of an application for transfer of ownership to the Division. The Division will retain the original application and send the copy to the relevant local jurisdiction within seven days of receiving the application. See Rule R 1401 - Instructions for Local Jurisdictions and Law Enforcement Officers.
  7. The Division will not approve a transfer of ownership application without first receiving written notification that the Applicant disclosed the transfer of ownership to the relevant local jurisdiction. If a local jurisdiction elects not to approve or deny a transfer of ownership application, the local jurisdiction must provide written notification acknowledging receipt of the application and the State Licensing Authority shall revoke the state-issued license.
  8. The Applicant(s), or proposed transferee(s), for any license shall not operate the Retail Marijuana Establishment identified in the transfer of ownership application until the transfer of ownership request is approved in writing by the State Licensing Authority or its designee. A violation of this requirement shall constitute grounds to deny the transfer of ownership request, may be a violation affecting public safety, and may result in disciplinary action against the Applicant's existing license(s), if applicable.
  9. All current Direct Beneficial Interest Owner(s), or proposed transferor(s), of the license(s) at issue retain full responsibility for the Retail Marijuana Establishment identified in the transfer of ownership application until the transfer of ownership request is approved in writing by the Division. A violation of this requirement shall constitute grounds to deny the transfer of ownership request, may be a violation affecting public safety, and may result in disciplinary action against the license(s) of the current Direct Beneficial Interest Owners and/or the Retail Marijuana Establishment.
  10. If a Retail Marijuana Establishment or any of its Direct Beneficial Interest Owners applies to transfer ownership and is involved in an administrative investigation or administrative disciplinary action, the following may apply:
    - a. The transfer of ownership may be delayed or denied until the administrative action is resolved; or
    - b. If the transfer of ownership request is approved in writing by the Division, the transferee may be responsible for the actions of the Retail Marijuana Establishment and its prior Direct Beneficial Interest Owners, and subject to discipline based upon the same.
  11. Licensee Initiates Change of Ownership for Permitted Economic Interests. All individuals holding a Permitted Economic Interest who seek to convert to become a Direct Beneficial Interest Owner are subject to this Rule R 205. The Retail Marijuana Establishment must initiate the change of ownership process for an individual holding a Permitted Economic Interest who seeks to convert its interest to become a Direct Beneficial Interest Owner. Permitted Economic Interest holders who are not qualified to become a Direct Beneficial Interest Owner shall not be allowed to convert.
  12. Retail Marijuana Transporters Not Eligible. Retail Marijuana Transporters are not eligible to apply for change of ownership.
- B. As It Relates to Corporations and Limited Liability Companies

1. If the Applicant is a corporation or limited liability company, it shall submit with the application the names, mailing addresses, and background forms of all of its officers, directors, and Direct and Indirect Beneficial Interest Owners; a copy of its articles of incorporation or articles of organization; and evidence of its authorization to do business within this State. In addition, each Applicant shall submit the names, mailing addresses, and, where applicable, certifications of residency or citizenship for all Persons owning any of the outstanding or issued capital stock or holding a membership interest. No publicly traded company may be identified as the proposed recipient of any ownership interest in a Retail Marijuana Establishment.
  2. Any proposed transfer of capital stock, regardless of the number of shares of capital stock transferred, shall be reported and approved by the State Licensing Authority or its designee and the relevant local jurisdiction at least 30 days prior to such transfer or change. If a local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.
- C. As It Relates to Partnerships. If the Applicant is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, it shall submit with the application the names, mailing addresses, background forms and, where applicable, certification of residency or citizenship for all of its partners and a copy of its partnership agreement.
- D. As It Relates to Entity Conversions. Any Licensee that qualifies for an entity conversion pursuant to sections 7-90-201, C.R.S., *et. seq.*, shall not be required to file a transfer of ownership application pursuant to section 44-12-308, C.R.S., upon statutory conversion, but shall submit a report containing suitable evidence of its intent to convert at least 30 days prior to such conversion. Such evidence shall include, but not be limited to, any conversion documents or agreements for conversion at least ten days prior to the date of recognition of conversion by the Colorado Secretary of State. The Licensee shall submit to the Division the names and mailing addresses of any officers, directors, general or managing partners, and all Direct and Indirect Beneficial Owners.
- E. Approval Required. It may be considered a license violation affecting public safety if a Licensee engages in any transfer of ownership without prior approval from the Division and the relevant local jurisdiction.
- F. Applications for Reinstatement Deemed New Applications. The Division will not accept an application for transfer of ownership if the license to be transferred is expired for more than 90 days, is voluntarily surrendered, or is revoked. See Rule R 202 - Process for Issuing a New License: Retail Marijuana Establishments.

### **Basis and Purpose – R 206**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(e), 44-12-202(3)(a)(I), 44-12-309(6), 44-12-309(12) and 44-12-303, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify the application process for changing location of a Licensed Premises.

### **R 206 – Changing Location of Licensed Premises: Retail Marijuana Establishments**

- A. Application Required to Change Location of Licensed Premises
1. A Direct Beneficial Interest Owner of a Retail Marijuana Establishment seeking to change the physical location or address of its Licensed Premises must make application to the Division for permission to change location of its Licensed Premise.

2. Such application shall:
  - a. Be made upon current forms prescribed by the Division;
  - b. Be complete in every material detail and include remittance of all applicable fees;
  - c. Be submitted at least 30 days prior to the proposed change;
  - d. Explain the reason for requesting such change;
  - e. Be supported by evidence that the application complies with the relevant local jurisdiction requirements; and
  - f. Contain a report of the relevant local jurisdiction(s) in which the Retail Marijuana Establishment is to be situated, which report shall demonstrate the approval of the local jurisdiction(s) with respect to the new location. If the relevant local jurisdiction elects not to approve or deny a change of location of Licensed Premises application, the local jurisdiction must provide written notification acknowledging receipt of the application.

**B. Permit Required Before Changing Location**

1. No change of location shall be permitted until after the Division considers the application, and such additional information as it may require, and issues to the Applicant a permit for such change.
2. The permit shall be effective on the date of issuance, and the Licensee shall, within 120 days, change the location of its business to the place specified therein and at the same time cease to operate a Retail Marijuana Establishment at the former location. At no time may a Retail Marijuana Establishment operate or exercise any of the privileges granted pursuant to the license in both locations. For good cause shown, the 120 day deadline may be extended for an additional 120 days. If the Licensee does not change the location of its business within the time period granted by the Division, including any extension, the Licensee shall submit a new application, pay the requisite fees and receive a new permit prior to completing any change of the location of the business.
3. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains.

**C. General Requirements**

1. Repealed.
2. An Applicant for change of location shall file a change of location application with the Division and pay the requisite change of location fee. See Rule R 210 - Schedule of Other Application Fees: All Licensees.

**Basis and Purpose – R 207**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-12-202(2)(b), 44-12-104(1)(a)(I), 44-12-202(3)(a)(II), 44-12-202(3)(a)(XV), 44-12-306(5)(a-b), 44-12-401(1)(a-g), 44-12-103, 44-12-401, 44-11-501, 44-11-502, and 44-12-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to clarify the schedules of application fees for new retail business Licensees.

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**R 207 – Schedule of Application Fees: Retail Marijuana Establishments**

A. Base Retail Marijuana Application Fees

1. Application Fee for Existing Medical Marijuana Licensees in Good Standing and Qualified Applications.
  - a. A Person licensed pursuant to the Medical Code, section 44-11-401, and that meets the requirements of 44-12-104, C.R.S., shall pay a \$500 application fee, for each application submitted, to operate a Retail Marijuana Establishment if the following are met:
    - i. The Licensee is operating; and
    - ii. The Licensee's license is in good standing. A license in good standing has complied consistently with the provisions of the Medical Code and the regulations adopted pursuant thereto and is not subject to a disciplinary action at the time of the application.
2. Application Fee for New Applicants - Retail Marijuana Store, Cultivation Facility, or Product Manufacturer. Applicants that do not meet the criteria in Part A. of this rule are required to pay a \$5000 application fee that must be submitted with each application before it will be considered.
3. Retail Marijuana Testing Facility Application Fee - \$1,000.00
4. Retail Marijuana Transporter Application Fee - \$1,000.00
5. Retail Marijuana Establishment Operator License Application Fee - \$1,000.00

B. Retail Marijuana Establishment Application Fees for Indirect Beneficial Interest Owners, Qualified Limited Passive Investors and Other Affiliated Interests

1. Affiliated Interest that is not an Indirect Beneficial Interest Owner - \$200.00
2. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of more than 30 percent - \$400.00
3. Commercially Reasonable Royalty Interest Holder receiving, in the aggregate, a royalty of 30 percent or less - \$200.00
4. Permitted Economic Interest - \$400.00
5. Employee Profit Sharing Plan - \$200.00
6. Qualified Limited Passive Investor
  - a. Standard limited initial background check - \$75.00
  - b. Full background check for reasonable cause - \$125.00
7. Qualified Institutional Investor - \$200.00

- C. When Application Fees Are Due. All application fees are due at the time a Retail Marijuana Establishment submits an application and/or at the time a Retail Marijuana Establishment submits an application for a new Financial Interest. An Applicant must follow Division policies regarding payment to local jurisdictions.

### **Basis and Purpose – R 208**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-12-202(2)(b), 44-12-202(3)(a)(II), 44-12-303(1), and 44-12-401(1)(a-g), 44-12-103, 44-11-501, 44-11-502, 44-12-304, and 44-12-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

### **R 208 – Schedule of Business License Fees: Retail Marijuana Establishments**

- A. License Fees - Medical Marijuana Business Converting To or Adding a Retail Marijuana Establishment Pursuant to 44-12-104(1)(a)(I).
1. Medical Marijuana Center Applying For A Retail Marijuana Store License – \$2,000.00
  2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) – \$1,500.00
  3. Expanded Production Management Fees for Licensees who apply and are approved by the Division pursuant to Rule R 506(E) for an increased production management tier:
    - a. Expanded Production Management Fee for Tier 2 (1,801 – 3,600 plants) - \$1,000.00
    - b. Expanded Production Management Fee for Tier 3 (3,601 – 6,000 plants) - \$2,000.00
    - c. Expanded Production Management Fee for Tier 4 (6,001 – 10,200 plants) - \$4,000.00
    - d. Expanded Production Management Fee for Tier 5 (10,201 – 13,800 plants) - \$6,000.00
    - e. Expanded Production Management Fee for each additional tier of 3,600 plants over Tier 5 - \$6,000.00 plus an additional \$1,000.00 for each tier of 3, 600 plants over Tier 5.
  4. Retail Marijuana Products Manufacturing License – \$1,500.00
- B. Retail Marijuana Transporter License Fee - \$4,400.00
- C. Retail Marijuana Establishment Operator License Fee - \$2,200.00
- D. License Fees - New Retail Marijuana Establishment Applicants That Have Applied Pursuant To 44-12-104(1)(b).
1. Retail Marijuana Store License - \$2,000.00
  2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) - \$1,500.00

3. Expanded Production Management Fees for Applicants with an increased production management tier approved by the Division pursuant to rule R 506(E):
  - a. Expanded Production Management Fee for Tier 2 (1,801 – 3,600 plants) - \$1,000.00
  - b. Expanded Production Management Fee for Tier 3 (3,601 – 6,000 plants) - \$2,000.00
  - c. Expanded Production Management Fee for Tier 4 (6,001 – 10,200 plants) - \$4,000.00
  - d. Expanded Production Management Fee for Tier 5 (10,201 – 13,800 plants) - \$6,000.00
  - e. Expanded Production Management Fee for each additional tier of 3,600 plants over Tier 5 - \$1,000.00
4. Retail Marijuana Products Manufacturing License - \$1,500.00
5. Retail Marijuana Testing Facility License - \$1,500.00
- E. When License Fees Are Due. All license fees are due at the time an application is submitted.
- F. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

### **Basis and Purpose – R 209**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-12-202(2)(b), 44-12-202(3)(a)(II), 44-12-303(1), 44-12-310(3)(a), 44-12-401(1)(a-g), 44-12-103, 44-12-401, 44-11-501, 44-11-502, 44-12-304, and 44-12-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements. The purpose of the 2018 modifications are to provide greater clarity regarding how the Division calculates fees due at renewal and not to increase the fees actually paid.

### **R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments**

- A. Renewal Fee Amount and Due Date. In addition to the Medical Marijuana Business specific renewal fee, all Licensees shall pay a renewal fee of \$300. Renewal license and processing fees are due at the time the renewal application is submitted.
- B. Late Renewal Application and Fee Pursuant to 44-12-310(2)(a), C.R.S. A Licensee whose license has been expired for no more than 90 days may file a late renewal application upon payment of a late renewal fee. The late renewal fee is non-refundable and shall be \$500. This late renewal fee must be paid in addition to the \$300 renewal fee required pursuant to paragraph A of this rule R 209.
- C. Renewal Fees.
  1. Retail Marijuana Store – \$1,500.00
  2. Retail Marijuana Cultivation Facility License (Tier 1: 1 – 1,800 plants) – \$1,500.00

3. Expanded Production Management Renewal Fees for Applicants with an increased production management tier approved by the Division pursuant to Rule R 506(E). In addition to subparagraph (C)(2), the following fees apply for each expanded production management tier:
    - a. Expanded Production Management Renewal Fee for Tier 2 (1,801 – 3,600 plants) - \$800.00
    - b. Expanded Production Management Renewal Fee for Tier 3 (3,601 – 6,000 plants) - \$1,500.00
    - c. Expanded Production Management Renewal Fee for Tier 4 (6,001 – 10,200 plants) - \$3,000.00
    - d. Expanded Production Management Renewal Fee for Tier 5 (10,201 – 13,800 plants) - \$5,000.00
    - e. Expanded Production Management Renewal Fee for each additional tier of 3,600 plants over Tier 5 - \$5,000.00 plus an additional \$800.00 for each additional tier of 3,600 plants over Tier 5.
  4. Retail Marijuana Products Manufacturing License – \$1,500.00
  5. Retail Marijuana Testing Facility License – \$1,500.00
  6. Retail Marijuana Transporter License - \$4,400.00
  7. Retail Marijuana Establishment Operator License - \$2,200.00
- D. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

### **Basis and Purpose – R 210**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-11-1101, 44-11-1102, 44-12-202(2)(b), 44-12-202(3)(a)(II), 44-12-303(1), 44-12-103, 44-12-401, 44-11-501, 44-11-502, 44-12-501, and 44-12-202(2)(a)(XXII), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

### **R 210 – Schedule of Other Application Fees: All Licensees**

- A. Other Application Fees. The following application fees apply:
1. Transfer of Ownership - New Owners - \$1,600.00
  2. Transfer of Ownership - Reallocation of Ownership - \$1,000.00
  3. Change of Corporation or LLC Structure - \$800.00
  4. Change of Trade Name - \$50.00
  5. Change of Location Application Fee - \$500.00

6. Modification of Licensed Premises - \$100.00
  7. Duplicate Business License - \$20.00
  8. Duplicate Occupational License - \$20.00
  9. Off Premises Storage Permit - \$1,500.00
  10. Retail Marijuana Transporter Off Premises Storage Permit - \$2,200.00
  11. Responsible Vendor Program Provider Application Fee: \$850.00
  12. Responsible Vendor Program Provider Renewal Fee: \$350.00
  13. Responsible Vendor Program Provider Duplicate Certificate Fee: \$50.00
  14. Temporary Appointee Registration finding of suitability
    - a. Individual - \$225.00
    - b. Entity - \$800.00
  15. Centralized Distribution Permit - \$20.00
- B. When Other Application Fees Are Due. All other application fees are due at the time the application and/or request is submitted.
- C. Subpoena Fee – See Rule R 106 – Subpoena Fees

**Basis and Purpose - R 211**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I-II), 44-12-202(3)(c)(VIII), 44-12-202(4)(a-b), 44-12-103, 44-12-104, and 44-12-501, C.R.S. The purpose of this rule is to clarify that, with the exception of Medical Marijuana Testing Facilities, Medical Marijuana Business Operators and Medical Marijuana Business Transporters, an existing Medical Marijuana Business may apply to convert a Medical Marijuana Business License to a Retail Marijuana Establishment License or may apply to obtain one additional license to operate a Retail Marijuana Establishment. It is important to note that the State Licensing Authority considers each license issued as separate and distinct. Each license, whether it is in the same location or not, is fully responsible to maintain compliance with all statutes and rules promulgated regardless of whether or not they are located in a shared address.

A Medical Marijuana Business may only obtain one Retail Marijuana Establishment License, whether it converts the Medical Business License or obtains a Retail Marijuana Establishment License, for each Medical Marijuana Business License it holds. In order to ensure all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are tracked in the Inventory Tracking System and as a condition of licensure, a Medical Marijuana Business must declare in the Inventory Tracking System all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Infused-Product that are converted for Transfer as Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product prior to initiating or allowing any Transfers. This declaration may be made only once, in part, due to the excise tax issues that may be implicated if a Licensee makes multiple conversions from Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product to Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment.

The State Licensing Authority received several comments from stakeholders who requested lower fees for Medical Marijuana Businesses that were either converting a Medical Marijuana Business license to a Retail Marijuana Establishment license or obtaining an additional Retail Marijuana Establishment license while retaining the existing Medical Marijuana Business license. The adopted permanent regulations reflect changes to address this concern. Under the rules as adopted Medical Marijuana Businesses that apply to convert to a Retail Marijuana Establishment license will be required to pay an application fee, but no license fees will be charged until such time as the renewal fees would have been due under the Medical Marijuana Business license term. The Retail Marijuana Establishment license, if approved, would assume the balance of the license term from the Medical Marijuana Business license and have the same expiration date.

This rule also informs existing and prospective licensees of production management conditions. The State Licensing Authority intends to replace or revise this rule's production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to Transfer the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

**R 211 – Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 44-12-104(1)(a)(I), C.R.S.**

- A. Medical Marijuana Business Applying for a Retail Marijuana Establishment License. Except for a Medical Marijuana Testing Facility, a Medical Marijuana Business Operator or a Medical Marijuana Business Transporter, a Medical Marijuana Business in good standing or who had a pending application as of December 10, 2012 that has not yet been denied, and who has paid all applicable fees may apply for a Retail Marijuana Establishment license in accordance with the Retail Code and these rules on or after October 1, 2013. A Medical Marijuana Business meeting these conditions may apply to convert a Medical Marijuana Business license to a Retail Marijuana Establishment license or may apply for a single Retail Marijuana Establishment of the requisite class of license in the Medical Marijuana Code for each Medical Marijuana Business License not converted.

B. Retail Marijuana Establishment Expiration Date.

1. A Medical Marijuana Business converting its license to a Retail Marijuana Establishment license shall not be required to pay a license fee at the time of application for conversion.
2. If a Medical Marijuana Business licensee is scheduled to renew its license during the processing of its conversion to a Retail Marijuana Establishment license, the Medical Marijuana Business must complete all renewal applications and pay the requisite renewal licensing fees.
3. A Retail Marijuana Establishment license that was fully converted from a Medical Marijuana Business license will assume the balance of licensing term previously held by the surrendered Medical Marijuana Business license.

C. Retail Marijuana Establishment Licenses Conditioned

1. It shall be unlawful for a Retail Marijuana Establishment to operate without being issued a Retail Marijuana Establishment license by the State Licensing Authority and receiving all relevant local jurisdiction approvals. Each Retail Marijuana Establishment license issued shall be conditioned on the Licensee's receipt of all required local jurisdiction approvals and licensing, if required.
2. Each Retail Marijuana Establishment license issued shall be conditioned on the Medical Marijuana Business' declaration of the amount of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product it intends to Transfer from the requisite Medical Marijuana Business for sale as Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. A Licensee that converts to a Retail Marijuana Establishment shall not exercise any of the rights or privileges of a Retail Marijuana Establishment until such time as all such Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are fully Transferred and declared in the Inventory Tracking System as Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See Rule R 309 –Inventory Tracking System. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility.

D. One-Time Transfer

1. Repealed.
- 1.5. Beginning July 1, 2016, the only allowed Transfer of marijuana between a Medical Marijuana Business and a Retail Marijuana Establishment is the Transfer of Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer to any Retail Marijuana Establishment. Once a Retail Marijuana Establishment has declared Medical Marijuana and Medical Marijuana Concentrate as Retail Marijuana or Retail Marijuana Concentrate in the Inventory Tracking System and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana Concentrate can be Transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.

E. Additional Application Disclosures.

1. At the time of application for a Retail Marijuana Store license an Applicant must designate the Medical Marijuana Center license intended to be used to obtain the Retail Marijuana Store license, whether or not that license will be converted, by providing its business license number.
2. At the time of application for a Retail Marijuana Products Manufacturing Facility license an Applicant must designate the Medical Marijuana Infused-Products Manufacturing Business license intended to be used to obtain the Retail Marijuana Products Manufacturing license, whether or not that license will be converted, by providing its business license number.
3. At the time of application for a Retail Marijuana Cultivation Facility license an Applicant must designate the Optional Premises Cultivation Operation license intended to be used to obtain the Retail Marijuana Cultivation Facility license, whether or not that license will be converted, by providing its business license number.

F. One Retail Cultivation License per Licensed Premises.

1. Only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises. Each Licensed Premises must be located at a distinct address recognized by the local jurisdiction. Each Licensed Premises must have its own public entrance and be securely and physically separated from any other address located within the same structure.
2. Existing Retail Marijuana Cultivation Facilities that have Multiple Cultivation Licenses at the Licensed Premises. Upon the first renewal at the Retail Marijuana Cultivation Facility, all of the Retail Marijuana Cultivation Facility's licenses will be collapsed into one surviving license, and fees shall be prorated for the non-expiring licenses. The maximum authorized plant count shall also collapse into the surviving license. See rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

G. Authorized Plant Count and Associated Fees.

1. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time and are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
2. All Retail Marijuana Cultivation Facility licenses granted before November 30, 2015 are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.

4. Upon demonstrating certain conditions, the Direct Beneficial Interest Owner/s of an existing Retail Marijuana Cultivation Facility license may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. See Rule R 506 – Retail Marijuana Cultivation Facility: Production Management. If the application is approved, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.
  5. At renewal, a Licensee that is authorized to cultivate more than 1,800 plants shall pay the requisite Retail Marijuana Cultivation Facility licensee fee and the applicable expanded production management tier fee. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.
  6. At renewal, the Division will review a Licensee’s maximum authorized plant count and may reduce it pursuant to the requirements of Rule R 506.
  7. The State Licensing Authority, in its sole discretion, may adjust any of the plant limits described in this rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.
- H. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.
1. A Person that is a Direct Beneficial Interest Owner in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses in which a Person is a Direct Beneficial Interest Owner in, the Person must also be a Direct Beneficial Interest Owner in at least one Retail Marijuana Store. For example: (1) a Person that is a Direct Beneficial Interest Owner in three, four, or five Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least one Retail Marijuana Store; (2) a Person that is a Direct Beneficial Interest Owner in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least two Retail Marijuana Stores; (3) a Person that is a Direct Beneficial Interest Owner in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least three Retail Marijuana Stores; etc.
  2. A Person that is a Direct Beneficial Interest Owner in Less than Three Retail Marijuana Cultivation Facility Licenses. A Person that is a Direct Beneficial Interest Owner in less than three Retail Marijuana Cultivation Facility licenses shall not be required to be a Direct Beneficial Interest Owner in a Retail Marijuana Store.

### **Basis and Purpose – R 212**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I-II), 44-12-202(3)(c)(VIII), 44-12-202(4)(a-b), 44-12-103, 44-12-104, and 44-12-501, C.R.S. This rule also informs existing and prospective licensees licensed pursuant to 44-12-104(1)(b), C.R.S. of licensing and production management conditions. The State Licensing Authority intends to replace or revise this rule’s production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to Transfer the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

**R 212 – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 44-12-104(1)(b), C.R.S.**

- A. Applicability. This Rule R 212 shall apply to all new Applicant Retail Marijuana Cultivation Facility Licenses granted after September 30, 2014 pursuant to 44-12-104(1)(b), C.R.S.
- B. One Retail Cultivation License per Licensed Premises.
1. Only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises. Each Licensed Premises must be located at a distinct address recognized by the local jurisdiction. Each Licensed Premises must have its own public entrance and be securely and physically separated from any other address located within the same structure.
  2. Existing Retail Marijuana Cultivation Facilities that have Multiple Cultivation Licenses at the Licensed Premises. Upon the first renewal at the Retail Marijuana Cultivation Facility, all of the Retail Marijuana Cultivation Facility's licenses will be collapsed into one surviving license, and fees shall be prorated for the non-expiring licenses. The maximum authorized plant count shall also collapse into the surviving license. See Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
- C. Authorized Plant Count and Associated Fees.
1. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time and are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
  2. All Retail Marijuana Cultivation Facility licenses granted before November 30, 2015 are subject to the production management requirements of Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
  3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to Rule R 506 – Retail Marijuana Cultivation Facility: Production Management.
  4. Upon demonstrating certain conditions, the Direct Beneficial Interest Owner/s of an existing Retail Marijuana Cultivation Facility license may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. See rule R 506 – Retail Marijuana Cultivation Facility: Production Management. If the application is approved, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.
  5. At renewal, a Licensee that is authorized to cultivate more than 1,800 plants shall pay the requisite Retail Marijuana Cultivation Facility licensee fee and the applicable expanded production management tier fee. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

6. At renewal, the Division will review a Licensee's maximum authorized plant count and may reduce it pursuant to the requirements of Rule R 506.
7. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.

**D. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.**

1. A Person with an Interest in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses a Person has an interest in, the Person must have a controlling interest in at least one Retail Marijuana Store. For example: (1) a Person with an interest in three, four, or five Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least one Retail Marijuana Store; (2) a Person with an interest in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least two Retail Marijuana Stores; (3) a Person with an interest in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must have a controlling interest in at least three Retail Marijuana Stores; etc.
2. A Person with an Interest in Less than Three Retail Marijuana Cultivation Facility Licenses. The Person shall not be required to have an interest in a Retail Marijuana Store.

**R 230 – Repealed Effective January 1, 2017.**

**Basis and Purpose – R 231**

The statutory authority for this rule includes but is not limited to sections 44-11-201(3), 44-12-202(2)(b), 44-12-202(3)(a)(III), 24-18-105(3), 44-12-103, 44-12-304, 44-12-305, 44-12-306, and 24-76.5-101, *et seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for licensure, including, but not limited to, background investigations for Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners, contractors, employees, and other support staff of licensed entities.

**R 231 – Qualifications for Licensure and Residency**

- A. Any Applicant may be required to establish his or her identity and age by any document required for a determination of Colorado residency, United States citizenship or lawful presence.
- B. Ongoing Licensing Qualification. Failure to maintain the qualifications for licensure may constitute grounds for discipline, including but not limited to suspension, revocation, or fine.
- B.1 Duty to Report Offenses. An Applicant or Licensee shall notify the Division in writing of any felony criminal charge and felony conviction against such Person within ten days of such person's arrest or felony summons, and within ten days of the disposition of any arrest or summons. Failure to make proper notification to the Division may be grounds for disciplinary action. Applicants and Licensees shall notify the Division within ten days of any other event that renders the Applicant or Licensee no longer qualified under these rules. Licensees shall cooperate in any investigation conducted by the Division. This duty to report includes, but is not limited to, deferred sentences or judgments that are not sealed. If the Division lawfully finds a disqualifying event and an Applicant asserts that the record was sealed, the Division may require the Applicant to provide proof from a court evidencing the sealing of the case.

- C. Application Forms Accessible to Law Enforcement and Licensing Authorities. All application forms supplied by the Division and filed by an Applicant for licensure shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agent.
- D. Associated Key Licenses. Each Direct Beneficial Interest Owner who is a natural person, including but not limited to each officer, director, member or partner of a Closely Held Business Entity, must apply for and hold at all times a valid Associated Key License. Except that these criteria shall not apply to Qualified Limited Passive Investors, who are not required to hold Associated Key Licenses. Each such Direct Beneficial Interest Owner must establish that he or she meets the following criteria before receiving an Associated Key License:
1. The Applicant has paid the annual application and licensing fees;
  2. The Applicant's criminal history indicates that he or she is of Good Moral Character;
  3. The Applicant is not employing, or financed in whole or in part, by any other Person whose criminal history indicates that he or she is not of Good Moral Character;
  4. The Applicant is at least 21 years of age;
  5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment or Medical Marijuana Business, if applicable;
  6. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
  7. The Applicant meets qualifications for licensure that directly and demonstrably relate to the operation of a Retail Marijuana Establishment;
  8. The Applicant is not currently subject to or has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 28, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a Person if the Person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the Person were convicted of the offense on the date he or she applied for a license;
  9. The Applicant does not employ another person who does not have a valid Occupational License issued pursuant to either the Retail Code or the Medical Code.
  10. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local licensing authority;
  11. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;
  12. The premises that the Applicant proposes to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;
  13. The Applicant either:

- a. Has been a resident of Colorado for at least one year prior to the date of the application, or
  - b. Has been a United States citizen since a date prior to the date of the application and has received a Finding of Suitability from the Division prior to filing the application. See Rule R 231.1 – Finding of Suitability, Residency and Requirements for Direct Beneficial Interest Owners; Rule R 232 – Factors Considered When Determining Residency and Citizenship: Individuals.
14. For Associated Key Licensees who are owners of a Closely Held Business Entity, the Applicant is a United States citizen.
  15. The Applicant has not failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division received notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.
- E. Occupational Licenses. An Occupational License Applicant who is not applying for an Associated Key License must establish that he or she meets the following criteria before receiving an Occupational License:
1. The Applicant has paid the annual application and licensing fees;
  2. The Applicant's criminal history indicates that he or she is of Good Moral Character;
  3. The Applicant is at least 21 years of age;
  4. The Applicant is currently a resident of Colorado. See Rule R 232 – Factors Considered When Determining Residency and Citizenship: Individuals;
  5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Medical Marijuana Business or Retail Marijuana Establishment;
  6. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
  7. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 28, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for a license;
  8. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction; and
  9. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for occupational licensees, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

10. The Applicant has not failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division received notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.
- F. Current Medical Marijuana Occupational Licensees.
1. An individual who holds a current, valid Occupational License issued pursuant to the Medical Code may also work in a Retail Marijuana Establishment; no separate Occupational License is required.
  2. Repealed.
- G. Associated Key License Privileges. A person who holds an Associated Key License must associate that license separately with each Retail Marijuana Establishment or Medical Marijuana Business with which the person is associated by submitting a form approved by the Division. A person who holds an Associated Key License may exercise the privileges of a licensed employee in any licensed Retail Marijuana Establishment or Medical Marijuana Business in which they are not an owner so long as the person does not exercise privileges of ownership.
- H. Qualified Limited Passive Investor. An Applicant who wishes to be a Qualified Limited Passive Investor and hold an interest in a Retail Marijuana Establishment as a Direct Beneficial Interest Owner must establish that he or she meets the following criteria before the ownership interest will be approved:
1. He or she is a natural person;
  2. The Applicant qualifies under Rule R 231.2(B);
  3. He or she has been a United States citizen since a date prior to the date of the application, and
  4. He or she has signed an affirmation of passive investment.
- I. Workforce Training or Development Residency Exempt License. An Applicant who wishes to obtain a workforce development or training exemption to the license residency requirement may only apply for a Support License or a Key License and must:
1. Submit a complete application on the Division's approved forms;
  2. Establish he or she meets the licensing criteria of Rule R 231(E)(1)-(3) and 231(E)(5)-(9) for Occupational Licensees;
  3. Provide evidence of proof of lawful presence; and
  4. Provide a complete Workforce Training or Development Affirmation form executed under penalty of perjury.

- J. Evaluating an Individual's Good Moral Character Based on His or Her Criminal History.
1. In evaluating whether a Person is prohibited as a licensee pursuant to section 44-12-306(1)(b) or (c), C.R.S., based on a determination that the individual's criminal history indicates he or she is not of Good Moral Character, the Division will not consider the following:
    - a. The mere fact an individual's criminal history contains an arrest(s) or charge(s) of a criminal offense that is not actively pending;
    - b. A conviction of a criminal offense in which the Applicant/Licensee received a pardon;
    - c. A conviction of a criminal offense which resulted in the sealing or expungement of the record; or
    - d. A conviction of a criminal offense in which a court issued an order of collateral relief specific to the application for state licensure.
  2. In evaluating whether a Person is prohibited as a licensee pursuant to section 44-12-306(1)(b) or (c), C.R.S., based on a determination that the individual's criminal history indicates he or she is not of Good Moral Character, the Division may consider the following history:
    - a. Any felony conviction(s);
    - b. Any conviction(s) of crimes involving moral turpitude;
    - c. Pertinent circumstances connected with the conviction(s); and
    - d. Conduct underlying arrest(s) or charge(s) or a criminal offense for which the criminal case is not actively pending.
  3. When considering any criminal history set forth in subparagraphs 1 & 2 above, the Division will consider:
    - a. Whether there is a direct relationship between the conviction(s) and the duties and responsibilities of holding a state license issued pursuant to the Medical or Retail Codes;
    - b. Any information provided to the Division regarding the individual's rehabilitation, which may include but is not limited to the following non-exhaustive considerations:
      - i. Character references;
      - ii. Educational, vocational and community achievements, especially those achievements occurring during the time between the individual's most recent criminal conviction and the application for a state license;
      - iii. Successful Participation in an alcohol or drug treatment program;
      - iv. That the individual truthfully and fully reported the criminal conduct to the Division;

- v. The individual's employment history after conviction or release, including but not limited to whether the individual was vetted and approved to hold a state or out-of-state license for the purposes of employment within a regulated industry;
  - vi. The individual's successful compliance with any conditions of parole or probation imposed after conviction or release; or
  - vii. Any other facts and circumstances tending to show the Applicant has been rehabilitated and is ready to accept the responsibilities of a law-abiding and productive member of society.
- K. Compliance with Child Support Obligations. An Applicant for an Occupational License must be in compliance with all court or administrative orders for current child support, child support debt, retroactive child support, or child support arrearages. An Occupational License application may be denied if the Division receives notice of noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S.

### **Basis and Purpose – R 231.1**

The statutory authority for this rule includes but is not limited to sections 44-11-201(3), 44-12-202(2)(b), 44-12-202(3)(a)(III), 24-18-105(3), 44-12-202(3)(a)(XXI), 44-12-103, 44-12-303, 44-12-304, 44-12-306, and 24-76.5-101, *et seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for Direct Beneficial Interest Owners.

### **R 231.1 – Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners**

- A. Finding of Suitability – Non-Resident Direct Beneficial Interest Owners. A natural person, owner, shareholder, director, officer, member or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application shall first submit a request to the State Licensing Authority for a finding of suitability to become a Direct Beneficial Interest Owner as follows:
1. A request for a finding of suitability for a non-resident natural person shall be submitted on the forms prescribed by the Division.
  2. A natural person or all owners, shareholders, directors, officers, members or partners of an entity who have not been a resident of Colorado for at least one year shall obtain a finding of suitability prior to submitting an application to become a Direct Beneficial Interest Owner to the State Licensing Authority.
  3. A finding of suitability is valid for one year from the date it is issued by the Division. If more than one year has passed since the Division first issued a finding of suitability to a natural person, owner, shareholder, director, officer, member or partner of an entity that intends to apply to become a Direct Beneficial Interest Owner who has not been a resident of Colorado for at least one year prior to the application, then such applicant shall submit a new request for finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Direct Beneficial Interest Owner to the State Licensing Authority. All recipients of a finding of suitability shall disclose in writing to the Division any and all disqualifying events within ten days after occurrence of the event that could lead to a finding that the recipient no longer qualifies to become a Direct Beneficial Interest Owner.

4. The failure of a non-Colorado resident, who is not already a Direct Beneficial Interest Owner, to obtain a finding of suitability within the year prior to submission of an application to become a Direct Beneficial Interest Owner to the State Licensing Authority shall be grounds for denial of the application.
- B. Number of Permitted Direct Beneficial Interest Owners.
1. A Retail Marijuana Establishment may be comprised of an unlimited number of Direct Beneficial Interest Owners that have been residents of Colorado for at least one year prior to the date of the application.
  2. On and after January 1, 2017, a Retail Marijuana Establishment that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year is limited to no more than fifteen Direct Beneficial Interest Owners, each of whom is a natural person. Further, a Retail Marijuana Establishment that is comprised of one or more Direct Beneficial Interest Owners who have not been Colorado residents for at least one year shall have at least one officer who is a Colorado resident. All officers with day-to-day operational control over a Retail Marijuana Establishment must be Colorado residents for at least one year, must maintain their Colorado residency during the period while they have day-to-day operational control over the Retail Marijuana Establishment and shall be licensed as required by the Retail Code. Rule 231 – Qualifications for Licensure and Residency: Individuals.
- C. Notification of Change of Residency. A Retail Marijuana Establishment with more than fifteen Direct Beneficial Interest Owners shall provide thirty days prior notice to the Division of any Direct Beneficial Interest Owners' intent to change their residency to a residency outside Colorado. A Retail Marijuana Establishment with no more than fifteen Direct Beneficial Interest Owners shall notify the Division of the change of residency of any Direct Beneficial Interest Owner at the time of its license renewal. Failure to provide timely notice pursuant to this rule may lead to administrative action against the Retail Marijuana Establishment and its Direct Beneficial Interest Owners.
- D. A Direct Beneficial Interest Owner shall not be a publicly traded company.

### **Basis and Purpose – R 231.2**

The statutory authority for this rule includes but is not limited to sections 44-11-201(3), 44-12-202(2)(b), 44-12-202(3)(a)(III), 24-18-105(3), 44-12-202(3)(a)(XXI), 44-12-103, 44-12-303, 44-12-304, 44-12-306, and 24-76.5-101, *et seq.*, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for an Indirect Beneficial Interest Owner other than a Permitted Economic Interest.

### **R 231.2 – Qualifications for Indirect Beneficial Interest Owners and Qualified Limited Passive Investors**

- A. General Requirements
1. An Applicant applying to become a Commercially Reasonable Royalty Interest holder who receives a royalty of more than 30 percent or the holder of a Permitted Economic Interest must be pre-approved by the Division.

2. An Applicant applying to become an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application. This type of conduct may be considered as the basis of additional administrative action against the Applicant and the Retail Marijuana Establishment.
  3. The Division may deny the application when the Applicant fails to provide any requested information by the Division's deadline.
  4. The Division's determination that an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified constitutes a revocable privilege held by the Retail Marijuana Establishment. The burden of proving the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified rests at all times with the Retail Marijuana Establishment Applicant. Indirect Beneficial Interest Owners and Qualified Limited Passive Investors are not separately licensed by the Division. Any administrative action regarding an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor may be taken directly against the Retail Marijuana Establishment.
  5. Permitted Economic Interest Fingerprints Required. Any individual applying to hold his or her first Permitted Economic Interest shall be fingerprinted for a criminal history record check. In the Division's discretion, an individual may be required to be fingerprinted again for additional criminal history record checks.
  6. No publicly traded company can be an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor.
- B. Qualification. The Division may consider the following non-exhaustive list of factors to determine whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is qualified:
1. The Applicant's criminal history indicates that he or she is of Good Moral Character;
  2. The Applicant is at least 21 years of age;
  3. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment or Medical Marijuana Business, if applicable;
  4. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;
  5. The Applicant is not currently subject to and has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 28, 2013, whichever is longer, except, in the Division's discretion, a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the Person were convicted of the offense on the date he or she applied may not disqualify an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor;
  6. The Applicant is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;

7. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for individuals, Retail Marijuana Establishments and/or Medical Marijuana Businesses licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.
8. The Applicant has provided all documentation requested by the Division to establish qualification to be an Indirect Beneficial Interest Owner.

**C. Maintaining Qualification:**

1. An Indirect Beneficial Interest Owner or Qualified Limited Passive Investor shall notify the Division in writing of any felony criminal charge and felony conviction against such person within ten days of such person's arrest or felony summons, and within ten days of the disposition of any arrest or summons. Failure to make proper notification to the Division may be grounds for disciplinary action. This duty to report includes, but is not limited to, deferred sentences, prosecutions, or judgments that are not sealed. If the Division lawfully finds a disqualifying event and the individual asserts that the record was sealed, the Division may require the individual to provide proof from a court evidencing the sealing of the case.
2. An Indirect Beneficial Interest Owner, Qualified Limited Passive Investor and Retail Marijuana Establishment shall cooperate in any investigation into whether an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor continues to be qualified that may be conducted by the Division.

- D. Divestiture of Indirect Beneficial Interest Owner or Qualified Limited Passive Investor.** If the Division determines an Indirect Beneficial Interest Owner or Qualified Limited Passive Investor is not permitted to hold their interest, the Retail Marijuana Establishment shall have 60 days from such determination to divest the Indirect Beneficial Interest Owner or Qualified Limited Passive Investor. The Division may extend the 60-day deadline for good cause shown. Failure to timely divest any Indirect Beneficial Interest Owner or Qualified Limited Passive Investor the Division determines is not qualified, or is no longer qualified, may constitute grounds for denial of license or administrative action against the Retail Marijuana Establishment and/or its Associated Key Licensee(s).

**R 231.5 – Repealed Effective January 1, 2017.**

**Basis and Purpose – R 232**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I), 44-12-202(3)(a)(XXI), 44-12-306(2), and 44-12-309(5), C.R.S. The purpose of this rule is to interpret residency requirements set forth in the Retail Code.

**R 232 – Factors Considered When Determining Residency and Citizenship: Individuals**

This rule applies to individual Applicants who are trying to obtain licenses issued pursuant to the Retail Code. This rule does not apply to patrons of Retail Marijuana Stores. When the State Licensing Authority determines whether an Applicant is a resident, the following factors will be considered:

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- A. Primary Home Defined. The location of an Applicant's principal or primary home or place of abode ("primary home") may establish Colorado residency. An Applicant's primary home is that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include, by way of example, a house, condominium, apartment, room in a house, or manufactured housing. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home.
- B. Reliable Indicators That an Applicant's Primary Home is in Colorado. The State Licensing Authority considers the following types of evidence to be generally reliable indicators that a person's primary home is in Colorado.
1. Evidence of business pursuits, place of employment, income sources, residence for income or other tax purposes, age, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences outside of Colorado and the amount of time spent at each such residence, and any motor vehicle or vessel registration;
  2. Duly authenticated copies of the following documents may be taken into account: A current driver's license with address, recent property tax receipts, copies of recent income tax returns where a Colorado mailing address is listed as the primary address, current voter registration cards, current motor vehicle or vessel registrations, and other public records evidencing place of abode or employment; and
  3. Other types of reliable evidence.
- C. Totality of the Evidence. The State Licensing Authority will review the totality of the evidence, and any single piece of evidence regarding the location of a person's primary home is not necessarily determinative.
- D. Other Considerations for Residency. The State Licensing Authority may consider the following circumstances:
1. Members of the armed services of the United States or any nation allied with the United States who are on active duty in this state under permanent orders and their spouses;
  2. Personnel in the diplomatic service of any nation recognized by the United States who are assigned to duty in Colorado and their spouses; and
  3. Full-time students who are enrolled in any accredited trade school, college, or university in Colorado. The temporary absence of such student from Colorado, while the student is still enrolled at any such trade school, college, or university, shall not be deemed to terminate their residency. A student shall be deemed "full-time" if considered full-time pursuant to the rules or policy of the educational institution he or she is attending.
- E. Entering Armed Forces Does Not Terminate Residency. An individual who is a Colorado resident pursuant to this rule does not terminate Colorado residency upon entering the armed services of the United States. A member of the armed services on active duty who resided in Colorado at the time the person entered military service and the person's spouse are presumed to retain their status as residents of Colorado throughout the member's active duty in the service, regardless of where stationed or for how long.

- F. Determination of United States Citizenship. Whenever the Retail Code or the rules promulgated pursuant thereto require a Direct Beneficial Interest Owner to be a United States citizen, the Direct Beneficial Interest Owner must provide evidence of United States citizenship as required by the Division in accordance with applicable federal and state statutes and regulations.

### **Basis and Purpose – R 233**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-309(5), and 44-12-401(1)(e), C.R.S. The purpose of this rule is to clarify when an individual must be licensed or registered with the Division before commencing any work activity at a licensed Retail Marijuana Establishment. The rule also sets forth the process for obtaining a license or registration and explains what information may be required before obtaining such license or registration.

### **R 233 – Retail Code or Medical Code Occupational Licenses Required**

- A. Retail Code or Medical Code Occupational Licenses and Identification Badges
1. Any Person who possesses, cultivates, manufactures, tests, dispenses, Transfers, serves, transports or delivers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product as permitted by privileges granted under a Retail Marijuana Establishment license must have a valid Occupational License.
  2. Any Person who has the authority to access or input data into the Inventory Tracking System or a Retail Marijuana Establishment point of sale system must have a valid Occupational License.
  3. Any Person within a Restricted Access Area or Limited Access Area that does not have a valid Occupational License shall be considered a visitor and must be escorted at all times by a person who holds a valid Associated Key License or other Occupational License. Failure by a Retail Marijuana Establishment to continuously escort a person who does not have a valid Occupational License within a Limited Access Area may be considered a license violation affecting the public safety. See Rule R 1307 – Penalties; see *a/so* Rule R 301 – Limited Access Areas. Nothing in this provision alters or eliminates a Retail Marijuana Establishment’s obligation to comply with the Occupational License requirements of paragraph (A) of this Rule R 233. Trade craftspeople not normally engaged in the business of cultivating, processing, or Transferring Retail Marijuana do not need to be accompanied at all times, and instead only reasonably monitored.
- B. Occupational License Required to Commence or Continue Employment. Any Person required to be licensed pursuant to these rules shall obtain all required approvals and obtain a Division-issued identification badge before commencing activities permitted by his or her Retail Code or Medical Code Occupational License. See Rule R 231 – Qualifications for Licensure and Residency; Rule R 204 – Ownership Interests of a License: Retail Marijuana Establishments; and R 301 – Limited Access Areas.
- C. Identification Badges Are Property of State Licensing Authority. All identification badges shall remain the property of the State Licensing Authority, and all identification badges shall be returned to the Division upon demand of the State Licensing Authority or the Division. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

**Basis and Purpose – R 234**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-12-202(2)(b), 44-12-202(2)(e), 44-12-202(3)(c)(VII), 44-12-202(3)(c)(VIII), 44-12-306(5)(a-b), 44-12-309(6), 44-12-103, 44-12-401, 44-11-501, 44-11-502, and 44-12-501, C.R.S. The purpose of this rule is to establish licensing fees for individuals.

**R 234 – Schedule of Application and License Fees: Individuals**

A. Individual Application and License Fees

1. Direct Beneficial Interest Owner Fees
  - a. Colorado Resident Associated Key License
    - i. Application Fee - \$725.00
    - ii. License Fee - \$75.00
  - b. Non-Resident Associated Key License
    - i. Application Fee upon request for finding of suitability - \$4,925.00
    - ii. License Fee following finding of suitability - \$75.00
2. Occupational Key License
  - i. Application Fee - \$225.00
  - ii. License Fee - \$25.00
3. Occupational Support License
  - i. Application Fee - \$50.00
  - ii. License Fee - \$25.00

B. When Fees Are Due. Application and License fees are due at the time Applicant submits an application, except for the Non-Resident Associated Key License fee following a finding of suitability. The Non-Resident Associated Key License fee following a finding of suitability is due after an Applicant has been informed by the Division of a finding of suitability and prior to issuance of the Non-Resident Associated Key License.

**Basis and Purpose – R 235**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(a), 44-12-202(2)(b), 44-12-202(2)(e), 44-12-202(3)(c)(VII), 44-12-202(3)(c)(VIII), 44-12-309(6), 44-12-401, 44-11-501, 44-12-103, 44-12-401, 44-11-501 44-11-502, and 44-12-501, C.R.S. The purpose of this rule is to establish renewal license fees for individuals.

**R 235 – Schedule of Renewal Fees: Individuals**

A. Individual Renewal Fees

1. Associated Key Renewal Fee - \$500.00

2. Other Occupational Renewal Fee - \$75.00
- B. When Fees Are Due. Renewal fees are due at the time Applicant submits an application for renewal.

### **Basis and Purpose – R 250**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 24-4-105(2), and 44-12-601(2), C.R.S. The purpose of this rule is to clarify that a Licensee must keep its mailing address current with the Division.

### **R 250 – Licensee Required to Keep Mailing Address Current with the Division: All Licensees**

- A. Timing of Notification. A Licensee must provide a physical mailing address to the Division and additionally may provide an electronic mailing address to the Division. A Licensee shall inform the Division in writing of any change to its physical mailing address and/or electronic mailing address within 30 days of the change. The Division will not change a Licensee's information without explicit written notification provided by the Licensee or its authorized agent.
- B. Division Communications. Division communications are sent to the last physical and/or electronic mailing address furnished by an Applicant or Licensee to the Division.
- C. Failure to Change Address Does Not Relieve Licensee's or Applicant's Obligation. Failure to notify the Division of a change of its physical and/or electronic mailing address does not relieve a Licensee or Applicant of the obligation to respond to a Division communication.
- D. Disciplinary Communications. The State Licensing Authority will send any disciplinary or sanction communication, as well as any notice of hearing, to the mailing address contained in the license and, if different, to the last mailing address and to the last known electronic mailing address, if any, furnished to the Division by the Licensee.

### **Basis and Purpose – R 251**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XVI), 44-12-202(3)(a)(XVII), 44-12-304, 24-4-104, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(I). The purpose of this rule is to establish what factors the State Licensing Authority will consider when denying an application for licensure.

### **R 251 – Application Denial and Voluntary Withdrawal: All Licensees**

- A. Applicant Bears Burden of Proving It Meets Licensing Requirements
1. At all times during the application process, an Applicant must be capable of establishing that it is qualified to hold a license.
  2. An Applicant that does not cooperate with the Division during the application phase may be denied as a result. For example, if the Division requests additional evidence of qualification and the Applicant does not furnish such evidence by the date requested, the Applicant's application may be denied.
- B. Applicants Must Provide Accurate Information
1. An Applicant must provide accurate information to the Division during the entire Application process.

2. If an Applicant provides inaccurate information to the Division, the Applicant's application may be denied.

**C. Grounds for Denial**

1. The State Licensing Authority will deny an application from an Applicant that forms a business including but not limited to a sole proprietorship, corporation, or other business enterprise, with the purpose or intent, in whole or in part, of transporting, cultivating, processing, Transferring, or distributing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product without receiving prior approval from all relevant local jurisdictions.
2. The State Licensing Authority will deny an application for Good Cause, as defined in subsection 44-12-304(1), C.R.S., of the Retail Code.
3. The State Licensing Authority will deny an Applicant's application that is statutorily disqualified from holding a license.

**D. Voluntary Withdrawal of Application**

1. The Division and Applicant may mutually agree to allow the voluntary withdrawal of an application in lieu of a denial proceeding.
2. Applicants must first submit a notice to the Division requesting the voluntary withdrawal of the application. In such instances, an Applicant waives his or her right to a hearing in the matter once the voluntary withdrawal is approved.
3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant the request with or without prejudice or deny the request.
4. The Division will notify the Applicant and relevant local jurisdiction of its acceptance of the voluntary withdrawal and the terms thereof.
5. If the Applicant agrees to a voluntary withdrawal granted with prejudice, then the Applicant is not eligible to apply again for licensing or approval until after expiration of one year from the date of such voluntary withdrawal.

**E. A Denied Applicant May Appeal a Denial**

1. A Denied Applicant may appeal an application denial pursuant to the Administrative Procedure Act.
2. See Rule R 1304 – Administrative Hearings, Rule R 1305 – Administrative Subpoenas, and Rule R 1306 – Administrative Hearing Appeals.

**Basis and Purpose – R 252**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(VIII), and 44-12-309(5), C.R.S. The purpose of this rule is to clarify that Retail Marijuana Establishment licenses are valid for one year unless suspended, revoked, or otherwise disciplined.

**R 252 – License Must Be Renewed Each Year: All Licensees Except Retail Marijuana Transporters and Occupational Licenses**

- A. All Retail Code Licenses. All licenses issued pursuant to the Retail Code and these rules are valid for one year, except that a Retail Marijuana Transporter license and an Occupational License are valid for two years.
- B. License May Be Valid for Less Than One Year. A License may be valid for less than one year if surrendered, or if revoked, suspended, or otherwise disciplined.

**Basis and Purpose – R 253**

The statutory authority for this rule includes but is not limited to sections 44-12-202 and 44-12-401, C.R.S. The purpose of this rule is to establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with section 44-12-401(1.5), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Retail Marijuana Establishment.

**R 253 – Temporary Appointee Registrations for Court Appointees**

- A. For Court Appointees appointed on or after May 15, 2018, the effective date of House Bill 18-1280:
1. Notice to the State and Local Licensing Authorities. Within seven days of accepting an appointment as a Court Appointee pursuant to section 44-12-401(1.5), C.R.S., (or within seven days of June 18, 2018, the effective date of this Rule R 253, whichever is later), such Court Appointee shall file a notice to the State Licensing Authority and the applicable local licensing authority on a form prescribed by the State Licensing Authority. The notice shall be accompanied by a copy of the order appointing the Court Appointee and a statement affirming that the Court Appointee complied with the certification required by section 44-12-401(1.5)(a), C.R.S. If the Court Appointee is an entity, the notice shall identify all individuals responsible for taking possession of, operating, managing, or controlling the licensed Retail Marijuana Establishment. Each notice shall identify at least one such individual.
  2. Application for Finding of Suitability. Within 14 days of accepting an appointment as a Court Appointee pursuant to section 44-12-401(1.5), C.R.S., (or within 14 days of June 18, 2018, the effective date of this Rule R 253, whichever is later), each Court Appointee shall file an application for a finding of suitability with the State Licensing Authority on forms prescribed by the State Licensing Authority. Each entity and individual for whom a notice was filed pursuant to Rule R 253(A) shall file an application for a finding of suitability. The Division may in its discretion extend the 14 day deadline to file an application for a finding of suitability upon a showing of good cause. The Division may also in its discretion rely upon a recent licensing background investigation for Court Appointees that currently hold a license or Temporary Appointee Registration issued by the State Licensing Authority, and may waive all or part of the application fee accordingly.
  3. Effective date. The Temporary Appointee Registration shall issue following the State Licensing Authority's receipt of the notice required by Rule R 253(A)(1), and shall be deemed effective as of the date of the court appointment.

- B. For Court Appointees appointed prior to May 15, 2018, the effective date of House Bill 18-1280:
1. Any receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person authorized by court order to take possession of, operate, manage, or control a Retail Marijuana Establishment prior to May 15, 2018, the effective date of House Bill 18-1280, shall be deemed a Court Appointee.
  2. Notice to the State and Local Licensing Authorities and Application for Finding of Suitability. Any such Court Appointee appointed by a court prior to May 15, 2018, shall, within 14 days of June 18, 2018, the effective date of this Rule R 253, file notice of the appointment with the State Licensing Authority and the applicable local licensing authority, and file an application for a finding of suitability with the State Licensing Authority, in accordance with Rule R 253(A)(2). The notice and application shall include a copy of the order appointing the Person, but need not include a statement affirming that the Person complied with the certification required by section 44-12-401(1.5)(a), C.R.S. The Division may extend the 14 day deadline to file an application for a finding of suitability upon a showing of good cause. The Division may also in its discretion rely upon a recent licensing background investigation for Court Appointees that currently hold a license or Temporary Appointee Registration issued by the State Licensing Authority, and may waive all or part of the application fee accordingly.
  3. Effective date. The Temporary Appointee Registration for a Court Appointee appointed prior to May 15, 2018, the effective date of House Bill 18-1280, shall be deemed effective May 15, 2018.
- C. Temporary Appointee Registration.
1. Entities. If the Court Appointee is an entity, such entity shall receive a Temporary Appointee Registration. Additionally, each such entity must identify all individuals responsible for taking possession of, operating, managing, or controlling the Retail Marijuana Establishment, and all such individuals shall also receive a Temporary Appointee Registration, which shall be treated as an Associated Key License, except where contrary to the provisions of this Rule R 253 or section 44-12-401(1.5), C.R.S. Each Court Appointee that is an entity must identify at least one such individual.
  2. Individuals. If the Court Appointee is an individual, such individual's Temporary Appointee Registration shall be treated as an Associated Key License except where inconsistent with section 44-12-401(1.5), C.R.S., or this Rule R 253.
  3. Other employees. Any other individual working under the direction of a Court Appointee who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, researches, or delivers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product as permitted by privileges granted under a Retail Marijuana Establishment license must have a valid Occupational License of the type required for the duties that individual will perform. See Rules R 103 and 233.
  4. Licensed Premises. A Court Appointee shall not establish an independent Licensed Premises, but shall be authorized to exercise the privileges of the Temporary Appointee Registration within the Licensed Premises of Retail Marijuana Establishment for which it is appointed.
  5. Retail Marijuana Establishment Operators. A Court Appointee may retain a Retail Marijuana Establishment Operator. If the Retail Marijuana Establishment Operator is the Court Appointee, see subparagraph F of this Rule R 253.

6. Retail Code and rules applicable. Court Appointees shall be subject to the terms of the Retail Code and the rules promulgated pursuant thereto. Except where inconsistent with section 44-12-401(1.5), C.R.S., or this Rule R 253, the State Licensing Authority may take any action with respect to a Temporary Appointee Registration that it could take with respect to any license issued under the Retail Code. In any administrative action involving a Temporary Appointee Registration, these rules shall be read as including the terms “registered”, “registration”, “registrant” or any other similar terms in lieu of “licensed”, “licensee”, and any other similar terms as the context requires when applied to a Temporary Appointee Registration.

D. Disciplinary actions.

1. Suspension, revocation, fine, or other disciplinary action regarding a Retail Marijuana Establishment. In addition to any other basis for suspension, revocation, fine, or other disciplinary action, a Retail Marijuana Establishment’s license may, pursuant to section 44-12-202(2)(a), 44-12-401(1.5)(b), and 44-12-601(1), C.R.S., be suspended, revoked, or subject to other disciplinary action based upon the Court Appointee’s violations of the Retail Code, the rules promulgated pursuant thereto, or the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee’s failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such disciplinary action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect.
2. Suspension, revocation, fine, or other disciplinary action regarding a Temporary Appointee Registration. In addition to any other basis for suspension, revocation, fine, or other disciplinary action, a Temporary Appointee Registration may, pursuant to section 44-12-202(2)(a), 44-12-401(1.5)(b), and 44-12-601(1), C.R.S., be suspended, revoked, or subject to other disciplinary action based upon the Court Appointee’s failure to obtain a finding of suitability or violations of the Retail Code, the rules promulgated pursuant thereto, or the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Such grounds for discipline include, but are not limited to, the Court Appointee’s failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such disciplinary action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect. If a person holding a Temporary Appointee Registration also holds any other Occupational License, both the Occupational License and the Temporary Appointee Registration may be suspended, revoked or subject to other disciplinary action for any violations of the Retail Code, the rules promulgated pursuant thereto, the terms, conditions, or provisions of the occupational license issued by the State Licensing Authority, or any order of the State Licensing Authority.
3. Suitability. If the State Licensing Authority denied an application for a finding of suitability because the Court Appointee failed to timely apply for a finding of suitability, failed to timely provide all material information requested by the Division in connection with an application for a finding of suitability, or was found to be unsuitable, the State Licensing Authority may also pursue disciplinary action as set forth in Rule R 253(D)(1)-(2) and (4).

4. Court Appointee's responsibility to notify the appointing court. The Court Appointee shall notify the appointing court of any action taken against the Temporary Appointee Registration by the State Licensing Authority pursuant to sections 44-12-601 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Court Appointee shall forward a copy of such notification to the Division at the same time the notification is made to the appointing court.
- E. Expiration and renewal.
1. Conclusion of a Court Appointee's court appointment. A Court Appointee's Temporary Appointee Registration shall expire upon the conclusion of a Court Appointee's court appointment. Each Court Appointee and each Retail Marijuana Establishment that has a Court Appointee shall notify the State Licensing Authority within two business days of the date on which a Court Appointee's court appointment ends, whether due to termination of the appointment by the court, substitution of another Court Appointee, closure of the court case, or otherwise. For a Court Appointee that is appointed in connection with multiple court cases, the notice shall be filed with the State Licensing Authority with respect to each such case.
  2. Annual renewal. If it has not yet expired pursuant to Rule R 253(E)(1), each Temporary Appointee Registration shall be valid for one year, after which it shall be subject to annual renewal in accordance with the Retail Code and rules promulgated pursuant thereto. If a Court Appointee is appointed in connection with multiple court cases, the Temporary Appointee Registration is subject to annual renewal unless all such appointments have ended, whether due to termination of the appointments by the courts, substitution of other Court Appointees, closure of the court cases, or otherwise.
  3. Other termination. A Temporary Appointee Registration may be valid for less than the applicable term if surrendered, revoked, suspended, or subject to similar action.
- F. Retail Marijuana Establishment Operators as Court Appointees. By virtue of its privileges of licensure, a Retail Marijuana Establishment Operator and its Associated Key Licensees may serve as Court Appointees without a Temporary Appointee Registration subject to the following terms:
1. Notice to the State Licensing Authority of appointment. The Retail Marijuana Establishment Operator and its Associated Key Licensee(s) shall be responsible for notifying the State Licensing Authority within seven days of any court appointment to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Retail Marijuana Establishment. Such notice shall be accompanied by a copy of the order making the appointment, and shall identify each Retail Marijuana Establishment regarding which the Retail Marijuana Establishment Operator is appointed.

2. Notice to the court of State Licensing Authority action. The Retail Marijuana Establishment Operator and its Associated Key Licensee(s) shall be responsible for notifying the appointing court of any action taken against the Retail Marijuana Establishment Operator license or the Associated Key license by the State Licensing Authority pursuant to sections 44-12-601 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Retail Marijuana Establishment Operator and its Associated Key Licensee(s) shall forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

## R 300 Series – The Licensed Premises

### Basis and Purpose – R 301

The statutory authority for this rule includes but is not limited to sections 44-12-103(1), 44-12-103(2), 44-12-202(2)(b), 44-12-202(3)(a)(V), 44-12-202(3)(a)(X), 44-12-202(3)(c)(VIII), and 44-12-105, C.R.S. The purpose of this rule is to establish Limited Access Areas for Licensed Premises under the control of the Licensee to only individuals licensed by the State Licensing Authority. In addition, this rule clarifies that businesses and individuals cannot use the visitor system as a means to employ an individual who does not possess a valid and current Occupational License.

### R 301 – Limited Access Areas

- A. Proper Display of License Badge. All Persons in a Limited Access Area as provided for in section 44-12-105, C.R.S., shall be required to hold and properly display a current license badge issued by the Division at all times. Proper display of the license badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the Licensee visible.
- B. Visitors in Limited Access Areas
  1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.
  2. Visitors shall be escorted by the Retail Marijuana Establishment's licensed personnel at all times. No more than five visitors may be escorted by a single employee. Except that trade craftspeople not normally engaged in the business of cultivating, processing or selling Retail Marijuana need not be accompanied on a full-time basis, but only reasonably monitored.
  - 2.1 A Retail Marijuana Establishment and a Licensee employed by the Retail Marijuana Establishment shall report any discovered plan of or other act or omission by any visitor or other Person: (1) to commit theft, burglary, underage sales, diversion of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or other crime related to the operation of the subject Retail Marijuana Establishment; (2) to compromise the integrity of the Inventory Tracking System; or (3) that results in serious bodily injury to any Person on the Licensed Premises of the Retail Marijuana Establishment or otherwise creates a material risk to public health and safety. Such discovered plan or other act or omission shall be reported to the Division in accordance with Rule R 904 – Retail Marijuana Establishment Reporting Requirements.

3. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division or relevant local jurisdiction.
  4. All visitors must provide proof of age and must be at least 21 years of age. See Rule R 404 – Acceptable Forms of Identification.
  5. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log. See Rule R 404 – Acceptable Forms of Identification.
  6. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.
  7. Use of a visitor badge to circumvent the Occupational License requirements of Rule R 233 is prohibited and may constitute a license violation affecting public safety.
- C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, “Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors.”
- D. Diagram for Licensed Premises. All Limited Access Areas shall be clearly identified to the Division or relevant local jurisdiction and described in a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, and retail sales areas. See Rule R 901 – Business Records Required.
- E. Modification of Limited Access Area. A Licensee’s proposed modification of designated Limited Access Areas must be approved by the Division and, if required, the relevant local jurisdiction prior to any modifications being made. See Rule R 303 – Changing, Altering, or Modifying Licensed Premises.
- F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this rule, nothing shall prohibit investigators and employees of the Division, authorities from relevant local jurisdiction or state or local law enforcement, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

### **Basis and Purpose – R 302**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-307, C.R.S. The purpose of this rule is to establish and clarify the means by which the Licensee has lawful possession of the Licensed Premises.

### **R 302 – Possession of Licensed Premises**

- A. Evidence of Lawful Possession. Persons licensed pursuant to sections 44-12-402, 44-12-403, 44-12-404, 44-12-405, or 44-12-406. C.R.S., or those making application for such licenses, must demonstrate proof of lawful possession of the premises to be licensed or Licensed Premises. Evidence of lawful possession consists of properly executed deeds of trust, leases, or other written documents acceptable to licensing authorities.

- B. Relocation Prohibited. The Licensed Premises shall only be those geographical areas that are specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location application and obtaining approval from the Division and the relevant local jurisdiction. If the local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application. Licensees shall not add additional contiguous units or areas, thereby altering the initially-approved premises, without filing an Application and receiving approval to modify the Licensed Premises on current forms prepared by the Division, including any applicable processing fee. See Rule R 303 - Changing, Altering, or Modifying Licensed Premises
- C. Subletting Not Authorized. Licensees are not authorized to sublet any portion of Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Division and the relevant local jurisdiction. If the local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

### **Basis and Purpose – R 303**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-303, and 44-12-309(2), C.R.S. The purpose of this rule is to establish guidelines for changing, altering or modifying the Licensed Premises.

### **R 303 – Changing, Altering, or Modifying Licensed Premises**

- A. Application Required to Change, Alter, or Modify Licensed Premises. After obtaining a license, the Licensee shall make no physical change, alteration, or modification of the Licensed Premises that materially or substantially alters the Licensed Premises or the usage of the Licensed Premises from the plans originally approved, without the Division's prior written approval and, written approval or written acknowledgement from the relevant local jurisdiction. The Licensee whose Licensed Premises are to be materially or substantially changed is responsible for filing an application for approval on current forms provided by the Division.
- B. What Constitutes a Material Change. Material or substantial changes, alterations, or modifications requiring approval include, but are not limited to, the following:
1. Any increase or decrease in the total physical size or capacity of the Licensed Premises;
  2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes Limited Access Areas, such as the cultivation, harvesting, manufacturing, or sale of Retail Marijuana or Retail Marijuana Product within the Licensed Premises;
  3. Within a Retail Marijuana Store, the permanent addition of a separate sales counter that creates an additional point-of-sale location, and the permanent addition of a display case, all of which would require the installation of additional video surveillance cameras. See Rule R 306 – Video Surveillance.
  4. The installation or replacement of electric fixtures or equipment for purposes of increasing production, the lowering of a ceiling, or electrical modifications made for the purpose of increasing power usage to enhance cultivation activities; or

5. The addition or deletion of a Retail Marijuana Cultivation Facility license that will be, or has been, combined with other commonly owned cultivation licenses in a common area for the purpose of growing and cultivating Retail Marijuana.
- C. Attachments to Application. The Division and relevant local jurisdiction may grant approval for the types of changes, alterations, or modifications described herein upon the filing of an application by the Licensee and payment of any applicable fee. The Licensee must submit all information requested by the Division, including but not limited to, documents that verify the following:
1. The Licensee will continue to have possession of the Licensed Premises, as changed, by ownership, lease, or rental agreement; and
  2. The proposed change conforms to any local restrictions related to the time, manner, and place of Retail Marijuana Establishment regulation.

**R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation – Repealed.**

**Basis and Purpose – R 304.1**

The statutory authority for this rule includes but is not limited to sections 44-11-202(1)(b), 44-11-202(2)(a)(XXIV), 44-11-202(3)(a)(I)(A-F), 44-12-104(1)(a)(V), 44-12-202(2)(b), 44-12-401(2), 44-12-404(2), 44-11-406, 44-12-405, and 44-12-406, C.R.S. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a Medical Marijuana Business operation from Retail Marijuana Establishment operation.

**R 304.1 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation**

- A. Co-Located Medical Marijuana Centers and Retail Marijuana Stores.
1. Medical Marijuana Center that authorizes only patients that are over the age of 21. A Medical Marijuana Center that authorizes only Medical Marijuana patients who are over the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate at the same location under the following circumstances:
    - a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;
    - b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;
    - c. The Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;
    - d. The Medical Marijuana Center and Retail Marijuana Store shall maintain separate displays between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory, but the displays may be on the same sale floor;

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- e. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store; and
  - f. The Medical Marijuana Center shall post and maintain signage that clearly conveys that persons under the age of 21 years may not enter.
2. Medical Marijuana Center that authorizes patients under the age of 21. A Medical Marijuana Center that authorizes Medical Marijuana patients under the age of 21 years to be on the Licensed Premises may operate in the same location with a Retail Marijuana Store under the following conditions:
    - a. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;
    - b. The Medical Marijuana Center and Retail Marijuana Store are commonly owned;
    - c. The Medical Marijuana Center and Retail Marijuana Store maintain physical separation, including separate entrances and exits, between their respective Restricted Access Areas;
    - d. No point of sale operations occur at any time outside the physically separated Restricted Access Areas;
    - e. All Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product in a Restricted Access Area must be physically separated from all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Restricted Access Area, and such physical separation must include separate entrances and exits;
    - f. Any display areas shall be located in the physically separated Restricted Access Areas;
    - g. In addition to the physically separated sales and display areas, the Medical Marijuana Center and Retail Marijuana Store shall maintain physical or virtual separation for storage of Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory from storage of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and
    - h. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Center and Retail Marijuana Store shall enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Center from the inventories and business transactions of the Retail Marijuana Store.
- B. Co-Located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility. An Optional Premises Cultivation Operation and a Retail Marijuana Cultivation Facility may share a single Licensed Premises and operate at the same location under the following circumstances:
    1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;
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2. The Optional Premises Cultivation Operation and the Retail Marijuana Cultivation Facility are commonly owned;
  3. The co-located Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation between (i) Medical Marijuana and Medical Marijuana Concentrate and (ii) Retail Marijuana and Retail Marijuana Concentrate; and
  4. Record-keeping, inventory tracking, packaging and labeling for the Optional Premises Cultivation Operation and Retail Marijuana Cultivation Facility must enable the Division and relevant local licensing authority to clearly distinguish the inventories and business transactions of the Optional Premises Cultivation Operation from the Retail Marijuana Cultivation Facility.
- C. Co-located Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility. A Medical Marijuana-Infused Products Manufacturer and a Retail Marijuana Products Manufacturing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:
1. The relevant local licensing authority and local jurisdiction permit a dual operation at the same location;
  2. The Medical Marijuana-Infused Products Manufacturer and the Retail Marijuana Products Manufacturing Facility are commonly owned;
  3. The Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory. Nothing in this Rule prohibits a co-located Retail Marijuana Products Manufacturing Facility and Medical Marijuana-Infused Products Manufacturer from sharing raw ingredients in bulk, for example flour or sugar, except Retail Marijuana and Medical Marijuana may not be shared under any circumstances; and
  4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana-Infused Products Manufacturer and Retail Marijuana Products Manufacturing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana-Infused Products Manufacturer from the Retail Marijuana Products Manufacturing Facility.
- D. Co-located Medical Marijuana Testing Facility and Retail Marijuana Testing Facility. A Medical Marijuana Testing Facility and a Retail Marijuana Testing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:
1. The relevant local licensing authority and local jurisdiction permit dual operation at the same location;
  2. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility are identically owned;

3. The Medical Marijuana Testing Facility and Retail Marijuana Testing Facility shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and
  4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Testing Facility and Retail Marijuana Testing Facility must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Testing Facility from the Retail Marijuana Testing Facility.
- E. Co-located Medical Marijuana Transporter and Retail Marijuana Transporter. A Medical Marijuana Transporter and a Retail Marijuana Transporter may share a single Licensed Premises and operate dual transporting, logistics, and temporary storage business operation at the same location under the following circumstances:
1. The relevant local licensing authority and local jurisdiction permit dual operation at the same location;
  2. The Medical Marijuana Transporter and Retail Marijuana Transporter are identically owned;
  3. The Medical Marijuana Transporter and Retail Marijuana Transporter shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana-Infused Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and
  4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Transporter and Retail Marijuana Transporter must enable the Division and local licensing authority to clearly distinguish the inventories and business transactions of the Medical Marijuana Transporter from the Retail Marijuana Transporter.
- F. Co-Located Licensed Research Business. A Licensed Research Business that has obtained an R&D Co-Location Permit pursuant to Rule M 1901(C) may share a single Licensed Premises and operate at the same location as another Medical Marijuana Business or Retail Marijuana Establishment to the extent permitted by the R&D Co-Location Permit and otherwise in compliance with all applicable rules. See Rule M 1900 Series.
- G. Violation Affecting Public Safety. Violation of this Rule may be considered a license violation affecting public safety.

### **Basis and Purpose – R 305**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(V), and 29-2-114(8)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV). The purpose of this rule is to ensure adequate control of the Licensed Premises and Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product contained therein. This rule establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security. This rule also establishes fencing and lighting requirements for outdoor cultivations.

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**R 305 – Security Alarm Systems and Lock Standards**

- A. Security Alarm Systems – Minimum Requirements. The following Security Alarm Systems and lock standards apply to all Retail Marijuana Establishments.
1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.
  2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.
  3. A Licensee shall maintain up-to-date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. See Rule R 901 – Business Records Required.
  4. Upon request, Licensees shall make available to agents of the Division or relevant local jurisdiction or state or local law enforcement agency, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.
  5. Any outdoor or greenhouse Retail Marijuana Cultivation Facility is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this Rule. An outdoor or greenhouse Retail Marijuana Cultivation Facility must provide sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to a Retail Marijuana Cultivation Facility located in an indoor Licensed Premises so it can be fully secured and alarmed. The fencing requirements shall include, at a minimum, perimeter fencing designed to prevent the general public from entering the Limited Access Areas and shall meet at least the following minimum requirements:
    - a. The entire Limited Access Area shall be surrounded by a fence constructed nine gauge or lower metal chain link fence or another similarly secure material. The fence shall measure at least eight feet from the ground to the top, or in the alternative, the fence may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands along the entire fence. All support posts shall be steel and securely anchored.
    - b. All gates of ingress or egress shall measure at least eight feet from the ground to the top of the entry gate, or in the alternative, the gate may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands, and shall be constructed of nine gauge or lower metal chain link fence or a similarly secure material.
    - c. The fence shall obscure the Limited Access Area so that it is not easily viewed from outside the fence.
    - d. All areas of ingress and egress of the fence shall be illuminated including a 20 foot radius from the point of ingress or egress. The required lights may be, but are not required to be, motion sensing. See also Rule R 306(C).

- e. A Licensee or Applicant for initial licensure may, in writing, request that the Division waive one or more of the security requirements described in this subparagraphs (a) through (d) of this Rule, by submitting on a form prescribed by the Division a security waiver request for Division approval. The Division may, in its discretion and on a case by case basis, approve the security waiver if it finds that the alternative safeguard proposed by the Licensee or Applicant for initial licensure meets the goals of the above security requirements or that the security requirements are in conflict with a local ordinance of general applicability. Approved security waivers expire at the same time as the underlying License and may be renewed at the time the License renewal application is submitted. The Licensee's or Applicant for initial licensure's request for a waiver shall include:
  - i. The specific rules and subsections of a rule that is requested to be waived;
  - ii. The reason for the waiver;
  - iii. A description of an alternative safeguard the Licensee will implement in lieu of the requirement that is the subject of the waiver; and
  - iv. An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.
- f. During the period January 1, 2018, to January 1, 2019, a Licensee that is currently in compliance with the Security Alarm Systems requirements will not be required to comply with this revised Rule R 305. Compliance with this revised Rule R 305 shall be required effective January 1, 2019.

**B. Lock Standards – Minimum Requirement**

1. At all points of ingress and egress, the Licensee shall ensure the use of a commercial-grade, non-residential door locks.
2. Any outdoor or greenhouse Retail Marijuana Cultivation Facility must meet all of the requirements for the lock standards described in this rule.

**Basis and Purpose – R 306**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(d), 44-12-202(3)(a)(V), and 44-12-701, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure adequate control of the Licensed Premises and Retail Marijuana and Retail Marijuana Product contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security.

**R 306 - Video Surveillance**

- A. Minimum Requirements. The following video surveillance requirements shall apply to all Retail Marijuana Establishments.
  1. Prior to exercising the privileges of a Retail Marijuana Establishment, an Applicant must install a fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this rule.

2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.
3. Video surveillance records and recordings must be made available upon request to the Division, the relevant local jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.
4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the relevant local jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

B. Video Surveillance Equipment

1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.
2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.
3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained, so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.
4. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage. Licensee must notify the Division of any loss of video surveillance capabilities that extend beyond four hours.

C. Placement of Cameras and Required Camera Coverage

1. Camera coverage is required for all Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Retail Marijuana or Retail Marijuana Product is displayed for sale, and all points of ingress and egress to the exterior of the Licensed Premises.
2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.
3. At each point-of-sale location, camera coverage must enable recording of the customer(s) and employee(s) facial features with sufficient clarity to determine identity.
4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.

5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Retail Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.
6. Areas where Retail Marijuana is grown, tested, cured, manufactured, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.
7. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, or tagging activities occur.
8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.
9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment

1. The surveillance room or surveillance area shall be a Limited Access Area.
2. Surveillance recording equipment must be housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division and relevant local jurisdiction, state or local law enforcement agencies for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, and service personnel or contractors.
3. Licensees must keep a current list of all authorized employees and service personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.
4. Off-site Monitoring and video recording storage of the Licensed Premises by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site Monitoring.
5. Each Retail Marijuana Licensed Premises located in a common or shared building, or commonly owned Retail Marijuana Establishments located in the same local jurisdiction, must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Retail Marijuana Establishments located in the same local jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned retail facilities. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in this section apply to the review station.

6. Licensed Premises that combine both a Medical Marijuana Business and a Retail Marijuana Establishment may have one central surveillance room located at the shared Licensed Premises. See Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment: Shared Licensed Premises and Operational Separation.

**E. Video Recording and Retention Requirements**

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.
2. All surveillance recordings must be kept for a minimum of 40 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately-captured video and guarantees that no alteration of the recorded image has taken place.
3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the Licensed Premises.
4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture.
5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: <http://www.time.gov/timezone.cgi?Mountain/d/-7/java>
6. After the 40 day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to: sale or transfer of the facility or business to another Licensee; or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil or administrative investigation, or any other proceeding for which the recording may contain relevant information.

**F. Other Records**

1. All records applicable to the surveillance system shall be maintained on the Licensed Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list, and operating instructions for the surveillance equipment.
2. A chronological point-of-sale transaction log must be made available to be used in conjunction with recorded video of those transactions.

**Basis and Purpose – R 307**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), and 44-12-202(3)(c)(VIII), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish waste disposal requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after its Medical Marijuana rules.

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**R 307 – Waste Disposal**

- A. All Applicable Laws Apply. Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste must be stored, secured, locked, and managed in accordance with all applicable federal, state, and local statutes, regulations, ordinances, or other requirements.
- B. Liquid Waste. Liquid waste from Retail Marijuana Establishments shall be disposed of in compliance with all applicable federal, state and local laws, regulations, rules and other requirements.
- C. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules and other requirements. This may include, but is not limited to, the disposal of all Pesticide or other agricultural chemicals, certain solvents or other chemicals used in the production of Retail Marijuana Concentrate or any Retail Marijuana soaked in a Flammable Solvent for purposes of producing a Retail Marijuana Concentrate.
- D. Waste Must Be Made Unusable and Unrecognizable. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste, excluding Fibrous Waste disposed of in accordance with Rule R 307.5, must be made unusable and Unrecognizable prior to leaving the Licensed Premises.
- E. Methods to Make Waste Unusable and Unrecognizable. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste shall be rendered unusable and Unrecognizable through one of the following methods::
1. Grinding or compacting and incorporating the marijuana waste with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste, and such that the resulting mixture cannot easily be separated and sorted:
    - a. Paper waste;
    - b. Plastic waste;
    - c. Cardboard waste;
    - d. Food waste;
    - e. Grease or other compostable oil waste;
    - f. Bokashi or other compost activators;
    - g. Soil;
    - h. Sawdust; and
    - i. Other wastes approved by the Division that will render the Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste unusable and Unrecognizable.
- F. After Waste is Made Unusable and Unrecognizable. Excluding Fibrous Waste disposed of in accordance with Rule R 307.5, after the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product waste is made unusable and Unrecognizable, then the rendered waste shall be disposed of as solid waste, as defined at 6 CCR 1007-2, Part 1. The solid waste shall be:

1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing authority;
  2. Deposited at a compost facility that has a certificate of designation approved and issued by the local governing body; or
  3. Composted on-site at a facility owned by the generator of the waste and operated in compliance with the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) in the Colorado Department of Public Health and Environment.
  4. These waste rules are in addition to, not in lieu of, those solid waste rules as established and enforced by the Colorado Department of Public Health and Environment at 6 CCR 1007-2, Part 1.
- G. Proper Disposal of Waste. A Licensee shall only dispose of Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste in a secured waste receptacle in possession and control of the Licensee.
- H. Inventory Tracking Requirements
1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize the Inventory Tracking System to ensure its post-harvest waste materials are identified, weighed and tracked while on the Licensed Premises until disposed of.
  2. All Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste must be weighed before leaving any Retail Marijuana Establishment. A scale used to weigh Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. See Rule R 309 – Retail Marijuana Establishments: Inventory Tracking System.
  3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of Marijuana. See Rule R 901 – Business Records Required.
  4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Retail Marijuana plant prior to harvest, which must include weighing and documenting all waste, including Fibrous Waste. Unless required by an Inventory Tracking System procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. Waste, excluding Fibrous Waste, whether produced prior or subsequent to harvest, must be disposed of in accordance with this Rule and be made unusable and Unrecognizable. See Rule R 307.5 – Transfers of Fibrous Waste.

### **Basis and Purpose – R 307.5**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(VIII), and 44-12-202(5), C.R.S. The purpose of this rule is to establish conditions under which a Licensee is authorized to Transfer Fibrous Waste to a Person for the purpose of producing only Industrial Fiber Products.

### **R 307.5 – Transfers of Fibrous Waste**

- A. All Applicable Laws Apply. Fibrous Waste must be stored and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements.

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- B. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers may Transfer Fibrous Waste to an Industrial Fiber Products Producer in accordance with the requirements of this Rule R 307.5.
- C. Contract Requirements. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers that Transfer Fibrous Waste to an Industrial Fiber Products Producer shall enter into a written contract prior to Transferring any Fibrous Waste.
1. The written contract must be complete, and must fully incorporate all terms and conditions.
  2. The written contract shall include the following terms:
    - a. The identity of the Industrial Fiber Products Producer;
    - b. A requirement that the Industrial Fiber Products Producer shall be and shall remain in good standing with the Colorado Secretary of state during the contract term; and
    - c. A requirement that the Industrial Fiber Products Producer shall ensure the security of Fibrous waste during transport from the Licensed Premises to the point of processing by the Industrial Fiber Products Producer.
  3. The Licensee and Industrial Fiber Products Producer shall sign an affirmation that the Fibrous Waste is being Transferred only for the purpose of producing Industrial Fiber Products, which may be incorporated as part of a purchase order, invoice, or manifest.
- D. Business Records. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers that Transfer Fibrous Waste to an Industrial Fiber Products Producer shall keep all contracts, receipts, and inventory records relating to the Transfer of any Fibrous Waste in accordance with Rule R 901, including but not limited to Rule R 901(A)(2).
- E. Security Measures.
1. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers that Transfer Fibrous Waste to an Industrial Fiber Products Producer shall comply with all security requirements pursuant to Rules R 305 and 306.
  2. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers preparing Fibrous Waste for Transfer to an Industrial Fiber Products Producer must separate Fibrous Waste from other Retail Marijuana plant material and waste within the Limited Access Area and on video surveillance.
  3. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers shall physically segregate all Fibrous Waste from other waste, Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products.
  4. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers shall affix a label to all receptacles holding Fibrous Waste that has already been separated from other Retail Marijuana plant material and waste within the Limited Access Area prior to Transfer to an Industrial Fiber Products Producer. The label must identify the receptacle as "Contains Fibrous Waste."

5. An Industrial Fiber Products Producer, or its employee or agent, must sign the visitor log, unless such individual has a valid Division-issued Occupational License, to enter the Limited Access Area for any Transfer of Fibrous Waste.
  6. The Licensee remains responsible for all Fibrous Waste until the Industrial Fiber Products Producer takes possession and removes Fibrous Waste from the Licensed Premises.
  7. The Licensee shall assure that only Fibrous Waste and waste that has been made unusable and Unrecognizable pursuant to Rule R 307 is Transferred to the Industrial Fiber Products Producer.
- F. Inventory Tracking Requirements.
1. A Licensee shall utilize the Inventory Tracking System to ensure its post-harvest Fibrous Waste materials are identified, weighed and tracked while on the Licensed Premises until Transferred.
  2. A scale used to weigh Fibrous Waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 25-14-127, C.R.S. See Rule R 309 – Retail Marijuana Establishment: Inventory Tracking System.
  3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all Fibrous Waste Transfers. See Rule R 901 – Business Records Required.
- G. Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturers shall not Transfer contaminated Fibrous Waste to an Industrial Fiber Products Producer and shall handle contaminated Fibrous Waste using the same reasonable protocols used to handle waste.
- H. Violation of Public Safety. It may be considered a violation of public safety for a Licensee to Transfer anything to an Industrial Fiber Products Producer other than in accordance with this Rule R 307.5.

### **Basis and Purpose – R 308**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-301(2) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(f). The purpose of this rule is to establish hours of operation requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after the Colorado Department of Revenue's liquor rules. Based upon written comments and testimony during working groups and public hearings, this rule was amended to remove restrictions on the hours during which initiating the transportation of Retail Marijuana and Retail Marijuana Product is permitted.

### **R 308 – Selling and Serving, Retail Marijuana and Retail Marijuana Product - Hours of Operation**

- A. Hours of Operation. Retail Marijuana Establishments shall not sell or serve Retail Marijuana or Retail Marijuana Product at any time other than between the hours of 8:00 am and 12:00 am, Mountain Time, Monday through Sunday.
- B. Local Jurisdictions May Further Restrict Hours. Nothing in this rule shall prohibit a local jurisdiction from further restricting hours of operation within its jurisdiction.

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**Basis and Purpose – R 309**

The statutory authority for this rule includes but is not limited to sections 44-12-104(1)(a)(III), 44-12-201(1), 44-12-202(2)(b), 44-12-402(1)(d), 44-12-402(4), 44-12-403, and 44-12-404(1)(b), C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Retail Marijuana and Retail Marijuana Product from either seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to the customer or destroyed.

The Inventory Tracking System is a web-based tool coupled with RFID technology that allows both the Inventory Tracking System user and the State Licensing Authority the ability to identify and account for all Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Through the use of RFID technology, a Retail Marijuana Cultivation Facility will tag either the seed or immature plant with an individualized number, which will follow the Retail Marijuana through all phases of production and final sale to a consumer. This will allow the State Licensing Authority and the Inventory Tracking System user the ability to monitor and track Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product inventory. The Inventory Tracking System will also provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Retail Marijuana to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold and disposed of in the Retail Marijuana market is transparently accounted for.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate the Inventory Tracking System to promote an effective means for this industry to account for and monitor its Retail Marijuana inventory.

**R 309 – Retail Marijuana Establishments: Inventory Tracking System**

- A. Inventory Tracking System Required. A Retail Marijuana Establishment is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Retail Marijuana Establishment must have an Inventory Tracking System account activated and functional prior to operating or exercising any privileges of a license. Medical Marijuana Businesses converting to or adding a Retail Marijuana Establishment must follow the inventory transfer guidelines detailed in Rule R 309(C) below.
  
- B. Inventory Tracking System Access - Inventory Tracking System Administrator
  - 1. Inventory Tracking System Administrator Required. A Retail Marijuana Establishment must have at least one individual Owner who is an Inventory Tracking System Administrator. A Retail Marijuana Establishment may also designate additional Owners and occupationally licensed employees to obtain Inventory Tracking System Administrator accounts.
  
  - 2. Training for Inventory Tracking System Administrator Account. In order to obtain a Inventory Tracking System Administrator account, a Person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.

3. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Retail Marijuana Establishment may designate licensed Owners and employees who hold valid Occupational Licenses as Inventory Tracking System Users. A Retail Marijuana Establishment shall ensure that all Owners and Occupational License Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.
- C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Establishment
1. Medical Marijuana Inventory Transfer to Retail Marijuana Establishments.
    - a. Repealed.
    - b. Beginning July 1, 2016:
      - i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Establishment is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Optional Premises Cultivation Operation, from the Optional Premises Cultivation Operation to a Retail Marijuana Cultivation Facility.
      - ii. Each Optional Premises Cultivation Operation that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.
      - iii. An Optional Premises Cultivation Operation must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.
      - iv. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Establishment.
      - v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer to any Retail Marijuana Establishment.
  2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.
- D. RFID Tags Required
1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provision RFID tags for the Inventory Tracking System. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires RFID tag use. A Retail Marijuana Establishment must ensure it has an adequate supply of RFID tags to properly tag Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product as required by the Inventory Tracking System. An RFID tag must be physically attached to every Retail Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. Prior to a plant reaching a viable point to support the weight of the RFID tag and attachment strap, the RFID tag may be securely fastened to the stalk. When plants reach a viable point to support the weight of the RFID tag and attachment strap, the RFID tag shall be securely fastened to a lower supporting branch. An RFID tag must be assigned to all Harvested Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See Rule R 801(G.5) – Required RFID Tags; Rule R 1001-1(F) – Shipping Containers.
3. Reuse of RFID Tags Prohibited. A Licensee shall not reuse any RFID tag that has already been affixed or assigned to any Harvested Marijuana, Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
4. When plants reach a viable point to support the weight of the RFID tag and attachment strap, the RFID tag shall be securely fastened to a lower branch.

E. General Inventory Tracking System Use

1. Reconciliation with Inventory. All inventory tracking activities at a Retail Marijuana Establishment must be tracked through use of the Inventory Tracking System. A Licensee must reconcile all on-premises and in-transit Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product inventories each day in the Inventory Tracking System at the close of business.
2. Common Weights and Measures.
  - a. A Retail Marijuana Establishment must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.
  - b. A scale used to weigh product prior to entry into the Inventory Tracking System system shall be tested and approved in accordance with section 35-14-127, C.R.S.
3. Inventory Tracking System Administrator and User Accounts – Security and Record
  - a. A Retail Marijuana Establishment shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Retail Marijuana Establishment shall update this list when a new Inventory Tracking System User is trained. A Retail Marijuana Establishment must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.
  - b. A Retail Marijuana Establishment must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

- c. A Retail Marijuana Establishment is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product inventory tracking activities.
  - d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product inventory tracking activities, and shall maintain compliance with all relevant laws.
4. Secondary Software Systems Allowed
- a. Nothing in this Rule prohibits a Retail Marijuana Establishment from using separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems.
  - b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.
  - c. A Retail Marijuana establishment must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use the Inventory Tracking System data as the primary source of data and must be compatible with updating to the Inventory Tracking System.
- F. Conduct While Using Inventory Tracking System
- 1. Misstatements or Omissions Prohibited. A Retail Marijuana Establishment and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Retail Marijuana Establishment and the individuals using the Inventory Tracking system are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.
  - 2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.
  - 3. Loss of System Access. If at any point a Retail Marijuana Establishment loses access to the Inventory Tracking System for any reason, the Retail Marijuana Establishment must keep and maintain comprehensive records detailing all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product tracking inventory activities that were conducted during the loss of access. See Rule R 901 – Business Records Required. Once access is restored, all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Retail Marijuana Establishment must document when access to the system was lost and when it was restored. A Retail Marijuana Establishment shall not transport any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to another Retail Marijuana Establishment until such time as access is restored and all information is recorded into the Inventory Tracking System.

G. System Notifications

1. Compliance Notifications. A Retail Marijuana Establishment must monitor all compliance notifications from the Inventory Tracking System. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the Inventory Tracking System until the Retail Marijuana Establishment resolves the compliance issues detailed in the notification.
2. Informational Notifications. A Retail Marijuana Establishment must take appropriate action in response to informational notifications received through the Inventory Tracking System, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

H. Lawful Activity Required. Proper use of the Inventory Tracking System does not relieve a Licensee of its responsibility to maintain compliance with all laws, rules, and other requirements at all times.

I. Inventory Tracking System Procedures Must Be Followed. A Retail Marijuana Establishment must utilize Inventory Tracking System in conformance with these rules and Inventory Tracking System procedures, including but not limited to:

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;
2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;
3. Accurately identifying when inventory is no longer on the Licensed Premises;
4. Properly indicating that a Test Batch is being used as part of achieving process validation;
5. Accurately indicating the Inventory Tracking System category for all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Products; and
6. Accurately including a note explaining the reason for any destruction of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Products, and reason for any adjustment of weights to Inventory Tracking System packages.
7. Properly designating one or more Sampling Managers before Transferring any Sampling Units; and
8. Fully and accurately tracking the Transfer of any Sampling Unit from a Retail Marijuana Establishment to a Sampling Manager identified by name and license number.
9. When entering into the Inventory Tracking System a unit of Retail Marijuana flower or trim, Retail Marijuana Product, or Retail Marijuana Concentrate, the Inventory Tracking System Trained Administrator or Inventory Tracking System User shall also identify the net contents of each unit consistent with Rules R 1001-1(B)(2)(e) and (C)(2)(a)(iv). For example, if the Inventory Tracking System User enters 1 unit of Retail Marijuana Product that contains 100 mg of Retail Marijuana Product, then the Inventory Tracking System User shall also identify that each unit contains 100 mg.

## R 400 Series – Retail Marijuana Stores

### Basis and Purpose – R 401

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(VIII), 44-12-309(7)(a), 44-12-901(4)(f), 44-12-402, and 44-12-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Store to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.

### R 401 – Retail Marijuana Store: License Privileges

- A. Privileges Granted. A Retail Marijuana Store shall only exercise those privileges granted to it by the State Licensing Authority.
- B. Licensed Premises. To the extent authorized by Rule R 304.1 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share, and operate at, the same Licensed Premises with a commonly-owned Medical Marijuana Center. However, a separate license is required for each specific business or business entity, regardless of geographical location.
- C. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that was obtained from another Retail Marijuana Establishment.
- D. Repealed.
- E. Samples Provided for Testing. A Retail Marijuana Store may provide samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. See Rule R 901 – Business Records Required.
- F. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.
- G. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Establishment. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

### Basis and Purpose – R 402

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(IX), 44-12-202(3)(a)(X), 44-12-202(3)(b)(I), 44-12-202(3)(c)(VIII), 44-12-401(4), 44-12-901(1), 44-12-901(4)(c) and (g), 44-12-105, and 44-12-402, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The equivalencies have been determined through utilizing findings of a study that the House Bill authorized. The study, "Marijuana Equivalency in Portion and Dosage," was authored by the Marijuana Policy Group and is available on the Division's website. The study was presented to a group of stakeholders during a public meeting as part of the rulemaking process. Although there was disagreement among stakeholders regarding what the equivalencies should be, the general consensus was that the equivalencies must be simple and straightforward, which would facilitate regulatory compliance and serve public safety.

The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

#### **R 402 – Retail Marijuana Sales: General Limitations or Prohibited Acts**

- A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.
- B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.
- C. Quantity Limitations On Sales.
  - 1. Repealed.
  - 1.5. Repealed.
  - 2. Repealed.
  - 3. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product or more than six Retail Marijuana seeds in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 402(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule R 1307(C).
  - 4. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:
    - a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

- b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.
- D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a customer.
- E. Sales over the Internet. A Licensee is prohibited from selling Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product over the internet. Any Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product must occur within the Retail Marijuana Store's Restricted Access Area.
- F. Purchases Only Within Restricted Access Area. A customer must be physically present within the Restricted Access Area of the Retail Marijuana Store's Licensed Premises to purchase Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
- G. Repealed effective January 1, 2019.
- H. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.
- I. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer for any reason.
- J. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 46 or 47 of Title 12, C.R.S.
- K. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on the Licensed Premises.
- L. Storage and Display Limitations.
1. A Retail Marijuana Store shall not display Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product outside of a designated Restricted Access Area or in a manner in which Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product can be seen from outside the Licensed Premises. Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall otherwise be maintained in Limited Access Areas or Restricted Access Area.
  2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.
    - a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.
    - b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.
- M. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product to a consumer.

- N. Transfer Restrictions. A Retail Marijuana Store shall not Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter. A Retail Marijuana Store may not possess or Transfer Sampling Units.
- O. A Retail Marijuana Store shall not compensate its employees using performance-based sales incentives. Performance-based incentives that are not sales-based are acceptable. Examples of performance-based incentives that are not sales-based include recognition for providing quality information to consumers, or the duration of the employee's employment with the Retail Marijuana Store.
- P. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This paragraph (P) is effective beginning October 1, 2017.
1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:
    - a. The distinct shape of a human, animal, or fruit; or
    - b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
  2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Establishment. Nothing in this subparagraph (P)(2) alters or eliminates a Licensee's obligation to comply with the requirements of Rule R 1001 – Labeling and Packaging Requirements: General Applicability or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.
  3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and
  4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.
- Q. Adverse Event Reporting. A Retail Marijuana Store that Transfers Audited Product and/or Alternative Use Product must report any adverse event related to an Audited Product and/or Alternative Use Product directly to the Retail Marijuana Products Manufacturing Facility that Transferred the Audited Product or Alternative Use Product to the Retail Marijuana Store. The report must be submitted within forty-eight (48) hours after learning of the adverse event by the Retail Marijuana Store. For purposes of this Rule, adverse event means any untoward medical occurrence associated with the use of marijuana—this could include any unfavorable and unintended sign (including a hospitalization, emergency department visit, doctor's visit, abnormal laboratory finding), symptom or disease temporally associated with the use of a marijuana product, and may include concerns or reports on the quality or possible adverse reactions to a specific Audited Product or Alternative Use Product. To the extent known after reasonable diligence to ascertain the information, the report to the Retail Marijuana Products Manufacturing Facility must contain the name and contact information of the complainant, the date the complaint was received, the nature of the complaint, and the name and Production Batch number of the Audited Product or Alternative Use Product.
- R. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to a Medical Research Facility, a Pesticide Manufacturer or a Licensed Research Business.

- S. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

**Basis and Purpose – R 403**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(VI), and 44-12-202(3)(a)(IX), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that a Retail Marijuana Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age.

**R 403 – Point of Sale: Restricted Access Area**

- A. Identification of Restricted Access Area. All areas where Retail Marijuana or Retail Marijuana Product are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – No One Under 21 Years of Age Allowed."
- B. Customers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when customers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owners and Occupational Licensees shall make reasonable efforts to limit the number of customers in relation to the number of Owners or employees in the Restricted Access Area at any time.
- C. Display of Retail Marijuana. The display of Retail Marijuana and Retail Marijuana Product for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the customer must be supervised by the Owner or Occupational Licensees at all times when customers are present.

**Basis and Purpose – R 404**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(e), 44-12-202(3)(c)(VI), 44-12-202(3)(c)(VIII), and 44-12-402(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V). The purpose of this rule is to establish guidelines for the acceptable forms of identification for verifying the lawful sale of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

**R 404 – Acceptable Forms of Identification for Retail Sales**

- A. Valid Identification to Verify Age Only. A Licensee shall refuse the Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to anyone, unless such person can produce a form of valid identification showing that the purchaser is 21 years of age or older. If the identification contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following, so long as such identification is valid and not expired:
1. An operator's, chauffeur's or similar type driver's license, including a temporary license, issued by any state within the United States, District of Columbia, or any U.S. territory;
  2. An identification card, including a temporary identification card, issued by any state within the United States, District of Columbia, or any U.S. territory, for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2-303, C.R.S.;

3. A United States military identification card or any other identification card issued by the United States government including but not limited to a permanent resident card, alien registration card, or consular card;
  4. A passport or passport identification card; or
  5. Enrollment card issued by the governing authority of a federally recognized Indian tribe, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2-303, C.R.S.
  6. Repealed.
- B. Fraudulent Identification and Licensee's Burden. Pursuant to section 44-12-402(3)(b)(I), C.R.S., if a person under twenty-one years of age presents a fraudulent proof of age, any action based upon the fraudulent proof of age shall not be grounds for the revocation or suspension of a license. To establish that the identification presented by the minor was a fraudulent proof of age, the Licensee must establish that:
1. The minor presented fraudulent identification of the type established in paragraph A above;
  2. During the transaction in which Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product was Transferred to the minor, the Licensee inspected the identification provided, and referenced and inspected an identification book, or other electronic scanner, ID checking software or other device used in the inspection of identification, issued within the past three years, which contained a sample of the specific kind of identification presented for compliance purposes.
- C. Repealed.

### **Basis and Purpose – R 405**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), and 44-12-402(1)(d), C.R.S. The purpose of this rule is to establish a Retail Marijuana Store's obligation to account for and track all inventories on the Licensed Premises from the point of Transfer from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Transporter to the point of sale.

### **R 405 – Retail Marijuana Store: Inventory Tracking System**

- A. Minimum Tracking Requirement. A Retail Marijuana Store must use Inventory Tracking System to ensure its inventories are identified and tracked from the point of Transfer to or from another Retail Marijuana Establishment through the point-of-sale, or otherwise disposed of. See Rule R 309 – Retail Marijuana Establishment: Inventory Tracking System. The Retail Marijuana Store must have the ability to reconcile its inventory records with the Inventory Tracking System and the associated transaction history and sale receipts. See Rule R 901 – Business Records Required.
1. A Retail Marijuana Store is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Retail Marijuana Store must immediately input all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Store. All delivered Retail Marijuana must be weighed and the scale used shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. A Retail Marijuana Store must account for all variances.
3. A Retail Marijuana Store must reconcile transactions from their point of sale processes and on-hand inventory to the Inventory Tracking System at the close of business each day.

### **Basis and Purpose – R 406**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), and 44-12-202(3)(c)(VIII), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Store. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

### **R 406 – Retail Marijuana Store: Health and Safety Regulations**

- A. Local Safety Inspections. A Retail Marijuana Store may be subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local jurisdiction restrictions related to Retail Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.
- B. Sanitary Conditions. A Retail Marijuana Store shall take all reasonable measures and precautions to ensure the following:
  1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
  2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;

3. That all persons working in direct contact with Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall conform to hygienic practices while on duty, including but not limited to:
    - a. Maintaining adequate personal cleanliness;
    - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work and at any other time when the hands may have become soiled or contaminated; and
    - c. Refraining from having direct contact with Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.
  4. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are exposed;
  5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
  6. That there is adequate lighting in all areas where Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are stored or sold, and where equipment or utensils are cleaned;
  7. That the Licensee provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
  8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition, including but not limited to the prevention of microorganism growth;
  9. That toxic cleaning compounds, sanitizing agents, and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation or ordinance;
  10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;
  11. That each employee is provided with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and
  12. That Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- C. Independent Health and Sanitary Audit

1. State Licensing Authority May Require a Health and Sanitary Audit
  - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Store to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Store is in compliance with the requirements set forth in this Rule and other applicable health, sanitary or food handling laws, rules and regulations.
  - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Store. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.
  - c. The Retail Marijuana Store will be responsible for all costs associated with the independent health and sanitary audit.
2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
  - a. The Division has reasonable grounds to believe that the Retail Marijuana Store is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules or regulations; or
  - b. The Division has reasonable grounds to believe that the Retail Marijuana Store was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
3. Compliance Required. A Retail Marijuana Store must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this Rule.
4. Suspension of Operations
  - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Store's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
  - b. Prior to or following the issuance of such an order, the Retail Marijuana Store may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
    - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.

- ii. If an agreement to suspend operations is reached, then the Retail Marijuana Store may continue to care for its inventory and conduct any necessary internal business operations but it may not Transfer any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to a consumer or to any other Retail Marijuana Establishment during the period of time specified in the agreement.
- D. Contaminated Product. A Retail Marijuana Store shall not accept or Transfer to any Person any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed required testing pursuant to Rule R 1501 or Rule R 1503, unless otherwise permitted in these rules. If, despite the prohibitions in these rules, another Retail Marijuana Establishment Transfers to the Retail Marijuana Store any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed or subsequently fails required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Store shall assure that all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Products that failed required testing are safely disposed of in accordance with Rule R 307.
- E. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

#### **Basis and Purpose - R 407**

The statutory authority for this rule includes but is not limited to sections 44-11-1101, 44-11-1102, 44-12-202(2)(b), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(VI), and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to establish minimum standards for responsible vendor programs that provide training to personnel at Retail Marijuana Stores seeking designation as a “responsible vendor.” It sets forth general standards and basic requirements for responsible vendor programs. This rule also establishes the timeframe for new staff to complete a responsible vendor program and the requirements for recertification. The State Licensing Authority intends this rule to help maintain the integrity of Colorado’s Retail Marijuana Stores.

#### **R 407 - Retail Marijuana Store: Responsible Vendor Program**

- A. General Standards for a Retail Marijuana Establishment Designated a Responsible Vendor.
  - 1. Pursuant to section 44-11-1102, C.R.S., to be designated a “responsible vendor” of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate at any licensed Retail Marijuana Store, a Retail Marijuana Store licensee shall comply with this Rule.
  - 2. To be designated a “responsible vendor” all Owners, managers and employees involved in the handling and Transfer of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate shall attend and successfully complete a responsible vendor program.
  - 3. Once a licensee is designated a “responsible vendor,” all new employees involved in the handling and Transfer of Retail Marijuana, Retail Marijuana Product and Retail Marijuana Concentrate shall successfully complete the training described in this Rule within 90 days of hire.
  - 4. After initial successful completion of a responsible vendor program, each Owner, manager and employee of a Retail Marijuana Store shall successfully complete the program once every two years thereafter to maintain designation as a “responsible vendor.”
- A.5 General Standards for a Responsible Vendor Program Provider.

1. Responsible Vendor Program Provider and Approved Training Program as used in this section have the meanings defined in Rule R 103.
  2. An application for approval of a responsible vendor program pursuant to section 44-11-1101, C.R.S., shall be made upon current forms prescribed by the Division.
  3. Upon request by the Division, a Person seeking approval of its responsible vendor program shall timely provide any additional information required to process and fully review the responsible vendor program.
  4. All information shall be submitted in a full, faithful, truthful and fair manner. The Division may deny the approval of a responsible vendor program where the responsible vendor program provider made misstatements, omissions, misrepresentations, or untruths in the application.
  5. Changes to an Approved Training Program. Within thirty (30) days of any change to the Medical Code or Retail Code, or the rules promulgated thereunder, a Responsible Vendor Program Provider shall update its responsible vendor program curriculum to conform with any such changes.
- B. Certification Training Program Standards.
1. No owner or employee of a responsible vendor program shall have an interest in a licensed Medical Marijuana Business or Retail Marijuana Establishment.
  2. Repealed effective January 1, 2019.
  3. A Responsible Vendor Program Provider shall submit their responsible vendor program for approval every two years in order to maintain designation as a responsible vendor program. The renewal application must be submitted within sixty (60) days of the expiration of the Approved Training Program.
  4. The responsible vendor program shall include at least two hours of instruction time.
  5. Classroom Setting. The responsible vendor program shall be taught in a classroom setting where the instructor is able to verify the identification of each individual attending the responsible vendor program and certify completion of the responsible vendor program by the individual identified.
    - a. Online Instruction. An Approved Training Program may be delivered in an on-line or virtual based classroom setting provided the Responsible Vendor Program Provider utilizes a learning management system or other means to verify the identification of each individual attending the responsible vendor program. For purposes of this Rule, a learning management system means the platform or database used to monitor participation, attendance, and to deliver core curriculum materials;
    - b. Any Approved Training Program delivered in an on-line or virtual based classroom setting must comply with the core curriculum and assessment requirements in this Rule R 407.

6. The Responsible Vendor Program Provider shall maintain its training records in a format that is readily understood by a reasonably prudent business person during the applicable year and for the preceding three years. The Responsible Vendor Program Provider shall make the records available for inspection by the licensing authority upon request during normal business hours.
  7. The responsible vendor program shall provide to the Licensee written or electronic documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.
    - a. Successful completion of an Approved Training Program requires a minimum passage score of 70% or better. A Responsible Vendor Program Provider may provide a reasonable testing accommodation or modification to a Licensee participant, provided the results of the test are documented and meet the minimum passing score requirement.
    - b. Repealed effective January 1, 2019.
  8. A Responsible Vendor Program Provider shall solicit effectiveness evaluations from individuals who have completed their program.
- C. Certification Training Class Core Curriculum. When considering whether to approve a responsible vendor program, the Division, after consulting with the Colorado Department of Public Health and Environment, will consider the following criteria:
1. Discussion concerning the health and safety concerns of marijuana use. Training shall include:
    - a. Health effects of marijuana use, including but not limited to the effects in connection with pregnancy and breast-feeding;
    - b. The amount of time to feel impairment based on the type of marijuana or marijuana product;
    - c. Recognizing signs of impairment;
    - d. The amount of time to wait before driving after marijuana use based on the type of marijuana or marijuana product;
    - e. Safe storage of marijuana;
    - f. Responsible use and storage of marijuana;
    - g. Appropriate responses in the event of unintentional or over-consumption of marijuana and marijuana product, including but not limited to access to the appropriate resources provided by state and local public health authorities.
  2. Transfers to minors. Training shall cover all pertinent Colorado statutes, rules and regulations.
  3. Quantity limitations on Transfers to consumers. Training shall cover all pertinent Colorado statutes, rules and regulations.
  4. Acceptable forms of Identification. Training shall include:

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- a. How to check identification;
  - b. Spotting false identification;
  - c. Patient Registry Cards issued by the Colorado Department of Public Health and Environment and equivalent patient verification documents;
  - d. Provisions for confiscating fraudulent identifications; and
  - e. Common mistakes made in verification.
5. Other key state laws and rules that apply to Retail Marijuana Stores and their owners, managers, and employees. Training shall include:
- a. Local and state licensing and enforcement;
  - b. Compliance with all Inventory Tracking System regulations;
  - c. Administrative and criminal liability;
  - d. License sanctions and court sanctions;
  - e. Waste handling, management, and disposal
  - f. Health and safety standards
  - g. Patrons prohibited from bringing marijuana onto licensed premises;
  - h. Permitted hours of sale;
  - i. Licensee security and surveillance requirements;
  - j. Permitting inspections by state and local licensing and enforcement authorities;
  - k. Licensee responsibility for activities occurring within licensed premises;
  - l. Maintenance of records;
  - m. Privacy issues;
  - n. Applicable laws and regulations concerning Transfers to patients and consumers;
  - o. Packaging and labeling requirements for Transfers to patients and consumers; and
  - p. How to access the Medical Marijuana Patient Registry website and how to sign up for the Registry's voluntary email list.
6. Evaluation of program participants. The Responsible Vendor Program Provider must establish that it has an adequate mechanism for evaluating attendees' successful completion of the responsible vendor program.

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## R 500 Series – Retail Marijuana Cultivation Facilities

### Basis and Purpose – R 501

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XXII), 44-12-202(3)(c)(VIII), 44-12-401(4), 44-12-403, 44-12-404(1)(b), and 44-12-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Cultivation Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

### R 501 – Retail Marijuana Cultivation Facility: License Privileges

- A. Privileges Granted. A Retail Marijuana Cultivation Facility shall only exercise those privileges granted to it by the State Licensing Authority.
- B. Licensed Premises. To the extent authorized by Rule R 304.1 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises with a commonly owned Optional Premises Cultivation Operation. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises as a Licensed Research Business so long as:
1. Each business or business entity holds a separate license;
  2. The Licensed Research Business obtains an R&D Co-Location Permit;
  3. Both the Licensed Research Business and the Retail Marijuana Cultivation Facility comply with all terms and conditions of the R&D Co-Location Permit; and
  4. Both the Licensed Research Business and the Retail Marijuana Cultivation Facility comply with all applicable rules. See Rule M 1900 Series.
- C. Cultivation of Retail Marijuana Authorized. A Retail Marijuana Cultivation Facility may Propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana, whether in concentrated form or otherwise.
- D. Authorized Transfers. A Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana and Water-Based Retail Marijuana Concentrate to another Retail Marijuana Establishment.
1. A Retail Marijuana Cultivation Facility is also authorized to Transfer Retail Marijuana and Water-Based Retail Marijuana Concentrate to a Medical Research Facility pursuant to section 25-1.5-106.5, C.R.S., or Pesticide Manufacturer pursuant to section 44-11-202(1)(h)(II), C.R.S. and these Rules.
  2. A Retail Marijuana Cultivation Facility shall not Transfer Flowering plants or Vegetative plants to any Person except as authorized pursuant to Rule R 801.
  3. A Retail Marijuana Cultivation Facility may Transfer Sampling Units of Retail Marijuana or Retail Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-12-403(6), C.R.S., and Rule R 507.
- E. Authorized On-Premises Storage. A Retail Marijuana Cultivation Facility is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premise must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

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- F. Samples Provided for Testing. A Retail Marijuana Cultivation Facility may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. See Rule R 901 – Business Records Required.
- G. Authorized Marijuana Transport. A Retail Marijuana Cultivation Facility is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Establishment. Nothing in this Rule prevents a Retail Marijuana Cultivation Facility from transporting its own Retail Marijuana.
- H. Performance Based Incentives. A Retail Marijuana Cultivation Facility may compensate its employees using performance-based incentives. However, a Retail Marijuana Cultivation Facility may not compensate a Sampling Manager using Sampling Units. See Rule R 507 – Sampling Unit Protocols.
- I. Authorized Sources of Retail Marijuana Seeds and Immature Plants. A Retail Marijuana Cultivation Facility shall only obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana or properly transferred from another Retail Marijuana Establishment pursuant to the inventory tracking requirements in this Rule.
- J. Centralized Distribution Permit. A Retail Marijuana Cultivation Facility may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturing Facility for the sole purpose of Transfer to commonly owned Retail Marijuana Stores.
1. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person has a minimum of five percent ownership in both the Retail Marijuana Cultivation Facility possessing a Centralized Distribution Permit and the Retail Marijuana Store to which the Retail Marijuana Concentrate and Retail Marijuana Product will be Transferred.
  2. To apply for a Centralized Distribution Permit, a Retail Marijuana Cultivation Facility may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Retail Marijuana Cultivation Facility shall send a copy of its Centralized Distribution addendum to the local licensing authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.
  3. A Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Retail Marijuana Concentrate and Retail Marijuana Product from a Retail Marijuana Products Manufacturing Facility for the sole purpose of temporary storage and Transfer to commonly owned Retail Marijuana Stores.
    - a. A Retail Marijuana Cultivation Facility may only accept Retail Marijuana Concentrate and Retail Marijuana Product that is packaged and labeled for sale to a consumer pursuant to the Rule R 1000-1 Series.
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- b. A Retail Marijuana Cultivation Facility storing Retail Marijuana Concentrate and Retail Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Retail Marijuana Concentrate or Retail Marijuana Product on the Retail Marijuana Cultivation Facility's Licensed Premises for more than 90 days from the date of receipt.
  - c. All Transfers of Retail Marijuana Concentrate and Retail Marijuana Product by a Retail Marijuana Cultivation Facility shall be without consideration.
4. All security and surveillance requirements that apply to a Retail Marijuana Cultivation Facility apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

### **Basis and Purpose – R 502**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(e), 44-12-202(3)(a)(VI), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(c)(VIII), 44-12-901(2)(a), 44-12-901(4)(c), 44-12-901(4)(g), 44-12-403, and 44-12-406, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility.

### **R 502 – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts**

#### **A. Temporary Limitations**

1. Repealed.
2. Repealed

**B. Packaging and Labeling Standards Required.** A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana and Retail Marijuana Concentrate that is not packaged and labeled in accordance with these rules. See Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.

**C. Transfer to Consumer Prohibited.** A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-12-403(6), C.R.S., and Rule R 507.

**D. Consumption Prohibited.** A Retail Marijuana Cultivation Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises, including any Sampling Units Transferred to a Sampling Manager.

**E. Excise Tax Paid.** A Retail Marijuana Cultivation Facility shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., and shall provide verification to purchasers of the Retail Marijuana that any required excise tax was, or will be, paid.

**F. Sales and Gifts to Transporters Prohibited.** A Retail Marijuana Cultivation Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

### Basis and Purpose – R 503

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(c)(VIII), and 44-12-403, C.R.S. The purpose of this rule is to establish a Retail Marijuana Cultivation Facility's obligation to account for and track all inventories on the Licensed Premises from seed or cutting to Transfer to other Retail Marijuana Establishments.

### R 503 – Retail Marijuana Cultivation Facility: Inventory Tracking System

- A. Minimum Tracking Requirement. A Retail Marijuana Cultivation Facility must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point Retail Marijuana is Propagated from seed or cutting to the point when it is delivered to a Retail Marijuana Establishment, or designated as a Sampling Unit and Transferred to a Sampling Manager pursuant to Rule R 507. See Rule R 309 –Inventory Tracking System. A Retail Marijuana Cultivation Facility shall track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product possessed pursuant to a Centralized Distribution Permit in the Inventory Tracking System from the point the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is received to the point of Transfer to its commonly owned Retail Marijuana Store. See Rule R 501 – Retail Marijuana Cultivation Facility: License Privileges. A Retail Marijuana Cultivation Facility must have the ability to reconcile its Retail Marijuana inventory with the Inventory Tracking System and the associated transaction history and sale receipts. See Rule R 901 – Business Records Required.
- B. Transport of Retail Marijuana Without Transport Manifest Prohibited. A Retail Marijuana Cultivation Facility is prohibited from transporting any Retail Marijuana without a valid transport manifest generated by the Inventory Tracking System.
- C. Accepting Retail Marijuana Without Transport Manifest Prohibited. A Retail Marijuana Cultivation Facility is prohibited from accepting any Retail Marijuana from another Retail Marijuana Establishment without receiving a valid transport manifest generated from the Inventory Tracking System.
- D. Input Into Inventory Tracking System Required. A Retail Marijuana Cultivation Facility must immediately input all Retail Marijuana delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Marijuana Cultivation Facility.
- E. Inventory Must Be Reconciled Daily. A Retail Marijuana Cultivation Facility must reconcile its transaction history and on-hand inventory to the Inventory Tracking System at the close of business each day.
- F. Sampling Unit Tracking Requirements.
1. In addition to all other tracking requirements set forth in these rules, a Retail Marijuana Cultivation Facility shall utilize the Inventory Tracking System to ensure that any Retail Marijuana or Water-Based Retail Marijuana Concentrate designated as a Sampling Unit is identified and tracked from the point of such designation until the Sampling Unit is Transferred to a Sampling Manager. See Rule R 507 – Sampling Unit Protocols.
  2. The Inventory Tracking System must adequately reflect all Transfers of Sampling Units. At a minimum, a Retail Marijuana Cultivation Facility must ensure that the Inventory Tracking System reflects the date the Sampling Unit was Transferred, the weight of the Sampling Unit, and the name and license number of the recipient Sampling Manager.

3. A Retail Marijuana Cultivation Facility must have the ability to reconcile its Sampling Manager and Sampling Unit records with the Inventory Tracking System and any associated transaction history.

#### **Basis and Purpose – R 504**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Cultivation Facilities. The rule prohibits a Retail Marijuana Cultivation Facility from treating or otherwise adulterating Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Cultivation Facility. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit.

#### **R 504 – Retail Marijuana Cultivation Facility: Health and Safety Regulations**

- A. Local Safety Inspections. A Retail Marijuana Cultivation Facility may be subject to inspection of its Licensed Premises by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local jurisdiction restrictions related to Retail Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.
- B. General Sanitary Requirements. A Retail Marijuana Cultivation Facility shall take all reasonable measures and precautions to ensure the following:
  1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Retail Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
  2. That all persons working in direct contact with Retail Marijuana shall conform to hygienic practices while on duty, including but not limited to:
    - a. Maintaining adequate personal cleanliness;
    - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of a Retail Marijuana Concentrate, and at any other time when the hands may have become soiled or contaminated;
    - c. Hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices; and
    - d. Refraining from having direct contact with Retail Marijuana if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.

3. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana is exposed;
4. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
5. That there is adequate lighting in all areas where Retail Marijuana are stored or sold, and where equipment or utensils are cleaned;
6. That the Licensee provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
7. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
8. That toxic cleaning compounds, sanitizing agents, solvents and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana or Retail Marijuana Concentrate, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance. All Pesticide must be stored and disposed of in accordance with the information provided on the product's label;
9. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana or Retail Marijuana Concentrate shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Retail Marijuana Cultivation Facility and used in accordance with labeled instructions;
10. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs. Reclaimed water may also be used only for the cultivation of Retail Marijuana to the extent authorized under the Reclaimed Water Control Regulations (5 CCR 1002-84), and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;
11. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable water, reclaimed water and waste water lines;
12. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana or Retail Marijuana Concentrate shall be conducted in accordance with adequate sanitation principles;
13. That each Retail Marijuana Cultivation Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

14. That Retail Marijuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- C. Pesticide Application. A Retail Marijuana Cultivation Facility may only use Pesticide in accordance with the “Pesticide Act,” section 35-9-101 et seq., C.R.S., Pesticides Applicators’ Act, section 35-10-101 et seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide. The Colorado Department of Agriculture’s determination that the Licensee used any quantity of a Pesticide that would constitute a violation of the Pesticide Act or the Pesticide Applicators’ Act shall constitute *prima facie* evidence of a violation of this Rule.
- D. Application of Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility may only use agricultural chemicals, other than Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules and regulations.
- E. Required Documentation
1. Standard Operating Procedures. A Retail Marijuana Cultivation Facility must establish written standard operating procedures for the cultivation, harvest, drying, curing, packaging, storing, and sampling for testing of Retail Marijuana, and the processing, packaging, storing, and sampling for testing of Retail Marijuana Concentrate. The standard operating procedures must also include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.
  2. Material Change. If a Retail Marijuana Cultivation Facility makes a Material Change to its standard operating procedures, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.
  3. Safety Data Sheet. A Retail Marijuana Cultivation Facility must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Retail Marijuana Cultivation Facility must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.
  4. Labels of Pesticide and Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.
  5. Pesticide Application Documentation. A Retail Marijuana Cultivation Facility that applies any Pesticide or other agricultural chemical to any portion of a Retail Marijuana plant, water or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:
    - a. The name, signature and Occupational License number of the individual who applied the Pesticide or other agricultural chemical;
    - b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with the “Pesticides Applicators’ Act,” section 35-10-101 et seq., C.R.S.;
    - c. The date and time of the application;

- d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;
  - e. Any of the active ingredients of the Pesticide or other agricultural chemical(s) applied;
  - f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;
  - g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;
  - h. The RFID tag number of the Retail Marijuana plant(s) to which the Pesticide or other agricultural chemical(s) were applied, or, if the Pesticide or other agricultural chemical(s) were applied to all plants throughout the Licensed Premises, a statement to that effect; and
  - i. The total amount of each Pesticide or other agricultural chemical applied.
- F. Prohibited Chemicals. The following chemicals are prohibited and shall not be used in Retail Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Retail Marijuana or Retail Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.
- 1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq.*, C.R.S., the "Pesticides Applicators' Act," section 35-10-101 *et seq.*, C.R.S., or the rule and regulations pursuant thereto.
  - 2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):
- ALDRIN  
309-00-2
- ARSENIC OXIDE (3)  
1327-53-3
- ASBESTOS (FRIABLE)  
1332-21-4
- AZODRIN  
6923-22-4
- 1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-  
118-75-2
- BINAPACRYL  
485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

- G. DMSO. The use of Dimethylsulfoxide (“DMSO”) in the production of Retail Marijuana shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.
- H. Adulterants. A Retail Marijuana Cultivation Facility may not treat or otherwise adulterate Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell.
- I. Independent Health and Sanitary Audit
1. State Licensing Authority May Require A Health and Sanitary Audit
    - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Cultivation Facility to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Cultivation Facility is in compliance with the requirements set forth in this rule and other applicable public health or sanitary laws and regulations.
    - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Cultivation Facility. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.
    - c. The Retail Marijuana Cultivation Facility will be responsible for all costs associated with the independent health and sanitary audit.
  2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
    - a. A Retail Marijuana Cultivation Facility does not provide requested records related to the use of Pesticide or other agricultural chemicals during in the cultivation process;
    - b. The Division has reasonable grounds to believe that the Retail Marijuana Cultivation Facility is in violation of one or more of the requirements set forth in this rule or other applicable public health or sanitary laws, rules or regulations;
    - c. The Division has reasonable grounds to believe that the Retail Marijuana Cultivation Facility was the cause or source of contamination of Retail Marijuana or Retail Marijuana Concentrate; or
    - d. Multiple Harvest Batches or Production Batches produced by the Retail Marijuana Cultivation Facility failed contaminant testing.

3. Compliance Required. A Retail Marijuana Cultivation Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this Rule.
  4. Suspension of Operations
    - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Cultivation Facility's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
    - b. Prior to or following the issuance of such an order, the Retail Marijuana Cultivation Facility may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
      - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
      - ii. If an agreement to suspend operations is reached, then the Retail Marijuana Cultivation Facility may continue to care for its inventory and conduct any necessary internal business operations but it may not Transfer or wholesale Retail Marijuana or Retail Marijuana Concentrate to any other Retail Marijuana Establishment during the period of time specified in the agreement.
- J. Contaminated Product. Unless otherwise permitted by these rules:
1. A Retail Marijuana Cultivation Facility shall not accept or Transfer to another Retail Marijuana Establishment or any other Person any Retail Marijuana or Retail Marijuana Concentrate that has failed required testing pursuant to Rule R 1501 or Rule R 1503.
  2. If a Retail Marijuana Cultivation Facility possesses any Retail Marijuana or Retail Marijuana Concentrate that failed required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Cultivation Facility shall assure that all Retail Marijuana and Retail Marijuana Concentrate that failed required testing is destroyed safely in accordance with Rule R 307.
- K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

#### **Basis and Purpose – R 505**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(XI), and 44-12-202(3)(c)(VIII), 44-12-403, and 44-12-405, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Cultivation Facility and standards for the production of Retail Marijuana Concentrate.

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**R 505 – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production**

- A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may only produce Water-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. See Rule R 901-Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of a Retail Marijuana Cultivation Facility unless the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.
- B. Safety and Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Owners and Occupational Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon a Retail Marijuana Products Manufacturing Facility that produces Retail Marijuana Concentrate, including all general requirements. See Rule R 604– Health and Safety Regulations: Retail Marijuana Products Manufacturing Facility and Rule R 605 – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production.
- C. Possession of Other Categories of Retail Marijuana Concentrate.
1. It shall be considered a violation of this Rule if a Retail Marijuana Cultivation Facility possesses a Retail Marijuana Concentrate other than a Water-Based Retail Marijuana Concentrate on its Licensed Premises unless: the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license; or the Retail Marijuana Cultivation Facility has been issued a Centralized Distribution Permit and is in possession of the Retail Marijuana Concentrate in compliance with Rule R 501(J).
  2. Notwithstanding subparagraph (C)(1) of this Rule R 505, a Retail Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to a Retail Marijuana Products Manufacturing Facility for processing into a Solvent-Based Retail Marijuana Concentrate, and the Retail Marijuana Products Manufacturing Facility Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Retail Marijuana Cultivation Facility.
    - a. The Retail Marijuana Cultivation Facility shall comply with all requirements in Rule R 1507(B.1) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.
    - b. The Retail Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule R 1501 – Retail Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule R 1503 – Retail Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Retail Marijuana Rules or Retail Marijuana Code.
    - c. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Cultivation Facility that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule R 502(E).

- D. Production of Alternative Use Product or Audited Product Prohibited. A Retail Marijuana Cultivation Facility shall not produce an Alternative Use Product or Audited Product.
- E. Possession of Alternative Use Product or Audited Product. A Retail Marijuana Cultivation Facility is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Retail Marijuana Cultivation Facility received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from a Retail Marijuana Products Manufacturing Facility that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule R 607.

### **Basis and Purpose – R 506**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(I-II), 44-12-202(3)(c)(VIII), 44-12-202(4)(a-b), 44-12-103, 44-12-104, and 44-12-501, C.R.S.

The rule establishes a means by which to manage the overall production of Retail Marijuana. The intent of this rule is to encourage responsible production to meet demand for retail marijuana, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.

The State Licensing Authority intends to replace or revise this rule's production management provisions as early as January 2017 by transitioning to an output-based production management model. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to sell the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

### **R 506 – Retail Marijuana Cultivation Facility: Production Management**

- A. Applicability. Repealed effective January 1, 2019.
- B. One Retail Cultivation License per Licensed Premises.
1. One Retail Marijuana Cultivation License per Licensed Premises. Except as permitted by subparagraph (B)(2) only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises and each Licensed Premises must be located at a distinct address recognized by the local jurisdiction.
  2. Collapse after January 1, 2019. After January 1, 2019, collapse of more than one Retail Marijuana Cultivation Facility license at a single Licensed Premises through an approved change of location application shall be permitted if all Retail Marijuana Cultivation Facility licenses for which the collapse is sought meet the following requirements:
    - a. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have been continuously operating for at least 180 days prior to the proposed collapse;
    - b. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have identical Direct Beneficial Interest Owners holding identical ownership percentages;

- c. There is no pending administrative action regarding any of the Retail Marijuana Cultivation Facility licenses sought to be collapsed;
- d. The tier for the surviving Retail Marijuana Cultivation Facility license has not been decreased in the 180 days prior to the change of location application.
- e. All Retail Marijuana Cultivation Facility Licensees identify the desired surviving license and agree that all other Retail Marijuana Cultivation Facility licenses will be surrendered at the time of collapse; and
- f. Determining Tier for Surviving License.
  - i. Surviving License Tier Will Not Decrease. The tier for the surviving license will not be decreased as a result of any approved change of location application.
  - ii. Surrendered License is Tier 1 or Tier 2. For the surviving license to increase one tier or one increment of 3,600 plants if already tier 5 or higher, during the 180 days prior to the change of location application, the surrendered license must have cultivated at least 50% of the maximum authorized plant count and transferred at least 85% of the inventory it produced during that time.
  - iii. Surrendered License is Tier 3 or Higher. For the surviving license to increase by the maximum authorized plant count of the surrendered license, during the 180 days prior to the change of location application the surrendered license must have cultivated at least 50% of the maximum authorized plant count and transferred at least 85% of the inventory it produced during that time. If during the 180 days prior to the change of location application, the surrendering license did not cultivate at least 50% of the maximum authorized plant count and transfer at least 85% of the inventory it produced, the surviving license will only increase one tier or one increment of 3,600 plants if already a tier 5 or higher.
  - iv. Division Determination of Tier. If a collapse results in a maximum authorized plant count in the middle of a tier, the surviving license's maximum authorized plant count will be rounded up to the top of that tier.

C. Production Management.

- 1. Production Management Tiers.
  - a. Tier 1: 1 - 1,800 plants
  - b. Tier 2: 1,801 – 3,600 plants
  - c. Tier 3: 3,601 – 6,000 plants
  - d. Tier 4: 6,001 – 10,200 plants
  - e. Tier 5: 10,201 – 13,800+ plants
    - i. Tier 5 shall not have a cap on the maximum authorized plant count.

- ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. A Retail Marijuana Cultivation Facility Licensee shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule R 506.
2. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 shall be authorized to cultivate no more than 1,800 plants at any given time.
3. As of November 30, 2015, a Retail Marijuana Cultivation Facility license that was associated with a Retail Marijuana Products Manufacturing Facility shall be authorized to cultivate no more than 1,800 plants at any given time. If such a Retail Marijuana Cultivation Facility Licensee submitted a plant count waiver application prior to August 31, 2015 and it was subsequently approved, the license shall be authorized to cultivate the maximum number of plants at any given time in the corresponding production management tier pursuant to subparagraph (C)(1) of this Rule R 506.
4. Each Retail Marijuana Cultivation Facility with a license(s) granted before November 30, 2015 shall be authorized to cultivate the same number of plants that it was authorized to cultivate prior to November 30, 2015. Pursuant to subparagraph (B)(2) of this Rule R 506, for any Retail Marijuana Cultivation Facility that has multiple licenses, the total plant count authorized in sum across those licenses shall apply to the entire Retail Marijuana Cultivation Facility and shall be collapsed into one license upon renewal.
5. Tier Decrease. For Retail Marijuana Cultivation Facilities that are authorized to cultivate more than 1,800 plants, the Division may review the purchases, Transfers, and cultivated plant count of the Retail Marijuana Cultivation Facility Licensee in connection with the license renewal process or after an investigation. Based on the Division's review, the Division may reduce the Licensee's maximum allowed plant count to a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:
  - a. The Licensee sold less than 70% of what it produced during any 180 day review period;
  - b. On average during the previous 180 days the Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management tier;
  - c. Whether the plants/inventory suffered a catastrophic event during the review period;
  - d. Excise tax payment history;
  - e. Existing inventory and inventory history;
  - f. Sales contracts; and
  - g. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

D. Inventory Management.

1. Inventory Management for Retail Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 721<sup>st</sup> day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was Transferred to another Retail Marijuana Establishment in the previous 720 days.
2. Inventory Management for Retail Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the 181<sup>st</sup> day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was Transferred to another Retail Marijuana Establishment in the previous 180 days.

E. Application for Additional Plants.

1. Retail Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.
  - a. After accruing at least one harvest season of sales, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Licensee shall provide documentation demonstrating that during the previous harvest season prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count. The Licensee shall also provide documentation demonstrating that for the previous 360 days it Transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the tier increase application. If the Licensee cultivated between 75% and 85% of its maximum authorized plant count, the Division may consider Transfers of over 85% of the inventory produced during that time period in evaluating a request to be authorized to cultivate the number of plants in the next highest production management tier.
  - b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.
  - c. For a Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.

- d. After accruing at least one harvest season of Transfers and establishing that the Retail Marijuana Cultivation consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count, and Transferred at least 90% of the inventory produced during that time period to another Retail Marijuana Establishment (if the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it produced during that time period and/or Transfers in to the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s)), the Retail Marijuana Cultivation Facility may apply to increase its authorized plant count by: (a) two production management tiers or (b) two increments of 3,600 plants (7,200 plants total) if already authorized to cultivate at a production management tier 5, every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two tiers or increments of 3,600 plants (7,200 plants total). In making its determination, the Division may consider the following exclusive factors:
- i. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;
  - ii. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 360 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);
  - iii. The Retail Marijuana Cultivation has contracts for the sale of Retail Marijuana in the next 360 days supporting the requested two tiers or two increments of 3,600 plants;
  - iv. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;
  - v. Any history of noncompliance with the Retail Code and/or Rules by the Retail Marijuana Cultivation Facility, or any commonly owned Retail Marijuana Establishment, and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility, or any commonly owned Retail Marijuana Establishment; or
  - vi. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Retail Marijuana Cultivation Facilities that have more than two harvest seasons per year.
  - a. After accruing at least two quarters of sales, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Licensee shall provide documentation demonstrating that for at least 180 days prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and Transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the tier increase application. If the Licensee cultivated between 75% and 85% of its maximum authorized plant count, the Division may consider Transfers of over 85% of the inventory produced during that time period in approving a request to be authorized to cultivate the number of plants in the next highest production management tier.
  - b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. See Rule R 208 – Schedule of Business License Fees: Retail Marijuana Establishments.
  - c. For a Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. See Rule R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments.
  - d. After accruing at least 180 days of Transfers and establishing the Retail Marijuana Cultivation consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count, and Transferred at least 90% of the inventory produced during that time period to another Retail Marijuana Establishment (if the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it produced during that time period and/or Transfers in to the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s)), the Retail Marijuana Cultivation Facility may apply to increase its authorized plant count by: (a) two production management tiers or (b) two increments of 3,600 plants (7,200 plants total) if already authorized to cultivate at a production management tier 5, every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two tier or two increments of 3,600 plants (7,200 plants total). In making its determination, the Division may consider the following exclusive factors:
    - i. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two increments of 3,600 plants;
    - ii. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 180 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);

- iii. The Retail Marijuana Cultivation has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next 180 days supporting the requested two tiers or two increments of 3,600 plants;
    - iv. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;
    - v. Any history of noncompliance with the Retail Code and/or Rules by the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Establishment(s), and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Establishment;
    - vi. Any other pertinent facts or circumstances regarding responsible production and inventory management.
  3. Application for Tier Increase. Applications for a tier increase shall be submitted on Division forms, and shall be complete and accurate. Applications for a tier increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.
- F. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.
  1. A Person that is a Direct Beneficial Interest Owner in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses in which a Person is a Direct Beneficial Interest Owner, the Person must also be a Direct Beneficial Interest Owner in at least one Retail Marijuana Store. For example: (1) a Person that is a Direct Beneficial Interest Owner in three, four, or five Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least one Retail Marijuana Store; (2) a Person that is a Direct Beneficial Interest Owner in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least two Retail Marijuana Stores; (3) a Person that is a Direct Beneficial Interest Owner in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must be a Direct Beneficial Interest Owner in at least three Retail Marijuana Stores; etc.
  2. A Person that is a Direct Beneficial Interest Owner in Less than Three Retail Marijuana Cultivation Facility Licenses. A Person that is a Direct Beneficial Interest Owner in less than three Retail Marijuana Cultivation Facility licenses shall not be required to be a Direct Beneficial Interest Owner in a Retail Marijuana Store.
- G. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this Rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.

### Basis and Purpose – R 507

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(VIII), and 44-12-403(6), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Cultivation Facility that Transfer Sampling Units.

### R 507 – Sampling Unit Protocols

- A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Cultivation Facility may designate no more than five Sampling Managers in the Inventory Tracking System.
1. Only a manager of the Retail Marijuana Cultivation Facility who holds an Associated Key License or a Key License may be designated as a Sampling Manager.
  2. A person may be designated as a Sampling Manager by more than one Medical Marijuana Business or Retail Marijuana Establishment.
  3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.
  4. A Retail Marijuana Cultivation Facility that wishes to provide Sampling units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-12-403(6), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule R 507. See also Rule R 901 – Business Records Required. A Retail Marijuana Cultivation Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.
- B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in the Rule R 1500 Series – Retail Marijuana Testing Program.
1. A Sampling Unit of Retail Marijuana flower or trim shall not exceed one gram.
  2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.
- C. Excise Tax Requirements. A Retail Marijuana Cultivation Facility must pay excise tax on Sampling Units of Retail Marijuana flower or trim, based on the average market rate of the unprocessed Retail Marijuana.

- D. Transfer Restrictions.
1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the Rule R 1001-1 Series – Labeling, Packaging, and Product Safety.
  2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Cultivation Facility as a Sampling Manager for the calendar month in which the Transfer occurs.
  3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Retail Marijuana or eight grams of Retail Marijuana Concentrate.
  4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Establishments with which the Sampling Manager is associated.
  5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (D)(3). Before Transferring any Sampling Units, a Retail Marijuana Cultivation Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (D)(3).
  6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.
- E. Compensation Prohibited. A Retail Marijuana Cultivation Facility may not use Sampling Units to compensate a Sampling Manager.
- F. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.
- G. Acceptable Purposes. Sampling Units shall only be designated and Transferred for the purposes of quality control and product development in accordance with section 44-12-403(6), C.R.S.
- H. Record keeping requirements. A Retail Marijuana Cultivation Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule M 901 – Business Records Required. At a minimum, a Retail Marijuana Cultivation Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of quality control or product development. A Retail Marijuana Cultivation Facility shall also maintain copies of the Retail Marijuana Cultivation Facility's standard operating procedures provided to Sampling Managers
- I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## **R 600 Series – Retail Marijuana Products Manufacturing Facilities**

### **Basis and Purpose – R 601**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XXIV), 44-12-305(1)(j), 44-12-309(7)(a), 44-12-403, 44-12-404(1)(a), 44-12-404(1)(b), 44-12-404(2) 44-12-404(6), 44-12-406(1)(c), and 44-12-406(4)(b), C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Products Manufacturing Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

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**R 601 – Retail Marijuana Products Manufacturing Facilities: License Privileges**

- A. Privileges Granted. A Retail Marijuana Products Manufacturing Facility shall only exercise those privileges granted to it by the State Licensing Authority.
- B. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturing Facility may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana-Infused Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Products Manufacturing Facility may share, and operate at, the same Licensed Premises as a Licensed Research Business so long as:
1. Each business or business entity holds a separate license;
  2. The Licensed Research Business obtains an R&D Co-Location Permit;
  3. Both the Licensed Research Business and the Retail Marijuana Products Manufacturing Facility comply with all terms and conditions of the R&D Co-Location Permit; and
  4. Both the Licensed Research Business and the Retail Marijuana Products Manufacturing Facility comply with all applicable rules. See Rule M 1900 Series.
- C. Authorized Transfers. A Retail Marijuana Products Manufacturing Facility is authorized to Transfer Retail Marijuana, Retail Marijuana Product, and Retail Marijuana Concentrate as follows:
1. Retail Marijuana Concentrate and Retail Marijuana Product.
    - a. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, other Retail Marijuana Products Manufacturing Facilities, Retail Marijuana Testing Facilities, Medical Research Facilities, and Pesticide Manufacturers.
    - b. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Product and Retail Marijuana Concentrate to a Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.
      - i. Prior to any Transfer pursuant to this Rule R 601(C)(1)(b), a Retail Marijuana Products Manufacturing Facility shall verify the Retail Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. See Rule R 501 – Retail Marijuana Cultivation Facility: License Privileges.
      - ii. For any Transfer pursuant to this Rule R 601(C)(1)(b), A Retail Marijuana Products Manufacturing Facility shall only Transfer Retail Marijuana Product and Retail Marijuana Concentrate that is packaged and labeled for Transfer to a consumer. See Rule R 1000-1 Series.
  2. Retail Marijuana. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana to other Retail Marijuana Products Manufacturing Facilities, Retail Marijuana Testing Facilities, and Retail Marijuana Stores.

3. Sampling Units. A Retail Marijuana Products Manufacturing Facility may also Transfer Sampling Units of its own Retail Marijuana Concentrate or Retail Marijuana Product to a designated Sampling Manager in accordance with the restrictions set forth in section 44-12-404(10), C.R.S., and Rule R 606.
- D. Manufacture of Retail Marijuana Product Authorized. A Retail Marijuana Products Manufacturing Facility may manufacture, prepare, package, store, and label Retail Marijuana Product, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures.
- E. Location Prohibited. A Retail Marijuana Products Manufacturing Facility may not manufacture, prepare, package, store, or label Retail Marijuana Product in a location that is operating as a retail food establishment or a wholesale food registrant.
- F. Samples Provided for Testing. A Retail Marijuana Products Manufacturing Facility may provide samples of its Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Products Manufacturing Facility shall maintain the testing results as part of its business books and records.
- G. Authorized Marijuana Transport. A Retail Marijuana Products Manufacturing Facility is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product so long as the place where transportation orders are taken is a Retail Marijuana Establishment and the transportation order is delivered to a Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. Nothing in this Rule prevents a Retail Marijuana Products Manufacturing Facility from transporting its own Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
- H. Compensation. A Retail Marijuana Products Manufacturing Facility may compensate its employees using performance-based incentives. However, a Retail Marijuana Products Manufacturing Facility may not compensate a Sampling Manager using Sampling Units. See Rule R 606 – Sampling Unit Protocols.

### **Basis and Purpose – R 602**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(VI), 44-12-202(3)(a)(VII)(B), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-202(3)(d)(IV), 44-12-309(7)(a), 44-12-404(1)(c), 44-12-404(1)(d)(I), 44-12-404(4), 44-12-404(5), 44-12-404(9), 44-12-406(1)(a), and 44-12-901(2)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturing Facility.

### **R 602 – Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts**

- A. Repealed effective January 1, 2019.
- B. Packaging and Labeling Standards Required. A Retail Marijuana Products Manufacturing Facility is prohibited from Transferring Retail Marijuana Product that are not properly packaged and labeled. See Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.
- C. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. See Rule R 1002-1 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

- D. Transfer to Consumer Prohibited. A Retail Marijuana Products Manufacturing Facility is prohibited from Transferring Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-12-404(10), C.R.S., and Rule R 606.
- E. Consumption Prohibited. A Retail Marijuana Products Manufacturing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises, including any Sampling Units Transferred to a Sampling Manager.
- F. Evidence of Excise Tax Paid. A Retail Marijuana Products Manufacturing Facility is prohibited from accepting Retail Marijuana from a Retail Marijuana Cultivation Facility or Retail Marijuana Manufacturing Facility Licensee unless the manufacturer has received evidence that any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., was paid.
- G. Adequate Care of Perishable Product. A Retail Marijuana Products Manufacturing Facility must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.
- H. Homogeneity of Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.
- I. Sales or Gifts to Transporters Prohibited. A Retail Marijuana Products Manufacturing Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

### **Basis and Purpose – R 603**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(XVIII), 44-12-404(1)(b), and 44-12-406(3), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to require all Retail Marijuana Products Manufacturing Facilities to track all inventory from the point it is received from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Transporter through any manufacturing processes, to the point of sale or Transfer to another Retail Marijuana Establishment.

### **R 603 – Retail Marijuana Products Manufacturing Facility: Inventory Tracking System**

- A. Minimum Tracking Requirement. A Retail Marijuana Products Manufacturing Facility must use the Inventory Tracking System to ensure its inventories are identified and tracked from the point they are Transferred from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, Retail Marijuana Transporter, or another Retail Marijuana Products Manufacturing Facility through Transfer. See Rule R 309 – Inventory Tracking System. A Retail Marijuana Products Manufacturing Facility must have the ability to reconcile its inventory records with the Inventory Tracking System and the associated transaction history and sale receipts. See Rule R 901 – Business Records Required.
  - 1. A Retail Marijuana Products Manufacturing Facility is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product without receiving a valid transport manifest generated from the Inventory Tracking System.

2. A Retail Marijuana Products Manufacturing Facility must immediately input all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product delivered to its Licensed Premises, accounting for all RFID tags, into the Inventory Tracking System at the time of delivery to the Retail Marijuana Products Manufacturing Facility.
3. A Retail Marijuana Products Manufacturing Facility must reconcile transactions to the Inventory Tracking System at the close of business each day.

**B. Sampling Unit Tracking Requirements.**

1. In addition to all other tracking requirements set forth in these rules, a Retail Marijuana Products Manufacturing Facility shall utilize the Inventory Tracking System to ensure that any Retail Marijuana Concentrate or Retail Marijuana Product designated as a Sampling Unit is identified and tracked from the point of such designation until the Sampling Unit is Transferred to a Sampling Manager. See Rule R 606 – Sampling Unit Protocols.
2. The Inventory Tracking System must adequately reflect all Transfers of Sampling Units. At a minimum, a Retail Marijuana Products Manufacturing Facility must ensure that the Inventory Tracking System reflects the date the Sampling Unit was Transferred, the weight of the Sampling Unit, and the name and license number of the recipient Sampling Manager.
3. A Retail Marijuana Products Manufacturing Facility must have the ability to reconcile its Sampling Manager and Sampling Unit records with the Inventory Tracking System and any associated transaction history.

**Basis and Purpose – R 604**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV)(A), 44-12-202(3)(a)(VI), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(IV), 44-12-202(3)(d)(VI), 44-12-202(3)(d)(VIII)(A-B), 44-12-202(3)(e)(I), and 44-12-404, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Products Manufacturing Facilities. It requires all Owners and Occupational Licensees to demonstrate an understanding of basic food handling safety practices or attend a food handler training course prior to manufacturing any Edible Retail Marijuana Product. It sets forth general standards and basic sanitary requirements for Retail Marijuana Products Manufacturing Facilities. It covers the physical premises where the products are made as well as the individuals handling the products. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Products Manufacturing Facility. This rule explains when a health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. This rule also establishes requirements for each Edible Retail Marijuana Product manufactured by a Retail Marijuana Products Manufacturing Facility. Product safety requirements were adopted to aid in making Edible Retail Marijuana Products more readily identifiable to the general public outside of their packaging as containing marijuana. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

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**R 604 – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations**

A. Training

1. Prior to engaging in the manufacture of any Edible Retail Marijuana Product each Owner or Occupational Licensee must:
  - a. Have a currently valid ServSafe Food Handler Certificate obtained through the successful completion of an online assessment or print exam; or
  - b. Take a food safety course that includes basic food handling training and is comparable to, or is a course given by, the Colorado State University extension service or a state, county, or district public health agency, and must maintain a status of good standing in accordance with the course requirements, including attending any additional classes if necessary. Any course taken pursuant to this Rule must last at least two hours and cover the following subjects:
    - i. Causes of foodborne illness, highly susceptible populations and worker illness;
    - ii. Personal hygiene and food handling practices;
    - iii. Approved sources of food;
    - iv. Potentially hazardous foods and food temperatures;
    - v. Sanitization and chemical use; and
    - vi. Emergency procedures (fire, flood, sewer backup).
2. A Retail Marijuana Products Manufacturing Facility must obtain documentation evidencing that each Owner and each Occupational Licensee has successfully completed the examination or course required by this Rule and is in good standing. A copy of the documentation must be kept on file at any Licensed Premises where that Owner or Occupational Licensee is engaged in the manufacturing of an Edible Retail Marijuana Product.

B. General Standards

1. A Retail Marijuana Products Manufacturing Facility may be subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local jurisdiction restrictions related to Retail Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.
2. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall comply with all kitchen-related health and safety standards of the relevant local jurisdiction and, to the extent applicable, with all Colorado Department of Public Health and Environment health and safety regulations applicable to retail food establishments, as set forth in 6 CCR 1010-2.

C. Repealed.

C.5. Product Safety.

Paragraph (C.5) is effective beginning October 1, 2016.

1. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall create and maintain standard production procedures and detailed manufacturing processes for each Edible Retail Marijuana Product it manufactures. These procedures and processes must be documented and made available on the Licensed Premises for inspection by the Division, the Colorado Department of Public Health & Environment, and local licensing authorities.
2. The size of a Standardized Serving Of Marijuana shall be no more than 10mg of active THC. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall determine the total number of Standardized Servings Of Marijuana for each product that it manufactures. No individual Edible Retail Marijuana Product unit for sale shall contain more than 100 milligrams of active THC.
3. The following information must be documented in the standard production procedures for each Edible Retail Marijuana Product: the amount in milligrams of Standardized Serving Of Marijuana, the total number of Standardized Servings Of Marijuana, and the total amount of active THC contained within the product.
4. Each single Standardized Serving Of Marijuana shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on at least one side of the Edible Retail Marijuana Product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall:
  - a. Be centered either horizontally or vertically on each Standardized Serving Of Marijuana; and
  - b. If centered horizontally on a serving, the height and width of the Universal Symbol shall be of a size that is at least 25% of the serving's width, but not less than ¼ inch by ¼ inch; or
  - c. If centered vertically on a serving, the height and width of the Universal Symbol shall be of a size that is at least 25% of the serving's height, but not less than ¼ inch by ¼ inch.
5. Notwithstanding the requirement of subparagraph (C.5)(4), an Edible Retail Marijuana Product shall contain no more than 10 mg of active THC per Container and the Retail Marijuana Products Manufacturing Facility must ensure that the product is packaged in accordance with Rule R 1004(A)(2) or the Rules R 1001-1(C)(1) and R 1002-1(D)(1), when:
  - a. The Edible Retail Marijuana Product is of the type that is impracticable to mark, stamp, or otherwise imprint with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable; or
  - b. The Edible Retail Marijuana Product is of the type that is impracticable to clearly demark each Standardized Serving Of Marijuana or to make each Standardized Serving Of Marijuana easily separable.
6. The following categories of Edible Retail Marijuana Product are considered to be per se practicable to mark with the Universal Symbol:

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- a. Chocolate
  - b. Soft confections
  - c. Hard confections or lozenges
  - d. Consolidated baked goods (e.g. cookie, brownie, cupcake, granola bar)
  - e. Pressed pills and capsules
7. The following categories of Edible Retail Marijuana Product are considered to be per se impracticable to mark with the Universal Symbol:
- a. Repealed.
  - b. Loose bulk goods (e.g. granola, cereals, popcorn)
  - c. Powders
8. Repealed.
- 8.1. Liquid Edible Retail Marijuana Product.
- a. Pursuant to 44-12-404(4)(b), C.R.S., Liquid Edible Retail Marijuana Products are impracticable to mark with the Universal Symbol and are exempt from the provision in subparagraph (C.5)(5) of this Rule R 604 that requires Edible Retail Marijuana Products that are impracticable to mark with the Universal Symbol to contain 10mg or less active THC per Container.
  - b. This exemption permits the manufacture and Transfer of Multi-Serving Liquid Edible Retail Marijuana Products so long as the product is packaged in accordance with Rule R 1004(A)(4.5) or Rules R 1001-1(C)(1) and R 1002-1(D)(1)(c)(ii).
    - i. Repealed.
    - ii. Repealed.
9. Multiple-Serving Edible Retail Marijuana Product.
- a. A Retail Marijuana Products Manufacturing Facility must ensure that each single Standardized Serving Of Marijuana of a Multiple-Serving Edible Retail Marijuana Product is physically demarked in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of active THC.
  - b. Each demarked Standardized Serving Of Marijuana must be easily separable in order to allow an average person 21 years of age and over to physically separate, with minimal effort, individual servings of the product.

- c. Each single Standardized Serving Of Marijuana contained in a Multiple-Serving Edible Retail Marijuana Product shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall comply with the requirements of subparagraph (C.5)(4) of this Rule R 604.
  - d. A Multiple-Serving Edible Retail Marijuana Product that is a Liquid Edible Retail Marijuana Product shall comply with the requirements in subparagraph (C.5)(8.1)(b) of this Rule R 604 and is exempt from subparagraphs (a)-(c) of this subparagraph (C.5)(9).
10. Remanufactured Products Prohibited. A Retail Marijuana Product Manufacturing Facility shall not utilize a commercially manufactured food product as its Edible Retail Marijuana Product. The following exceptions to this prohibition apply:
- a. A food product that was commercially manufactured specifically for use by the Retail Marijuana Product Manufacturing Facility Licensee to infuse with marijuana shall be allowed. The Licensee shall have a written agreement with the commercial food product manufacturer that declares the food product's exclusive use by the Retail Marijuana Product Manufacturing Facility.
  - b. Commercially manufactured food products may be used as ingredients in a Retail Marijuana Product Manufacturing Facility's Edible Retail Marijuana product so long as: (1) they are used in a way that renders them unrecognizable as the commercial food product in the final Edible Retail Marijuana Product, and (2) the Retail Marijuana Product Manufacturing Facility does not state or advertise to the consumer that the final Edible Retail Marijuana Product contains the commercially manufactured food product.
11. Trademarked Food Products. Nothing in this Rule alters or eliminates a Retail Marijuana Product Manufacturing Facility's responsibility to comply with the trademarked food product provisions required by the Retail Code per 44-12-404(1)(d)(I-III), C.R.S.
12. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit. This subparagraph (C.5)(12) is effective beginning October 1, 2017.
- a. The production and Transfer of Edible Retail Marijuana Products in the following shapes is prohibited:
    - i. The distinct shape of a human, animal, or fruit; or
    - ii. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
  - b. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Establishment. Nothing in this subparagraph (C.5)(12)(b) alters or eliminates a Licensee's obligation to comply with the requirements of Rule R 1001 – Labeling and Packaging Requirements: General Applicability or Rule R 1000-1 Series – Labeling, Packaging, and Product Safety.
  - c. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

- d. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

D. General Sanitary Requirements. The Licensee shall take all reasonable measures and precautions to ensure the following:

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and/or in Retail Marijuana Product preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
3. That all persons working in direct contact with preparation of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall conform to hygienic practices while on duty, including but not limited to:
  - a. Maintaining adequate personal cleanliness;
  - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of a Retail Marijuana Concentrate or manufacture of a Retail Marijuana Product and at any other time when the hands may have become soiled or contaminated; and
  - c. Refraining from having direct contact with preparation of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.
4. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product;
5. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are exposed;
6. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
7. That there is adequate safety-type lighting in all areas where Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are processed or stored and where equipment or utensils are cleaned;

8. That the Licensed Premises provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
9. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
10. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Retail Marijuana Products Manufacturing Facility and used in accordance with labeled instructions;
11. That toxic cleaning compounds, sanitizing agents, solvents used in the production of Retail Marijuana Concentrate and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance;
12. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs;
13. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable and waste water lines;
14. That each Retail Marijuana Products Manufacturing Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
15. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;
16. That Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms; and
17. That storage and transport of finished Retail Marijuana Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any container.

E. Standard Operating Procedures

1. A Retail Marijuana Products Manufacturing Facility must have written standard operating procedures for each category of Retail Marijuana Concentrate and type of Retail Marijuana Product that it produces.

- a. All standard operating procedures for the production of a Retail Marijuana Concentrate must follow the requirements in Rule R 605.
  - b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Products Manufacturing Facility.
2. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its standard Retail Marijuana Concentrate or Retail Marijuana Product production process, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.
- F. Additives. A Retail Marijuana Products Manufacturing Facility shall not include any Additive that is toxic within a Retail Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children or misleading to consumers.
- G. DMSO. The use of Dimethylsulfoxide (“DMSO”) in the production of Retail Marijuana Concentrate or Retail Marijuana Product shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.
- H. Independent Health and Sanitary Audit
1. State Licensing Authority May Require An Independent Health and Sanitary Audit
    - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Products Manufacturing Facility to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Products Manufacturing Facility is in compliance with the requirements set forth in this Rule or other applicable food handling laws, rules or regulations or compliance with the concentrate production rules in Rule R 605 or other applicable laws, rules and regulations.
    - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Products Manufacturing Facility. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.
    - c. The Retail Marijuana Products Manufacturing Facility will be responsible for all costs associated with the independent health and sanitary audit.
  2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
    - a. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the food handling training required for Owners or Occupational Licensees engaged in the production of Edible Retail Marijuana Product to the Division;

- b. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the production of Retail Marijuana Concentrate, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, training of Owners or Occupational Licensees, or Production Batch specific records;
        - c. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility is in violation of one or more of the requirements set forth in this Rule or Rule R 605;
        - d. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product; or
        - e. Multiple Production Batches of Retail Marijuana Concentrate or Retail Marijuana Product produced by the Retail Marijuana Products Manufacturing Facility failed contaminant testing.
3. Compliance Required. A Retail Marijuana Products Manufacturing Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this Rule.
4. Suspension of Operations
  - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Products Manufacturing Facility's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
  - b. Prior to or following the issuance of such an order, the Retail Marijuana Products Manufacturing Facility may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
    - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
    - ii. If an agreement to suspend operations is reached, then the Retail Marijuana Products Manufacturing Facility may continue to care for its inventory and conduct any necessary internal business operations but it may not Transfer or wholesale Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to another Retail Marijuana Establishment during the period of time specified in the agreement. Depending on the condition of the Retail Marijuana Products Manufacturing Facility and required remedial measures, the Division may permit a Retail Marijuana Products Manufacturing Facility to produce Retail Marijuana Concentrate or manufacture Retail Marijuana Product while operations have been suspended.

- I. Contaminated Product. Unless otherwise permitted by these rules:
1. A Retail Marijuana Products Manufacturing Facility shall not accept or Transfer to another Retail Marijuana Establishment or any other Person any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has failed required testing pursuant to Rule R 1501 or Rule R 1503.
  2. If a Retail Marijuana Manufacturing Facility possesses Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Products that failed required testing pursuant to Rule R 1501 or Rule R 1503, the Retail Marijuana Products Manufacturing Facility shall assure that all Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Products that failed required testing is safely destroyed in accordance with Rule R 307.
- J. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

### **Basis and Purpose – R 605**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(XI), and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturing Facility and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.

### **R 605 – Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production.**

- A. Permitted Categories of Retail Marijuana Concentrate Production
1. A Retail Marijuana Products Manufacturing Facility may produce Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate.
  2. A Retail Marijuana Products Manufacturing Facility may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO<sub>2</sub>, ethanol, isopropanol, acetone, heptane and pentane. The use of any other solvent is expressly prohibited unless and until it is approved by the Division.
  3. Beginning on July 1, 2014, a Retail Marijuana Products Manufacturing Facility may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next formal rulemaking.
- B. General Applicability. A Retail Marijuana Products Manufacturing Facility that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:
1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. See Rule R 901- Business Records Required.
  2. Ensure that all applicable sanitary rules are followed. See Rule R 604.

3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate on its Licensed Premises includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:
  - a. Conduct all necessary safety checks prior to commencing production;
  - b. Prepare Retail Marijuana for processing;
  - c. Extract Cannabinoids and other essential components of Retail Marijuana;
  - d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,
  - e. Clean all equipment, counters and surfaces thoroughly; and
  - f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. See Rule R 307 – Waste Disposal.
4. Establish written and documentable quality control procedures designed to maximize safety for Owners and Occupational Licensees and minimize potential product contamination.
5. Establish written emergency procedures to be followed by Owners or Occupational Licensees in case of a fire, chemical spill or other emergency.
6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate on its Licensed Premises. The training manual must include, but need not be limited to, the following topics:
  - a. All standard operating procedures for each method of concentrate production used at that Licensed Premises;
  - b. The Retail Marijuana Products Manufacturing Facility's quality control procedures;
  - c. The emergency procedures for that Licensed Premises;
  - d. The appropriate use of any necessary safety or sanitary equipment;
  - e. The hazards presented by all solvents used within the Licensed Premises as described in the safety data sheet for each solvent;
  - f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and
  - g. Any additional periodic cleaning required to comply with all applicable sanitary rules.
7. Provide adequate training to every Owner or Occupational Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.

- a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.
  - b. The individual training an Owner or Occupational Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner or Occupational Licensee can safely produce a Retail Marijuana Concentrate. See Rule R 901- Business Records Required.
  - c. The Owner or Occupational Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional period cleaning required to maintain compliance with all applicable sanitary rules. See Rule R 901- Business Records Required.
8. Maintain clear and comprehensive records of the name, signature and Owner or Occupational License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. See Rule R 901- Business Records Required.
- C. Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-Based Retail Marijuana Concentrate must:
1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-Based Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.
  2. Ensure that all equipment, counters, and surfaces used in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-Based Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.
  3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO<sub>2</sub>.
  4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate or Heat/Pressure-Based Retail Marijuana Concentrate.
  5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Water-Based Retail Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.
  7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Water-Based Retail Marijuana Concentrate, a Food-Based Retail Marijuana Concentrate or a Heat/Pressure-Based Retail Marijuana Concentrate.
- D. Solvent-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of Solvent-Based Retail Marijuana Concentrate must:
1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (<http://www.iccsafe.org>), the International Fire Code of 2012 (<http://www.iccsafe.org>) or the National Electric Code of 2014 (<http://www.nfpa.org>), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;
    - a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:
      - i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;
      - ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;
      - iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and
      - iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
    - b. CO<sub>2</sub> Solvent Determination. If CO<sub>2</sub> is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO<sub>2</sub> gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO<sub>2</sub> is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

- c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
  - d. Material Change. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its Licensed Premises, equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its Licensed Premises and equipment as well.
  - e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Retail Marijuana Products Manufacturing Facility by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.
  - f. Records Retention. A Retail Marijuana Products Manufacturing Facility must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.
2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;
  3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;
  4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;
    - a. UL or ETL Listing.
      - i. If the system is UL or ETL listed, then a Retail Marijuana Products Manufacturing Facility may use the system in accordance with the manufacturer's instructions.
      - ii. If the system is UL or ETL listed but the Retail Marijuana Products Manufacturing Facility intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Retail Marijuana Products Manufacturing Facility must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

- iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
  - b. Ethanol or Isopropanol. A Retail Marijuana Products Manufacturing Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.
- 5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;
  - a. A Retail Marijuana Products Manufacturing Facility must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. A Retail Marijuana Products Manufacturing Facility must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. See Rule R 901- Business Records Required.
  - b. A Retail Marijuana Products Manufacturing Facility is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate.
- 6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Retail Marijuana Products Manufacturing Facility store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;
- 7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and
- 8. Ensure that a trained Owner or Occupational Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.
- E. Ethanol and Isopropanol. If a Retail Marijuana Products Manufacturing Facility only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Retail Marijuana Products Manufacturing Facility shall comply with contaminant testing required in Rule R 1501(C)(4).
- F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 606

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(VIII), and 44-12-404(10), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Products Manufacturing Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Products Manufacturing Facility that Transfer Sampling Units.

## R 606 – Sampling Unit Protocols

- A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Products Manufacturing Facility may designate no more than five Sampling Managers in the Inventory Tracking System.
1. Only a manager of the Retail Marijuana Products Manufacturing Facility who holds an Associated Key License or a Key License may be designated as a Sampling Manager.
  2. A person may be designated as a Sampling Manager by more than one Retail Marijuana Establishment.
  3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.
  4. A Retail Marijuana Products Manufacturing Facility who wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-12-404(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule R 606. *See also* Rule R 901 – Business Records Required. A Retail Marijuana Products Manufacturing Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.
- B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in the Rule R 1500 Series – Retail Marijuana Testing Program.
1. A Sampling Unit of Retail Marijuana Product shall not exceed one Standardized Serving of Marijuana.
  2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.
- C. Transfer Restrictions.
1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the Rule R 1001-1 Series – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Products Manufacturing Facility as a Sampling Manger for the calendar month in which the Transfer occurs.
  3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:
    - a. With respect to Retail Marijuana Product, fourteen Standardized Servings of Marijuana; and
    - b. Eight grams of Retail Marijuana Concentrate.
  4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Establishments with which the Sampling Manager is associated.
  5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Retail Marijuana Products Manufacturing Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).
  6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.
- D. Compensation Prohibited. A Retail Marijuana Products Manufacturing Facility may not use Sampling Units to compensate a Sampling Manager.
- E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.
- F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-12-404(10), C.R.S.
- G. Record keeping requirements. A Retail Marijuana Products Manufacturing Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule R 901 – Business Records Required. At a minimum, a Retail Marijuana Products Manufacturing Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Retail Marijuana Products Manufacturing Facility shall also maintain copies of the Retail Marijuana Products Manufacturing Facility’s standard operating procedures provided to Sampling Managers.
- H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 607

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV)(B), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(a)(3)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(b)(I), 44-12-202(3)(d)(I)(A)-(B), 44-12-202(3)(d)(II), 44-12-202(3)(d)(V), 44-12-202(3)(d)(VI), 44-12-202(3)(e)(I), 44-12-202(3)(h), 44-12-404(2)-(4)(a), 44-12-404(8)-(9), and 44-12-901(4)(b), C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) pressurized metered dose inhaler, (3) vaginal administration, or (4) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Retail Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule M 1003-1 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Retail Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule R 1003-1.

### **R 607 – Retail Marijuana Products Manufacturing Facility: Audited Product and Alternative Use Product**

***Effective Dates. Except as provided below, this Rule R 607 governing Audited Product and Alternative Use Product is effective January 1, 2019.***

***Exception for Retail Marijuana Products Manufacturing Facilities. During the period from January 1, 2019 to June 30, 2019, a Retail Marijuana Products Manufacturing Facility may produce, label, and Transfer Audited Product without full compliance with this Rule R 607 provided, at a minimum, the Retail Marijuana Products Manufacturing Facility certifies to the Division on Division approved forms that it will be in full compliance with Rule R 607 by July 1, 2019, and commencing January 1, 2019 is in compliance with Rules R 607(C), 607(G), and 607(H). To the extent practicable, the Retail Marijuana Products Manufacturing Facility must be in compliance with Rule R 607(F). Paragraph (D)(2)(a)(i) of this Rule R 607 is effective on the latter of July 1, 2019 or the date when at least one Medical Marijuana Testing Facility has the capacity to perform the required test, but no later than January 1, 2020. Full compliance with all other paragraphs of this Rule R 607 for all Audited Product is mandatory beginning July 1, 2019.***

***Exception for Retail Marijuana Stores. During the period from January 1, 2019 through December 31, 2019, a Retail Marijuana Store may Transfer to a consumer Audited Product that was Transferred to it prior to July 1, 2019, provided at a minimum the Retail Marijuana Store complies with Rule R 402(Q).***

- A. General Rule. A Retail Marijuana Products Manufacturing Facility shall not Transfer Audited Product to a Retail Marijuana Store, another Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule R 607. The requirements of this Rule R 607 are in addition to all other Rules that apply to Retail Marijuana Products Manufacturing Facilities; except where the context otherwise clearly requires this Rule R 607 controls.
- B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and, if applicable, to the local jurisdiction as required by this Rule, a Retail Marijuana Products Manufacturing Facility may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) pressurized metered dose inhaler, (3) vaginal administration, or (4) rectal administration.

1. A written audit report from an independent third-party auditor that was completed within the last twenty-four (24) months shall be submitted to the Division and, if applicable to the local licensing authority: (i) before the first Transfer of Audited Product to any Retail Marijuana Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Retail Marijuana Products Manufacturing Facility's renewal application if the Retail Marijuana Products Manufacturing Facility will Transfer Audited Product after renewal.
  2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Retail Marijuana Products Manufacturing Facility shall be responsible for all costs associated with obtaining the independent third-party audit.
  3. The independent third-party written audit report shall include the following minimum requirements:
    - a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;
    - b. Establish that the Retail Marijuana Products Manufacturing Facility and the Audited Product meet all requirements of this Rule R 607, including but not limited to the specific requirements of this Rule R 607(C), 607(D), 607(E), 607(G), and 607(H);
    - c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;
    - d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Retail Marijuana Products Manufacturing Facility adheres to all applicable standard operating procedures;
    - e. Verify based upon a physical inspection of any Licensed Premises where the Audited Product is to be manufactured that such Licensed Premises complies with the requirements of this Rule R 607(E);
    - f. Include the independent third-party auditor's findings;
    - g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and
    - h. Include the independent third-party auditor's assessment that the Retail Marijuana Products Manufacturing Facility demonstrated compliance with all requirements of Rule R 607 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.
- C. Products Liability Insurance. Any Retail Marijuana Products Manufacturing Facility that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

- D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:
1. All non-cannabis derived inactive ingredients contained in any Audited Product must be listed in, and the maximum concentration of all inactive ingredients in the final Audited Product must be less than or equal to the concentration listed in the Federal Food and Drug Administration Inactive Ingredients Database, <https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm> for:
    - a. The inhalation route of administration for any Audited Product to be used in either a metered dose nasal spray or a pressurized metered dose inhaler;
    - b. The vaginal route of administration for any Audited Product to be used for vaginal administration; or
    - c. The rectal route of administration for any Audited Product to be used for rectal administration.
    - d. In the alternative, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment, may approve an inactive ingredient upon a reasonable showing that such inactive ingredient has a well-established safety record for the intended route of administration. Such approval shall not be unreasonably withheld.
    - e. If the Audited Product contains a fungicidal or bactericidal ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, <https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm>, the Audited Product is not required to undergo microbial contaminant testing required by Rules R 712 and R 1501.
  2. Required Product Development Testing. The Retail Marijuana Products Manufacturing Facility must establish the Audited Product meets the following through independent third-party testing:
    - a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Retail Marijuana Products Manufacturing Facility, as demonstrated by testing at a Retail Marijuana Testing Facility.
      - i. For Audited Product with an intended use of either metered dose nasal spray or pressurized metered dose inhaler, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.
      - ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

- b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Retail Marijuana Testing Facility.
  - c. Identification of all non-cannabis derived ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:
    - i. Testing by a Retail Marijuana Testing Facility;
    - ii. Testing by a laboratory that is ISO 17025 accredited but is not a Retail Marijuana Testing Facility, except that no Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred to such a laboratory; and/or
    - iii. One or more certificate(s) of analysis from the manufacturer of any ingredient or constituent included in the Audited Product.
- E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Retail Marijuana Products Manufacturing Facility, a Medical Marijuana-Infused Products Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:
1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Retail Marijuana Products Manufacturing Facility's Licensed Premises. Personnel directly involved in the manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.
  2. Facility Requirements. A Retail Marijuana Products Manufacturing Facility must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.
  3. Cleaning and Sanitizing. A Retail Marijuana Products Manufacturing Facility must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. A Retail Marijuana Products Manufacturing Facility must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.
  4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.
    - a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Occupational Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.
6. Ingredient Quality. All ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the ingredient or after 1 year from the date of receipt, whichever period is shorter.
7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited product a Retail Marijuana Products Manufacturing Facility manufactures. A master formulation record must include at least the following information:
  - a. Name of the Audited Product;
  - b. Ingredient identities and amounts;
  - c. Specifications on the delivery device (if applicable);
  - d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;
  - e. Quality control procedures; and
  - f. Any other information needed to describe the Retail Marijuana Products Manufacturing Facility's production and ensure its repeatability.
8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:
  - a. Name of the Audited Product;
  - b. Master formulation record reference for the Audited Product;
  - c. Date and time of preparation of the Audited Product;
  - d. Production Batch number;
  - e. Signature or initials of individuals involved in each manufacturing step;
  - f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each ingredient;
  - g. Weight or measurement of each ingredient;
  - h. Documentation of quality control procedures;
  - i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and
  - j. Total quantity of the Audited Product manufactured.

- F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in Rules R 1501 through 1507 for Retail Marijuana Product and/or Audited Product. See also Rule R 712 – Retail Marijuana Testing Facilities: Sampling and Testing Program.
- G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the Rule R 1000-1 Series regarding packaging and labeling for Transfer to a consumer prior to any Transfer.
- H. Adverse Event Reporting. A Retail Marijuana Products Manufacturing Facility that manufactures Audited Product must maintain a record of all complaints it receives, which may include concerns or reports on the quality or possible adverse reactions to a specific Audited Product. For purposes of this Rule, adverse event means any untoward medical occurrence associated with the use of marijuana—this could include any unfavorable and unintended sign (including a hospitalization, emergency department visit, doctor’s visit, abnormal laboratory finding), symptom or disease temporally associated with the use of a marijuana product. To the extent known after reasonable diligence to ascertain the information, the record must contain the name of the complainant, the date the complaint was received, the nature of the complaint, the steps taken to investigate the complaint, the response to the complaint, and the name and Production Batch number of the Audited Product. Adverse events must also be reported directly to the Colorado Department of Public Health and Environment and the Division within forty-eight (48) hours of receipt by the Retail Marijuana Products Manufacturing Facility.
- I. Alternative Use Designation – Any Other Method of Consumption or Administration. A Retail Marijuana Products Manufacturing Facility shall not Transfer to a Retail Marijuana Store, another Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit any Retail Marijuana Concentrate or Retail Marijuana Product that is not within any intended use identified in Rule R 1003-1(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Retail Marijuana Products Manufacturing Facility shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:
1. The Retail Marijuana Products Manufacturing Facility shall identify provisions of this Rule R 607 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Retail Marijuana Products Manufacturing Facility shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.
  2. The Retail Marijuana Products Manufacturing Facility bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards, and tests are in place.
  3. A Retail Marijuana Products Manufacturing Facility seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Retail Marijuana Products Manufacturing Facility does not meet the burden established in this Rule R 607.
- J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Retail Marijuana Products Manufacturing Facility the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. See Rules R 1002-1 and R 1003-1.
- K. Required Records. A Retail Marijuana Products Manufacturing Facility manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule R 607. See Rule R 901 – Business Records Required.

## R 700 Series – Retail Marijuana Testing Facilities

### Basis and Purpose – R 701

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(III), 44-12-309(7)(a), 44-12-402(4), 44-12-403(4), 44-12-404(6), 44-12-405, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Testing Facility Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

### R 701 – Retail Marijuana Testing Facilities: License Privileges

- A. Privileges Granted. A Retail Marijuana Testing Facility shall only exercise those privileges granted to it by the State Licensing Authority.
- B. Licensed Premises. A separate License is required for each specific Retail Marijuana Testing Facility and only those privileges granted by the Retail Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.
- C. Testing of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product Authorized. A Retail Marijuana Testing Facility may accept Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from Retail Marijuana Establishments for testing and research purposes only. The Division may require a Retail Marijuana Establishment to submit a Sample of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Testing Facility upon demand.
- D. Product Development Authorized. A Retail Marijuana Testing Facility may develop Retail Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 44-12-404, C.R.S., and Rule R 601 – Retail Marijuana Manufacturing Facilities: License Privileges.
- E. Repealed.

- F. Transferring Samples to Another Licensed and Certified Retail Marijuana Testing Facility. A Retail Marijuana Testing Facility may Transfer Samples to another Retail Marijuana Testing Facility for testing. All laboratory reports provided to or by a Retail Marijuana Establishment must identify the Retail Marijuana Testing Facility that actually conducted the test.
- G. Testing of Registered and Tracked Industrial Hemp Authorized.
1. A Retail Marijuana Testing Facility may accept and test Industrial Hemp as regulated by Article 61 of Title 35, C.R.S.
  2. Before a Retail Marijuana Testing Facility accepts a sample of Industrial Hemp, the Retail Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S.
  3. A Retail Marijuana Testing Facility may only accept samples that are tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.
  4. A Retail Marijuana Testing Facility shall be permitted to test Industrial Hemp only in the category(ies) that The Retail Marijuana Testing Facility is certified to perform testing in pursuant to Rule R 703 – Retail Marijuana Testing Facilities: Certification Requirements.
  5. In accordance with section 35-61-105.5, C.R.S., a Retail Marijuana Testing Facility shall provide the results of any testing performed on Industrial Hemp to the Person submitting the sample of Industrial Hemp and to the Colorado Department of Agriculture.
  6. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test Samples of Industrial Hemp.
- H. Authorized Retail Marijuana Transport. A Retail Marijuana Testing Facility is authorized to utilize a licensed Retail Marijuana Transporter to transport Samples of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for testing, in accordance with the Retail Marijuana Code and Retail Marijuana Rules, between the originating Retail Marijuana Establishment requesting testing services and the destination Retail Marijuana Testing Facility performing testing services. Nothing in this rule requires a Retail Marijuana Establishment to utilize a Retail Marijuana Transporter to transport Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for testing.

**Basis and Purpose – R 702**

The statutory authority for this rule includes but is not limited to sections 44-12-901(2), 44-12-105, 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XII), 44-12-202(3)(a)(XVIII), 44-12-202(3)(c)(VIII), 44-12-405, 44-12-901, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility.

**R 702 – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts**

- A. Prohibited Financial Interest. A Person who is a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, Retail Marijuana Store, Medical Marijuana Center, Optional Premises Cultivation, or a Medical Marijuana Infused-Products Manufacturing Facility shall not be a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Retail Marijuana Testing Facility.
- A.2 Conflicts of Interest. The Retail Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Retail Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Retail Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Retail Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample or Test Batch are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Retail Marijuana Establishment that provided the Sample.
- B. Transfer of Retail Marijuana Prohibited. A Retail Marijuana Testing Facility shall not Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to another Retail Marijuana Establishment or a consumer, except that a Retail Marijuana Testing Facility may Transfer a Sample to another Retail Marijuana Testing Facility.
- C. Destruction of Received Samples. A Retail Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Retail Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. See Rule R 307 – Waste Disposal.
- D. Consumption Prohibited. A Retail Marijuana Testing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.
- E. Sample Rejection. A Retail Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the Sample may have been tampered with.
- F. Retail Marijuana Establishment Requirements Applicable. A Retail Marijuana Testing Facility shall be considered a Licensed Premises. A Retail Marijuana Testing Facility shall be subject to all requirements applicable to Retail Marijuana Establishments.
- G. Retail Marijuana Testing Facility – Inventory Tracking System Required. A Retail Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana are identified and tracked from the point they are Transferred from a Retail Marijuana Establishment through the point of Transfer or destruction or disposal. A Retail Marijuana Testing Facility that performs testing on Industrial Hemp must use the Inventory Tracking System to ensure all samples of Industrial Hemp are identified and tracked from the point they are Transferred from a cultivator registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S., to the point of Transfer or destruction or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Product or Industrial Hemp. See *a/so* Rule R 309 – Retail Marijuana Establishment: Inventory Tracking System and Rule R 711 – Reporting and Inventory Tracking System. The Retail Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. See *a/so* Rule R 901 – Business Records Required and Rule R 711.

- H. Testing of Unregistered or Untracked Industrial Hemp Prohibited. A Retail Marijuana Testing Facility is authorized to accept or test Industrial Hemp only if (1) the entity providing the Samples of Industrial Hemp is regulated by Article 61 of Title 35, C.R.S., (2) the Industrial Hemp is submitted by a registered cultivator, and (3) the Industrial Hemp is tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.
- I. Transporter Restrictions. A Retail Marijuana Testing Facility shall not sell or give away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Retail Marijuana Transporter, and shall not buy, or receive complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from a Retail Marijuana Transporter.

### **Basis and Purpose – R 703**

The statutory authority for this rule includes but is not limited to section 44-12-202(2)(b), 44-12-202(3)(a)(III), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(V), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), and 44-12-405, C.R.S. The purpose of this rule is to establish a framework for certification for Retail Marijuana Testing Facilities.

### **R 703 – Retail Marijuana Testing Facilities: Certification Requirements**

- A. Certification Types. If certification in a testing category is required by the Division, then the Retail Marijuana Testing Facility must be certified in the category in order to perform that type of testing.
1. Residual solvents;
  2. Microbials;
  3. Mycotoxins;
  4. Repealed.
  5. Pesticides;
  6. Repealed.
  7. THC and other Cannabinoid potency; and
  8. Repealed.
  9. Repealed.
  10. Metals.
- A.1 Effective July 1, 2019, in order to obtain a certification for Pesticide testing, a Retail Marijuana Testing Facility must also obtain certification for mycotoxin testing.
- B. Certification Procedures. The Retail Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in proficiency testing, and ongoing compliance with the applicable requirements in this rule.
1. Certification Inspection. A Retail Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Retail Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting. In addition, a Retail Marijuana Testing Facility must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO/IEC 17025 standard. In order to obtain certification in a testing category from the Division, the Retail Marijuana Testing Facility's scope of accreditation must specify that particular testing category.
  - a. Subsequent to initial approval of a Retail Marijuana Testing Facility License, the Division may grant provisional certification if the Applicant has not yet obtained ISO/IEC 17025:2005 accreditation, but meets all other requirements. Such provisional certification shall be for a period not to exceed twelve months.
  - b. A Retail Marijuana Testing Facility which is not accredited to the ISO/IEC 17025:2005 standard, but obtained certification prior to January 1, 2019, may submit a request for a temporary exemption from the ISO/IEC 17025:2005 accreditation requirement. Such request must be made on Division-approved forms. In order to receive a temporary exemption, a Retail Marijuana Testing Facility must establish good cause, which includes, but is not limited to, circumstances in which the Retail Marijuana Testing Facility has submitted an application for accreditation prior to December 31, 2018, and the application is still pending. A temporary exemption shall not exceed twelve months.
3. Personnel Qualifications
  - a. Laboratory Director. A Retail Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. See Rule R 704 – Retail Marijuana Testing Facilities: Personnel.
  - b. Employee Competency. A Retail Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).
4. Standard Operating Procedure Manual. A Retail Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.
  - a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign, and date the revised version prior to use.
  - b. A Retail Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. See Rule R 710 – Retail Marijuana Testing Facilities: Records Retention and Rule R 901 – Business Records Required.

5. Analytical Processes. A Retail Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Retail Marijuana Testing Facility must provide this listing to the Division upon request.
6. Proficiency Testing. A Retail Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.
7. Quality Assurance and Quality Control. A Retail Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.
8. Security. A Retail Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.
9. Chain of Custody. A Retail Marijuana Testing Facility must establish a system to document the complete chain of custody for samples from receipt through disposal.
10. Space. A Retail Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.
11. Records. A Retail Marijuana Testing Facility must establish a system to retain and maintain records for a period not less than three years. See Rules R 710 – Retail Marijuana Testing Facilities - Records Retention and Rule R 901 – Business Records Required.
12. Results Reporting. A Retail Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. See Rule R 711 – Reporting and Inventory Tracking System.
13. Conduct While Seeking Certification. A Retail Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner. A violation of this rule may be considered a license violation affecting public safety.

#### **Basis and Purpose – R 704**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(III), 44-12-202(3)(a)(IV), 44-12-202(3)(c)(VIII), and 44-12-405, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility.

#### **R 704 – Retail Marijuana Testing Facilities: Personnel**

- A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this rule.
  1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.

2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:
  - a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or
  - b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or
  - c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.
- B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. See Rule R 901 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.
- C. Responsibilities of the Laboratory Director. The laboratory director must:
  1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;
  2. Establish and adhere to a written standard operating procedure used to perform the tests reported;
  3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;
  4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;
  5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;
  6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;
  7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;
  8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;
  9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;
11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;
12. Ensure that reports of test results include pertinent information required for interpretation;
13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;
14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;
15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;
16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interests, and whenever necessary, identify needs for remedial training or continuing education to improve skills;
17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and
18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

C.5 Change in Laboratory Director. In the event that the laboratory director leaves employment at the Retail Marijuana Testing Facility, the Retail Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Marijuana Enforcement Division within seven days of the laboratory director's departure; and
2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.
3. The Retail Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.
4. Notwithstanding the requirement of subparagraph (C.5)(3), the Retail Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Retail Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

- D. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the three years of full-time laboratory experience.
- E. Laboratory Testing Analyst
1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.
  2. Responsibilities. In order to independently perform any test for a Retail Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

### **Basis and Purpose – R 705**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish standard operating procedure manual standards for the operation of a Retail Marijuana Testing Facility.

### **R 705 –Retail Marijuana Testing Facilities: Standard Operating Procedure Manual**

- A. A standard operating procedure manual must include, but need not be limited to, procedures for:
1. Sample receiving;
  2. Sample accessioning;
  3. Sample storage;
  4. Identifying and rejecting unacceptable specimens;
  5. Recording and reporting discrepancies;
  6. Security of Samples, aliquots and extracts and records;
  7. Validating a new or revised method prior to testing Samples to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;
  8. Aliquoting Samples to avoid contamination and carry-over;
  9. Sample retention to assure stability, as follows:
    - a. For Samples that comprise Test Batches submitted for testing other than Pesticide contaminant testing, Sample retention for 14 days;
    - b. For Samples that comprise Test Batches submitted for Pesticide contaminant testing, Sample retention for 90 days.
  10. Disposal of Samples;

11. The theory and principles behind each assay;
12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology (“NIST”);
13. Special requirements and safety precautions involved in performing assays;
14. Frequency and number of control and calibration materials;
15. Recording and reporting assay results;
16. Protocol and criteria for accepting or rejecting analytical Procedure to verify the accuracy of the final report;
17. Pertinent literature references for each method;
18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;
19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;
20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results and are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and
21. Policies and procedures to follow when Samples are requested for referral and testing by another certified Retail Marijuana Testing Facility or an approved local or state agency’s laboratory.
22. Testing Industrial Hemp, if the Retail Marijuana Testing Facility tests Industrial Hemp.

**Basis and Purpose – R 706**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Retail Marijuana Testing Facility.

**R 706 –Retail Marijuana Testing Facilities: Analytical Processes**

- A. Gas Chromatography (“GC”). A Retail Marijuana Testing Facility using GC must:
1. Document the conditions of the gas chromatograph, including the detector response;
  2. Perform and document preventive maintenance as required by the manufacturer;
  3. Ensure that records are maintained and readily available to the staff operating the equipment;
  4. Document the performance of new columns before use;
  5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and
  7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.
- B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Retail Marijuana Testing Facility using GC/MS must:
1. Perform and document preventive maintenance as required by the manufacturer;
  2. Document the changes of septa as specified in the standard operating procedure;
  3. Document liners being cleaned or replaced as specified in the standard operating procedure;
  4. Ensure that records are maintained and readily available to the staff operating the equipment;
  5. Maintain records of mass spectrometric tuning;
  6. Establish written criteria for an acceptable mass-spectrometric tune;
  7. Document corrective actions if a mass-spectrometric tune is unacceptable;
  8. Monitor analytic analyses to check for contamination and carry-over;
  9. Use selected ion monitoring within each run to assure that the laboratory compare ion ratios and retention times between calibrators, controls and Samples for identification of an analyte;
  10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
  11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;
  12. Define the criteria for designating qualitative results as positive;
  13. When a library is used to qualitatively match an analyte, the relative retention time and mass spectra from a known standard or control must be run on the same system before reporting the results; and
  14. Evaluate the performance of the instrument after routine and preventive maintenance (e.g. clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.
- C. Immunoassays. A Retail Marijuana Testing Facility using Immunoassays must:
1. Perform and document preventive maintenance as required by the manufacturer;
  2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a Sample is not included within the types of Samples approved by the manufacturer; and
  4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.
- D. Thin Layer Chromatography ("TLC"). A Retail Marijuana Testing Facility using TLC must:
1. Apply unextracted standards to each thin layer chromatographic plate;
  2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;
  3. Include in their written procedure the storage of unused thin layer chromatographic plates;
  4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;
  5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;
  6. Measure all appropriate RF values for qualitative identification purposes;
  7. Use and record sequential color reactions, when applicable;
  8. Maintain records of thin layer chromatographic plates; and
  9. Analyze an appropriate matrix blank with each batch of Samples analyzed.
- E. High Performance Liquid Chromatography ("HPLC"). A Retail Marijuana Testing Facility using HPLC must:
1. Perform and document preventive maintenance as required by the manufacturer;
  2. Ensure that records are maintained and readily available to the staff operating the equipment;
  3. Monitor and document the performance of the HPLC instrument each day of testing;
  4. Evaluate the performance of new columns before use;
  5. Create written standards for acceptability when eluting solvents are recycled;
  6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and
  7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.
- F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Retail Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;
  2. Ensure that records are maintained and readily available to the staff operating the equipment;
  3. Maintain records of mass spectrometric tuning;
  4. Document corrective actions if a mass-spectrometric tune is unacceptable;
  5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
  6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;
  7. Compare two transitions and retention times between calibrators, controls and Samples within each run;
  8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and
  9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.
- G. Other Analytical Methodology. A Retail Marijuana Testing Facility using other methodology or new methodology must:
1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:
    - a. Verification of Accuracy
    - b. Verification of Precision
    - c. Verification of Analytical Sensitivity
    - d. Verification of Analytical Specificity
    - e. Verification of the LOD
    - f. Verification of the LOQ
    - g. Verification of the Reportable Range
    - h. Identification of Interfering Substances
  2. Validation of the other or new methodology must be documented.
  3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.
5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

### **Basis and Purpose – R 707**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish a proficiency testing program for Retail Marijuana Testing Facilities.

### **R 707 – Retail Marijuana Testing Facilities: Proficiency Testing**

- A. Proficiency Testing Required. A Retail Marijuana Testing Facility must participate in a Proficiency Testing program for each approved category in which it seeks certification under Rule R 703 – Retail Marijuana Testing Facilities: Certification Requirements.
- B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Retail Marijuana Testing Facility must have successfully participated in Proficiency Testing in the category for which it seeks certification, within the preceding 12 months.
- C. Continued Certification. To maintain continued certification, a Retail Marijuana Testing Facility must participate in the designated Proficiency Testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.
- D. Analyzing Proficiency Testing Samples. A Retail Marijuana Testing Facility must analyze Proficiency Test Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used in its standard operating procedures.
- E. Proficiency Testing Attestation. The laboratory director and all testing analysts who participated in Proficiency Testing must sign corresponding attestation statements.
- F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.
- G. Remedial Action. A Retail Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during Proficiency Testing. Remedial action documentation must include a review of Samples tested and results reported since the last successful Proficiency Testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.
- H. Unsatisfactory Participation in a Proficiency Testing Event. Unless the Retail Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing event will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive result reported will be considered unsatisfactory participation in the Proficiency Testing event.
- I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsatisfactory participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule R 703 certification.

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## Basis and Purpose – R 708

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Retail Marijuana Testing Facility.

### R 708 – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

- A. Quality Assurance Program Required. A Retail Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:
1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;
  2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and
  3. Review of the performance of validated methods used by the Retail Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.
- B. Quality Control Measures Required. A Retail Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:
1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;
  2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;
  3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;
  4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;
  5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;
  6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;
  7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;
9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of Samples analyzed;
10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;
11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;
12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;
13. Analyzing an appropriate matrix blank and control with each analytical run, when available;
14. Analyzing calibrators and controls in the same manner as unknowns;
15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the standard operating procedure is met;
16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the standard operating procedure;
17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and
18. Performing testing analysts that follow the current Standard Operating Procedures Manual for the test or tests to be performed.

**Basis and Purpose – R 709**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish chain of custody standards for a Retail Marijuana Testing Facility. In addition, it establishes the requirement that a Retail Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains.

**R 709 –Retail Marijuana Testing Facilities: Chain of Custody**

General Requirements. A Retail Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not limited to:

1. Issue instructions for the minimum Sample requirements and storage requirements;
2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;
3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;
5. Document all Transfers of Samples, aliquots, and extracts referred to another certified Retail Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;
6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;
7. Secure the Laboratory during non-working hours;
8. Secure short and long-term storage areas when not in use;
9. Utilize a secured area to log-in and aliquot Samples;
10. Ensure Samples are stored appropriately; and
11. Document the disposal of Samples, aliquots, and extracts.

#### **Basis and Purpose – R 710**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Testing Facility.

#### **R 710 –Retail Marijuana Testing Facilities: Records Retention**

- A. General Requirement. A Retail Marijuana Testing Facility must maintain all required business records. See Rule R 901 - Business Records Required.
- B. Specific Business Records Required: Record Retention. A Retail Marijuana Testing Facility must establish processes to preserve records in accordance with Rule R 901 that includes, but is not limited to;
  1. Test Results, including final and amended reports, and identification of analyst and date of analysis;
  2. Quality Control and Quality Assurance Records, including accession numbers, Sample type, and acceptable reference range parameters;
  3. Standard Operating Procedures;
  4. Personnel Records;
  5. Chain of Custody Records;
  6. Proficiency Testing Records; and
  7. Analytical Data to include data generated by the instrumentation, raw data of calibration standards and curves.
- C. Repealed.

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## Basis and Purpose – R 711

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(IV) and 44-12-405, C.R.S. The purpose of this rule is to establish reporting standards for a Retail Marijuana Testing Facility.

## R 711 – Reporting and Inventory Tracking System

Required Procedures. A Retail Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise and scientifically valid prior to reporting such results.

- A. Reports. Every final report, whether submitted to the Division, to a Retail Marijuana Establishment or to any other Person authorized to receive the report, must include the following:
1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;
  2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the Sample in duplicate prior to reporting a quantitative result;
  3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;
  4. Adequately document the available external chain of custody information;
  5. Ensure all final reports contain the name and location of the Retail Marijuana Testing Facility that performed the test, name and unique identifier of Sample, submitting client, Sample received date, date of report, type of Sample tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies;
  6. Provide the final report to the Division, as well as the Retail Marijuana Establishment and/or any other Person authorized to receive the report a timely manner; and
  7. Repealed.
- B. Inventory Tracking System. Each Retail Marijuana Testing Facility shall:
1. Report all test results to the Division as part of daily reconciliation by the close of business and in accordance with all Inventory Tracking System Procedures under Rule R 309 – Retail Marijuana Establishments: Inventory Tracking System. The requirement to report all test results includes:
    - a. Both positive and negative test results;
    - b. Results from both mandatory and voluntary testing; and
    - c. For quantitative tests, a quantitative value.

2. As part of Inventory Tracking System reporting, when results of tested Samples exceed maximum levels of allowable potency or contamination, or otherwise result in failed potency, homogeneity, or contaminant testing, the Retail Marijuana Testing Facility shall, in the Inventory Tracking System, indicate failed test results for the Inventory Tracking System package associated with the failed Sample. This requirement only applies to testing of Samples that are comprised of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
- C. Violation Affecting Public Safety. Violation of this Rule may constitute a license violation affecting public safety

### **Basis and Purpose – R 712**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(IV), 44-12-202(3)(d)(V), 44-12-202(3)(d)(VI), and 44-12-405, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish the portion of the Division's Mandatory Testing and Random Sampling program that is applicable to Retail Marijuana Testing Facilities. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 44-12-202(3)(a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine, must be at least plus or minus 15 percent.

### **R 712 – Retail Marijuana Testing Facilities: Sampling and Testing Program**

- A. Division Authority. The Division may require that a Test Batch be submitted to a specific Retail Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.
1. Independent Third Party Review. The Division may require Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to undergo an independent third-party review to verify that the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product does not pose a threat to public health and safety when the Division, in consultation with the Colorado Department of Public Health and Environment, has objective and reasonable grounds to believe and finds, upon a full investigation, one of the following:
    - a. The Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contains one or more substances known to cause harm; or
    - b. The Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contains one or more substances that could be toxic as consumed or applied in accordance with the intended use.
  - 1.5 The fact that Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product contains marijuana shall not constitute grounds to require an independent third-party review. Ingredients Generally Recognized as Safe by the U.S. Food & Drug Administration or that are regulated by the U.S. Food & Drug Administration under the Dietary Supplement Health and Education Act of 1994 that are included in Edible Retail Marijuana Product shall not constitute grounds to require an independent third-party review.

2. Quarantine. In addition to any other remedies provided by law, the Division may immediately quarantine Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product pursuant to Rule R 1507(A) in any one of the following circumstances:
  - a. The Division has objective and reasonable grounds to believe and finds, upon a full investigation, that a Retail Marijuana Establishment has been guilty of deliberate and willful violations of these rules;
  - b. The Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or Alternative Use Product poses a potential threat to public health and safety;
  - c. The Division has received one or more reports of an adverse event related to Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or Alternative Use Product. For purpose of this Rule, adverse event means any untoward medical occurrence associated with the use of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Product, or Alternative Use Product— this could include any unfavorable and unintended sign (including hospitalization, emergency department visit, doctor’s visit, abnormal laboratory finding), symptom, or disease temporally associated with the use of a Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or Alternative Use Product;
  - d. The Division determines the independent third-party audit submitted pursuant to Rule R 607(B) does not meet the requirements of Rule R 607; or
  - e. The Retail Marijuana Products Manufacturing Facility has violated or is not in compliance with all of the requirements in Rule R 607.
3. Any quarantine pursuant to subparagraph (A)(2) above shall remain in effect unless and until the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product undergoes an independent third-party review to verify the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product does not pose a risk to public health and safety.
4. For the purpose of this Rule, full investigation means a reasonable ascertainment of the underlying facts on which the agency action is based.

B. Test Batches

1. Retail Marijuana and Retail Marijuana Concentrate. A Retail Marijuana Testing Facility must establish a standard minimum weight of Retail Marijuana and Retail Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.
2. Retail Marijuana Product. A Retail Marijuana Testing Facility must establish a standard number of Samples it requires to be included in each Test Batch of Retail Marijuana Product for every type of test that it conducts. See Rule R 1504 – Retail Marijuana Testing Program – Sampling Procedures.

C. Rejection of Test Batches

1. A Retail Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.

2. A Retail Marijuana Testing Facility may not accept a Test Batch that it knows was not taken in accordance with these rules, except a Retail Marijuana Testing Facility may accept a Test Batch that was collected by Division representatives or that was collected by a Licensee pursuant to Division direction.
- D. Notification of Retail Marijuana Establishment. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product failed a contaminant test, then the Retail Marijuana Testing Facility must immediately (1) notify the Retail Marijuana Establishment that submitted the Test Batch for testing and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule R 711(B).
- E. Permissible Levels of Contaminants. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is found to have a contaminant in levels exceeding those established as permissible under this rule, then it shall be considered to have failed contaminant testing. Notwithstanding the permissible levels established in this rule, the Division reserves the right to determine, upon good cause and reasonable grounds, that a particular Test Batch presents a risk to the public health or safety and therefore shall be considered to have failed a contaminant test.

1. Microbials (Bacteria, Fungus)

<b><u>Substance</u></b>	<b><u>Acceptable Limits Per Gram</u></b>	<b><u>Product to be Tested</u></b>
-Shiga-toxin producing Escherichia coli (STEC)*- Bacteria	< 1 Colony Forming Unit (CFU)	Flower; Retail Marijuana Products (other than Audited Product); Water-Based, Heat/Pressure-Based, and Food-Based Retail Marijuana Concentrate
Salmonella species* – Bacteria	< 1 Colony Forming Unit (CFU)	
Total Yeast and Mold	< 10 <sup>4</sup> Colony Forming Unit (CFU)	
	≤10 <sup>1</sup> cfu/ml or ≤10 <sup>1</sup> cfu/g	Audited Product: administration by metered dose nasal spray, pressurized metered dose inhaler, or vaginal administration
	≤10 <sup>2</sup> cfu/ml or ≤10 <sup>2</sup> cfu/g	Audited Product: rectal administration
Total aerobic microbial count	≤10 <sup>2</sup> cfu/ml or ≤10 <sup>2</sup> cfu/g	Audited Product: administration by metered dose nasal spray, pressurized metered dose inhaler, or vaginal administration
	≤10 <sup>3</sup> cfu/ml or ≤10 <sup>3</sup> cfu/g	Audited Product: rectal administration
<i>Staphylococcus Aureus</i>	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray, pressurized metered dose inhaler, or vaginal administration

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
<i>Pseudomonas aeruginosa</i>	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray, pressurized metered dose inhaler, or vaginal administration
<i>Bile tolerant gram negative bacteria</i>	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray or pressurized metered dose inhaler
<i>Candida albicans</i>	Absent in 1 ml or 1 g	Audited Product: vaginal administration

\*The Retail Marijuana Testing Facility shall contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits.

2. Mycotoxins

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
Aflatoxins (B1, B2, G1, and G2)	< 20 parts per billion (PPB) (total of B1 + B2 + G1 + G2)	Solvent-Based Retail Marijuana Concentrate manufactured from Retail Marijuana flower or trim that failed microbial testing
Ochratoxin A	< 20 parts per billion (PPB)	

3. Residual Solvents

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
Acetone	< 1,000 Parts Per Million (PPM)	Solvent-Based Retail Marijuana Concentrate
Butanes	< 1,000 Parts Per Million (PPM)	
Ethanol***	< 1,000 Parts Per Million (PPM)	
Heptanes	< 1,000 Parts Per Million (PPM)	
Isopropyl Alcohol	< 1,000 Parts Per Million (PPM)	
Propane	< 1,000 Parts Per Million (PPM)	
Benzene**	< 2 Parts Per Million (PPM)	
Toluene**	< 180 Parts Per Million (PPM)	
Pentane	< 1,000 Parts Per Million (PPM)	
Hexane**	< 60 Parts Per Million (PPM)	

<u>Substance</u>	<u>Acceptable Limits Per Gram</u>	<u>Product to be Tested</u>
Total Xylenes (m,p, o-xylenes)**	< 430 Parts Per Million (PPM)	
Any other solvent not permitted for use pursuant to Rule R 605.	None Detected	

\*\* Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule R 605, limits have been listed here accordingly.

\*\*\*Note. Solvent-Based Retail Marijuana Concentrate that exceeds the acceptable limit for ethanol may only be used in Retail Marijuana Concentrate or Retail Marijuana Product which intended use is oral consumption, skin and body products, or Audited Product .

4. Metals

<u>Substance</u>	<u>Acceptable Limits Per Gram Based on Intended Use</u>	<u>Product to be Tested</u>
Metals (Arsenic, Cadmium, Lead and Mercury)	<b>Inhaled or Audited Product: administration by metered dose nasal spray or pressurized metered dose inhaler</b> Lead – Max Limit: < .5 ppm Arsenic – Max Limit: < 0.2 ppm Cadmium – Max Limit: < 0.2 ppm Mercury – Max Limit: < 0.1 ppm	Flower; Water-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Concentrate; Retail Marijuana Product
	<b>Topical and/or Transdermal</b> Lead – Max Limit: < 10 ppm Arsenic – Max Limit: < 3 ppm Cadmium – Max Limit: < 3 ppm Mercury – Max Limit: < 1 ppm	
	<b>Oral Consumption or Audited Product: rectal or vaginal administration</b> Lead – Max Limit: < 1 ppm Arsenic – Max Limit: < 1.5 ppm Cadmium – Max Limit: < 0.5 ppm Mercury – Max Limit: < 1.5 ppm	

5. Pesticides

<u>Substance</u>	<u>Detection Limits</u>	<u>Product to be Tested</u>
Abamectin (Avermectins: B1a & B1b)	< 0.07 Parts Per Million (PPM)	Retail Marijuana flower and trim
Azoxystrobin	< 0.02 Parts Per Million (PPM)	
Bifenazate	< 0.02 Parts Per Million (PPM)	
Etoazole	< 0.01 Parts Per Million (PPM)	
Imazalil	< 0.04 Parts Per Million (PPM)	

Substance	Detection Limits	Product to be Tested
Imidacloprid	< 0.02 Parts Per Million (PPM)	
Malathion	< 0.05 Parts Per Million (PPM)	
Myclobutanil	< 0.04 Parts Per Million (PPM)	
Permethrin (mix of isomers)	< 0.04 Parts Per Million (PPM)	
Spinosad (Mixture of A and D)	< 0.06 Parts Per Million (PPM)	
Spiromesifen	< 0.03 Parts Per Million (PPM)	
Spirotetramat	< 0.02 Parts Per Million (PPM)	
Tebuconazole	< 0.01 Parts Per Million (PPM)	

6. Other Contaminants

Pesticide	If the Test Batch is found to contain banned prohibited Pesticide not listed in Paragraph (5) above, or the improper application of a permitted Pesticide, then that Test Batch shall be considered to have failed contaminant testing.
Chemicals	If the Test Batch is found to contain levels of any chemical that could be toxic if consumed or as applied, then the Division may determine that the Test Batch has failed contaminant testing.
Microbials	If the Test Batch is found to contain levels of any microbial that could be toxic if consumed or present, then the Division may determine that the Test Batch has failed contaminant testing.
Metals	If the Test Batch is found to contain levels of any metal that could be toxic if consumed or present then the Division may determine that the Test Batch has failed contaminant testing.

7. Division Notification. A Retail Marijuana Testing Facility must notify the Division by timely input in the Inventory Tracking System if a Test Batch is found to contain levels of a contaminant not listed within this rule that could be injurious to human health if consumed. See Rule R 711 – Reporting and Inventory Tracking System

F. Potency Testing

1. Cannabinoids Potency Profiles. A Retail Marijuana Testing Facility may test and report results for any Cannabinoid provided the test is conducted in accordance with the Division's Retail Marijuana Testing Facility's standard operating procedure.
2. Reporting of Results
  - a. For potency tests on Retail Marijuana and Retail Marijuana Concentrate, results must be reported by listing a single percentage concentration for each Cannabinoid that represents an average of all Samples within the Test Batch. This includes reporting the Total THC in addition to each Cannabinoid required in Rule R 1503.
  - b. For potency tests conducted on Retail Marijuana Product, whether conducted on each individual Production Batch or via process validation per Rule R 1503,

results must be reported by listing the total number of milligrams contained within a single Retail Marijuana Product unit for sale for each cannabinoid and stating whether the THC content is homogenous as defined in Paragraph (4)(b) of this Rule.

3. Repealed.
  4. Failed Potency Tests for Retail Marijuana Products
    - a. If an individually packaged Edible Retail Marijuana Product is determined to have more than 100 milligrams of THC within it, then the Test Batch shall be considered to have failed potency testing. If an individually packaged Edible Retail Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. If a single serving in an individually packaged Edible Retail Marijuana Product is determined to have more than 10 milligrams of THC, or less than 10 milligrams of THC, then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (F)(5) of this rule R 712 shall apply to potency testing.
    - b. If the THC content of a Retail Marijuana Product is determined through testing not to be homogenous, then it shall be considered to have failed potency testing. A Retail Marijuana Product shall be considered to not be homogenous if 10% of the infused portion of the Retail Marijuana Product contains more than 20% of the total THC contained within entire Retail Marijuana Product.
  5. Potency Variance. A potency variance of no more than plus or minus 15% is allowed.
- G. Testing Retail Marijuana Ready for Transfer. All tests must occur at the time the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is ready for Transfer to another Retail Marijuana Establishment, according to the required steps outlined in the standard operating procedures of the Licensee submitting the Test Batch.

## **R 800 Series – Transport and Storage**

### **Basis and Purpose – R 801**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-202(3)(d)(III), 44-12-309(4), 44-12-401(1), and 44-12-406 C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

### **R 801 – Transport: All Retail Marijuana Establishments**

- A. Persons Authorized to Transport. Except as provided in the Rule R 1600 series, any individual who transports Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product on behalf of a Retail Marijuana Establishment must hold a valid Occupational License and must be an employee or Owner of the Retail Marijuana Establishment. An individual who does not possess a current and valid Owner or Occupational License from the State Licensing Authority may not transport Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product between Licensed Premises.
- B. Transport Between Licensed Premises.
1. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall only be transported by Licensees between Licensed Premises; between Licensed Premises and a permitted off-premises storage facility; between Licensed Premises and a Medical Research Facility; and between Licensed Premises and a Pesticide Manufacturer. Licensees transporting Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are responsible for ensuring that all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are secured at all times during transport.
  2. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants.
    - a. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule R 206.
    - b. Retail Marijuana Immature plants shall only be transported between Licensed Premises; between Licensed Premises and a Medical Research Facility; and between Licensed Premises and a Pesticide Manufacturer.
    - c. Licensees transporting Retail Marijuana Vegetative plants and Retail Marijuana Immature plants are responsible for ensuring that all Retail Marijuana Vegetative plants and Retail Marijuana Immature plants are secure at all times during transport. Transportation of Retail Marijuana Vegetative plants and Retail Marijuana Immature plants to a permitted off-premises storage facility shall not be allowed. Transport of Retail Marijuana plants other than Vegetative Plants and Immature plants shall not be allowed.
- C. Inventory Tracking System-Generated Transport Manifest Required. A Licensee may only transport Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product if he or she has a hard copy of an Inventory Tracking System -generated transport manifest that contains all the information required by this rule and shall be in the format prepared by the State Licensing Authority.
1. Retail Marijuana, Retail Marijuana Immature Plants, Retail Marijuana Concentrate, and Retail Marijuana Product. A Licensee may transport Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific Retail Marijuana Establishments, Medical Research Facilities, and/or Pesticide Manufacturers.
  2. Retail Marijuana Vegetative Plants. A Licensee shall transport Retail Marijuana Vegetative plants only from the originating Licensed Premises to the destination Licensed

Premises due to a change of location that has been approved by the Division pursuant to Rule R 206.

3. Manifest for Transfers to Medical Research Facilities and Pesticide Manufacturers. A Licensee may not transport or permit the transportation of Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or Pesticide Manufacturer unless an Inventory Tracking System-generated transport manifest has been generated.
- D. Motor Vehicle Required. Transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, and/or Retail Marijuana Product shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee. Except that when a rental truck is required for transporting Retail Marijuana Vegetative plants or Retail Marijuana Immature plants, Colorado motor vehicle registration is not required.
- E. Documents Required During Transport. Transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product shall be accompanied by a copy of the originating Retail Marijuana Establishment's business license, the driver's valid Owner or Occupational License, the driver's valid motor vehicle operator's license, and all required vehicle registration and insurance information.
- F. Use of Colorado Roadways. State law does not prohibit the transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, and/or Retail Marijuana Product on any public road within the state of Colorado as authorized in this rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Retail Marijuana, Retail Marijuana Vegetative plants, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product.
- G. Preparation of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for Transport
  1. Final Weighing and Packaging. A Retail Marijuana Establishment shall comply with the specific rules associated with the final weighing and packaging of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product before such items are prepared for transport pursuant to this rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.
  2. Preparation in Limited Access Area. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.
  3. Shipping Containers. Licensees may Transfer multiple Containers of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, local jurisdictions, and state and local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.
- G.5. Preparation of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for Transport.

1. Final Weighing and Packaging. A Retail Marijuana Establishment shall comply with the specific rules associated with the final weighing and packaging of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product before such items are prepared for transport pursuant to this rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.
2. Preparation in Limited Access Area. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.
3. Shipping Containers. Licensees may Transfer multiple Containers of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, local jurisdictions, and state and local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.
  - a. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag.
  - b. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants. Each Retail Marijuana Vegetative plant that is transported pursuant to this rule must have a RFID tag affixed to it prior to transport. Each receptacle containing Retail Marijuana Immature plants transported pursuant to this rule must have an RFID tag affixed prior to transport.

H. Creation of Records and Inventory Tracking

1. Use of Inventory Tracking System -Generated Transport Manifest.
  - a. Retail Marijuana, Retail Marijuana Immature Plants, Retail Marijuana Concentrate, and Retail Marijuana Product. Licensees who transport or permit the transportation of Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the Licensed Premises destined for other Licensed Premises, Medical Research Facilities, or Pesticide Manufacturers. The transport manifest may either reflect all deliveries for multiple locations within a single trip or separate transport manifests may reflect each single delivery. In either case, no inventory shall be transported without an Inventory Tracking System -generated transport manifest.
    - a.1 Use of a Retail Marijuana Transporter. In addition to subparagraph (H)(1)(a), Licensees shall also follow the requirements of this subparagraph (H)(1)(a.1) when a Licensee utilizes the services of a Retail Marijuana Transporter.
      - i. When a Retail Marijuana Store, Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Testing Facility utilizes a Retail Marijuana Transporter for transporting its

Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Products, the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer who will be receiving the Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Products.

- ii. A Retail Marijuana Transporter is prohibited from being listed as the final destination Licensee.
- iii. A Retail Marijuana Transporter shall not alter the information of the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer after the information has been entered on the Inventory Tracking System-generated transport manifest by the Licensee.
- iv. If the Retail Marijuana Transporter is not delivering the originating Licensee's Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product directly to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer, the Retail Marijuana Transporter shall communicate to the originating Licensee which of the Retail Marijuana Transporter's Licensed Premises or off-premises storage facilities will receive and temporarily store the Retail Marijuana, Retail Marijuana Immature plants, Retail Marijuana Concentrate, or Retail Marijuana Product. The originating Licensee shall input the Retail Marijuana Transporter's location address and license number on the Inventory Tracking System-generated transport manifest.

b. Retail Marijuana Vegetative Plants.

- i. Licensees who transport Retail Marijuana Vegetative plants shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the originating Licensed Premises to be transported to the destination Licensed Premises due to a change of location approved by the Division pursuant to Rule R 206.
- ii. Retail Marijuana Transporters are permitted to transport Retail Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule R 206. The Retail Marijuana Transporter shall transport the Retail Marijuana Vegetative Plants directly from the originating Licensed Premises to the final destination Licensed Premises.

- 2. Copy of Transport Manifest to Recipient. A Licensee shall provide a copy of the transport manifest to each Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate Inventory Tracking System-generated transport manifest for each recipient Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer.
- 3. The Inventory Tracking System-generated transport manifest shall include the following:
  - a. Departure date and approximate time of departure;

- b. Name, location address, and license number of the originating Retail Marijuana Establishment;
  - c. Name, location address, and license number of the destination Retail Marijuana Establishment(s), name and location address of the Medical Research Facility, or name and location address of the destination Pesticide Manufacturer;
  - c.1 Name, location address, and license number of the Retail Marijuana Transporter if applicable pursuant to R 801(H)(1)(a.1)(iv).
  - d. Product name and quantities (by weight and unit) of each product to be delivered to each specific destination location(s);
  - e. Arrival date and estimated time of arrival;
  - f. Delivery vehicle make and model and license plate number; and
  - g. Name, Occupational License number, and signature of the Licensee accompanying the transport.
- J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. See Rule R 901 – Business Records Required.
- 1. Responsibilities of Originating Licensee.
    - a. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Prior to departure, the originating Retail Marijuana Establishment shall adjust its records to reflect the removal of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.
    - b. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants. Prior to departure, the originating Retail Marijuana Cultivation Facility shall adjust its records to reflect the removal of Retail Marijuana Vegetative plants and Retail Marijuana Immature plants. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.
  - 2. Responsibilities of Recipient Licensee.

- a. Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. Upon receipt, the receiving Licensee shall ensure that the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product received are as described in the transport manifest and shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the inventory records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest. Retail Marijuana Transporters shall comply with all requirements of this subparagraph (J)(2)(a) except that they are not required to weigh Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Products.
    - i. When a Retail Marijuana Establishment transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the Inventory Tracking System.
  - b. Retail Marijuana Vegetative Plants and Retail Marijuana Immature Plants. Upon receipt, the recipient Licensee shall ensure that the Retail Marijuana Vegetative plants received are as described in the transport manifest, accounting for all RFID tags and each associated plant, and shall immediately adjust its records to reflect the receipt of inventory. Upon Receipt, the recipient Licensee shall ensure that the Retail Marijuana Immature plants received are as described in the transport manifest, accounting for all RFID tags and each receptacle containing Retail Marijuana Immature plants, and shall immediately adjust its records to reflect the receipt of inventory.
    - i. When a Retail Marijuana Establishment transfers Retail Marijuana Immature plants to a Medical Research Facility or Pesticide Manufacturer, the originating Licensee is responsible for confirming delivery of the Retail Marijuana Immature plants in the Inventory Tracking System.
3. Discrepancies.
- a. Licensees. A recipient Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in the Inventory Tracking System and in any relevant business records.
  - b. Medical Research Facilities and Pesticide Manufacturers. In the event of a discrepancy between the quantity specified in a transport manifest and the quantity received by a Medical Research Facility or Pesticide Manufacturer, the originating Licensee shall document the discrepancy in the Inventory Tracking System and in any relevant business records, and account for the discrepancy.
- K. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product during transport.
- L. Failed Testing. In the event Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may

only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

### **Basis and Purpose – R 802**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-406(2), and 44-12-701(2), C.R.S. The purpose of this rule is to establish that Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit.

### **R 802 – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments**

- A. Off-Premises Storage Permit Authorized. A Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Cultivation Facility, and a Retail Marijuana Testing Facility may only store Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in their Licensed Premises or in their one permitted off-premises storage facility. Retail Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.
- B. Permitting. To obtain a permit for an off-premises storage facility, a Retail Marijuana Establishment must apply on current Division forms and pay any applicable fees. A Retail Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Retail Marijuana Stores.
- C. Extension of Licensed Premises. A permitted off-premises storage facility shall constitute an extension of the Retail Marijuana Establishment's Licensed Premises, subject to all applicable Retail Marijuana regulations.
- D. Limitation on Inventory to be Stored. A Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, and a Retail Marijuana Cultivation Facility may only have upon the permitted off-premises storage facility Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that are part of the particular Retail Marijuana Establishment's finished goods inventory. The aforementioned Licensees may not share the premises with, or store inventory belonging to a Retail Marijuana Establishment that is not commonly-owned or a Medical Marijuana Business.
- E. Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Retail Marijuana Establishment may not Transfer, cultivate, manufacture, process, test, research, or consume any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product within the premises of the permitted off-premises storage facility.
- F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Retail Marijuana Establishment's license must be displayed in a prominent place within the permitted off-premises storage facility.
- G. Local Jurisdiction Approval
  - 1. Prior to submitting an application for an off-premises storage facility permit, the Retail Marijuana Establishment must obtain approval or acknowledgement from the relevant local jurisdiction.
  - 2. A copy of the relevant local jurisdiction's approval or acknowledgement must be submitted by the Retail Marijuana Establishment in conjunction with its application for an off-premises storage facility.

3. No Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be stored within a permitted storage facility until the relevant local jurisdiction has been provided a copy of the off-premises storage facility permit.
  4. Any off-premises storage permit issued by the Division shall be conditioned upon the Retail Marijuana Establishment's receipt of all required local jurisdiction approvals or acknowledgments.
- H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. See Rules R 305 – Security Alarm and Lock Standards and R 306 – Video Surveillance.
- I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule R 801 – Transport: All Retail Marijuana Establishments, when transporting any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to and from a permitted off-premises storage facility.
- J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall utilize the Inventory Tracking System to track its inventories from the point of transfer to or from a permitted off-premises storage facility. See Rules R 309 – Retail Marijuana Establishment: Inventory Tracking System and R 901 – Business Records Required.
- K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.
- L. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product and shall utilize adequate storage facilities and transport methods.
- M. Consumption Prohibited. A Retail Marijuana Establishment shall not permit the consumption of marijuana or marijuana product on the premises of its permitted off-premises storage facility.

## **R 900 Series – Business Records**

### **Basis and Purpose – R 901**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XII), 44-12-301, and 44-12-701(1), C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. Rule R 901(B) was added due to written commentary received from an industry representative.

### **R 901 – Business Records Required**

- A. General Requirements
1. A Retail Marijuana Establishment must maintain the information required in this rule in a format that is readily understood by a reasonably prudent business person.
  2. Each Retail Marijuana Establishment shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

- a. On premises records: The Retail Marijuana Establishment's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times.
  - b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.
3. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:
- a. Current Employee List – This list must provide the full name and Occupational License number of each employee and all non-employee Owners, who work at a Retail Marijuana Establishment.
    - i. Each Licensed Premises shall enter the full name and Occupational License number of every employee that works on the premises into the Inventory Tracking System. The Licensed Premises shall update its list of employees in the Inventory Tracking System within 10 days of an employee commencing or ceasing employment on the premises.
  - b. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Retail Marijuana Establishment must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.
  - c. Advertising Records - All records related to Advertising and marketing, including, but not limited to, audience composition data.
  - d. Licensed Premises – Diagram of all approved Limited Access Areas, Restricted Access Areas, and any permitted off-premises storage facilities.
  - e. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.
  - f. All records normally retained for tax purposes.
  - g. Waste Log – Comprehensive records regarding all waste and Fibrous Waste material that accounts for, reconciles, and evidences all waste and Fibrous Waste activity relate to the disposal of marijuana.
  - h. Surveillance Logs – Surveillance logs as required by Rule R 306.
  - i. Every Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol which shall be available upon request by the State Licensing Authority or Division. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.
  - j. Testing Records – all testing records required by Rule R 710.
  - k. All other records required by these Rules.
  - l. Sampling Unit Records – All records related to designated Sampling Managers, identified Sampling Units, and Transfers of Sampling Units. See Rules R 503, R 507, R 603, R 606. This includes, but is not limited to, standard operating

procedures that explain the requirements of sections 44-12-403(6) and 44-12-404(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements imposed by Rules R 507 and R 606.

- m. License Application Records – all records provided by the Licensee to both the state and local licensing authorities in connection with an application for licensure pursuant to the Retail Codes and these Rules.
  - n. Standard Operating Procedures – all standard operating procedures as required by these Rules.
  - o. Audited Product and/or Alternative Use Product Records – all records required to demonstrate compliance with Rule R 607.
- B. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.
- C. Violation Affecting Public Safety. Violation of this rule may constitute a license violation affecting public safety.
- D. Records Related to Inventory Tracking. A Retail Marijuana Establishment must maintain accurate and comprehensive inventory tracking records that account for, reconcile and evidence all inventory activity for Retail Marijuana from either seed or immature plant stage until the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is destroyed or Transferred to another Retail Marijuana Establishment, a consumer, a Medical Research Facility, or a Pesticide Manufacturer.
- E. Records Related to Transport. A Retail Marijuana Establishment must maintain adequate records for the transport of all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See Rule R 801 – Transport.
- F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

### **Basis and Purpose – R 902**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(a)(XIII), C.R.S. A Retail Marijuana Establishment must collect and remit sales tax on all retail sales made pursuant to the licensing activities. The purpose of this rule is to clarify when such taxes must be remitted to the Colorado Department of Revenue.

### **R 902 – Reporting and Transmittal of Taxes**

- A. Sales and Use Tax Returns Required. All state and state-collected sales and use tax returns must be filed, and all taxes must be remitted to the Department of Revenue, on or before the 20<sup>th</sup> day of the month following the reporting month. For example, a January return and remittance will be due to the Department of Revenue by February 20<sup>th</sup>. If the due date (20<sup>th</sup> of the month) falls on a weekend or holiday, the next business day is considered the due date for the return and remittance.

- B. Excise and Retail Marijuana Sales Tax Returns Required. A Retail Marijuana Establishment shall submit any applicable tax returns and remit any payments due pursuant to Article 28.8 of Title 39, C.R.S.
- C. Proof of Tax Remittance Required. All state tax payments shall require proof of remittance with the State Licensing Authority. A Retail Marijuana Cultivation Facility must maintain records evidencing the payment of all required excise taxes. Proof of retail sales taxes shall be identified in required tax records, tracking systems, and sales receipts provided to consumers.

### **Basis and Purpose – R 903**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XII), and 44-12-701(1), C.R.S. The Retail Code mandates that a Retail Marijuana Establishment must pay for an audit when the State Licensing Authority deems an audit necessary. This rule explains when an audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit.

### **R 903 – Independent Audit May Be Required**

- A. State Licensing Authority May Require Independent Audit
  - 1. When the State Licensing Authority deems it necessary, it may require a Retail Marijuana Establishment to undergo an audit by an independent accountant. The scope of the audit may include, but need not be limited, to financial transactions and inventory control measures.
  - 2. In such instances, the Division may attempt to mutually agree upon the selection of the independent accountant with a Retail Marijuana Establishment. However, the Division always retains the right to select the independent accountant regardless of whether mutual agreement can be reached. The independent accountant shall be a certified public accountant licensed by, and in good standing with, the Colorado State Board of Accountancy.
  - 3. The Retail Marijuana Establishment will be responsible for all direct costs associated with the independent audit.
- B. When Independent Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent accountant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
  - 1. A Retail Marijuana Establishment does not provide requested records to the Division;
  - 2. The Division has reason to believe that the Retail Marijuana Establishment does not properly maintain its business records;
  - 3. A Retail Marijuana Establishment has a prior violation related to recordkeeping or inventory control;
  - 4. A Retail Marijuana Establishment has a prior violation related to diversion.
  - 5. As determined by the Division, the scope of an audit conducted by the Division would be so extensive as to jeopardize the regular duties and responsibilities of the Division's audit or enforcement staff.

- C. Compliance Required. A Retail Marijuana Establishment must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo and audit in accordance with this rules.
- D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **Basis and Purpose – R 904**

The statutory authority for this rule includes but is not limited to sections 44-11-201(4), 44-11-202(1)(d), 44-12-202(2)(b), 44-12-202(1), 44-12-202(2)(d), 44-12-202(3)(c)(VIII), 44-12-309(11), and 44-12-901(2)(a), C.R.S. The State Licensing Authority must be able to immediately access information regarding a Retail Marijuana Establishment's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.

The State Licensing Authority finds it essential to the stringent and comprehensive enforcement of the Retail Code to regulate, monitor, and track all Retail Marijuana in order to prevent diversion and to ensure that all Retail Marijuana grown, processed, sold, and disposed of in the Retail Marijuana market is accounted for transparently in accordance with the Retail Code.

Requiring Licensees to report instances when the Retail Marijuana they cultivate, manufacture, distribute, sell, or dispose of is stolen, unlawfully transferred, or otherwise diverted from the regulated market, or when Licensees discover plans to divert the Retail Marijuana, emphasizes that Licensees are accountable for their Retail Marijuana at all times and contributes to the transparency of the regulated market.

In addition to maintaining transparency in the regulated marijuana industry, the State Licensing Authority also must ensure the confidentiality of certain Licensee information and records, including information in the Inventory Tracking System. Requiring Licensees to report instances where the Inventory Tracking System was compromised or planned to be compromised through unlawful access, use for unlawful purposes, the deliberate alteration or deletion of data, or deliberately entering false data, contributes to ensuring the accuracy and transparency of the system and therefore the regulated market, and aids in maintaining the confidentiality of Licensee data.

### **R 904 – Retail Marijuana Establishment Reporting Requirements**

- A. Manager Change Must Be Reported.
  - 1. When Required. A Retail Marijuana Establishment shall provide the Division a written report within seven days after any change in manager occurs. In addition, a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall report any designation or change of Sampling Manager(s) through the Inventory Tracking System.
  - 2. Licensee Must Maintain Record of Reported Change. A Retail Marijuana Establishment must also maintain a copy of this written report with its business records.
  - 3. Consequence of Failure to Report. Failure to report a change in a timely manner may result in discipline.

- B. Reporting of Crime on the Licensed Premises or Otherwise Related to a Retail Marijuana Establishment. A Retail Marijuana Establishment and all Licensees employed by the Retail Marijuana Establishment shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Retail Marijuana Establishment; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Retail Marijuana Establishment or Licensee may have to report criminal activity to a local law enforcement agency.

### **Basis and Purpose – R 905**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(d), 44-12-202(3)(a)(XIII), 44-12-202(3)(a)(XIV), 44-12-202(3)(c)(VIII), and 44-12-305(1)(f), C.R.S. See also articles 21, 22, 26 and 28.8 of title 39, C.R.S. The purpose of this rule is to clarify the Division's authority to provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee, for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise and income taxes required by Title 39 of the Colorado Revised Statutes. Such information sharing is for a purpose authorized by the Retail Code.

### **R 905 – Department Information Access**

- A. Department Access to Reports or Other Information. The Division may provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise and income taxes required by Title 39 of the Colorado Revised Statutes.
- B. Confidentiality. Reports or other information provided to or accessed by taxation divisions within the Department for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise and income taxes required by Title 39 of the Colorado Revised Statutes shall be considered part of the Department's investigation pursuant to subsection 39-21-113(4)(a), C.R.S., and the Division shall continue to maintain such records and information in its possession or control as confidential pursuant to subsection 44-11-202(1)(d) and 44-12-202(2)(d), C.R.S.

**R 1000 Series – Labeling, Packaging, and Product Safety. Repealed effective July 1, 2018.**

**R 1001 – Labeling and Packaging Requirements: General Applicability (Repealed effective July 1, 2018)**

**Rule R 1002 is repealed effective October 1, 2016. Licensees shall refer to rule R 1002.5 beginning October 1, 2016.**

**R 1002.5 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility (Repealed effective July 1, 2018)**

**Rule R 1003 is repealed effective October 1, 2016. Licensees shall refer to rule R 1003.5 beginning October 1, 2016.**

**R 1003.5 – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. (Repealed effective July 1, 2018)**

**R 1004 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility (Repealed effective July 1, 2018)**

Rule R 1004.5 is repealed effective October 1, 2016. Licensees shall refer to rule R 1004 beginning October 1, 2016.

Rule R 1005 is repealed effective October 1, 2016. Licensees shall refer to rule R 1005.5 beginning October 1, 2016.

**R 1005.5 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store (Repealed effective July 1, 2018)**

**R 1006 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store (Repealed effective July 1, 2018)**

Rule R 1006.5 is repealed effective October 1, 2016. Licensees shall refer to rule R 1006 beginning October 1, 2016.

Rule R 1007 is repealed effective October 1, 2016. Licensees shall refer to rule R 1007.5 beginning October 1, 2016.

**R 1007.5 – Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Store (Repealed effective July 1, 2018)**

**R 1000-1 Series – Labeling, Packaging, and Product Safety**

**Basis and Purpose – R 1001-1**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(VII), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(I), 44-12-202(3)(d)(II), 44-12-202(3)(h), 44-12-402(2)(a), 44-12-402(5), 44-12-404(1)(d), 44-12-404(4)(a), and 44-12-404(8), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product transferred between Retail Marijuana Establishments. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production and sale of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

**Rule R 1001-1 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment**

- A. Applicability. This rule establishes minimum requirements for packaging and labeling Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a Retail Marijuana Establishment. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product.
- B. Packaging and Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana flower and trim or Retail Marijuana Concentrate to another Retail Marijuana Establishment:
  1. Packaging of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate.

- a. Prior to Transfer to a Retail Marijuana Establishment, Retail Marijuana flower and trim or Retail Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.
  - b. Each Container of Retail Marijuana flower or trim that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rule R 402(C).
  - c. Each Container of Retail Marijuana Concentrate that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana Concentrate, but may include pre-weighed units that are within the sales limit in Rule R 402(C).
2. Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate. Prior to Transfer to a Retail Marijuana Establishment, every Container of Retail Marijuana flower and trim or Retail Marijuana Concentrate shall be affixed with a label that includes at least the following information:
- a. The license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;
  - b. The Harvest Batch Number(s) assigned to the Retail Marijuana or the Production Batch Number(s) assigned to the Retail Marijuana Concentrate;
  - c. If applicable, the license number of the Retail Marijuana Cultivation Facility(ies) that produced the Water-Based Retail Marijuana Concentrate;
  - d. If applicable, the license number of the Retail Marijuana Products Manufacturing Facility(ies) where the Retail Marijuana Concentrate was produced;
  - e. The net contents, using a standard of measure compatibility with the Inventory Tracking System, of the Retail Marijuana or Retail Marijuana Concentrate prior to its placement in the Container; and
  - f. Potency test results as required to permit the receiving Retail Marijuana Establishment to label the Retail Marijuana or Retail Marijuana Concentrate as required by these rules.
- C. Packaging and Labeling of Retail Marijuana Product Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana Product to another Retail Marijuana Establishment:
1. Packaging of Retail Marijuana Product.
    - a. Transfer to a Retail Marijuana Establishment Other Than a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store, Retail Marijuana Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.
    - b. Transfer to a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Store, all Retail Marijuana Product shall be packaged in a Child-Resistant Container that is ready for sale to the consumer as required by the Rule R 1002-1(D)(1).

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2. Labeling of Retail Marijuana Product.
    - a. Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Establishment other than a Retail Marijuana Store, every Container of Retail Marijuana Product shall be affixed with a label that includes at least the following information:
      - i. The license number of the Retail Marijuana Cultivation Facility(ies) where the Retail Marijuana was grown;
      - ii. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product;
      - iii. The Production Batch Number(s) assigned to the Retail Marijuana Product;
      - iv. The net contents, using a standard of measure compatibility with the Inventory Tracking System, of the Retail Marijuana Product prior to its placement in the Container; and
      - v. Potency test results as required to permit the receiving Retail Marijuana Establishment to label the Retail Marijuana Product as required by these rules.
    - b. Transfer to a Retail Marijuana Store. Prior to Transfer to a Retail Marijuana Store, every Container of Retail Marijuana Product shall be affixed with a label ready for sale to the consumer including all information required by Rules R 1002-1(D)(2) and 1003-1(B).
  - D. Packaging and Labeling of Retail Marijuana Seeds and Immature Plants Prior to Transfer to a Retail Marijuana Establishment. A Retail Marijuana Establishment shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana seeds or Immature plants to another Retail Marijuana Establishment:
    1. Packaging of Retail Marijuana Seeds.
      - a. Prior to Transfer to a Retail Marijuana Establishment, Retail Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.
      - b. Each Container of Retail Marijuana seeds that is Transferred to a Retail Marijuana Establishment shall not exceed 10 pounds of Retail Marijuana seeds.
    2. Packaging of Immature Plants. Prior to Transfer to a Retail Marijuana Establishment, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.
    3. Labeling of Retail Marijuana Seeds and Immature Plants. Prior to Transfer to a Retail Marijuana Establishment, every Container of Retail Marijuana seeds and all receptacles holding an Immature plant shall be affixed with a label that includes at least the license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature plant was grown.
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- D.2 Packaging and Labeling of Sampling Units. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall comply with the following minimum packaging and labeling requirements prior to Transferring any Sampling Unit to a Sampling Manager.
1. Packaging of Sampling Units. Prior to Transfer to a Sampling Manager, a Sampling Unit must be placed in a Container. If the Sampling Unit is composed of Retail flower, trim, or Retail Marijuana Concentrate, the Container may, but is not required to, be Child-Resistant; however, the Container shall be placed into a Child-Resistant Exit Package at the point of Transfer to the Sampling Manager. If the Sampling Unit is composed of Retail Marijuana Product, the Sampling Unit shall be packaged in a Child-Resistant Container.
  2. Labeling of Sampling Units. Prior to Transfer to a Sampling Manager, every Container for a Sampling Unit shall be affixed with a label that includes at least the following information:
    - a. Required License Number. The license number for the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility Transferring the Sampling Unit.
    - b. Batch Number(s). The relevant Harvest Batch number and/or Production Batch number from which the Sampling Unit was designated.
    - c. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than  $\frac{1}{2}$  of an inch by  $\frac{1}{2}$  of an inch, with the following statement directly below the Universal Symbol: **“Contains Marijuana. Keep away from children.”**
    - d. Required Potency Statement.
      - i. For a Sampling Unit composed of Retail Marijuana or Retail Marijuana Concentrate, the potency of the Sampling Unit’s active THC and CBD expressed as a percentage.
      - ii. For a Sampling Unit composed of Retail Marijuana Product, the potency of the Sampling Unit’s active THC and CBD expressed in milligrams.
      - iii. The required potency statement shall be displayed either: (1) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (2) highlighted with a bright color, such as yellow.
    - e. Date of Transfer. The label shall include the date of Transfer to the Sampling Unit.
    - f. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:
      - i. “This product was received as a Sampling Unit and may have been produced with undisclosed allergens, solvents, or pesticides, and may pose unknown physical or mental health risks. This product is not for resale and should not be used by anyone else.”

- E. Prohibited Transfers – All Retail Marijuana Establishments. A Retail Marijuana Establishment shall not Transfer to a Retail Marijuana Store and a Retail Marijuana Store shall not accept nor offer for sale, any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is not packaged and labeled in conformance with the requirements of these rules or that does not provide all information necessary to permit the Retail Marijuana Store to package and label the Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product prior to Transfer to a consumer. However, a Retail Marijuana Store is not required to open any tamper evident Marketing Layer received from a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility to verify the Container is Child-Resistant or labeled.
- F. Shipping Containers. Licensees may Transfer multiple Containers of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Retail Marijuana Establishment in a Shipping Container.
1. RFID Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Retail Marijuana, one Production Batch of Retail Marijuana Concentrate, or one Production Batch of Retail Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag. See Rule R 309 – Inventory Tracking System; Rule R 801 – Transport: All Retail Marijuana Establishments.
  2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the consumer is not required to be labeled according to these rules.
- G. Packaging and Labeling of Retail Marijuana Flower and Trim Prior to Transfer to a Medical Research Facility or a Pesticide Manufacturer. The packaging and labeling requirements in these R 1000-1 Series also apply to any Transfer of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility or a Pesticide Manufacturer.
- H. Violation Affecting Public Safety. A violation of any rule in these R 1000-1 Series may be considered a license violation affecting public safety.

**Basis and Purpose – R 1002-1**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(I), 44-12-202(3)(d)(II), 44-12-202(3)(h), 44-12-402(2)(a), 44-12-402(5), 44-12-404(1)(d), 44-12-404(4)(a), and 44-12-404(8), C.R.S. The purpose of this rule is to define general packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to consumers to make informed decisions and first responders in the event of accidental ingestion, over ingestion or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees.

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**Rule R 1002-1 - Packaging and Labeling: General Requirements Prior to Transfer to a Consumer**

- A. Applicability. This rule establishes general requirements for packaging and labeling Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product. The labeling requirements based on intended use in Rule R 1003-1 are in addition to, not in lieu of, the requirements in this rule.
- B. Labeling Requirements – All Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product.
1. Font Size. Labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.
  2. Labels Shall Not Be Designed to Appeal to Children. A Retail Marijuana Establishment shall not place any content on a Container or the Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.
  3. False or Misleading Statements. Label(s) on a Container and any Marketing Layer shall not include any false or misleading statements.
  4. Trademark Infringement Prohibited. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.
  5. Health and Benefit Claims. The label(s) on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the consumer.
  6. Use of English Language. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.
  7. Unobstructed and Conspicuous. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.
  8. Use of the Word “Candy” and/or “Candies” Prohibited.
    - a. Licensees shall not use the word(s) “candy” and/or “candies” on the label of any Container holding Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or of any Marketing Layer.
    - b. Notwithstanding the requirements of this subparagraph, a Retail Marijuana Establishment whose Identity Statement contains the word(s) “candy” and/or “candies” may place its Identity Statement on the label of the Container holding Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product, or of any Marketing Layer.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule R 901(A).
    - a. Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division's regular business hours.
  10. Containers and Marketing Layers. The Container and any Marketing Layer shall have a label with all information required by this R 1000-1 Series. Any intermediary packaging between the Container and the Marketing Layer is not required to be labeled in accordance with these rules.
  11. Exit Packages.
    - a. Exit Packages Permitted for Child-Resistant Containers. A Retail Marijuana Store may but is not required to place a Child-Resistant Container into an Opaque Exit Package at the point of Transfer to the consumer.
    - b. Exit Packages Required for Retail Marijuana Flower, Trim, and Seeds. Any Retail Marijuana flower, trim, or seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer. The Exit Package is not required to be labeled but may include the Retail Marijuana Store's Identity Statement and/or Standardized Graphic Symbol.
- C. Packaging and Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate Prior to Transfer to a Consumer. A Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana flower and trim or Retail Marijuana Concentrate to a consumer:
1. Packaging of Retail Marijuana Flower and Trim. Prior to Transfer to a consumer, Retail Marijuana flower and trim shall be in a Container that does not exceed the sales limit in Rule R 402(C). The Container may but is not required to be Child-Resistant. Any Retail Marijuana flower and trim in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer.
  2. Packaging of Retail Marijuana Concentrate. Prior to Transfer to a consumer, Retail Marijuana Concentrate shall be in a Child-Resistant Container that does not exceed the sales limit in Rule R 402(C). A sealed vaporizer cartridge, disposable vaporizer pen, or syringe-type device that is within an intended use that is listed in Rule R 1003-1(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a consumer. A sealed vaporizer cartridge, disposable vaporizer pen, or syringe-type device with an intended use that is listed in Rule R 1003-1(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but is not required to include "**Contains Marijuana. Keep away from children.**", prior to Transfer to a consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.

3. Labeling of Retail Marijuana Flower and Trim and Retail Marijuana Concentrate. Prior to Transfer to a consumer, every Container of Retail Marijuana flower and trim or Retail Marijuana Concentrate and any Marketing Layer shall be affixed with a label that includes at least the following information:
  - a. Required License Number(s). The license number for each of the following:
    - i. The Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;
    - ii. If applicable, the Retail Marijuana Cultivation Facility(ies) where the Water-Based Retail Marijuana Concentrate was produced;
    - iii. If applicable, the Retail Marijuana Products Manufacturing Facility where the Retail Marijuana Concentrate was produced; and
    - iv. The Retail Marijuana Store that sold the Retail Marijuana or Retail Marijuana Concentrate to the consumer, except the Retail Marijuana Store may affix its license number to the Container or Marketing Layer.
  - b. Batch Numbers. The Harvest Batch Number(s) assigned to the Retail Marijuana or the Production Batch Number(s) assigned to the Retail Marijuana Concentrate.
  - c. Statement of Net Contents. The statement of net contents must identify the net weight of the Retail Marijuana or net weight or volume of Retail Marijuana Concentrate prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.
  - d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than  $\frac{1}{2}$  of an inch by  $\frac{1}{2}$  of an inch, with the following statement directly below the Universal Symbol: **“Contains Marijuana. Keep away from children.”**
  - e. Required Potency Statement. The potency of Retail Marijuana flower or trim shall be expressed as: (1) the percentage of total THC and CBD from the test results for that Harvest Batch, or (2) if the Harvest Batch is not required to be tested, either as: (i) a range of percentages of total THC and CBD that extends from the lowest percentage to the highest percentage for each cannabinoid listed, from every test conducted on that strain of Retail Marijuana cultivated by the same Retail Marijuana Cultivation Facility during the preceding six months or (ii) an average for each cannabinoid listed, from every test conducted on that strain of Retail Marijuana cultivated by the Retail Marijuana Cultivation Facility during the preceding six months. The potency of Retail Marijuana Concentrate’s Total THC and CBD shall be expressed as a percentage. The potency of Retail Marijuana and Retail Marijuana Concentrate shall be displayed either:
    - i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or
    - ii. Highlighted with a bright color such as yellow.
  - f. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or Marketing Layer.

- g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Retail Marijuana Concentrate.
  - h. Ingredient List Including Major Allergens. If applicable, a list of all ingredients used to manufacture the Retail Marijuana Concentrate including identification of any major allergens contained in the Retail Marijuana Concentrate in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.
    - i. Note that this rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.
  - i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:
    - i. **"This product was produced without regulatory oversight for health, safety, or efficacy."**
    - ii. **"This product complies with testing requirements."**
    - iii. **"There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."**
- D. Packaging and Labeling of Retail Marijuana Product and Audited Product. A Retail Marijuana Products Manufacturing Facility and a Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Retail Marijuana Product:
- 1. Packaging of Retail Marijuana Product. Every Retail Marijuana Product shall be in a Child-Resistant Container at the time of Transfer to a Retail Marijuana Store in accordance with the following packaging limits:
    - a. Retail Marijuana Product Other than Edible Retail Marijuana Product. Retail Marijuana Product that is not Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that does not exceed the sales limit in Rule R 402(C). A sealed vaporizer cartridge, disposable vaporizer pen, or syringe-type device that is within the intended use that is listed in Rule R 1003-1(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a consumer. A sealed vaporizer cartridge, disposable vaporizer pen, or syringe-type device within an intended use that is listed in Rule R 1003-1(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but is not required to include "Contains Marijuana. Keep away from children.", prior to Transfer to a consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.
    - b. Edible Retail Marijuana Product. Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:



- iii. The Retail Marijuana Store that sold the Retail Marijuana Product to the consumer, except the Retail Marijuana Store may affix its license number to the Container or Marketing Layer.
- b. Batch Numbers. The Production Batch Number(s) assigned to the Retail Marijuana Product.
- c. Statement of Net Contents. The statement of net contents must identify the net weight, volume, or number of Retail Marijuana Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.
- d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: **“Contains Marijuana. Keep away from children.”**
- e. Ingredient List Including Major Allergens. A list of all ingredients used to manufacture the Retail Marijuana Product including identification of any major allergens contained in the Retail Marijuana Product in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.
  - i. Note that this rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division’s regular business hours.
- f. Required Potency Statement. The potency of the Retail Marijuana Product’s active THC and CBD expressed in milligrams, which shall be displayed either:
  - i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or
  - ii. Highlighted with a bright color such as yellow.
- g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Retail Marijuana Concentrate used as a production input in any Retail Marijuana Product.
- h. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or Marketing Layer.
- i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:
  - i. **“This product was produced without regulatory oversight for health, safety, or efficacy.”**
  - ii. **“This product complies with testing requirements.”**

- iii. **“There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery.”**

E. Packaging and Labeling of Seeds and Immature Plants Prior to Transfer to a Consumer. A Retail Marijuana Store shall comply with the following minimum packaging and labeling requirements prior to Transferring seeds or Immature plants to a consumer:

1. Packaging of Retail Marijuana Seeds. Prior to Transfer to a consumer, Retail Marijuana seeds shall be in a Container. The Container may but is not required to be Child-Resistant. Any Retail Marijuana seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a consumer.
2. Packaging of Immature Plants. Prior to Transfer to a consumer, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.
3. Labeling of Seeds and Immature Plants. Prior to Transfer to a consumer, every Container holding Retail Marijuana seeds and any receptacle containing an Immature plant must be affixed with a label that includes at least the following information:
  - a. Required License Number(s). The license number for each of the following:
    - i. The Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature plant was grown; and
    - ii. The Retail Marijuana Store that sold the seeds or Immature plant to the consumer.
  - b. Universal Symbol. The Universal Symbol on the front of the Container holding seeds and the receptacle containing each Immature plant, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: **“Contains Marijuana. Keep away from children.”**
  - c. Statement of Net Contents for Seeds. A statement of net contents identifying the number of seeds in the Container.
  - d. Date of Sale. The Retail Marijuana Store shall affix the date of sale to the consumer to the Container or receptacle.
  - e. Required Warning Statements:
    - i. **“This product was produced without regulatory oversight for health, safety, or efficacy.”**
    - ii. **“There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery.”**

F. Permissive Information.

1. Identity Statement. A label affixed to a Container of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or any Marketing Layer may include, but is not required to include, the Identity Statement and/or Standardized Graphic Symbol for:

- a. The Retail Marijuana Cultivation Facility(ies) where the Retail Marijuana was grown;
  - b. The Retail Marijuana Products Manufacturing Facility that manufactured the Retail Marijuana Product or Retail Marijuana Concentrate; and/or
  - c. The Retail Marijuana Store that sold the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
2. Nutritional Fact Panel. Label(s) may include, but are not required to include, a nutritional fact panel or dietary supplement fact panel in substantial conformance with 21 CFR 101.9 (2016) or 21 C.F.R. 101.36 (2016) as follows:
- a. For Edible Retail Marijuana Products other than pills, capsules, and tinctures and Food-Based Retail Marijuana Concentrate the nutritional fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.9(C) (2016) which provides the FDA's nutritional labeling requirements for food;
  - b. For pills, capsules, and tinctures, the dietary supplement fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.36 (2016) which provides the FDA's nutritional labeling requirements for dietary supplements.
    - i.. Note that this rule does not include any later amendments or editions to the Code of Federal Regulations. The Division maintains copies of 21 C.F.R. 101.9(C) (2016) and 21 C.F.R. 101.36 (2016), which are available to the public for inspection and copying during the Division's regular business hours.
3. Other Permissive Information. The labeling requirements in these R 1000-1 Series provide only the minimum labeling requirements. Licensees may include additional information on the label(s) so long as such information is consistent with the requirements of these Rules.

### **Basis and Purpose – R 1003-1**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(IV)(D), 44-12-202(3)(a)(VII), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(V), 44-12-202(3)(h), 44-12-402(2)(a), 44-12-404(4)(a), and 44-12-404(8), C.R.S. The purpose of this rule is to define additional labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product (except Retail Marijuana seeds and Immature plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule R 1002-1.

### **Rule R 1003-1 - Additional Labeling Requirements Prior to Transfer to a Consumer**

- A. Applicability. This rule establishes additional labeling requirements for Retail Marijuana (except seeds and Immature plants), Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product. These labeling requirements based on intended use are in addition to, not in lieu of, the requirements in Rule R 1002-1.

- B. Additional Information Required on Every Container (Except Seeds and Immature Plants) Prior to Transfer to a Consumer. Prior to Transfer to a consumer, every Container of Retail Marijuana (except seeds and Immature plants), Retail Marijuana Concentrate, or Retail Marijuana Product and any Marketing Layer must have a label that includes at least the following additional information.
1. Statement of Intended Use. The Container and any Marketing Layer shall identify one or more intended use(s) for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from the following exclusive list:
    - a. Inhaled Product:
      - i. Flower or Trim (including pre-rolled joint and Kief);
      - ii. Solvent-Based Retail Marijuana Concentrate;
      - iii. Water-Based Retail Marijuana Concentrate;
      - iv. Heat/Pressure-Based Retail Marijuana Concentrate;
      - v. Vaporizer cartridge/vaporizer pen.
    - b. For Oral Consumption:
      - i. Food or drink infused with Retail Marijuana;
      - ii. Retail Marijuana Concentrate intended to be consumed orally;
      - iii. Pills and capsules;
      - iv. Tinctures.
    - c. Skin and Body Products:
      - i. Topical;
      - ii. Repealed
      - iii. Transdermal.
    - d. Audited Product:
      - i. Metered Dose Nasal Spray;
      - ii. Pressurized Metered Dose Inhaler;
      - iii. Vaginal Administration;
      - iv. Rectal Administration.
  2. Inhaled Product. The “Inhaled Product” intended use may be used only for products intended for consumption by smoking or vaping where the product is heated or burned prior to consumption. The label(s) on all inhaled product intended use shall also include:

- a. The potency statement required by Rule R 1002-1 for: (1) flower (including pre-rolls and Kief), (2) Solvent-Based Retail Marijuana Concentrate, (3) Water-Based Retail Marijuana Concentrate, (4) Heat/Pressure-Based Retail Marijuana Concentrate shall be stated as the percentage of Total THC and CBD.
  - b. The potency statement required by Rule R 1002-1 for vaporizer cartridges and disposable vaporizer pens shall be stated as either the percentage of Total THC and CBD, or the number of milligrams of Total THC and CBD, per cartridge or pen.
3. For Oral Consumption. The label(s) on all Edible Retail Marijuana Products, including but not limited to confections, liquids, Retail Marijuana-infused foods, pills, capsules and tinctures, shall also include:
  - a. Potency Statement. The potency statement required by Rule R 1002-1 shall be stated as: (1) milligrams of active THC and CBD per serving and (2) milligrams of active THC and CBD per Container where the Container contains more than one serving.
  - b. Additional Warning Statement Required. The following additional warning statement shall be included on the label on the Container or Marketing Layer for all Edible Retail Marijuana Product: **“The intoxicating effects of this product may be delayed by up to 4 hours.”**
  - c. Expiration/Use-By Date. A product expiration date, upon which the Edible Retail Marijuana Product will no longer be fit for consumption, or a use-by-date, upon which the Edible Retail Marijuana Product will no longer be optimally fresh. Once a label with an expiration or use-by date has been affixed to a Container containing an Edible Retail Marijuana Product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.
  - d. Production Date. The date on which the Edible Retail Marijuana Product was produced which may be included in the Batch Number required by Rule R 1002-1.
  - e. Statement Regarding Refrigeration. If an Edible Retail Marijuana Product is perishable, a statement that the product must be refrigerated.
4. Skin and Body Products (Topical and Transdermal). The “Skin and Body Products” intended use may be used only for products intended for consumption by topical or transdermal application, and must be intended for external use only. The label(s) on all skin and body products shall also include:
  - a. Topical Product Potency Statement. For topical product the potency statement required by Rule R 1002-1 shall be stated as the number of milligrams of active THC and CBD per Container.
  - b. Transdermal Product Potency Statement. For transdermal product, the potency statement required by Rule R 1002-1 shall be stated as the number of milligrams of active THC and CBD per transdermal product, and the total number of milligrams of active THC and CBD per Container.

- c. Expiration/Use-By Date. A product expiration or use-by date, after which the skin and body product will no longer be fit for use. Once a label with an expiration or use-by date has been affixed to any Container holding a skin and body product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.
        - d. Production Date. The date on which the skin and body product was produced which may be included in the Batch Number required by Rule R 1002-1.
  - 5. Audited Product. Packaging and labeling for all Audited Products: (i) metered dose nasal spray, (ii) pressurized metered dose inhaler, (iii) vaginal administration, or (iv) rectal administration shall include:
    - a. All packaging and labeling requirements required by these R 1000-1 Rules for Retail Marijuana Products; except Rule R 607 controls where the context otherwise clearly requires.
    - b. Audited Product shall be packaged and labeled for Transfer to a consumer prior to Transfer from a Retail Marijuana Products Manufacturing Facility.
    - c. Expiration/Use-By Date. A product expiration date that is appropriate for the Audited Product when stored at room temperature as verified by testing required by Rule R 607. Once a label with an expiration date has been affixed to a Container containing and Audited Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date.
    - d. Production Date. The date on which the Audited Product was produced, which may be included in the Batch Number required by Rule R 1002-1
- C. No Other Intended Use Permitted. No intended use other than those identified in this rule shall be identified on any label, except as permitted by an Alternative Use Designation approved by the State Licensing Authority pursuant to Rule R 607. Licensees shall accurately identify all intended use(s) from the exclusive list of intended uses in this Rule, or as required by the Alternative Use Designation, on the label.
- 1. Alternative Use Product. No Retail Marijuana Establishment shall Transfer or accept an Alternative Use Product unless the Alternative Use Product received an Alternative Use Designation in accordance with Rule R 607 and complied with all the requirements of Rules R 607 and R 1001-1 through 1003-1, and with any additional packaging and labeling requirements identified in the Alternative Use Designation. At a minimum the label(s) on all Alternative Use Products shall include:
    - a. All packaging and labeling requirements applicable to the Retail Marijuana Products Manufacturing Facility by these Rules R 1000-1 Series unless inconsistent with the Alternative Use Designation in which case the Alternative Use Designation shall control.
    - b. Expiration/Use-By Date. A product expiration date that is appropriate for the Alternative Use Product when stored at room temperature as verified by a Retail Marijuana Testing Facility. Once a label with an expiration date has been affixed to a Container containing Alternative Use Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date.
    - c. Production Date. The date on which the Alternative Use Product was produced, which may be included in the Batch Number required by Rule R 1002-1.

- d. All other requirements identified by the Alternative Use Designation.
- D. Multiple Intended Uses. Any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed. Licensees shall not counsel or advise any consumer to use Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product other than in accordance with the intended use(s) identified on the label.

## **R 1100 Series – Signage and Advertising**

### **Basis and Purpose – R 1102**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(d)(I), and 44-12-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clearly delineate that a Retail Marijuana Establishment is not permitted to make deceptive, false, or misleading statements in Advertising materials or on any product or document provided to a consumer.

### **R 1102 – Advertising General Requirement: No Deceptive, False or Misleading Statements**

A Retail Marijuana Establishment shall not engage in Advertising that is deceptive, false, or misleading. A Retail Marijuana Establishment shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a consumer.

### **Basis and Purpose – R 1103**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(d)(I), and 44-12-901(4)(b), C.R.S. Authority also exists throughout Article XVIII, Section 16 of the Colorado Constitution. The purpose of this rule is to clarify the definition of the term “minor” as used in the Retail Code and these rules.

### **R 1103 – The Term “Minor” as Used in the Retail Code and These Rules**

The term “minor” as used in the Retail Code and these rules means an individual under the age of 21.

### **Basis and Purpose – R 1104**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to television Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

#### **R 1104 – Advertising: Television**

- A. Television Defined. As used in this rule, the term “television” means a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming. Television includes any video programming downloaded or streamed via the internet.
- B. Television Advertising. A Retail Marijuana Establishment shall not utilize television Advertising unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.

#### **Basis and Purpose – R 1105**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to radio Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

**R 1105 – Advertising: Radio**

- A. Radio Defined. As used in this rule, the term “radio” means a system for transmitting sound without visual images, and includes broadcast, cable, on-demand, satellite, or internet programming. Radio includes any audio programming downloaded or streamed via the internet.
- B. Radio Advertising. A Retail Marijuana Establishment shall not engage in radio Advertising unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.

**Basis and Purpose – R 1106**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising in print media.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

#### **R 1106 – Advertising: Print Media**

A Retail Marijuana Establishment shall not engage in Advertising in a print publication unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the publication’s readership is reasonably expected to be under the age of 21.

#### **Basis and Purpose – R 1107**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising on the internet.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

### **R 1107 – Advertising: Internet**

A Retail Marijuana Establishment shall not engage in Advertising via the internet unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the internet web site is reasonably expected to be under the age of 21. See *also* Rule R 1114 – Pop-Up Advertising.

### **Basis and Purpose – R 1108**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising in a medium designed to target out-of-state residents.

The operation of Retail Marijuana Establishments in Colorado is permitted solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Colorado is one of the first two states to have authorized the regulated growth and sale of Retail Marijuana, and it has done so in the context of a longstanding federal ban on such activities. The State Licensing Authority finds that it is essential to regulate Retail Marijuana in the state of Colorado in a manner that does not negatively impact the ability of other states or the federal government to enforce their drug laws. The State Licensing Authority finds that the below restrictions on Advertising as defined in these Retail Marijuana rules are critical to prevent the diversion of Retail Marijuana outside of the state. The State Licensing Authority will continue to monitor and evaluate the best way to implement the state constitutional directive to establish appropriate Advertising restrictions for this emerging industry.

**R 1108 – Advertising: Targeting Out-of-State Persons Prohibited.**

A Retail Marijuana Establishment shall not engage in Advertising that specifically targets Persons located outside the state of Colorado.

**Basis and Purpose – R 1109**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(d)(I), and 44-12-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false.

**R 1109 – Signage and Advertising: No Safety Claims Because Regulated by State Licensing Authority**

No Retail Marijuana Establishment may engage in Advertising or utilize signage that asserts its products are safe because they are regulated by the State Licensing Authority.

**Basis and Purpose – R 1110**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(d)(I), and 44-12-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false.

**R 1110 – Signage and Advertising: No Safety Claims Because Tested by a Retail Marijuana Testing Facility**

A Retail Marijuana Establishment may advertise that its products have been tested by a Retail Marijuana Testing Facility, but shall not engage in Advertising or utilize signage that asserts its products are safe because they are tested by a Retail Marijuana Testing Facility.

**Basis and Purpose – R 1111**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to outdoor Advertising and signage.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

**R 1111 – Signage and Advertising: Outdoor Advertising**

- A. Local Ordinances. In addition to any requirements within these rules, a Retail Marijuana Establishment shall comply with any applicable local ordinances regulating signs and Advertising.
- B. Outdoor Advertising Generally Prohibited. Except as otherwise provided in this rule, it shall be unlawful for any Retail Marijuana Establishment to engage in Advertising that is visible to members of the public from any street, sidewalk, park or other public place, including Advertising utilizing any of the following media: any billboard or other outdoor general Advertising device; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner.
- C. Exception. The prohibitions set forth in this rule shall not apply to any fixed sign that is located on the same zone lot as a Retail Marijuana Establishment and that exists solely for the purpose of identifying the location of the Retail Marijuana Establishment and otherwise complies with any applicable local ordinances.

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**Basis and Purpose – R 1112**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to prohibit signage and Advertising that has a high likelihood of reaching individuals under the age of 21.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

**R 1112 – Signage and Advertising: No Content That Targets Minors**

A Retail Marijuana Establishment shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

**Basis and Purpose – R 1113**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I)(F), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to marketing directed toward location-based devices.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. Art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The State Licensing Authority finds that the restrictions contained in this rule are necessary to prevent Advertising and signage that has a high likelihood of reaching minors. See §44-12-202(3)(c), C.R.S. The language in this rule was taken from the list of discretionary rules articulated by the General Assembly in House Bill 13-1317. See §44-12-202(3)(c)(1)(F), C.R.S. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

### **R 1113 – Advertising: Advertising via Marketing Directed Toward Location-Based Devices**

A Retail Marijuana Establishment shall not engage in Advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 year of age or older and includes a permanent and easy opt-out feature.

#### **Basis and Purpose – R 1114**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I)(C), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to pop-up Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. See §44-12-202(3)(d)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse.

Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The State Licensing Authority finds that the restrictions contained in this rule are necessary to prevent Advertising and signage that has a high likelihood of reaching minors. The language in this rule was taken from the list of discretionary rules articulated by the General Assembly in House Bill 13-1317. See §44-12-202(3)(c)(1)(C), C.R.S. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

### **R 1114 – Pop-Up Advertising**

A Retail Marijuana Establishment shall not utilize unsolicited pop-up Advertising on the internet.

### **Basis and Purpose – R 1115**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b) and 44-12-202(3)(d)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to event sponsorship.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. See for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. See §44-12-202(3)(d), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors’ decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. This rule in particular received extensive commentary from the industry. It has been modified and clarified in response to that commentary. The written and oral testimony and commentary included a variety of recommended standards for determining when Advertising has a high likelihood of reaching minors. After reviewing the rulemaking record, the State Licensing Authority has determined that it is appropriate to utilize the current voluntary standard in the alcohol industry that Advertising that is likely to reach an audience comprise of more than 30 percent individuals under the age of 21 should be prohibited, as such advertising has a high likelihood of reaching minors. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply only to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the appropriate way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate Advertising and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

## R 1115 – Advertising: Event Sponsorship

A Retail Marijuana Establishment may sponsor a charitable, sports, or similar event, but a Retail Marijuana Establishment shall not engage in Advertising at, or in connection with, such an event unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be under the age of 21.

## R 1200 Series – Enforcement

### Basis and Purpose – R 1201

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(II), 44-12-202(3)(c)(III), and 44-12-602, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

### R 1201 – Duties of Employees of the State Licensing Authority

#### A. Duties of Director

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.
2. The Director may authorize Division employees to perform tasks delegated from the State Licensing Authority.
3. The Director or his or her authorized Division employees may consult with any state or local agency for the purpose of the proper administration of these rules, the Medical Marijuana Rules, or the Medical Code and Retail Code.

#### B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Retail Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Retail Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Retail Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Retail Code, probable cause exists that a crime related to such laws has been or is being committed;
2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product;
3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any premises where the Licensee's Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are grown, stored, cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed or unlicensed activity;
5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product;
6. Require Applicants to submit complete and current applications and fees and other information the Division deems necessary to make licensing decisions and approve material changes made by the Applicant or Licensee;
7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Licensees and Applicants for Retail Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and
8. Exercise any other power or duty authorized by law.

C. Duties of State Licensing Authority and Division Employees.

1. Employees shall maintain the confidentiality of State Licensing Authority and Division records and information. For confidentiality requirements of State Licensing Authority and Division employees who leave the employment of the State Licensing Authority, see Rule R 1308 - Confidential Information and Former State Licensing Authority Employees.
2. Pursuant to subsection 44-11-201(3), C.R.S., State Licensing Authority employees with regulatory oversight responsibilities for marijuana businesses licensed by the state licensing authority shall not work for, represent, or provide consulting services to or otherwise derive pecuniary gain from a marijuana business licensed by the State Licensing Authority or other business entity established for the primary purpose of providing services to the marijuana industry for a period of six months following his or her last day of employment with the State Licensing Authority.
3. Pursuant to subsection 44-11-201(4), C.R.S., disclosure of confidential records or information in violation of the provisions of the Medical Code (some of which also pertain to regulation of Retail Marijuana Establishments) constitutes a class 1 misdemeanor.

**Basis and Purpose – R 1202**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(II), 44-12-202(3)(c)(III), and 44-12-602, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

**R 1202 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time**

A. Applicants and Licensees Shall Cooperate with Division Employees

1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Retail Code.
2. No Applicant or Licensee shall by any means interfere with, obstruct or impede the State Licensing Authority or any employee of the Division from exercising their duties pursuant to the provisions of the Retail Code and all rules promulgated pursuant to it. This would include, but is not limited to:
  - a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from exercising their duties. The term “threatening force” includes the threat of bodily harm to such individual or to a member of his or her family;
  - b. Denying investigators of the Division access to premises where the licensee’s Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product are grown, stored, cultivated, manufactured, tested, distributed, or Transferred during business hours or times of apparent activity;
  - c. Providing false or misleading statements;
  - d. Providing false or misleading documents and records;
  - e. Failing to timely produce requested books and records required to be maintained by the Licensee; or
  - f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.
3. Failure to comply with this Rule may constitute a license violation affecting public safety.

**B. Administrative Hold**

1. To prevent destruction of evidence, diversion or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation, a Division investigator may order an administrative hold of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product pursuant to the following procedure:
  - a. If during an investigation or inspection of a Licensee, a Division investigator develops reasonable grounds to believe certain Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product constitute evidence of acts in violation of the Retail Code or rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The notice of administrative hold shall provide a documented description of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to be subject to the administrative hold and a concise statement that is promptly issued and approved by the Director or his or her designee regarding the reasons for issuing the administrative hold.

- b. Following the issuance of a notice of administrative hold, the Division will identify the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule R 309 Retail Marijuana Establishments: Inventory Tracking System.
- c. The Licensee shall completely and physically segregate the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.
- d. While the administrative hold is in effect, the Licensee is prohibited from, giving away, Transferring, transporting, or destroying the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to the administrative hold, except as otherwise authorized by these rules.
- e. While the administrative hold is in effect, the Licensee must safeguard the Retail Marijuana, Retail Marijuana Concentrate, and Retail Product subject to the administrative hold, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Retail Code and the rules of the State Licensing Authority.
- f. Nothing herein shall prevent a Licensee from voluntarily surrendering Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
- g. Nothing herein shall prevent a Licensee from the continued possession, cultivation or harvesting of the Retail Marijuana subject to the administrative hold. All Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product subject to an administrative hold must be put into separate Harvest Batches.
- h. At any time after the initiation of the administrative hold, the Division may lift the administrative hold, order the continuation of the administrative hold pending the administrative process, or seek other appropriate relief.

C. Voluntary Surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product

- 1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Division.
  - a. Such voluntary surrender may require destruction of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the presence of a Division investigator and at the Licensee's expense.
  - b. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

2. The voluntary surrender form may be utilized in connection with a stipulated agency order through which the Licensee waives the right to hearing and any associated rights.
3. The voluntary surrender form may be utilized even if the Licensee does not waive the right to hearing and any associated rights, with the understanding that the outcome of the hearing does not impact the validity of the voluntary surrender.
4. A Licensee, after a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Division.
  - a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.
  - b. Such voluntary surrender may require destruction of any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the presence of a Division investigator and at the Licensee's expense.
  - c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

### **Basis and Purpose – R 1203**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(I), 44-12-202(3)(c)(III), and 44-12-602, C.R.S. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the Licensee is ordered to surrender and/or destroy unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order.

### **R 1203 – Disposition of Unauthorized Retail Marijuana**

- A. After a Final Agency Order Orders the Destruction of Marijuana. If the State Licensing Authority issues a Final Agency Order pursuant to section 44-12-602, C.R.S., that orders the destruction of some or all of the Licensee's unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product, the Licensee may:
  1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, and unauthorized Retail Marijuana Product that are described in the Final Agency Order in accordance with the provisions of Rule R 1202(C).
  2. Seek A Stay. The Licensee may file a petition for a stay of the Final Agency Order with the Denver district court within 15 days of the date of the Final Agency Order.
  3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product as set forth in subparagraph (A)(1) of this rule; or (2) properly seek a stay of the Final Agency Order as set forth in subparagraph (A)(2) of this rule, the Division will enter upon the Licensed Premises and seize and destroy the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, and/or Retail Marijuana Product that are the subject of the Final Agency Order.

- B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Retail Marijuana, Unauthorized Retail Marijuana Concentrate, and Unauthorized Retail Marijuana Product. The following requirements apply regardless of whether the Licensee voluntarily surrenders its unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product seeks a stay of agency action, or takes no action:
1. The 15 day period set forth in section 44-12-602(5), C.R.S., and this rule shall include holidays and weekends.
  2. During the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product the Licensee shall not sell, destroy, or otherwise let any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product that are subject to the Final Agency Order leave the Licensed Premises, unless specifically authorized by the State Licensing Authority or Court order.
  3. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product, the Licensee must safeguard any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product in its possession or control and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Retail Code and the rules of the State Licensing Authority.
  4. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency order and the destruction of the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product.
  5. If a district attorney notifies the Division that some or all of the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product is involved in an investigation, the Division shall not destroy the unauthorized Retail Marijuana, unauthorized Retail Marijuana Concentrate, or unauthorized Retail Marijuana Product until approved by the district attorney.

#### **Basis and Purpose - R 1204**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(I), and 44-12-202(3)(c)(III), 44-12-202(3)(c)(VII), and 44-12-202(3)(c)(VIII), C.R.S. This rule explains that Division investigators may exercise discretion in issuing written warning when, during the course of a compliance check or investigation, the Division investigator identifies a violation(s) of the Retail Code or the rules promulgated thereunder. This rule also explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of a written warning or an assurance of voluntary compliance.

#### **R 1204 – Written Warnings and Assurances of Voluntary Compliance**

- A. Written Warnings. During an investigation, if a Division investigator identifies a violation(s) of the Retail Code or the rules promulgated thereunder, the Division investigator may issue a written warning in lieu of recommending immediate administrative action.

1. The written warning shall identify the alleged violation(s).
  2. The written warning shall not constitute an admission of a violation(s) for any purpose or finding of a violation(s) by the State Licensing Authority, and shall not be evidence that Licensee violated the Retail Code, or the rules promulgated thereunder.
  3. A written warning shall constitute evidence in any subsequent administrative proceeding, if relevant, that the Licensee was previously warned of the violation(s).
  4. The Division may in its discretion initiate a subsequent administrative action and prove the violation(s) that was the subject of the written warning
- B. Assurances of Voluntary Compliance. The Director of the Division may accept an assurance of voluntary compliance regarding any act or practice alleged to violate the Retail Code, or the rules and regulations thereunder.
1. The assurance must be in writing and may include a stipulation for the voluntary payment of the cost commensurate with the acts or practices and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices.
  2. An assurance of voluntary compliance may not be considered an admission of a violation(s) for any purpose or a finding of a violation(s) by the State Licensing Authority; however, the assurance of voluntary compliance shall constitute evidence in any subsequent administrative proceeding that Licensee entered into an agreement to comply with the Retail Code, and/or the rules promulgated thereunder.
  3. The State Licensing Authority may approve or review an assurance of voluntary compliance.
- C. Neither a written warning or an assurance of voluntary compliance constitutes a disciplinary action.

## **R 1300 Series – Discipline**

### **Basis and Purpose – R 1301**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(3)(a)(I), 44-12-202(3)(a)(XVI), 44-12-202(3)(c)(VIII), 44-12-601, and 24-4-105 C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify how the disciplinary process for non- summary license suspensions and license revocations is initiated.

### **R 1301 – Disciplinary Process: Non-Summary Suspensions**

- A. How a Disciplinary Action is Initiated
1. If the State Licensing Authority, on its own initiative or based on a complaint, has reasonable cause to believe that a Licensee has violated the Retail Code, any rule promulgated pursuant to it, or any of its orders, the State Licensing Authority shall issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why its license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

2. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended, revoked, restricted, fined, or subject to other disciplinary sanction should the charges contained in the notice be sustained upon final hearing.
- B. Disciplinary Hearings. Disciplinary hearings will be conducted in accordance with Rule R 1304 – Administrative Hearings.
- C. Renewal. The issuance of an Order to Show Cause does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

### **Basis and Purpose – R 1302**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(3)(a)(I), 44-12-202(3)(a)(XVI) 44-12-202(3)(c)(VIII), 24-4-104(4)(a), 44-12-601, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to set forth the process for summary suspensions when the State Licensing Authority has cause to immediately suspend a license prior to and pending a hearing and final agency order. Summary suspensions will be imposed when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and welfare imperatively require emergency action. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause.

### **R 1302 – Summary Suspensions**

- A. How a Summary Suspension Action is Initiated
1. When the State Licensing Authority has reasonable grounds to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety, or welfare imperatively requires emergency action it shall serve upon the Licensee a Summary Suspension Order that temporarily or summarily suspends the license.
  2. The Summary Suspension Order shall identify the nature of the State Licensing Authority's basis for the summary suspension. The Summary Suspension Order shall also provide an advisement that the Licensee may be subject to further discipline or revocation following a hearing on an Order to Show Cause.
  3. Proceedings for suspension or revocation shall be promptly instituted and determined after the Summary Suspension Order is issued in accordance with the following procedure:
    - a. After the Summary Suspension Order is issued, the State Licensing Authority shall promptly issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why the Licensee's license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

- b. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The Order to Show Cause shall also provide an advisement that the license could be suspended, revoked, restricted, fined or subject to disciplinary sanction should the charges contained in the Order to Show Cause be sustained upon final hearing.
- c. The Order to Show Cause shall be filed with the Department's Hearings Division. The hearing on the allegations set forth in the Order to Show Cause shall be expedited to the extent practicable and will be conducted in accordance with Rule M 1304 – Administrative Hearings.

- B. Duration of Summary Suspension. Unless lifted by the State Licensing Authority, the Summary Suspension Order shall remain in effect until issuance of a Final Agency Order.

### **Basis and Purpose – R 1303**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(3)(a)(I), 44-12-202(3)(a)(XVI) 44-12-202(3)(c)(VIII), 24-4-104(4)(a), 44-12-601, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension.

### **R 1303 – Suspension Process: Regular and Summary Suspensions**

- A. Signs Required During Suspension. Every Licensee whose license has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be at least 17 inches in length and 11 inches in width containing lettering not less 1/2" in height.

- 1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

RETAIL MARIJUANA LICENSES ISSUED

FOR THESE PREMISES HAVE BEEN

SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

FOR VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

- 2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

RETAIL MARIJUANA LICENSES ISSUED  
FOR THESE PREMISES HAVE BEEN  
SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY  
FOR ALLEGED VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this rule shall be deemed a violation of these rules.

B. Prohibited Activity During Active Suspension

1. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not permit the, serving, giving away, distribution, manufacture, sampling, acquisition, purchase, Transfer, or transport of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product on the Licensed Premises, nor allow customers to enter the Licensed Premises.
2. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee may continue to possess, maintain, cultivate or harvest Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product on the Licensed Premises. The Licensee must fully account for all such Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System. The Licensee must safeguard any Retail Marijuana or Retail Marijuana Product in its possession or control. The Licensee must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Retail Code and the rules of the State Licensing Authority.

C. Removal and Destruction of Marijuana, Retail Marijuana Concentrate, and Marijuana Product. Retail Marijuana and Retail Marijuana Product shall not be removed from the Licensed Premises or destroyed unless and until:

1. The provisions described in section 44-12-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. See *also* Rule R 1203 – Disposition of Unauthorized Retail Marijuana;
2. The Licensee has voluntarily surrendered the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in accordance with Rule R 1202(C) – Voluntary Surrender;
3. The State Licensing Authority has seized the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product pursuant to an Administrative Warrant. See Rule R 1309 – Administrative Warrant.

D. Renewal. The issuance of a suspension or an Order of Summary Suspension does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

## Basis and Purpose – R 1304

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(2)(d), 44-12-202(3)(a)(I), 44-12-202(3)(a)(XVI), 44-12-202(3)(c)(VIII), 44-11-202(1)(d), 44-12-601, 24-4-104, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish what entity conducts the administrative hearings, the procedures governing administrative hearings, and other general hearings issues. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause, and to clarify that an answer is required only for two types of administrative notices: an Order to Show Cause and a Notice of Grounds for Denial.

## R 1304 – Administrative Hearings

### A. General Procedures

1. Hearing Location. Hearings will generally be conducted by the Department's Hearings Division. Unless the hearing officer orders a change of location based on good cause, as described in this rule, hearings generally will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer. Under unusual circumstances where justice, judicial economy and convenience of the parties would be served, hearings may be held in other locations in the state of Colorado.
2. Scope of Hearing Rules. This rule shall be construed to promote the just and efficient determination of all matters presented.
3. Right to Legal Counsel. Any Denied Applicant or Respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the Denied Applicant's or Respondent's expense.

### B. Requesting a Hearing

1. A Denied Applicant that has been served with a Notice of Denial may request a hearing within 60 days of the service of the Notice of Denial by making a written request for a hearing to the Division. The request must be submitted by United States mail or by hand delivery. Email or fax requests will not be considered. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the Notice of Denial. An untimely request for hearing will not be considered.
2. A Denied Applicant that timely requests a hearing following issuance of a Notice of Denial shall be served with a Notice of Grounds for Denial, and shall be entitled to a hearing regarding the matters addressed therein.
3. A Respondent that has been served with an Order to Show Cause shall be entitled to a hearing regarding the matters addressed therein.

C. When a Responsive Pleading is Required

1. A Respondent shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Order to Show Cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.
2. A Denied Applicant shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Denied Applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

D. Hearing Notices

1. Notice to Set. The Division shall send a notice to set a hearing to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record.
2. Notice of Hearing. The Hearings Division shall notify the Division and Denied Applicant or Respondent of the date, place, time and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.
  - a. If an Order of Summary Suspension has issued, the hearing on the Order to Show Cause will be scheduled and held promptly.
  - b. Continuances may be granted for good cause, as described in this rule, shown. A motion for a continuance must be timely.
  - c. For purposes of this rule, good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

E. Prehearing Matters Generally

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the Hearing Officer's own motion. If a prehearing conference is held and a prehearing order is issued by the Hearing Officer, the prehearing order will control the course of the proceedings. Such prehearing conferences may occur by telephone.
2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with subsections (D)(2)(b) and (c) of this Rule.
3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the Hearing Officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:
  - a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.
  - b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
  - c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and Denied Applicant or Respondent using letters.
  - d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.
4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.
5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

F. Conduct of Hearings

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed.
  3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.
  4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.
    - a. Reports and other information that would otherwise be confidential pursuant to Subsections 44-11-202(1)(d) and 44-12-202(2)(d), C.R.S., may be introduced as exhibits at hearing.
    - b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.
  5. Court Rules.
    - a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a Hearing Officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.
    - b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a Hearing Officer.
  6. Exhibits.
    - a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.
    - b. The Division shall use numbers to mark its exhibits.
    - c. The Denied Applicant or Respondent shall use letters to mark its exhibits.
  7. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.
- G. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an Initial Decision subject to review by the State Licensing Authority pursuant to the Colorado Administrative Procedure Act and as set forth in Rule R 1306 – Administrative Hearing Appeals/Exceptions to Initial Decision.

- H. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the State Licensing Authority, or with conflicts counsel representing the hearing officer or State Licensing Authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the State Licensing Authority in connection with a hearing or with the exceptions process.
- I. Marijuana Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

### **Basis and Purpose – R 1305**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(3)(a)(I), 24-4-105, and 44-12-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process.

### **R 1305 – Administrative Subpoenas**

- A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the Notice of Denial or Order to Show Cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.
- B. Hearing Officer May Issue Subpoenas
1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.
  2. Requests for subpoenas to be issued by the hearing officer must be delivered in person or by mail to the office of the Department of Revenue – Hearings Division, 1881 Pierce St. #106, Lakewood, CO 80214. Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.
  3. Requests for subpoenas to be issued by the hearing officer must be made on a “Request for Subpoena” form authorized and provided by the Hearings Division. A hearing officer shall not issue a subpoena unless the request contains the following information:
    - a. Name of Denied Applicant or Respondent;
    - b. License or application number;
    - c. Case number;
    - d. Date of hearing;
    - e. Location of hearing, or telephone number for telephone check-in;
    - f. Time of hearing;
    - g. Name of witness to be subpoenaed; and

- h. Mailing address of witness (home or business).
  4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.
  5. Requests for subpoenas shall be signed by the requesting party or its counsel.
  6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.
- C. Service of Subpoenas
1. Service of any subpoena is the duty of the party requesting the subpoena.
  2. All subpoenas must be served at least two business days prior to the hearing.
- D. Subpoena Enforcement
1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the Hearing Officer.
  2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.

#### **Basis and Purpose – R 1306**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(2)(c), 44-12-202(3)(a)(I), 24-4-105, and 44-12-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how parties may appeal a hearing officer's Initial Decision pursuant to the Administrative Procedure Act.

#### **R 1306 – Administrative Hearing Appeals/Exceptions to Initial Decision**

- A. Exception(s) Process. Any party may appeal an Initial Decision to the State Licensing Authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the Initial Decision to the Denied Applicant or Respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these rules shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the State Licensing Authority is: State Licensing Authority, 1375 Sherman Street, 4<sup>th</sup> Floor, Denver, CO 80203.
- B. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the State Licensing Authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

- C. Deadline Modifications. The State Licensing Authority may modify deadlines and procedures related to the filing of exceptions to the Initial Decision upon motion by either party for good cause shown.
- D. No Oral Argument Allowed. Requests for oral argument will not be considered.

### **Basis and Purpose – R 1307**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(XVI), 44-11-202(2)(a)(XXV), and 44-12-601(3)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IX). The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Retail Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule R 1307(A) was amended to include additional license violations affecting public safety and Rule R 1307(C.1) was added.

### **R 1307 – Penalties**

- A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:
1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Retail Marijuana sales to persons under the age of 21 years, consuming marijuana on the Licensed Premises, Retail Marijuana sales in excess of the relevant transaction limit, permitting the diversion of Retail Marijuana outside the regulated distribution system, possessing Retail Marijuana or Retail Marijuana Product obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Inventory Tracking System, failing to continuously escort a visitor in a Limited Access Area, violations related to co-located Medical Marijuana Businesses and Retail Marijuana Establishments, violations related to R&D Co-Location Permits, failure to maintain books and records to fully account for all transactions of the business, failure to cooperate with Division investigators during the course of an investigation, failure to account fully for all Transfers of Sampling Units, Advertising violations directly targeting minors, or packaging or labeling violations that directly impact consumer safety. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.
  2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include but are not limited to, Advertising and/or marketing violations, packaging or labeling violations that do not directly impact consumer safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the inventory tracking procedures. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to \$10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.
- B. Other Factors
1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.
  2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.
  3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 44-12-601, C.R.S., in lieu of having its license suspended for all or part of the suspension.
- C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:
1. Any prior violations that the Licensee has admitted to or was found to have engaged in.
  2. Good faith measures by the Licensee to prevent the violation, including the following:
    - a. Proper supervision;
    - b. Regularly-provided and documented employee training, provided the Licensee demonstrates all reasonable training measures were delivered prior to the Division's investigation;
    - c. Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered; and
    - d. Previously established and maintained responsible-vendor designation pursuant to Rule R 407.
  3. Licensee's past history of success or failure with compliance checks.
  4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.
  5. Willfulness and deliberateness of the violation.
  6. Likelihood of reoccurrence of the violation.
  7. Circumstances surrounding the violation, which may include, but are not limited to:

- a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.
  - b. The dress or appearance of an underage operative used during an underage compliance check (e.g., the operative was wearing a high school letter jacket).
  - c. Licensee self-reported violation(s) of the Retail Code or rules promulgated pursuant to the Retail Code.
8. Owner or manager is the violator or has directed an employee or other individual to violate the law.
  9. Repealed.

### Basis and Purpose – R 1308

The statutory authority for this rule includes but is not limited to sections 44-11-201(3), 44-11-201(4), 44-12-202(2)(b), 44-12-202(2)(d), 44-12-202(3)(a)(XVI), 44-12-202(3)(a)(XVII), 44-12-202(3)(c)(I), , and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to assure Licensees do not use unauthorized confidential information at any time and do not engage the services of former State Licensing Authority or Division employees with regulatory oversight responsibilities for licensed marijuana businesses for the first 6 months following State Licensing Authority or Division employment.

### R 1308 – Confidential Information and Former State Licensing Authority Employees

- A. Misdemeanor if Disclosed. Disclosure of confidential records or information in violation of the Medical Code constitutes a class 1 misdemeanor pursuant to subsection 44-11-201(4), C.R.S.
  1. Licensees, and employees or agents Licensees, shall not obtain or utilize confidential information the Licensee, employee or agent is not lawfully entitled to possess and acquire through use or misuse of Division processes or Division-approved systems. For confidentiality requirements of State Licensing Authority and Division employees, see Rule R 1201 – Duties of Employees of the State Licensing Authority.
  2. Any Licensee, and any employee or agent of a Licensee, who is authorized to access the Division's Inventory Tracking System and/or have access to confidential information derived from Division sources, shall utilize the confidential information only for a purpose authorized by the Division or these Rules.
  3. All Licensees, and all employees and agents of Licensees, shall not use the Inventory Tracking System for any purpose other than tracking the Licensee's Retail Marijuana and Retail Marijuana Product.
- B. Six-Month Prohibition from Working with Former State Licensing Authority Employees. State Licensing Authority or Division employees with regulatory oversight responsibilities for Medical Marijuana Businesses or Retail Marijuana Establishments are prohibited from working for, representing, or providing consulting services to or otherwise deriving pecuniary gain from a Licensee for a period of six months following his or her last day of employment with the State Licensing Authority or Division.
  1. Any Licensee who utilizes, employs, consults, seeks advice from, or contracts with a former employee of the State Licensing Authority or the Division prior to the conclusion of the six-month period shall be in violation of the Retail Code.

2. Any Licensee who possesses, utilizes or re-discloses confidential information obtained from a former State Licensing Authority or Division employee at any time shall be in violation of the Retail Code.

### **Basis and Purpose – R 1309**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(V), 44-12-202(3)(a)(XVI), 44-12-202(3)(c)(I), 44-12-202(3)(c)(III), and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to establish the circumstances under which the Division may seek from a district court an administrative warrant to search and/or seize marijuana and marijuana products, or other evidence indicating a violation of the Retail Code or rules. The Division has encountered circumstances that would have justified such a warrant. Establishing the criteria under which the Division may seek an administrative warrant will give fair notice to the regulated community regarding the types of violations that would lead to a request for an administrative warrant.

### **R 1309 – Administrative Warrants**

- A. Criteria. The Division may seek from a district court an administrative search warrant authorizing search and seizure in circumstances in which the Division makes a proper showing that:
  1. A Licensee has refused entry of Division investigators during business hours or times of apparent activity;
  2. A Licensee subject to an administrative hold or summary suspension has failed to comply with applicable rules; or
  3. A Licensee otherwise has acted in a manner demonstrating disregard for the Retail Code and the State Licensing Authority's rules or that threatens the public health, safety, and welfare.
- B. Affidavit. When seeking an administrative search warrant, the Division will supply the district court with a sworn affidavit explaining the bases for seeking the warrant.
- C. Seized Property. If the Division seizes marijuana, neither the Division nor the State Licensing Authority shall cultivate or care for any seized marijuana or marijuana products. The Division may seek from the district court an order to destroy any such marijuana or marijuana products.

### **R 1400 Series – Division, Local Jurisdiction, and Law Enforcement Procedures**

#### **Basis and Purpose – R 1401**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(c)(II), 44-12-202(3)(c)(III), and 44-11-301(1), C.R.S. This rule gives general instructions regarding Retail Marijuana Establishment administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law enforcement's authority to investigate and take any necessary action with regard to Retail Marijuana Establishments remains unaffected by the Retail Code or any rules promulgated pursuant to it.

#### **R 1401 – Instructions for Local Jurisdictions and Law Enforcement Officers**

- A. Division Protocol for Retail Marijuana Establishments
  1. The Division shall forward a copy of all new Retail Marijuana Establishment applications to the relevant local jurisdiction.

2. The Division shall forward half of the total application fee with the copy of the Retail Marijuana Establishment application to the relevant local jurisdiction.
  3. The Division shall notify relevant local jurisdictions when an application for a Retail Marijuana Establishment is either approved or denied. This includes new business applications, renewal business applications, change of location applications, transfer of ownership applications, premises modification applications, and off-premises storage permit applications.
  4. Any license issued or renewed by the Division for Retail Marijuana Establishments shall be conditioned upon relevant local jurisdiction approval of the application. If a local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.
- B. Local Jurisdiction Protocol for Retail Marijuana Establishments
1. As soon as practicable, local jurisdictions that have prohibited the operation of Retail Marijuana Establishments shall inform the Division, in writing, of such prohibition and shall include a copy of the applicable ordinance or resolution.
  2. If a local jurisdiction will authorize the operation of Retail Marijuana Establishments, it shall inform the Division of the local point-of-contact on Retail Marijuana regulatory matters. The local jurisdiction shall include, at minimum, the name of the division or branch of local government, the mailing address of that entity, and telephone number.
  3. Local jurisdictions may impose separate local licensing or approval requirements related to the time, place, manner, and number of Retail Marijuana Establishments, and shall otherwise determine if an application meets those local requirements.
  4. The relevant local jurisdiction shall notify the Division, in writing, of whether an application for a Retail Marijuana Establishment complies with local restrictions and requirements, and whether the application is approved or denied based on that review. If a local jurisdiction makes any written findings of fact, a copy of those written findings shall be included with the notification.
- C. Local Jurisdiction Inspections. The relevant local jurisdictions and their investigators may inspect Retail Marijuana Establishments during all business hours and other times of apparent activity, for the purpose of inspection or investigation
- D. Local Jurisdiction Authority. Nothing in these rules shall be construed to limit the authority of local jurisdictions as established by the Retail Code or otherwise by law.
- E. Local Law Enforcement's Authority Not Impaired by Retail Code. Nothing in the Retail Code or any rules promulgated pursuant to it shall be construed to limit the ability of local police departments, sheriffs, or other state or local law enforcement agencies to investigate unlawful activity in relation to a Retail Marijuana Establishment, and such agencies shall have the ability to run a Colorado Crime Information Center criminal history check of an Applicant or Licensee or employee of an Applicant or Licensee during an investigation of unlawful activity related to Retail Marijuana or a Retail Marijuana Establishment. This includes, but is not limited to, inspecting and investigating Retail Marijuana Establishments to ensure they are in compliance with all local jurisdiction regulations related to time, place, manner, and number.

## R 1500 Series – Retail Marijuana Testing Program

### Basis and Purpose – R 1501

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(VI), 44-12-402(4), 44-12-403(4), 44-12-404(3), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the contaminant testing and related process validation portion of the Division's Retail Marijuana sampling and testing program.

### R 1501 – Retail Marijuana Testing Program – Contaminant Testing

- A. Contaminant Testing Required. Unless a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has achieved process validation under this rule, it shall not Transfer, or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless Samples from each Harvest Batch or Production Batch from which that Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product was derived has been tested by a Retail Marijuana Testing Facility for contaminants and passed all contaminant tests required by Paragraph (C) of this rule.
- B. Process Validation and Ongoing Testing – Contaminant Testing
1. Retail Marijuana. A Retail Marijuana Cultivation Facility's cultivation process shall be deemed validated for Contaminant testing if every Harvest Batch that it produced during at least a six-week period but no longer than a 12-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least six Test Batches. A Retail Marijuana Cultivation Facility can obtain process validation for all contaminants listed in paragraph (C) of this Rule at the same time or separately for each contaminant.
  2. Retail Marijuana Concentrate or Retail Marijuana Product. A Retail Marijuana Cultivation Facility's or a Retail Marijuana Products Manufacturing Facility's production process shall be deemed validated for contaminant testing if every Production Batch that it produced during at least a four-week period but no longer than an eight-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include Test Batches from at least four Production Batches.
  3. Process Validation is Effective for One Year. Once a Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility has successfully obtained process validation for each of the contaminants listed in paragraph (C) of this Rule, the process validation shall be effective for one year from the date of the last passing test required to satisfy the process validation requirements.

4. Retail Marijuana Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days a Retail Marijuana Cultivation Facility shall subject at least one Harvest Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period a Retail Marijuana Cultivation Facility does not possess a Harvest Batch that is ready for testing, the Retail Marijuana Cultivation Facility must subject its first Harvest Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Retail Marijuana. If a Harvest Batch subject to ongoing contaminant testing fails contaminant testing, the Retail Marijuana Cultivation Facility shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing contaminant testing pursuant to this Rule R 1501 shall be subject to the requirements in Rule R 1504. See Rule R 1504(A) – Collection of Samples.
    - a. The Division may reduce the frequency of ongoing contaminant testing required by Retail Marijuana Cultivation Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.
  
  5. Retail Marijuana Concentrate or Retail Marijuana Product Ongoing Contaminant Testing. After successfully obtaining process validation, once every 30 days a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall subject at least one Production Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility does not possess a Production Batch that is ready for testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must subject its first Production Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Retail Marijuana. If a Production Batch submitted for ongoing contaminant testing fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall follow the procedure in Paragraph (F)(2) of this Rule.
    - a. The Division may reduce the frequency of ongoing contaminant testing required by Retail Marijuana Cultivation Facilities and Retail Marijuana Products Manufacturing Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.
- C. Required Contaminant Tests
1. Microbial Contaminant Testing. Harvest Batches of Retail Marijuana and Production Batches of Water, Heat/Pressure-, or Food-Based Retail Marijuana Concentrate, Retail Marijuana Product, and Audited Product must be tested for microbial contamination by a Retail Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) of this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and amounts present of microbial contaminants listed in Rule R 712(E)(1).
  2. Repealed
  3. Repealed.

4. Residual Solvent Contaminant Testing. Production Batches of Solvent-Based Retail Marijuana Concentrate and Audited Product that contains any Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility must be tested by a Retail Marijuana Testing Facility for residual solvent contamination at the frequency established by Paragraphs (A) and (B) of this Rule. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of acetone,, butane, ethanol, heptanes, isopropyl alcohol, propane, benzene\*, toluene\*, pentane, hexane\*, and total xylenes\* (m, p, o – xylenes).  
  
\* Note: These solvents are not approved for use. Testing is required for these solvents due to their possible presence in the solvents approved for use per Rule R 605.
  5. Mycotoxin Contaminant Testing. As part of Remediation, each Production Batch of Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility from Retail Marijuana that failed microbial contaminant testing produced must be tested by a Retail Marijuana Testing Facility for mycotoxin contamination. The mycotoxin contaminant test must include, but need not be limited to, testing to determine the presence of, and amounts present of, aflatoxins (B1, B2, G1, and G2) and ochratoxin A. This is in addition to all other contaminant testing required by this Paragraph (C).
  6. Pesticide Contaminant Testing. Harvest Batches of Retail Marijuana must be tested for Pesticide contamination by a Retail Marijuana Testing Facility at the frequency established by this Rule R 1501(A) and (B). The Pesticide contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, the Pesticides listed in Rule R 712(E)(5).
  7. Metals Contaminant Testing. Each Harvest Batch and Production Batch of Retail Marijuana must be tested for metals contamination by a Retail Marijuana Testing Facility at the frequency established in paragraphs (A) and (B) of this Rule. The metals contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, arsenic, cadmium, lead, and mercury.
- D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility Transferring or processing into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch. Additional tests may include, but need not be limited to, screening for Pesticide, chemical contaminants, biological contaminants, or other types of microbials, molds, metals, or residual solvents.
- E. Exemptions
1. Retail Marijuana Concentrate. A Production Batch of Retail Marijuana Concentrate shall be considered exempt from this Rule if the Retail Marijuana Products Manufacturing Facility that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate must still be submitted for residual solvent contaminant testing. The manufactured Retail Marijuana Product shall be subject to testing under this Rule.

F. Required Re-Validation - Contaminants.

1. Material Change Re-Validation. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility makes a Material Change to its cultivation or production process or its standard operating procedure manual, then it must have the first five Harvest Batches or Production Batches produced using the new procedures tested for all of the contaminants required by Paragraph (C) of this Rule regardless of whether its process has been previously validated regarding contaminants. If any of those tests fail, then the Retail Marijuana Establishment's process must be re-validated.
  - a. Pesticide. It shall be considered a Material Change if a Retail Marijuana Cultivation Facility begins using a new or different Pesticide during its cultivation process.
  - b. Solvents. It shall be considered a Material Change if a Retail Marijuana Products Manufacturing Facility begins using a new or different solvent or combination of solvents or changes any parameters for equipment related to the solvent purging process, including but not limited to, time, temperature, or pressure.
  - c. Cultivation. It shall be considered a Material Change if a Retail Marijuana Cultivation Facility begins using a new or different method for any material part of the cultivation process, including, but not limited to, changing from one growing medium to another.
  - d. Notification. A Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility must notify the Retail Marijuana Testing Facility of the Material Change.
  - e. Testing Required Prior to Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this rule, the Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility that produced it may not Transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any of the Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch unless and until the Harvest Batch or Production Batch passes all required testing..
2. Failed Contaminant Testing and Re-Validation. Failed contaminant testing may constitute a violation of these rules. Additionally, if a Sample the Division requires to be tested fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall follow the procedures in Rule R 1507(B) for any Inventory Tracking System package, Harvest Batch, or Production Batch from which the failed Sample was taken. The Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall also submit three additional Test Batches of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for contaminant testing by a Retail Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails contaminant testing, the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall re-validate its process for contaminants.
3. Repealed.

G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1502

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(VI), 44-12-402(4), 44-12-403(4), 44-12-404(3), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Retail Marijuana sampling and testing program.

## R 1502 – Retail Marijuana Testing Program – Mandatory Testing

- A. Required Sample Submission. A Retail Marijuana Establishment may be required by the Division to submit a Sample(s) of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product it possesses to a Retail Marijuana Testing Facility at any time regardless of whether its process has been validated and without notice.
1. Samples collected pursuant to this rule may be tested for potency or contaminants which may include, but may not be limited to, Pesticide, microbials, mycotoxins, molds, metals, residual solvents, biological contaminants, and chemical contaminants..
  2. When a Sample(s) is required to be submitted for testing, the Retail Marijuana Establishment may not Transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from the Inventory Tracking System package, Harvest Batch or Production Batch from which the Sample was taken, unless or until it passes all required testing.
- B. Methods for Determining Required Testing
1. Random Testing. The Division may require Samples to be submitted for testing through any one or more of the following processes: random process, risk-based process or other internally developed process, regardless of whether a Retail Marijuana Establishment's process has been validated.
  2. Inspection or Enforcement Tests. In addition, the Division may require a Retail Marijuana Establishment to submit a Sample for testing if the Division has reasonable grounds to believe that:
    - a. Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or mislabeled;
    - b. A Retail Marijuana Establishment is in violation of any product safety, health or sanitary statute, rule or regulation; or
    - c. The results of a test would further an investigation by the Division into a violation of any statute, rule or regulation.
  3. Beta Testing. The Division may require a Retail Marijuana Establishment to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing prior to implementing mandatory testing.
- C. Minimum Testing Standards. The testing requirements contained in the R 1500 series are the minimum required testing standards. Retail Marijuana Establishments are responsible for ensuring adequate testing on any Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product they produce or Transfer to ensure safety for human consumption.

- D. Additional Sample Types. The Division may also require a Retail Marijuana Establishment to submit Samples comprised of items other than Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, metals, residual solvents, biological contaminants, and chemical contaminants.. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:
1. Specific Retail Marijuana plant(s) or any portion of a Retail Marijuana plant(s),
  2. Any growing medium, water or other substance used in the cultivation process,
  3. Any water, solvent or other substance used in the processing of a Retail Marijuana Concentrate,
  4. Any ingredient or substance used in the manufacturing of a Retail Marijuana Product; or
  5. Swab of any equipment or surface.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **Basis and Purpose – R 1503**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(IV), 44-12-202(3)(d)(V), 44-12-202(3)(d)(VI), 44-12-402(4), 44-12-403(4), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the potency testing and related process validation portion of the Division's Retail Marijuana sampling and testing program.

### **R 1503 – Retail Marijuana Testing Program – Potency Testing**

- A. Potency Testing – General
1. Test Batches. A Test Batch submitted for potency testing may only be comprised of Samples that are of the same strain of Retail Marijuana or from the same Production Batch of Retail Marijuana Concentrate or Retail Marijuana Product.
  2. Cannabinoid Profile. A potency test conducted pursuant to this rule must at least determine the level of concentration of THC, THCA, CBD, CBDA and CBN.
- B. Potency Testing for Retail Marijuana.
1. Initial Potency Testing. A Retail Marijuana Cultivation Facility must have potency tests conducted by a Retail Marijuana Testing Facility on four Harvest Batches, created a minimum of one week apart, for each strain of Retail Marijuana that it cultivates.
    - a. The first potency test must be conducted on each strain prior to the Retail Marijuana Cultivation Facility Transferring or processing into a Retail Marijuana Concentrate any Retail Marijuana of that strain.
    - b. All four potency tests must be conducted on each strain no later than December 1, 2014 or six months after the Retail Marijuana Cultivation Facility begins cultivating that strain, whichever is later.

2. Ongoing Potency Testing. After the initial four potency tests, a Retail Marijuana Cultivation Facility shall have each strain of Retail Marijuana that it cultivates tested for potency at least once per quarter.
- C. Potency Testing for Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must have a potency test conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Concentrate that it produces prior to Transferring or processing into a Retail Marijuana Product any of the Retail Marijuana Concentrate from that Production Batch.
- C.1 Potency Testing for Retail Marijuana – Kief. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must have a potency test conducted by a Retail Marijuana Testing Facility on every Harvest Batch of Kief that it produces prior to Transferring the Kief.
- D. Potency Testing for Retail Marijuana Product
  1. Potency Testing Required for Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility shall have potency tests conducted by a Retail Marijuana Testing Facility on every Production Batch of each type of Retail Marijuana Product that it produces prior to Transferring any of the Retail Marijuana Product from that Production Batch, unless the Retail Marijuana Products Manufacturing Facility has successfully completed process validation for potency and homogeneity for the particular type of Retail Marijuana Product.
  - 1.5 Repealed.
  2. Required Tests. Potency and homogeneity tests conducted on Retail Marijuana Product must determine the level of concentration of the required Cannabinoids and whether or not THC is homogeneously distributed throughout the product.
  3. Partially Infused Retail Marijuana Products. If only a portion of a Retail Marijuana Product is infused with Retail Marijuana, then the Retail Marijuana Products Manufacturing Facility must inform the Retail Marijuana Testing Facility of exactly which portions of the Retail Marijuana Product are infused and which portions are not infused.
- E. Process Validation - Potency and Homogeneity
  1. A Retail Marijuana Products Manufacturing Facility may process validate potency and homogeneity for each type of Retail Marijuana Product it manufactures.
  2. A Retail Marijuana Products Manufacturing Facility's production process for a particular type of Retail Marijuana Product shall be deemed valid regarding potency and homogeneity if every Production Batch that it produces for that particular type of Edible Retail Marijuana Product during at least a four-week period but no longer than an eight-week period passes all potency and homogeneity tests required by Rule R 1503(D)(2). This must include at least four Test Batches.
  3. Expiration of Process Validation. Once a Retail Marijuana Products Manufacturing Facility shall be required to re-validate its process every 12 months from the date process validation is achieved, after which point the process validation expires. If the process validation expires, the Retail Marijuana Products Manufacturing Facility shall comply with the requirements of Paragraph (D)(1) of this Rule.

4. Retail Marijuana Product Ongoing Potency and Homogeneity Testing. After successfully obtaining process validation, once per quarter a Retail Marijuana Products Manufacturing Facility shall subject at least one Production Batch of each type of Retail Marijuana Product that it produces to potency and homogeneity testing required by Paragraph (D) of this Rule. If during any quarter a Retail Marijuana Products Manufacturing Facility does not possess a Production Batch that is ready for testing, the Retail Marijuana Products Manufacturing Facility must subject its first Production Batch that is ready for testing to the required potency and homogeneity testing prior to Transfer or processing of the Retail Marijuana. If a Test Batch submitted for ongoing potency and homogeneity testing fails potency and homogeneity testing, the Retail Marijuana Products Manufacturing Facility shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing potency and homogeneity testing pursuant to this Rule R 1503 shall be subject to the requirements in Rule R 1504. See Rule R 1504(A) – Collection of Samples.
    - a. The Division may reduce the frequency of ongoing potency and homogeneity testing required by Retail Marijuana Products Manufacturing Facilities if the Division has reasonable grounds to believe Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing potency and homogeneity testing to the Licensee's last electronic mailing address provided to the Division.
- F. Required Re-Validation - Potency and Homogeneity - Retail Marijuana Product.
1. Material Change Re-Validation. If a Retail Marijuana Products Manufacturing Facility elects to process validate any Retail Marijuana Product for potency and homogeneity and it makes a Material Change to its production process for that particular type of Retail Marijuana Product, then the Retail Marijuana Products Manufacturing Facility must re-validate the production process.
    - a. New Equipment. It shall be considered a Material Change if the Retail Marijuana Products Manufacturing Facility begins using new or different equipment for any material part of the production process.
    - b. Notification. A Retail Marijuana Product Manufacturing Facility must notify the Retail Marijuana Testing Facility of a Material Change.
    - c. Testing Required Prior to Transfer. When a Production Batch is required to be submitted for testing pursuant to this rule, the Marijuana Product Manufacturing Facility that produced it may not Transfer Retail Marijuana Product from that Production Batch unless or until it obtains a passing test.
  2. Failed Potency Testing Re-Validation. If a Sample the Division requires to be tested fails potency testing, the Retail Marijuana Products Manufacturing Facility shall follow the procedures in Rule R 1507(C) for any Inventory Tracking System package or Production Batch associated with the failed Sample. The Retail Marijuana Products Manufacturing Facility shall also submit three additional Test Batches of the Retail Marijuana Product for potency testing by a Retail Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails potency testing, the Retail Marijuana Products Manufacturing Facility shall re-validate its process for potency.
  3. Repealed.
- G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1504

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(IV), 44-12-202(3)(d)(V), 44-12-202(3)(d)(VI), 44-12-402(4), 44-12-403(4), 44-12-404(3), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules for the Division's Retail Marijuana sampling and testing program.

## R 1504 – Retail Marijuana Testing Program – Sampling Procedures

### A. Collection of Samples

1. Sample Collection. All Samples submitted for testing pursuant to this rule must be collected by Division representatives or in accordance with the Division's sampling policy reflected in the marijuana laboratory testing reference library available at the Colorado Department of Public Health and Environment's website. This reference library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S..
2. Sample Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Samples, or may otherwise direct Sample selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in the Inventory Tracking System from which a Retail Marijuana Establishment shall select Samples for testing. A Retail Marijuana Establishment, its Owners and employees shall not attempt to influence the Samples selected by Division representatives. If the Division does not select the Harvest Batch or Production Batch to be tested, a Retail Marijuana Establishment must collect and submit Sample(s) that are representative of the Harvest Batch or Production Batch being tested.
3. Adulteration or Alteration Prohibited. A Licensee or its agent shall not adulterate or alter, or attempt to adulterate or alter, any Samples of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for the purpose of circumventing contaminant testing detection limits or potency testing requirements. The Sample(s) collected and submitted for testing must be representative of the Harvest Batch or Production Batch being tested. A violation of this sub-paragraph (A)(3) shall be considered a license violation affecting public safety.
4. Timing of Samples. A Licensee shall not collect or submit Samples for testing until the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has completed all steps required prior to Transfer to another Retail Marijuana Establishment as outlined in the standard operating procedures of the Licensee submitting the Test Batch.

B. Minimum Number of Samples Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Each Test Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product submitted for testing must be comprised of a representative selection of Samples. Unless a greater amount is required to comply with these rules, each Test Batch of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product must be comprised of at least the following number of separately taken Samples, which may be submitted for testing in all required testing categories:

1. Samples for Test Batches of Retail Marijuana.

- a. For Harvest Batches weighing up to 10 pounds, a minimum of eight separate 0.5 gram Samples must be combined into one 4 gram Sample and submitted as one Test Batch.
  - b. For Harvest Batches weighing more than 10 pounds but less than 20 pounds, a minimum of 12 separate 0.5 gram Samples must be combined into one 6 gram Sample and submitted as one Test Batch.
  - c. For Harvest Batches weighing 20 pounds or more but less than 30 pounds, a minimum of 15 separate 0.5 gram Samples must be combined into one 7.5 gram Sample and submitted as one Test Batch.
  - d. For Harvest Batches or weighing 30 pound or more but less than 40 pounds, a minimum of 18 separate 0.5 gram Samples must be combined into one 9 gram Sample and submitted as one Test Batch.
  - e. For Harvest Batches or weighing 40 pounds or more but less than 100 pounds, a minimum of 23 separate 0.5 gram Samples must be combined into one 11.5 gram Sample and submitted as one Test Batch.
  - f. For Harvest Batches weighing 100 pounds or more, a minimum of 29 separate 0.5 gram Samples must be combined into one 14.5 gram Sample and submitted as one Test Batch.
2. Repealed.
  3. Samples for Test Batches of Retail Marijuana Concentrate.
    - a. For Production Batches weighing up to one pound, a minimum of eight separate 0.25 gram Samples must be combined into one 2 gram Sample and submitted as one Test Batch.
    - b. For Production Batches weighing more than one pound and less than two pounds, a minimum of 12 separate 0.25 gram Samples must be combined into one 3 gram Sample and submitted as one Test Batch.
    - c. For Production Batches weighing two pounds or more but less than three pounds, a minimum of 15 separate 0.25 gram Samples must be combined into one 3.75 gram Sample and submitted as one Test Batch.
    - d. For Production Batches weighing three pounds or more but less than four pounds, a minimum of 18 separate 0.25 gram Samples must be combined into one 4.5 gram Sample and submitted as one Test Batch.
    - e. For Production Batches weighing four pounds or more but less than 10 pounds, a minimum of 23 separate 0.25 gram Samples must be combined into one 5.75 gram Sample and submitted as one Test Batch.
    - f. For Production Batches weighing 10 pounds or more, a minimum of 29 separate 0.25 gram Samples must be combined into one 7.25 gram Sample and submitted as one Test Batch.
  4. Samples for Test Batches of Retail Marijuana Product. A Sample of Retail Marijuana Product must be packaged for sale prior to Transfer to a Retail Marijuana Testing Facility. Each such package of Retail Marijuana Product shall constitute one Sample.

- a. For Production Batches of up to 100 Samples, a minimum of two separate Samples must be submitted as one Test Batch.
  - b. For Production Batches of up to 500 Samples, a minimum of four separate Samples must be submitted as one Test Batch.
  - c. For Production Batches of up to 1000 Samples, a minimum of six separate Samples must be submitted as one Test Batch.
  - d. For Production Batches of up to 5000 Samples, a minimum of eight separate Samples must be submitted as one Test Batch.
  - e. For Production Batches of up to 10,000 Samples, a minimum of 10 Samples must be submitted as one Test Batch.
  - f. For Production Batches of more than 10,000 Samples, a minimum 12 Samples must be submitted as one Test Batch.
- C. Repealed.
- D. Retail Marijuana Testing Facility Selection. Unless otherwise restricted or prohibited by these rules or ordered by the State Licensing Authority, a Retail Marijuana Establishment may select which Retail Marijuana Testing Facility will test a Sample collected pursuant to this rule. However, the Division may elect, at its sole discretion, to assign a Retail Marijuana Testing Facility to which a Retail Marijuana Establishment must submit for testing any Sample collected pursuant to this rule.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

**R 1505 – Retail Marijuana Testing Program – Test Batches – Repealed.**

**Basis and Purpose – R 1506**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-402(4), 44-12-403(4), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules requiring Retail Marijuana Establishments to cover certain costs associated with the Division's Retail Marijuana Sampling and Testing Program.

**R 1506 – Retail Marijuana Testing Program – Costs**

**This rule shall be effective on May 1, 2014.**

Costs. The cost for all sampling and tests conducted pursuant to these rules shall be the financial responsibility of the Retail Marijuana Establishment that is required to submit the Sample for testing.

## Basis and Purpose – R 1507

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(IV), 44-12-202(3)(a)(VII), 44-12-202(3)(a)(VIII), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(c)(III), 44-12-202(3)(c)(VIII), 44-12-202(3)(d)(IV), 44-12-202(3)(d)(VI), 44-12-402(4), 44-12-403(4), 44-12-404(3), and 44-12-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Retail Marijuana Sampling and Testing Program.

## R 1507 – Retail Marijuana Testing Program – Contaminated Product and Failed Test Results

### A. Quarantining of Product

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or presents a risk to public safety, then the Division may require a Retail Marijuana Establishment to quarantine it until the completion of the Division's investigation, which may include, but is not limited to, the receipt of any test results.
2. If a Retail Marijuana Establishment is notified by any local or state agency, or by a Retail Marijuana Testing Facility, that a Test Batch failed a contaminant or potency testing, then the Retail Marijuana Establishment shall quarantine any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to paragraph (B), (B.1), (B.2), and/or (C) of this Rule.
3. Except as provided by this Rule, Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product unless otherwise permitted by these rules.

### B. Failed Contaminant Testing: All Contaminant Testing Except Microbial Testing of Retail Marijuana Flower or Trim and Pesticide Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial testing of Retail Marijuana flower or trim and Pesticide testing), then for each Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule R 307 – Waste Disposal; or

2. Decontaminate the Inventory Tracking System package, Harvest Batch or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule R 1504.
    - a. A Licensee must either (1) submit both new Test Batches to the same Retail Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Retail Marijuana Testing Facilities.
    - b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.
    - c. If one or both of the Test Batches do not pass contaminant testing, then the Retail Marijuana Establishment must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch included in that Test Batch pursuant to Rule R 307 – Waste Disposal.
- B.1. Failed Contaminant Testing: Microbial Testing of Retail Marijuana Flower or Trim. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch of Retail Marijuana flower or trim failed microbial testing, then for each Inventory Tracking System package or Harvest Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:
1. Destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal;
  2. Decontaminate the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Such testing must comport with the sampling procedures under Rule R 1504.
    - a. A Licensee must either (1) submit both new Test Batches to the same Retail Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Retail Marijuana Testing Facilities
    - b. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.
    - c. If one or both of the Test Batches do not pass microbial testing, then the Retail Marijuana Establishment must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal; or (ii) Transfer the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.

3. In lieu of decontamination pursuant to Paragraph (B.1)(2) above, the Retail Marijuana Establishment may transfer all Inventory Tracking System packages or Harvest Batches associated with that failed Test Batch to a Retail Marijuana Products Manufacturing Facility for decontamination and/or Remediation by the Retail Marijuana Products Manufacturing Facility.
  - a. Decontamination. Only if the Retail Marijuana Establishment has not already attempted to decontaminate pursuant to Paragraph (B.1)(2) above, the Retail Marijuana Products Manufacturing Facility may decontaminate the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required microbial test that failed. Such testing must comport with the sampling procedures under Rule R 1504.
    - i. A Licensee must either (1) submit both new Test Batches to the same Retail Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Retail Marijuana Testing Facilities
    - ii. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with each Test Batch may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.
    - iii. If one or both of the Test Batches do not pass microbial testing, then the Retail Marijuana Establishment must either: (i) destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule R 307 – Waste Disposal; or (ii) attempt Remediation of the Inventory Tracking System package or Harvest Batch for Remediation pursuant to Paragraph (B.1)(3)(b) below.
  - b. Remediation.
    - i. For Remediation, the Retail Marijuana Establishment shall process the Inventory Tracking System package or Harvest Batch of Retail Marijuana flower or trim associated with the failed Test Batch into a Solvent-Based Retail Marijuana Concentrate. No other Retail Marijuana shall be included in the Solvent-Based Retail Marijuana Concentrate.
    - ii. The Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) shall undergo all required contaminant testing pursuant to Rule R 1501(C) – Retail Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule R 1503 – Retail Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Retail Marijuana Code or these rules, including but not limited to mycotoxins. Such testing must comport with the sampling procedures under Rule R 1504.
    - iii. If the Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (B.1)(3)(b) fails contaminant testing, the Retail Marijuana Establishment shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Retail Marijuana Concentrate pursuant to Rule R 307 – Waste Disposal.

- c. Repealed.
  4. Nothing in this rule removes or alters the responsibility of the Retail Marijuana Establishment transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule R 502(E) and article 28.8 of title 39, C.R.S.
- B.2. Failed Contaminant Testing: Pesticide Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed Pesticide testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:
1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule R 307 – Waste Disposal; or
  2. Request that the Retail Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule R 1504.
    - a. If both retesting analyses pass the required Pesticide testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.
    - b. If one or both of the retesting analyses do not pass Pesticide testing, then the Retail Marijuana Establishment must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule R 307 – Waste Disposal.
- C. Failed Potency Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch of Retail Marijuana Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Retail Marijuana Establishment must either:
1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule R 307 – Waste Disposal; or
  2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Such testing must comport with the sampling procedures under Rule R 1504.
    - a. A Licensee must either (1) submit both new Test Batches to the same Retail Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Retail Marijuana Testing Facilities
    - b. If both new Test Batches pass potency testing, then the Inventory Tracking System package or Production Batch associated with each Test Batch may be Transferred.
    - c. If one or both of the Test Batches do not pass potency testing, then the Retail Marijuana Products Manufacturing Facility must destroy and document the destruction of Inventory Tracking System package or Production Batch pursuant to Rule R 307 – Waste Disposal.

- D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **R 1600 Series – Retail Marijuana Transporters**

#### **Basis and Purpose – R 1601**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-202(3)(c)(VIII), and 44-12-406, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Transporter to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

#### **R 1601 – Retail Marijuana Transporter: License Privileges**

- A. Privileges Granted. A Retail Marijuana Transporter shall only exercise those privileges granted to it by the State Licensing Authority.
- B. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Transporter may share a location with an identically owned Medical Marijuana Transporter. However, a separate license is required for each specific business or business entity, regardless of geographical location.
- C. Transportation of Retail Marijuana and Retail Marijuana Product Authorized. A Retail Marijuana Transporter may take transportation and delivery orders, receive, transport, temporarily store, and deliver Retail Marijuana and Retail Marijuana Product.
- D. Authorized Sources of Retail Marijuana and Retail Marijuana Product. A Retail Marijuana Transporter may only transport and store Retail Marijuana and Retail Marijuana Product that it received directly from the originating Retail Marijuana Establishment.
- E. Authorized On-Premises Storage. A Retail Marijuana Transporter is authorized to store transported Retail Marijuana and Retail Marijuana Product on its Licensed Premises or permitted off-premises storage facility. All transported Retail Marijuana and Retail Marijuana Product must be secured in a Limited Access Area, and tracked consistently with the inventory tracking rules.

#### **Basis and Purpose – R 1602**

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XVIII), 44-12-202(3)(c)(VIII), and 44-12-406, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Transporter.

#### **R 1602 – Retail Marijuana Transporter: General Limitations or Prohibited Acts**

- A. Sales, Liens, and Secured Interests Prohibited. A Retail Marijuana Transporter is prohibited from buying, selling, or giving away Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product, or from receiving complimentary Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. A Retail Marijuana Transporter shall not place or hold a lien or secured interest on Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.

- B. Licensed Premises Permitted. A Retail Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a local jurisdiction that authorizes the operation of Retail Marijuana Stores. If a Retail Marijuana Transporter Licensed Premises is co-located with a Medical Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall be in a local jurisdiction that authorizes the operation of both Retail Marijuana Stores and Medical Marijuana Centers.
- C. Off-Premises Storage Permit. A Retail Marijuana Transporter may maintain one or more permitted off-premises storage facilities. See Rule R 802 – Off-Premises Storage of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product: All Retail Marijuana Establishments.
- D. Storage Duration. A Retail Marijuana Transporter shall not store Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product for longer than 7 days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable 7 day storage duration begins and applies regardless of which of the Retail Marijuana Transporter's premises receives the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product first, ie. the Retail Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities.
- E. Control of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. A Retail Marijuana Transporter is responsible for the Retail Marijuana, Retail Marijuana Concentrate and Retail Marijuana Product once it takes control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and until the Retail Marijuana Transporter delivers it to the receiving Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. For purposes of this rule, taking control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product means removing it from the originating Retail Marijuana Establishment's Licensed Premises and placing the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the transport vehicle.
- F. Location of Orders Taken and Delivered. A Retail Marijuana Transporter is permitted to take orders on the Licensed Premises of any Retail Marijuana Establishment to transport Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The Retail Marijuana Transporter shall deliver the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Licensed Premises of a licensed Retail Marijuana Establishment, a Medical Research Facility, or a Pesticide Manufacturer.
- G. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on the Licensed Premises or in transport vehicles.
- H. A Retail Marijuana Transporter shall receive Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee, Medical Research Facility, or Pesticide Manufacturer. The Retail Marijuana Transporter shall deliver the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the same, unaltered packaging to the final destination Licensee.
- I. Opening of Bulk Packages or Containers and Re-Packaging Prohibited. A Retail Marijuana Transporter shall not open Containers of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. Retail Marijuana Transporters are prohibited from re-packaging Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
- J. Temperature-Controlled Transport Vehicles. A Retail Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.

- K. Damaged or Refused Product. Any damaged Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product that is undeliverable to the final destination Retail Marijuana Establishment, or any Retail Marijuana or Retail Marijuana Product that is refused by the final destination Retail Marijuana Establishment shall be transported back to the originating Retail Marijuana Establishment.
- L. Transport of Retail Marijuana Vegetative Plants Authorized. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule R 206. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed.

### **Basis and Purpose – R 1603**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XII), 44-12-202(3)(a)(XVIII), 44-12-202(3)(c)(VIII), and 44-12-406(3), C.R.S. The purpose of this rule is to establish a Retail Marijuana Transporter's obligation to account for and track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product on the Licensed Premises from the point they are Transferred from the originating Retail Marijuana Establishment to the destination Retail Marijuana Establishment.

### **R 1603 – Retail Marijuana Transporter: Inventory Tracking System**

- A. Minimum Tracking Requirement. A Retail Marijuana Transporter must use the Inventory Tracking System to ensure its transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are identified and tracked from the point they are transferred from a Retail Marijuana Establishment when the Retail Marijuana Transporter takes control of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product by removing it from the originating Retail Marijuana Establishment's Licensed Premises and placing the Retail Marijuana and Retail Marijuana Product in the Retail Marijuana Transporter's transport vehicle, through delivery to the destination Retail Marijuana Establishment, Medical Research Facility, or Pesticide Manufacturer. *See also* Rule R 309 –Inventory Tracking System. A Retail Marijuana Transporter must have the ability to reconcile its transported Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product with the Inventory Tracking System and the associated transaction history and transportation order receipts. *See also* Rule R 901 – Business Records Required.
1. A Retail Marijuana Transporter is prohibited from accepting any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product from another Retail Marijuana Establishment without receiving a valid transport manifest generated from the Inventory Tracking System.
  2. A Retail Marijuana Transporter must immediately input all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product received at its Licensed Premises or off-premises storage facility, accounting for all RFID tags, into the Inventory Tracking System at the time of receipt of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.
  3. A Retail Marijuana Transporter must reconcile transactions to the Inventory Tracking System at the close of business each day.
  4. All information on the Inventory Tracking System generated transport manifests must be accurate.

## Basis and Purpose – R 1604

The statutory authority for this rule includes but is not limited to sections 44-12-202(2)(b), 44-12-202(3)(a)(X), 44-12-202(3)(a)(XI), 44-12-202(3)(a)(XII), 44-12-202(3)(a)(XVIII), and 44-12-202(3)(c)(VIII), C.R.S. It sets forth general standards and basic sanitary requirements for Retail Marijuana Transporters. It covers the physical premises where the products are stored as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Transporter's Licensed Premises. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Transporter's refusal to cooperate or pay for the audit. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana Establishments and the safety of the public.

## R 1604 – Retail Marijuana Transporter: Health and Safety Regulations

- A. Local Safety Inspections. A Retail Marijuana Transporter's Licensed Premises may be subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local jurisdiction restrictions related to Retail Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.
- B. Sanitary Conditions. A Retail Marijuana Transporter shall take all reasonable measures and precautions to ensure the following:
1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Retail Marijuana and Retail Marijuana Product, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
  2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
  3. That all persons working in direct contact with Retail Marijuana or Retail Marijuana Product shall conform to hygienic practices while on duty, including but not limited to:
    - a. Maintaining adequate personal cleanliness;
    - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work and at any other time when the hands may have become soiled or contaminated; and
    - c. Refraining from having direct contact with Retail Marijuana or Retail Marijuana Product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.

4. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana or Retail Marijuana Product are exposed;
5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
6. That there is adequate lighting in all areas where Retail Marijuana or Retail Marijuana Product are stored, and where equipment or utensils are cleaned;
7. That the Licensee provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
9. That toxic cleaning compounds, sanitizing agents, and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation or ordinance;
10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;
11. That each employee is provided with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and
12. That Retail Marijuana or Retail Marijuana Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

C. Independent Health and Sanitary Audit.

1. State Licensing Authority May Require a Health and Sanitary Audit.
  - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Transporter to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Transporter is in compliance with the requirements set forth in this rule and other applicable health, sanitary or food handling laws, rules and regulations.
  - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Transporter. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.
  - c. The Retail Marijuana Transporter will be responsible for all costs associated with the independent health and sanitary audit.

2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
    - a. The Division has reasonable grounds to believe that the Retail Marijuana Transporter is in violation of one or more of the requirements set forth in this rule or other applicable public health or sanitary laws, rules or regulations; or
    - b. The Division has reasonable grounds to believe that the Retail Marijuana Transporter was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
  3. Compliance Required. A Retail Marijuana Transporter must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this rule.
  4. Suspension of Operations.
    - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Transporter's license. See Rule R 1302 – Summary Suspensions.
    - b. Prior to or following the issuance of such an order, the Retail Marijuana Transporter may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
      - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Summary Suspensions.
      - ii. If an agreement to suspend operations is reached, then the Retail Marijuana Transporter may continue to care for its stored or transported Retail Marijuana and Retail Marijuana Product and conduct any necessary internal business operations.
- D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## **R 1700 Series – Retail Marijuana Establishment Operators**

### **Basis and Purpose – R 1701**

The statutory authority for this rule includes but is not limited to sections 44-12-103(25), 44-12-202(2)(b), 44-12-202(3)(a)(XIX), 44-12-202(3)(c)(VIII), 44-12-309(7)(a), 44-12-401(1)(g), 44-12-601(1), and 44-12-407, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Establishment Operator Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

## R 1701 – Retail Marijuana Establishment Operator: License Privileges

- A. Privileges Granted. A Retail Marijuana Establishment Operator shall only exercise those privileges granted to it by the Retail Code, the rules promulgated pursuant thereto and the State Licensing Authority. A Retail Marijuana Establishment Operator may exercise those privileges only on behalf of the Retail Marijuana Establishment(s) it operates. A Retail Marijuana Establishment shall not contract to have more than one Retail Marijuana Establishment Operator providing services to the Retail Marijuana Establishment at any given time.
- B. Licensed Premises of the Retail Marijuana Establishment(s) Operated. A separate License is required for each specific Retail Marijuana Establishment Operator, and each such licensed Retail Marijuana Establishment Operator may operate one or more other Retail Marijuana Establishment(s). A Retail Marijuana Establishment Operator will not have its own Licensed Premises, but shall maintain its own place of business, and may exercise the privileges of a Retail Marijuana Establishment Operator at the Licensed Premises of the Retail Marijuana Establishment(s) it operates.
- C. Entities Eligible to Hold Retail Marijuana Establishment Operator License. A Retail Marijuana Establishment Operator License may be held only by a business entity, including, but not limited to, a corporation, limited liability company, partnership or sole proprietorship.
- D. Separate Place of Business. A Retail Marijuana Establishment Operator shall designate and maintain a place of business separate from the Licensed Premises of any Retail Marijuana Establishment(s) it operates. A Retail Marijuana Establishment Operator's separate place of business shall not be considered a Licensed Premises, and shall not be subject to the requirements applicable to the Licensed Premises of other Retail Marijuana Establishments, except as set forth in Rules R 1702 and 1704. Possession, storage, use, cultivation, manufacture, sale, distribution, or testing of Retail Marijuana or Retail Marijuana Product is prohibited at a Retail Marijuana Establishment Operator's separate place of business.
- E. Agency Relationship and Discipline for Violations. A Retail Marijuana Establishment Operator and each of its Direct Beneficial Interest Owners required to hold an Associated Key License, as well as the agents and employees of the Retail Marijuana Establishment Operator, shall be agents of the Retail Marijuana Establishment(s) the Retail Marijuana Establishment Operator is contracted to operate, when engaged in activities related, directly or indirectly, to the operation of such Retail Marijuana Establishment(s), including for purposes of taking administrative action against the Retail Marijuana Establishment being operated. See § 44-12-601(1), C.R.S. Similarly, a Retail Marijuana Establishment Operator and its Direct Beneficial Interest Owners required to hold an Associated Key License, as well as the officers, agents and employees of the Retail Marijuana Establishment Operator, may be disciplined for violations committed by the Direct Beneficial Interest Owners, agents or employees of the Retail Marijuana Establishment acting under their direction or control. A Retail Marijuana Establishment Operator may also be disciplined for violations not directly related to a Retail Marijuana Establishment it is operating.
- F. Compliance with Applicable State and Local Law, Ordinances, Rules and Regulations. A Retail Marijuana Establishment Operator, and each of its Direct Beneficial Interest Owners, agents and employees engaged, directly or indirectly in the operation of the Retail Marijuana Establishment it operates, shall comply with all state and local laws, ordinances, rules and regulations applicable to the Retail Marijuana Establishment(s) being operated.

### Basis and Purpose – R 1702

The statutory authority for this rule includes but is not limited to sections 44-12-202(1), 44-12-202(2)(b), 44-12-202(3)(a)(XIX), 44-12-202(3)(c)(VIII), 44-12-407, and 44-12-901, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Establishment Operator.

**R 1702 – Retail Marijuana Establishment Operators: General Limitations or Prohibited Acts**

- A. Financial Interest. A Person who is a Direct Beneficial Interest Owner or an Indirect Beneficial Interest Owner of a Retail Marijuana Establishment Operator may also be a Direct Beneficial Interest Owner, an Indirect Beneficial Interest Owner or otherwise hold a direct or indirect financial interest in another Retail Marijuana Establishment so long as that interest complies with all other requirements of these rules. A Retail Marijuana Establishment may be operated by a Retail Marijuana Business Operator where each has one or more Direct Beneficial Interest Owners or Indirect Beneficial Interest Owners in common. A Person may receive compensation for services provided by a Retail Marijuana Business Operator in accordance with these rules.
- B. Sale of Marijuana Prohibited. A Retail Marijuana Establishment Operator is prohibited from selling, distributing, or transferring Retail Marijuana or Retail Marijuana Product to another Retail Marijuana Establishment or a consumer, except when acting as an agent of a Retail Marijuana Establishment(s) operated by the Retail Marijuana Establishment Operator.
- C. Consumption Prohibited. A Retail Marijuana Establishment Operator, and its Direct Beneficial Interest Owners, agents and employees, shall not permit the consumption of marijuana or marijuana products at its separate place of business.
- D. Inventory Tracking System. A Retail Marijuana Establishment Operator, and any of its Direct Beneficial Interest Owners, agents or employees engaged in the operation of the Retail Marijuana Establishment(s) it operates, must use the Inventory Tracking System account of the Retail Marijuana Establishment(s) it operates, in accordance with all requirements, limitations and prohibitions applicable to the Retail Marijuana Establishment(s) it operates.
- E. Compliance with Requirements and Limitations Applicable to the Retail Marijuana Establishment(s) Operated. In operating any other Retail Marijuana Establishment(s), a Retail Marijuana Establishment Operator, and its Direct Beneficial Interest Owners who are required to hold Associated Key Licenses, as well as the agents and employees of the Retail Marijuana Establishment Operator, shall comply with all requirements, limitations and prohibitions applicable to the type(s) of Retail Marijuana Establishment(s) being operated, under state and local laws, ordinances, rules and regulations, and may be disciplined for violation of the same.
- F. Inventory Tracking System Access. A Retail Marijuana Establishment may grant access to its Inventory Tracking System account to the Direct Beneficial Interest Owners, agents and employees of a Retail Marijuana Establishment Operator having duties related to Inventory Tracking System activities of the Retail Marijuana Establishment(s) being operated.
1. The Direct Beneficial Interest Owners, agents and employees of a Retail Marijuana Establishment Operator granted access to a Retail Marijuana Establishment's Inventory Tracking System account, shall comply with all Inventory Tracking System rules.
  2. At least one Direct Beneficial Interest Owner of a Retail Marijuana Establishment being operated by a Retail Marijuana Establishment Operator must be an Inventory Tracking System Trained Administrator for the Retail Marijuana Establishment's Inventory Tracking System account. That Inventory Tracking System Trained Administrator shall control access to its Inventory Tracking System account, and shall promptly terminate the access of the Retail Marijuana Establishment Operator's Direct Beneficial Interest Owners, agents and employees:
    - a. When its contract with the Retail Marijuana Establishment Operator expires by its terms;

- b. When its contract with the Retail Marijuana Establishment Operator is terminated by any party; or
  - c. When it is notified that the License of the Retail Marijuana Establishment Operator, or a specific Direct Beneficial Interest Owner, agent or employee of the Retail Marijuana Establishment Operator, has expired, or has been suspended or revoked.
- G. Limitations on Use of Documents and Information Obtained from Retail Marijuana Establishments. A Retail Marijuana Establishment Operator, and its agents and employees, shall maintain the confidentiality of documents and information obtained from the other Retail Marijuana Establishment(s) it operates, and shall not use or disseminate documents or information obtained from a Retail Marijuana Establishment it operates for any purpose not authorized by the Retail Code and the rules promulgated pursuant thereto, and shall not engage in data mining or other use of the information obtained from a Retail Marijuana Establishment to promote the interests of the Retail Marijuana Establishment Operator or its Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners, agents or employees, or any Person other than the Retail Marijuana Establishment it operates.
- H. Form and Structure of Allowable Agreement(s) Between Operators and Owners. Any agreement between a Retail Marijuana Establishment and a Retail Marijuana Establishment Operator:
- 1. Must acknowledge that the Retail Marijuana Establishment Operator, and its Direct Beneficial Interest Owners, agents and employees who are engaged, directly or indirectly, in operating the Retail Marijuana Establishment, are agents of the Retail Marijuana Establishment being operated, and must not disclaim an agency relationship.;
  - 2. May provide for the Retail Marijuana Establishment Operator to receive direct remuneration from the Retail Marijuana Establishment, including a portion of the profits of the Retail Marijuana Establishment being operated, subject to the following limitations:
    - a. The portion of the profits to be paid to the Retail Marijuana Establishment Operator shall be commercially reasonable, and in any event shall not exceed the portion of the net profits to be retained by the Retail Marijuana Establishment being operated;
    - b. The Retail Marijuana Establishment Operator shall not be granted, and may not accept:
      - i. A security interest in the Retail Marijuana Establishment being operated, or in any assets of the Retail Marijuana Establishment;
      - ii. An ownership or membership interest, shares, or shares of stock, or any right to obtain any direct or indirect beneficial ownership interest in the Retail Marijuana Establishment being operated, or a future or contingent right to the same, including but not limited to options or warrants;
    - c. The Retail Marijuana Establishment Operator shall not guarantee the Retail Marijuana Establishment's debts or production levels.
  - 3. Shall permit the Retail Marijuana Establishment being operated to terminate the contract with the Retail Marijuana Establishment Operator at any time, with or without cause;
  - 4. Shall be contingent on approval by the Division; and

5. Shall not be materially amended without advance written approval from the Division.
- I. A Retail Marijuana Establishment Operator may engage in dual operation of a Retail Marijuana Establishment and a Medical Marijuana Business at a single location, to the extent the Retail Marijuana Establishment being operated is permitted to do so pursuant to subsection 44-12-401(2)(a), C.R.S., and the Retail Marijuana Establishment Operator shall comply with the rules promulgated pursuant to the Medical Code and the Retail Code, including the requirement of obtaining a valid registration as a Medical Marijuana Business Operator.
- J. Any Retail Marijuana Establishment Operators and the Retail Marijuana Establishment Operator's Associated Key Licensee(s) that are appointed by a court to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Retail Marijuana Establishment must comply with Rule R 253(F).

### **Basis and Purpose – R 1703**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(XIX), 44-12-202(3)(c)(VIII), 44-12-309(11), and 44-12-401(1)(e) C.R.S. The purpose of this rule is to establish occupational license requirements for the Retail Marijuana Establishment Operator's Direct Beneficial Interest Owners, agents and employees, including those directly or indirectly engaged in the operation of other Retail Marijuana Establishment(s).

### **R 1703 – Retail Marijuana Establishment Operators: Occupational Licenses for Personnel**

#### **A. Required Occupational Licenses.**

1. Associated Key Licenses. All natural persons who are Direct Beneficial Interest Owners in a Retail Marijuana Establishment Operator must have a valid Associated Key License, associated with the Retail Marijuana Establishment Operator License. Such an Associated Key License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Establishment Operator and for work performed on behalf of, or at the Licensed Premises of, the Retail Marijuana Establishment(s) operated by the Retail Marijuana Establishment Operator.
2. Key Licenses. All other natural persons who are agents or employees of a Retail Marijuana Establishment Operator that are actively engaged, directly or indirectly, in the management or supervision of other Retail Marijuana Establishments, must hold a Key License. The Key License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Establishment Operator and for work at the Licensed Premises of, or on behalf of, the Retail Marijuana Establishment(s) operated by the Retail Marijuana Establishment Operator.
3. Occupational Licenses. All natural persons who are agents and employees of a Retail Marijuana Establishment Operator that are actively engaged, directly or indirectly, in the operation of one or more other Retail Marijuana Establishment(s), including but not limited to all agents or employees who will come into contact with Retail Marijuana or Retail Marijuana Product, who will have to access Limited Access Areas, or who will have access to the Inventory Tracking System account of the Retail Marijuana Establishment(s) being operated as part of their duties, must have a valid Occupational License.

- B. Occupational Licenses Not Required. Occupational Licenses are not required for Indirect Beneficial Interest Owners of a Retail Marijuana Establishment Operator, Qualified Limited Passive Investors who are Direct Beneficial Interest Owners of a Retail Marijuana Establishment Operator, or for natural persons who will not come into contact with Retail Marijuana or Retail Marijuana Product, will not have access Limited Access Area(s) of the Retail Marijuana Establishment(s) being operated, and will not have access to the Inventory Tracking System account of the Retail Marijuana Establishment(s) being operated.
- C. Designation of the Manager of a Retail Marijuana Establishment Operated by a Retail Marijuana Establishment Operator. If a Retail Marijuana Establishment Operator is contracted to manage the overall operations of a Retail Marijuana Establishment's Licensed Premises, the Retail Marijuana Establishment shall designate a separate and distinct manager on the Licensed Premises who is an officer, agent or employee of the Retail Marijuana Establishment Operator, which shall be a natural person with a valid Associated Key License or Key License, as set forth in paragraph A of this rule, and the Retail Marijuana Establishment shall comply with the reporting provisions of subsection 44-12-309(11), C.R.S.

#### **Basis and Purpose – R 1704**

The statutory authority for this rule includes but is not limited to sections 44-12-202(3)(a)(III), 44-12-202(2)(b), 44-12-202(3)(c), and 44-12-202(3)(c)(VIII), C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Establishment Operators.

#### **R 1704 – Retail Marijuana Establishment Operators: Business Records Required**

- A. General Requirement. A Retail Marijuana Establishment Operator must maintain all required business records as set forth in Rule R 901 - Business Records Required, except that:
1. A Retail Marijuana Establishment Operator is not required to maintain secure facility information, diagrams of its designated place of business, or a visitor log for its separate place of business, because a Retail Marijuana Establishment Operator will not come into contact with Retail Marijuana or Retail Marijuana Product at its separate place of business; and
  2. A Retail Marijuana Establishment Operator is not required to maintain records related to inventory tracking, or transport, because a Retail Marijuana Establishment Operator is prohibited from engaging in activities on its own behalf that would require inventory tracking or transport. All records relating to inventory tracking activities and records related to transport pertaining to the Retail Marijuana Establishment(s) operated by the Retail Marijuana Establishment Operator shall be maintained at the Licensed Premises of such Retail Marijuana Establishment(s).
- B. All records required to be maintained shall be maintained at the Retail Marijuana Establishment Operator's separate place of business, and not at the Licensed Premises of the Retail Marijuana Establishment(s) it operates.

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**R 1800 Series – Retail Marijuana Transfers to Unlicensed Medical Research Facilities and Pesticide Manufacturers**

**Basis and Purpose - R 1801**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1)(a), 44-12-202(2)(b), and 25-1.5-106.5(5)(b), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to Medical Research Facilities, including requirements for the possession and disposition of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product by Medical Research Facilities.

**R 1801 – Medical Research Facilities**

- A. Transfers to Medical Research Facilities. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana and Retail Marijuana Concentrate to a Medical Research Facility pursuant to Rule R 501. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Concentrate and Retail Marijuana Product to a Medical Research Facility pursuant to Rule R 601.
1. Upon Transfer of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be deemed Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product.
- B. Agreement with Medical Research Facility. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall enter into a written agreement with the Medical Research Facility prior to Transferring any Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility. The written agreement shall constitute a business record. See Rule R 901 – Business Records Required. The written agreement shall include the following information:
1. The identity of the Medical Research Facility;
  2. The quantity of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility;
  3. An affirmation by the Medical Research Facility that it (a) has received approval and funding from the State Board of Health for the research to be conducted on the marijuana; (b) remains authorized to receive the quantity of Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility; and (c) will destroy all Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product that will be Transferred to the Medical Research Facility, following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.;
  4. An affirmation by the Licensee that the Medical Research Facility has provided it with written proof of the State Board of Health’s approval and funding of the Medical Research Facility’s research;
  5. The date(s) upon which Transfer of the Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product will occur; and

6. An acknowledgement that, pursuant to these rules, upon Transfer of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to the Medical Research Facility, such Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product shall be deemed Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana-Infused Product.
- C. State Board of Health Approval. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall not Transfer Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless and until the State Board of Health approves and funds the Medical Research Facility's research pursuant to section 25-1.5-106.5, C.R.S.
1. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate and/or Retail Marijuana Product until the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility receives written proof of the State Board of Health's approval and funding of the Medical Research Facility's research. The written proof of the State Board of Health's approval and funding of the Medical Research Facility's research shall constitute a business record. See Rule R 901 – Business Records Required.
  2. Transferring Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility before the Medical Research Facility receives approval and funding from the State Board of Health shall be considered a violation affecting public safety.
- D. Inventory Tracking Requirements. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility shall track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System until it is delivered to a Medical Research Facility.
1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product unless a manifest is generated from the Inventory Tracking System. See Rule R 801(C) - Transport: All Retail Marijuana Establishments.
  2. Complete Manifest. A Licensee shall not relinquish possession or control of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility until a natural person authorized by the Medical Research Facility acknowledges receipt of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Concentrate, or Retail Marijuana Product by signing the transport manifest. See Rule R 801(I).
  3. No Inventory Tracking Following Delivery. Once Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product has been Transferred by a Licensee to a Medical Research Facility, no further inventory tracking is required.
  4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in the Inventory Tracking System. See Rule R 801(I).

- E. Packaging, Labeling, and Testing. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall package, label, and test all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in conformance with these Retail Marijuana Rules, 1 CCR 212-2, rules prior to Transferring the Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product. See R 1000-1 Series – Labeling, Packaging, and Product Safety; R 1500 Series – Retail Marijuana Testing Program.
- F. Business Records. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Medical Research Facility shall keep all documents concerning the relationship and Transfer of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in accordance with Rules R 801 and 901.
- G. Quantity Limitations for Medical Research Facilities. A Medical Research Facility shall only obtain Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the medical research approved pursuant to section 25-1.5-106.5, C.R.S. A Medical Research Facility shall not possess at any time a quantity of Transferred Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product greater than the quantity approved by the research grant awarded to the Medical Research Facility by the State Board of Health. In no event shall the Medical Research Facility possess at any given time more than (i) 12 Retail Marijuana Plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Product (5,120 ten-milligram servings of Retail Marijuana Product).
- H. Colorado Department of Public Health and Environment and State Board of Health Administration. The Colorado Department of Public Health and Environment is responsible for the administration of grants to Medical Research Facilities pursuant to section 25-1.5-106.5(2), C.R.S. The Colorado Department of Public Health, through the Scientific Advisory council, has the authority to review and make recommendations regarding research grant proposals. The State Board of Health has the authority to approve or deny research grant proposals pursuant to section 25-1.5-106.5, C.R.S.
- I. Disposal of Medical Marijuana. A Medical Research Facility shall destroy all Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product following completion of research activities as required by subsection 25-1.5-106.5(5)(b), C.R.S.
- J. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or Medical Marijuana or Medical Marijuana-Infused Product from a Medical Research Facility.

#### **Basis and Purpose - R 1802**

The statutory authority for this rule includes but is not limited to sections 44-12-202(1)(b) and 44-12-202(2)(b), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to Pesticide Manufacturers, including requirements for the possession and disposition of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Products by Pesticide Manufacturers.

**R 1802 – Pesticide Manufacturers**

- A. Transfers to Pesticide Manufacturers. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana and Retail Marijuana Concentrate to a Pesticide Manufacturer solely for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. See also Rule R 501. A Retail Marijuana Products Manufacturing Facility may Transfer Retail Marijuana Concentrate and Retail Marijuana Product to a Pesticide Manufacturer solely for the purpose of research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana. See also Rule R 601.
- B. Written Documentation Required. A Licensee shall require, and shall not Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to receiving, written proof under oath, as evidenced by an affidavit entered into by an authorized person on behalf of the Pesticide Manufacturer, affirming that the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this rule.: This documentation shall constitute a business record under Rule R 901 – Business Records Required.
- C. Agreement with Pesticide Manufacturer. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Pesticide Manufacturer shall enter into a written agreement with the Pesticide Manufacturer prior to Transferring any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Pesticide Manufacturer. The written agreement, which shall constitute a business record under Rule R 901, shall include:
1. The identity of the Pesticide Manufacturer;
  2. The quantity of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product that will be Transferred to the Pesticide Manufacturer;
  3. The date(s) upon which Transfer of the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product will occur;
  4. An affirmation by the Pesticide Manufacturer that it:
    - i. Has an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
    - ii. Is authorized to do business in Colorado;
    - iii. Is in possession of a physical location in the State of Colorado where its research activities will occur;
    - iv. Has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 et seq., C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 et seq., C.R.S.;
    - v. Remains authorized to receive the quantity of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product that will be Transferred to the Pesticide Manufacturer; and

- vi. Will only use the Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the purpose of research to establish safe and effective protocols for the use of Pesticides on Medical Marijuana, which protocols may include but not be limited to establishing efficacy and toxicity; and
  5. An affirmation by the Licensee that it has received written proof the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this rule.
- D. Inventory Tracking Requirements. A Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility shall track all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System until it is delivered to a Pesticide Manufacturer.
1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product unless a manifest is generated from the Inventory Tracking System.
  2. Complete Manifest. A Licensee shall not relinquish possession or control of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer until a natural person authorized by the Pesticide Manufacturer acknowledges receipt of the Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product by signing the transport manifest.
  3. No Inventory Tracking Following Delivery. Once Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product has been Transferred by a Licensee to a Pesticide Manufacturer, no further inventory tracking is required.
  4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in the Inventory Tracking System.
- E. Packaging, Labeling, and Testing. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer shall package, label, and test all Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in conformance with these rules prior to Transferring the Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. See R 1000-1 Series – Labeling, Packaging, and Product Safety; R 1500 Series – Medical Marijuana Testing Program.
- F. Business Records. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that Transfers Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to a Pesticide Manufacturer shall keep all documents concerning the relationship and Transfer of any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in accordance with Rules R 801 and R 901.
- G. Pesticide Manufacturer Authorized Activities. A Pesticide Manufacturer is only authorized to possess Transferred Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product in order to conduct research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Medical Marijuana.
- H. Quantity Limitations for Pesticide Manufacturer. In no event shall a Pesticide Manufacturer possess at any given time more than (i) 12 Retail Marijuana plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Products (5,120 ten-milligram servings of Retail Marijuana Product).

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- I. Disposition of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. A Pesticide Manufacturer shall destroy all Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product received from a Licensee following completion of research activities.
1. A Pesticide Manufacturer shall destroy Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in conformance with Rule R 307 – Waste Disposal.
  2. A Pesticide Manufacturer shall document the destruction of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product, which documentation shall include:
    - i. Whether the destroyed material was Transferred Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product;
    - ii. The date of destruction;
    - iii. The location of the destruction;
    - iv. The manner in which the Transferred Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product was rendered unusable and unrecognizable;
    - v. The method of final disposition pursuant to Rule R 307; and
    - vi. The identity(ies) and contact information of all Person(s) involved in the destruction.
  3. A Pesticide Manufacturer shall keep all documentation regarding destruction of Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product for the current year and three preceding calendar years.
- J. No Pesticide on Licensed Premises. Under no circumstance may a Pesticide Manufacturer apply Pesticide(s) for research purposes on the Licensed Premises of a Retail Marijuana Establishment.
1. Licensees Shall Not Permit Pesticide on Licensed Premises. Under no circumstance may a Licensee allow or permit the application of Pesticide(s) by a Pesticide Manufacturer for research purposes on the Licensed Premises of a Retail Marijuana Establishment.
  2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.
- K. No Human or Animal Subjects. Under no circumstance shall a Pesticide Manufacturer receiving Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from a Licensee engage in research involving human subjects. Additionally, under no circumstance shall a Pesticide Manufacturer receiving Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product from a Licensee engage in research involving animal subjects, as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g).

1. Licensees Shall Not Permit Human or Animal Subject Research. If a Licensee knows or reasonably should know that a Pesticide Manufacturer intends to engage in or has engaged in marijuana-related research involving human and/or animal subjects, the Licensee shall not Transfer any Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product to the Pesticide Manufacturer.
  2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.
- L. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product or Medical Marijuana or Medical Marijuana-Infused Product from a Pesticide Manufacturer.

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### **Editor's Notes**

#### **History**

Rule R 1101 emer. rule eff. 06/05/2013; expired 10/03/2013.  
Rules R 102-R 1004, R 1102-R 1401 emer. rule eff. 07/01/2013.  
Rules R 102-R 252, R 1401 emer. rule eff. 09/09/2013.  
Entire rule eff. 10/15/2013.  
Rule R 211 emer. rule eff. 12/19/2013; repealed eff. 03/02/2014.  
Rules R 103, R 211, R 307, R 406, R 504-R 505, R 604-R 605, R 712, R 1500 eff. 03/02/2014.  
Rules R 207-R 212 emer. rules eff. 07/01/2014; expired 10/28/2014.  
Rules R 103, R 604, R 712, R 1004, R 1004.5, R 1006, R 1006.5, R 1501-R 1503 emer. rules eff. 08/01/2014  
Rules R 231, R 234-R 235 emer. rules eff. 09/15/2014.  
Rules R 207-R 212 emer. rules eff. 10/28/2014.  
Rules R 103, R 207-R 212, R 231, R 234-R 235, R 407, R 604-R 605, R 712, R 1004, R 1004.5, R 1006, R 1006.5, R 1204, R 1501-R 1503 eff. 10/30/2014.  
Rules R 1004.5, R 1006.5 emer. rules eff. 01/30/2015.  
Rules R 1004.5, R 1006.5 eff. 05/30/2015.  
Rules R 103-R 104, R 106, R 201-R 207, R 210-R 212, R 231-R 231.5, R 233-R 234, R 301, R 304, R 307, R 309, R 402, R 405, R 501, R 506, R 604-R 605, R 701-R 706, R 712, R 801-R 802, R 901, R 904, R 1001-R 1007.5, R 1201-R 1203, R 1301-R 1304, R 1308-R 1309, R 1501-R 1504 eff. 11/30/2015.  
Rules R 207-R 210 emer. rules eff. 11/30/2015.  
Rules R 207-R 210 emer. rules eff. 03/24/2015.  
Rules R 207-R 210, R 231.5, R 234, R 235 eff. 07/01/2016.  
Rules R 604 C, R 1002, R 1003, R 1004.5, R 1005, R 1006.5, R 1007 repealed eff. 10/01/2016.  
Rules R 207-R 210, R 234, R 235 emer. rules eff. 12/22/2016.  
Rules R 103, R 201-R 252, R 301-R 308, R 401-R 405, R 501-R 505, R 601-R 604, R 701-R 712, R 801-R 802, R 905, R 1001-R 1007.5, R 1302-R 1304, R 1501-R 1507, R 1601-R 1604, R 1701-R 1704 eff. 01/01/2017.  
Rules R 106, R 207-R 210, R 234, R 235 eff. 04/14/2017.  
Rules R 1702, R 1703 emer. rules eff. 12/27/2017.

Rules R 101, R 103, R 201, R 202.1, R 204, R 204.5, R 206, R 207, R 210-R 212, R 231, R 231.1, R 231.2, R 233, R 251, R 301, R 304.1, R 305, R 307, R 309, R 401, R 402, R 404-R 407, R 501-R 506, R 601-R 605, R 701-R 712, R 801, R 802, R 901, R 1000, R 1001, R 1002.5, R 1003.5, R 1004, R 1005.5, R 1006, R 1007.5, R 1000-1 – R 1003-1, R 1201-R 1203, R 1303, R 1307, R 1501-R 1504, R 1507, R 1602, R 1603, R 1801, R 1802 eff. 01/01/2018. Rules R 304, R 1505 repealed eff. 01/01/2018.

Rules R 705, R 1504, R 1702, R 1703 emer. rules eff. 02/21/2018.

Rules R 103, R 201, R 210, R 253, R 304.1, R 501, R 503, R 505, R 601, R 1307, R 1702 emer. rules eff. 06/18/2018.

Rules R 705, R 1504, R 1702, R 1703 eff. 06/20/2018.

Rules R 103, R 201, R 210, R 253, R 304.1, R 501, R 503, R 505, R 601, R 1307, R 1702 emer. rules eff. 10/15/2018.

Rules R 102-R 106, R 201, R 202.1, R 203-R 205, R 208-R 212, R 231, R 232, R 234, R 235, R 250-R 253, R 302, R 303, R 304.1, R 305-R 307.5, R 308, R 309, R 401-R 404, R 406, R 407, R 501-R 507, R 601-R 603, R 605-R 607, R 701-R 703, R 705-R 709, R 712, R 801, R 901-R 905, R 1000-1, R 1002-1, R 1003-1, R 1102-R 1115, R 1201, R 1202, R 1204, R 1301-R 1309, R 1401, R 1501-R 1504, R 1506, R 1507, R 1601, R 1602, R 1604, R 1701, R 1702, R 1704 eff. 01/01/2019.