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## 2-210 – Duties of All Applicants and Licensees

- A. Duty to Keep Mailing Address Current: All Applicants and Licensees.
1. Timing of Notification. An Applicant or Licensee must provide a physical mailing address to the Division and may provide an electronic mailing address to the Division. A Licensee must inform the Division in writing of any change to its physical mailing address and/or electronic mailing address within 28 days of the change. The Division will not change a Licensee's information without written notice from the Licensee or its authorized agent.
  2. State Licensing Authority and Division Communications. The State Licensing Authority and Division will send any formal notifications or determinations regarding any application or an administrative action to the last mailing address and to the last electronic mailing address, if any, furnished to the Division by the Applicant or Licensee.
  3. Failure to Change Address Does Not Relieve Applicant's or Licensee's Obligations. An Applicant's or Licensee's failure to notify the Division of a change of physical or electronic mailing address does not relieve the Applicant or Licensee from the obligation of responding to a Division communication or a State Licensing Authority communication.
- B. Duty to Report Felony - Convictions, Deferred Sentences and Judgments. An Applicant or Licensee must notify the Division in writing of any felony conviction or deferred sentence or judgment regarding a felony against him or her within seven days of the conviction or deferred sentence or judgment. The notification must include disposition documents. Failure to make required notification to the Division may be grounds for administrative action.
- C. Duty to Report Any Disqualifying Event. Applicants and Licensees must notify the Division within seven days of any change of fact that would result in the Applicant or Licensee being disqualified from holding a license, permit, or registration pursuant to the Marijuana Code, or these Rules.
- D. Duty to Cooperate. Applicants and Licensees must cooperate in any investigation conducted by the Division. Failure to cooperate with a Division investigation may be grounds for denial of an application or for administrative action against a Licensee.
- E. Duty to Report Change of Registered Agent. A Regulated Marijuana Business must disclose any change of its registered agent in the State of Colorado within seven days of the change.

## Basis and Purpose – 2-215

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(k), 44-10-203(2)(w), 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, 44-10-314 and 44-10-316, C.R.S. The purpose of this rule is to establish requirements for all applications including: required application fees; complete, accurate and truthful applications; notification of the applicable local licensing authority or local jurisdiction; that the Applicant or Licensee establish he, she or it is not a person prohibited from licensure; submission of additional information or documents upon request by the Division; and notification that all application material may be disclosed consistent with the Marijuana Code.

## 2-215 – All Applications Requirements

- A. Applicability. This Rule 2-215 applies to all applications submitted to the Division for a license, permit, or registration provided by the Marijuana Code.
- B. Division Forms Required. All applications for licenses, registrations, or permits authorized by subsections 44-10-401(2) and (3), C.R.S., must be made on current Division forms.
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- C. Application Fees Required. Applications must be accompanied by full remittance of the required application and license fees. See Rules 2-205 and 2-206.
- D. Complete, Accurate, and Truthful Applications Required. Applications must be complete, accurate, and truthful and include all attachments and supplemental information. Incomplete applications may not be accepted by the Division.
- E. Local Licensing Authority/Local Jurisdiction.
1. Each application must identify the applicable Local Licensing Authority or Local Jurisdiction.
  2. If the Local Licensing Authority or Local Jurisdiction requires a physical copy of the application, the Applicant or Licensee must submit the original application and one identical copy to the Division. Otherwise the Applicant or Licensee must submit only the original application to the Division.
- F. Applicant Not Prohibited From Licensure. Applicants must provide information establishing the Applicant is not a Person prohibited from licensure by section 44-10-307, C.R.S.
- G. Additional Information and Documents May Be Required.
1. Upon request by the Division, an Applicant must provide additional information or documents required to process and investigate the application. The additional information or documents must be provided within seven days of the request, however, this deadline may be extended for a period of time commensurate with the scope of the request.
  2. An Applicant's failure to provide requested information or documents by the deadline may be grounds for denial of the application.
- H. Application Forms Accessible. All application forms provided by the Division and filed by an Applicant for a license, registration, or permit, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Marijuana Code, for investigation or enforcement of any international, federal, state, or local securities law or regulation, for any other state or local law enforcement purpose, or as otherwise required by law.

### **Basis and Purpose – 2-220**

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-301, 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, and 44-10-316, C.R.S. The purpose of this rule is to establish the general requirements and processes for submission of an initial application for a Regulated Marijuana Business to the State Licensing Authority.

### **2-220 – Initial Application Requirements for Regulated Marijuana Businesses**

- A. Documents and Information Requested. Every initial application for a Regulated Marijuana Business License must include all required documents and information including, but not limited to:
1. A copy of the local license application, if required, for a Regulated Marijuana Business.
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2. Certificate of Good Standing from the jurisdiction in which the Entity was formed, which must be one of the states of the United States, territories of the United States, District of Columbia, or another country that authorizes the sale of marijuana.
  3. If the Applicant is an Entity, the identity and physical address of its registered agent in the state of Colorado.
  4. Organizational Documents. Articles of Incorporation, by-laws, and any shareholder agreement for a corporation; articles of organization and operating agreement for a limited liability company; or partnership agreement for a partnership.
  5. Corporate Governance Documents.
    - a. A Regulated Marijuana Business that is a Publicly Traded Corporation must maintain corporate governance documents as required by the securities exchange on which its securities are listed and traded, and section 44-10-103(50), C.R.S., and must provide those corporate governance documents with each initial application.
    - b. A Regulated Marijuana Business that is not a Publicly Traded Corporation is not required to maintain any corporate governance documents. However, if the Regulated Marijuana Business that is not a Publicly Traded Corporation voluntarily maintains corporate governance documents, the Division encourages inclusion of such documents with each initial application.
  6. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Applicant is, or will be, entitled to possession of the premises for which the application is made.
  7. Legible and accurate diagram for the facility. The diagram must include a plan for the Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 x 11 inches, the Applicant must also provide a copy of the diagram in a portable document format (.pdf).
  8. All required findings of suitability issued by the Division.
  9. If the Applicant is a Publicly Traded Corporation:
    - a. Documents establishing the Publicly Traded Corporation qualifies to hold a Regulated Marijuana Business License including but not limited to disclosure of securities exchange(s) on which its Securities are listed and traded, the stock symbol(s), the identity of all regulators with regulatory oversight over its Securities; and
    - b. Divestiture plan for any Controlling Beneficial Owner that is a Person prohibited by the Marijuana Code, has had her or his Owner License revoked, or has been found unsuitable.
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10. Financial Statements. Consolidated financial statements (which may be prepared on either a calendar or fiscal year basis) that were prepared in the preceding 365 days, and which must include a balance sheet, an income statement, and a cash flow statement. If the Applicant or Regulated Marijuana Business is required to have audited financial statements by another regulator (e.g. United States Securities and Exchange Commission or the Canadian Securities Administrators) the financial statements provided to the Division must be audited and must also include all footnotes, schedules, auditors' report(s), and auditor's opinion(s). If the financial statements are publicly available on a website (e.g. EDGAR or SEDAR), the Applicant or Regulated Marijuana Business may provide notification of the website link where the financial statements can be accessed in lieu of hardcopy submission.
  11. Tax Documents. While duplicate tax documentation is not required to be provided with the application, the Applicant shall cooperate with the Division to establish proof of compliant return filing and payment of taxes related to any Regulated Marijuana Business in which the Person is, or was, required to file and pay taxes.
- B. Local Licensing/Approval Required.
1. Regulated Marijuana Business Local Licensing Authority Approval Required.
    - a. If the Division grants a License to a Regulated Marijuana Business before the Local Licensing Authority or Local Jurisdiction approves the application or grants a local license, the state License will be conditioned upon local approval. If the Local Licensing Authority denies the application, the state License will be revoked.
    - b. An Applicant is prohibited from operating a Regulated Marijuana Business prior to obtaining all necessary licenses, registrations, permits, or approvals from both the State Licensing Authority and the Local Licensing Authority or Local Jurisdiction.
  2. Retail Marijuana Business One Year to Obtain Local Jurisdiction Approval Required.
    - a. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing from the Local Jurisdiction.
    - b. If the Applicant fails to obtain Local Jurisdiction approval or licensing within one year from grant of the state License, the state License may be renewed in accordance with Rule 2-225(G)(2).
- C. Social Equity License Qualification.
1. A natural person who can establish he or she qualifies as a Social Equity Licensee may apply for either a Regulated Marijuana Business License or an Accelerator License.
  2. Repealed.
  3. Repealed.
  4. Repealed.
- D. Accelerator License Application and Qualification.
1. License Issuance.
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- a. Beginning January 1, 2021, a Social Equity Licensee may apply for an Accelerator License. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.
  - b. An Accelerator Licensee may exercise the privileges of a Retail Marijuana Cultivation Facility License, Retail Marijuana Products Manufacturer License, or Retail Marijuana Store License on the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that has been approved as an Accelerator-Endorsed Licensee or on a Licensed Premises under the control of the Accelerator-Endorsed Licensee.
2. Qualifications. To qualify for an Accelerator License, an Applicant must:
- a. Be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules; and
  - b. Be approved as a Social Equity Licensee pursuant to Rule 2-235(B.5).
3. Information Required to Establish Qualification as an Accelerator Licensee. To establish that an Applicant qualifies as an Accelerator Licensee, he or she must establish:
- a. Qualification as a Social Equity Licensee; and
  - b. An affirmation that the Applicant has not been the Beneficial Owner of a Regulated Marijuana Business License issued pursuant to the Marijuana Code.

### **Basis and Purpose – 2-225**

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-305(2)(b)(l)(C), 44-10-307, 44-10-308, 44-10-309, 44-10-313, 44-10-314, and 44-10-316 C.R.S. The purpose of this rule is to establish the requirements and procedures for the license renewal process, including the circumstances under which an expired license may be reinstated.

### **2-225 – Renewal Application Requirements for All Licensees**

- A. License Periods.
1. Regulated Marijuana Business and Owner Licenses are valid for a period not to exceed one year from the date of issuance.
  2. Medical Marijuana Transporters, Retail Marijuana Transporters, and Employee Licenses are valid for a period not to exceed two years from the date of issuance.
- B. Division Notification Prior to Expiration.
1. The Division will send a notice of license renewal 90 days prior to the expiration of an existing Regulated Marijuana Business or Owner License by first class mail to the Licensee's mailing address of record.
  2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.
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C. Renewal Deadline.

1. A Licensee must apply for the renewal of an existing license prior to the Licensee's expiration date.
2. A renewal application submitted to the Division prior to the license's expiration date shall be deemed timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until Final Agency Order on the renewal application.

D. 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 application and license fees prior to the license expiration date. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date must not operate unless it first obtains a new state license and any required local license.

1. Reinstatement of Expired Regulated Marijuana Business License. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date may request that the Division reinstate an expired license only in accordance to the following:
  - a. The Regulated Marijuana Business License expired within the previous 30 days;
  - b. The Regulated Marijuana Business License has submitted an initial application pursuant to Rule 2-220. The initial application must be submitted prior to, or concurrently with, the request for reinstatement;
  - c. The Regulated Marijuana Business has paid the reinstatement fee in Rule 2-205; and
  - d. Any license or approval from the Local Licensing Authority or Local Jurisdiction is still valid or has been obtained.
2. Reinstatement Not Available for Surrendered or Revoked Licenses. A request for reinstatement cannot be submitted and will not be approved for a Regulated Marijuana Business License that was surrendered or revoked.
3. Reinstatement Not Available for Owner Licenses or Employee Licenses. A request for reinstatement cannot be submitted and will not be approved for expired, surrendered, or revoked Owner Licenses or Employee Licenses.
4. Denial of Request for Reinstatement or Administrative Action. If the Licensee requesting reinstatement of a Regulated Marijuana Business License operated during a period that the license was expired, the request may be subject to denial and the Licensee may be subject to administrative action as authorized by the Marijuana Code or these Rules.
5. Approval of Request for Reinstatement. Upon approval of any request for reinstatement of an expired Regulated Marijuana Business License, the Licensee may resume operations until the final agency action on the Licensee's initial application for a Regulated Marijuana Business License.
  - a. Approval of a request for reinstatement of an expired Regulated Marijuana Business License does not guarantee approval of the Regulated Marijuana Business Licensee's initial application; and

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- b. Approval of a request for reinstatement of an expired License does not waive the State Licensing Authority's authority to pursue administrative action on the expired License or initial application for a Regulated Marijuana Business License.
6. Final Agency Order on Initial Application for Regulated Marijuana Business.
- a. If the initial application for a Regulated Marijuana Business License submitted pursuant to this Rule is approved, the new Regulated Marijuana Business License will replace the reinstated license.
  - b. If the initial application for a Regulated Marijuana Business License submitted pursuant to this Rule is denied, the Licensee must immediately cease all operations including but not limited to, Transfer of Regulated Marijuana. See Rule 2-270 – Application Denial and Voluntary Withdrawal; 8-115 – Disposition of Unauthorized Regulated Marijuana; 8-130 – Administrative Warrants.
- E. Voluntarily Surrendered or Revoked Licenses Not Eligible for Renewal. Any License that was voluntarily surrendered or that was revoked by a Final Agency Order is not eligible for renewal. Any Licensee who voluntarily surrendered its license or has had its License revoked by a Final Agency Order may only submit an initial application. The State Licensing Authority will consider the voluntary surrender or the Final Agency Order and all related facts and circumstances in determining approval of any subsequent initial application.
- F. Licenses Subject to Ongoing Administrative Action. Licenses subject to an administrative action are subject to the requirements of this Rule. Licenses that are not timely renewed expire and cannot be renewed.
- G. Documents Required at Renewal. A Regulated Marijuana Business and all Controlling Beneficial Owner-Entities must provide the following documents with every renewal application:
- 1. Any document required by Rule 2-220(A)(1) through (9) that has changed since the document was last submitted to the Division. It is a license violation affecting public safety to fail to submit any document that changed since the last submission for the purpose of circumventing the requirements of the Marijuana Code, or these Rules;
  - 2. A copy of the Local Licensing Authority or Local Jurisdiction approval, licensure, and/or documentation demonstrating timely submission of and pending local license renewal application;
    - a. For renewal applications submitted after August 8, 2023, the State Licensing Authority may renew a License that has not yet received Local Licensing Authority approval prior to the expiration of the state-issued License if:
      - i. The Applicant submits a renewal application in accordance with this Rule; and
      - ii. The Applicant submits written documentation that demonstrates the Licensee has taken action to obtain local approval and demonstrates why local approval has not yet been obtained or a local license issued.
  - 3. A list of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency, including but not limited to the United States Securities and Exchange Commission or the Canadian Securities Administrators;
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4. A Regulated Marijuana Business operating under a single Entity name with more than one License may submit the following documents only once each calendar year on the first license renewal in lieu of submission with every license renewal in the same calendar year:
    - a. Financial statements required by Rule 2-220(A)(10);
    - b. If the Regulated Marijuana Business is a Publicly Traded Corporation, the most recent list of Non-Objecting Beneficial Owners possessed by the Regulated Marijuana Business;
    - c. A copy of all management agreement(s) the Regulated Marijuana Business has entered into regardless of whether the Person is licensed or unlicensed; and
    - d. Contracts, agreements, royalty agreements, equipment leases, financing agreements, or security contracts for any Indirect Financial Interest Holder that is required to be disclosed by Rule 2-230(A)(3).
  - H. Controlling Beneficial Owner Signature. At least one Controlling Beneficial Owner shall sign the renewal application. However, other Controlling Beneficial Owners may be required to sign authorizations and/or requests to release information.
  - I. Accelerator Program Renewal Application Requirements.
    1. Accelerator License Renewal. Accelerator Cultivator, Accelerator Manufacturer, and Accelerator Store Licenses are required to be renewed annually. In addition to the documents and information required to be submitted with a renewal application, an Accelerator Licensee must also disclose to the Division copies of any agreements between the Accelerator Licensee and the Accelerator-Endorsed Licensee under which it operated during the previous year.
    2. Accelerator-Endorsed Licensee Additional Renewal Requirements.
      - a. An endorsement issued to an Accelerator-Endorsed Licensee is required to be renewed annually.
      - b. At the time of submitting a renewal application for the endorsement, an Accelerator-Endorsed Licensee must submit the following:
        - i. The name and License number of any Accelerator Licensee for which it served as an Accelerator-Endorsed Licensee during the previous year;
        - ii. The equity assistance proposal if there have been any updates or amendments since the proposal was last submitted to the Division;
        - iii. Copies of any agreements between the Accelerator-Endorsed Licensee and the Accelerator Licensee(s), including the equity partnership agreement; and
        - iv. Any required Local Jurisdiction approvals.
      - c. In addition to any other basis for denial of a renewal application, the State Licensing Authority may also consider the following facts and circumstances as additional bases for denial of an endorsement renewal application:
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- i. The Accelerator-Endorsed Licensee violated the terms of any equity partnership agreement it entered into with an Accelerator Licensee;
- ii. The Accelerator-Endorsed Licensee ended the equity partnership agreement with an Accelerator Licensee prematurely; and
- iii. The Accelerator-Endorsed Licensee provided false or misleading statements, records, or information to an Accelerator Licensee.

### **Basis and Purpose – 2-230**

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(t), 44-10-203(2)(u), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-308, 44-10-309, and 44-10-316, C.R.S. Section 44-10-309, C.R.S., establishes varying disclosure requirements for Applicants and Licensees regarding disclosure of financial interests and ownership in a Regulated Marijuana Business. The purpose of this rule is to clarify information an Applicant or Licensee must disclose to the State Licensing Authority at the various levels, which include mandatory disclosure, disclosure in the State Licensing Authority's discretion, and disclosure for reasonable cause. This rule also provides factors that will be considered in determining whether a Regulated Marijuana Business exercised reasonable care and whether a Person is in control of a Regulated Marijuana Business.

### **2-230 – Disclosure of Financial Interests in a Regulated Marijuana Business**

- A. Mandatory Disclosures. Information required to be disclosed by section 44-10-309, C.R.S., must be identified in every initial, renewal, and change of owner application. Mandatory disclosures include, but are not limited:
1. All Regulated Marijuana Businesses (including Publicly Traded Corporations and Entities that are not Publicly Traded Corporations) must disclose an organizational chart including the identity and ownership percentages of all Controlling Beneficial Owners;
  2. All Controlling Beneficial Owners.
    - a. For any Controlling Beneficial Owner that is an Entity (including Publicly Traded Corporations and entities that are not Publicly Traded Corporations):
      - i. The Controlling Beneficial Owner's Executive Officers; and
      - ii. Beneficial Owners of ten percent or more of the Controlling Beneficial Owner.
    - b. Natural persons:
      - i. Name;
      - ii. Address;
      - iii. Date of birth;
      - iv. Social Security Number or other Federal Government-issued identification number.

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- c. Qualified Private Fund: Organizational chart reflecting the identity and ownership percentages of the Qualified Private Fund's Executive Officers, investment advisers, investment adviser representatives, any trustee or equivalent, and any other Person that controls the investment in, or management or operations of, a Regulated Marijuana Business.
      - d. Trust: A copy of any documents required to establish the trust, a certification of the trust, and any additional documents necessary to demonstrate the type of trust, the identity and age of the trustee and all beneficiaries of the trust.
    3. Any Person that is an Indirect Financial Interest Holder that:
      - a. Holds two or more indirect financial interests;
      - b. Is also a Passive Beneficial Owner; or
      - c. That is contributing debt financing, secured or unsecured, that has not previously been disclosed and exceeds fifty percent of the operating capital of the Regulated Marijuana Business or if the calculation yields a negative number. Operating capital is defined as total current and fixed assets less total liabilities (as presented on the balance sheet consistent with the business's past practices), measured as of the nearest month's end prior to the date of the applicable loan document(s).
  - B. Discretionary Disclosure. In his or her reasonable discretion, the State Licensing Authority may require disclosure following an initial or renewal application for a Regulated Marijuana business as follows:
    1. For a Regulated Marijuana Business or a Controlling Beneficial Owner, neither of which is a Publicly Traded Corporation, its:
      - a. Affiliates;
      - b. Beneficial Owners of a Controlling Beneficial Owner;
    2. Qualified Private Fund's Affiliates; and
    3. Managers of a Controlling Beneficial Owner.
  - C. Reasonable Cause Disclosure. An Applicant will be notified by the State Licensing Authority of Reasonable Cause to require additional disclosure. The State Licensing Authority's notification will identify the facts and law supporting Reasonable Cause for the disclosure and the deadline for disclosure. The following may be required to be disclosed by the State Licensing Authority's notification:
    1. An updated list of all Non-objecting Beneficial Owners in a Publicly Traded Corporation that is either a Regulated Marijuana Business or a Controlling Beneficial Owner reflecting ownership as of the date of request;
    2. All Passive Beneficial Owners in a Regulated Marijuana Business that is not a Publicly Traded Corporation. If the Passive Beneficial Owner is not a natural person, the members of the board of directors, general partners, managing members, or Managers or Executive Officers and Beneficial Owners of ten percent or more of the Passive Beneficial Owner;
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3. A list of all Beneficial Owners of a Qualified Private Fund;
  4. All Indirect Financial Interest Holders of a Regulated Marijuana Business, and, for any Indirect Financial Interest Holder that is an Entity, the Beneficial Owners of ten percent or more of the Indirect Financial Interest Holder.
- D. Affirmation of Reasonable Care.
1. Reasonable Care Affirmation for a Regulated Marijuana Business That is Not a Publicly Traded Corporation. A Regulated Marijuana Business that is not a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owner(s), including any Qualified Institutional Investor(s), and Indirect Financial Interest Holder(s) are not Persons prohibited from holding a license under these Rules or the Marijuana Code. A Regulated Marijuana Business exercises reasonable care if it:
    - a. Receives documentation from each Passive Beneficial Owner, including any Qualified Institutional Investor, and each Indirect Financial Interest Holder affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and
    - b. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Passive Beneficial Owner or Indirect Financial Interest Holder's affirmation.
  2. Reasonable Care Affirmation for a Regulated Marijuana Business That is a Publicly Traded Corporation. A Regulated Marijuana Business that is a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, and Indirect Financial Interest Holder(s) are not Person prohibited from holding a license by these Rules and the Marijuana Code. A Regulated Marijuana Business that is a Publicly Traded Corporation exercises reasonable care if it:
    - a. At least annually, checks a list of its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, against the Specially Designated Nationals and Blocked Persons List (SDN List) on the United States Treasury Office of Foreign Assets Control (OFAC) website and the Financial Industry Regulatory Authority (FINRA) website for Persons Barred by FINRA to determine if there are any prohibited Persons;
    - b. Receives documentation from its Indirect Financial Interest Holder(s) affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and
    - c. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Indirect Financial Interest Holder's affirmation.
- E. Control. The State Licensing Authority will consider all facts and circumstances in determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.
1. Non-Exhaustive Factors. Non-exhaustive facts and circumstances that will be considered when evaluating Control include, but are not limited to:
    - a. The Person's percentage of ownership, if any;
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- b. The Person's ability to influence the decision of the Regulated Marijuana Business;
  - c. The Person is a Manager of the Regulated Marijuana Business;
  - d. The Person has a close relationship, familial tie, or common purpose or motive with one or more Persons in Control of the Regulated Marijuana Business;
  - e. The Person has substantial business relationship(s) with the Regulated Marijuana Business;
  - f. The Person has the ability to control the proxy machinery or to win a proxy contest;
  - g. The Person is a primary creditor of the Regulated Marijuana Business; or
  - h. The Person is the original incorporator of the Regulated Marijuana Business.
2. Totality of the Evidence. The State Licensing Authority may consider the totality of the evidence when determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.

#### **Basis and Purpose – 2-235**

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(2)(c), 44-10-203(2)(ee), 44-10-309, 44-10-310, and 44-10-312(4), C.R.S. Section 44-10-310, C.R.S., requires that persons disclosed or who should have been disclosed to the State Licensing Authority obtain a finding of suitability from the State Licensing Authority. The purpose of this rule is to explain the conditions under which a Person is subject to either a mandatory finding of suitability or a finding of suitability for reasonable cause, to identify exemptions from an otherwise required finding of suitability and to identify the information and documents that, at a minimum, must be submitted in connection with any Person's request for a finding of suitability.

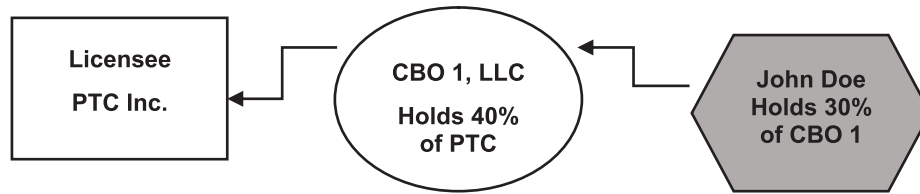
#### **2-235 – Suitability**

- A. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Not Publicly Traded Corporations.
1. Except as provided in subparagraph (A)(1)(a), any Person intending to become a Controlling Beneficial Owner by submitting an initial application for any Regulated Marijuana Business that is not a Publicly Traded Corporation must first obtain a finding of suitability from the State Licensing Authority.
    - a. Members of the Board of Directors and Executive Officers of a Regulated Marijuana Business. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.
  2. Indirect Ownership of Ten-Percent or More Owner's Interests in a Regulated Marijuana Business.

- a. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether that Entity's Executive Officers and any Person that directly or indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable. For example, assuming the scenario depicted below, Licensee RMB LLC has one-thousand outstanding ownership interests and CBO 1, LLC owns 400 of those ownership interests. John Doe owns 30% of CBO 1, LLC. Therefore, John Doe indirectly owns 12% of the outstanding ownership interests of Licensee RMB LLC, and must apply to the State Licensing Authority for a finding of suitability.



3. Any Person that has not received a finding of suitability and who intends to become a Controlling Beneficial Owner of a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit their request for a finding of suitability prior to or contemporaneously with the change of owner application, unless exempt from the change of owner application requirement under Rule 2-245(C).
  4. For a Controlling Beneficial Owner that is a trust, the trust's request for a finding of suitability must include all documents and information required or requested by the State Licensing Authority to permit a determination of whether or not the trustee and any beneficiary who may exercise control over the trust is suitable. A trust will not be found suitable if any person prohibited by section 44-10-307 is the trustee, otherwise controls the trust, or is positioned to receive distributions from the trust while a person prohibited.
  5. Any Passive Beneficial Owner who elects to apply for an Owner's License in accordance with Rule 2-265(B)(3).
- B. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Publicly Traded Corporations.
1. The following Persons must apply to the State Licensing Authority for a finding of suitability:
    - a. Any Person that becomes a Controlling Beneficial Owner of any Regulated Marijuana Business that is a Publicly Traded Corporation; and
    - b. Any Person that indirectly Beneficially Owns ten percent or more of the Regulated Marijuana Business that is a Publicly Traded Corporation through direct or indirect ownership of its Controlling Beneficial Owner. For example, assuming the scenario depicted below, Licensee PTC Inc. has one-million shares of outstanding Securities and CBO 1 owns 400,000 of those securities. John Doe owns 30% of CBO 1. Therefore, John Doe indirectly owns 12% of the outstanding securities of Licensee PTC Inc., and must apply to the State Licensing Authority for a finding of suitability.



2. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether its Executive Officers and any Person that indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable.
3. Timing of Request for Finding of Suitability Involving Publicly Traded Corporation.
  - a. Unless exempted under Rule 2-235(E), all Persons that will be a Controlling Beneficial Owner in a Regulated Marijuana Business that is entering into a Publicly Traded Corporation transaction described in Rule 2-245(B)(1) must first obtain a finding of suitability by the State Licensing Authority before the transaction can close or the public offering can occur.
  - b. A Person who becomes a Controlling Beneficial Owner in a Regulated Marijuana Business that is a Publicly Traded Corporation must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming a Controlling Beneficial Owner.
  - c. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

B.5. Persons Subject to Mandatory Finding of Suitability: Social Equity Licensees.

1. Qualifications. To qualify as a Social Equity Licensee, the Applicant must be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules, and must meet the following minimum eligibility requirements:
  - a. The Applicant is a Colorado Resident and has established Colorado residency by providing the items required by Rule 2-265(H).
  - b. The Applicant has not been the Beneficial Owner of a License subject to administrative action issued by the State Licensing Authority resulting in the revocation of a license issued pursuant to the Marijuana Code;
  - c. The Applicant has demonstrated at least one of the following:
    - i. The Applicant has resided for at least fifteen years between the years 1980 and 2010 in a census tract designated by the office of economic development and international trade as an opportunity zone or a census tract designated as a Disproportionate Impacted Area;

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- ii. The Applicant or the Applicant's parent, legal guardian, sibling, spouse, child, or minor in their guardianship was arrested for a marijuana offense, convicted of a marijuana offense, or was subject to civil asset forfeiture related to a marijuana investigation; or
        - iii. The Applicant's household income in the year prior to application did not exceed 50% of the state median income as measured by the number of people who reside in the Applicant's household.
      - d. The Social Equity Licensee, or collectively one or more Social Equity Licensees, holds at least fifty-one percent of the Beneficial Ownership of the Regulated Marijuana Business License.
    - 2. Information Required to Establish Qualification as a Social Equity Licensee.
      - a. To demonstrate qualification as a Social Equity Licensee based on residence during the relevant time period, the Applicant must demonstrate the Applicant's residency which may include either:
        - i. Providing information or documents including but not limited to a copy of school records, rental agreements, lease agreements, utility bills, mortgage statements, loan documents, bank records, tax returns, or any other document which proves the Applicant's place of residence; or
        - ii. Affirming, under penalty of perjury, the Applicant's place of residence and provide the name(s) and contact information for at least one individual who can verify the Applicant's place of residence during the time period at issue.
      - b. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on a prior marijuana conviction of a family member, the Applicant must provide affirmation of the familial relationship and court or other documents demonstrating the family member's arrest or conviction for a marijuana offense or that the family member was subject to a civil asset forfeiture related to a marijuana investigation.
      - c. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on the Applicant's income, the Applicant must provide the Applicant's tax return for the prior year. If an Applicant applies between January 1 and April 15 but has not yet filed a tax return, the application may be delayed or denied until the tax return is filed and provided to the Division. The Division cannot accept tax returns for previous years.
    - 3. Denial on the Sole Basis of a Marijuana Conviction. The State Licensing Authority will not deny an application for a Social Equity License or a related request for a finding of suitability on the sole basis of a marijuana conviction.
  - C. Finding of Suitability for Reasonable Cause. For Reasonable Cause, any other Person that was disclosed or should have been disclosed pursuant to subsections 44-10-309(1) or (2) or that was required to be disclosed based on previous notification of Reasonable Cause must submit a request to the State Licensing Authority for a finding of suitability. Any Person required to submit a request for a finding of suitability pursuant to this Rule must submit such request within 45 days from notice of the State Licensing Authority's determination of Reasonable Cause for the finding of suitability.
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- D. Information Required in Connection with a Request for a Finding of Suitability. When determining whether a Person is suitable or unsuitable for licensure, the State Licensing Authority may consider the Person's criminal character or record, licensing character or record, or financial character or record. To consider a Person's criminal character or record, licensing character or record, and financial character or record, all requests for a finding of suitability must, at a minimum, be accompanied by the following information:
1. Criminal Character or Record:
    - a. A set of the natural person's fingerprints for purposes of a fingerprint-based criminal history record check.
  2. Licensing Character or Record:
    - a. Affirmation that the Person is not prohibited from holding a license under section 44-10-307, C.R.S.
    - b. A list of all Colorado Department of Revenue-issued business licenses held in the three years prior to submission of the request for a finding of suitability;
    - c. A list of all Department of Regulatory Agencies business, professional, or occupational licenses held in the three years prior to submission of the request for a finding of suitability;
    - d. A list of any marijuana business or personal license(s) held in any other state or territory of the United States or District of Columbia or another country, where such license is or was at any time subject to a denial, suspension, revocation, surrender, or equivalent action by the licensing agency, commission, board, or similar authority; and
    - e. Disclosure of any civil lawsuits in which the Person was named a party where pleadings included allegations involving any Regulated Marijuana Business.
  3. Financial Character or Record:
    - a. Disclosure of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency other than the United States Securities Exchange Commission;
    - b. Account Statements or Property Ownership Documents Required.
      - i. If a Person is submitting a request for a finding of suitability to acquire ten percent or more of the Owner's Interest in a Regulated Marijuana Business and has identified both the source of funds or property and the Regulated Marijuana Business License that will be acquired at the time of the request for the finding of suitability, then the Person shall also include, copies of the Person's financial account statements for the preceding one-hundred eighty days for any accounts serving as a source of funding used to acquire the Owner's Interest in the Regulated Marijuana Business; or, if the Person is contributing one or more asset(s) to the Regulated Marijuana Business in exchange for the Owner's Interests, documents establishing the Person has owned such asset(s) for the preceding one-hundred eighty days.
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- ii. If a Person has not identified both the source of funding or property and the Regulated Marijuana Business License that will be acquired, then the Person can submit a request for a finding of suitability without account statements or property ownership documents.
- iii. When a Person submits a Change of Controlling Beneficial Owner or new Regulated Marijuana Business License application, the Person shall also provide account statements for the funds that will be used to acquire the Owner's Interest in the Regulated Marijuana Business License or the property ownership documents for the preceding one hundred eighty (180) days.

E. Exemptions from a Finding of Suitability.

1. The following Persons are exempt from an otherwise required finding of suitability:
  - a. Any Person that currently possesses an approved Owner License issued by the State Licensing Authority and such Owner License has not, in the preceding 365 days, been subject to suspension or revocation.
2. Exemptions from an otherwise required finding of suitability are limited to those listed in this Rule. The State Licensing Authority will consider other factors that may inform amendments to this Rule through the Department's formal rulemaking session.

F. Timing to Approve or Deny a Request for Finding of Suitability. Absent Reasonable Cause, the State Licensing Authority must approve or deny a request for a finding of suitability within 120 days from the date of submission of the request for such finding, where such request was accompanied by all information required under subsection (D) of this Rule.

G. Executive Officer Considerations. Whether an individual is an Executive Officer subject to a mandatory finding of suitability is based on the definition in these rules and the facts and circumstances. In determining whether an individual is an Executive Officer, the State Licensing Authority will consider the following, non-exhaustive factors:

1. Title is not dispositive, however, the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, president, the General Counsel, and any individual with similar policy making authority are Executive Officers;
2. The level of decision-making authority the individual possesses;
3. The Controlling Beneficial Owner and/or Regulated Marijuana Business's organizational chart; and
4. Any relevant guidance from the United States Securities and Exchange Commission or similar securities regulator, securities rules or securities case law.

H. Findings of Suitability Expiration.

1. Finding of Suitability. A finding of suitability other than for a Social Equity Licensee is valid for one year from the date it is issued by the State Licensing Authority. If more than one year has passed since the State Licensing Authority issued a finding of suitability to a Person other than for a Social Equity Licensee and such Person has not during that time applied to become a Controlling Beneficial Owner of a Regulated Marijuana Business pursuant to an initial business license application or change of owner application, then such Person 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 Controlling Beneficial Owner of a Regulated Marijuana Business. Upon approval and issuance of an Owner License, a finding of suitability is no longer valid.
  2. Finding of Suitability for Social Equity Licensees. A finding of suitability for Social Equity License Applicants under Rule 2-220(C) is valid for two years from the date it is issued by the State Licensing Authority. If more than two years has passed since the State Licensing Authority issued the finding of suitability and such Social Equity Licensee has not during that time applied to become a Controlling Beneficial Owner of a Regulated Marijuana Business, then such Social Equity Licensee 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 Controlling Beneficial Owner of a Regulated Marijuana Business. Upon approval and issuance of an Owner License, a finding of suitability is no longer valid.
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## Basis and Purpose – 2-245

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(1)(d), 44-10-203(1)(k), 44-10-203(2)(ee)(l)(A) and (E), 44-10-203(7), 44-10-308(3)(b), 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-505(1)(a), and 44-10-605(1)(a), C.R.S. The purpose of this rule is to define the application process and conditions an Applicant or Licensee must meet when changing Beneficial Ownership in a Regulated Marijuana Business. This rule further describes requirements in the event of a dispute between the Controlling Beneficial Owners of a Regulated Marijuana Business.

## 2-245 – Change of Controlling Beneficial Owner Application or Notification

- A. Application for Change of Controlling Beneficial Owner(s) – Not a Publicly Traded Corporation.
1. Division Approval Required Prior to Transfer of Owner's Interest. Unless excepted pursuant to subparagraph (C) of this Rule, a Regulated Marijuana Business that is not a Publicly Traded Corporation must obtain Division approval before it transfers the Owner's Interests of any Controlling Beneficial Owner(s) or before a trust that is a Controlling Beneficial Owner changes its trustee.
  2. Documents Required. Any change of owner application(s) regarding a Controlling Beneficial Owner of a Regulated Marijuana Business that does not involve a Publicly Traded Corporation must include the following documents:
    - a. Asset purchase agreement, merger, sales contract, agreement, or any other document necessary to effectuate the change of owner;
    - b. Request for a finding of suitability for each proposed Controlling Beneficial Owner(s) who has not already submitted a request for a finding of suitability, who has not already been found suitable, or who does not already hold an Owner License;
    - c. Operating agreement, by-laws, partnership agreement, or other governing document(s) as will apply to the Regulated Marijuana Business if the change of owner application is approved;
    - d. Request for voluntary surrender form of the Owner License of any Controlling Beneficial Owner that will not remain a Controlling Beneficial Owner, or Passive Beneficial Owner electing to hold an Owner License in a Regulated Marijuana Business if the change of owner application is approved;
    - e. Copy of current Medical Marijuana or Retail Marijuana State Sales Tax or Wholesale license and any other documents necessary to verify tax compliance; and
    - f. An affirmation and consent signed by any Controlling Beneficial Owner whose Owners Interest is decreasing as a result of the Change of Controlling Beneficial Owner application, unless otherwise specified in the Licensee's bylaws, operating agreement, or purchase agreement signed by a Controlling Beneficial Owner whose Owners Interest is decreasing.
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3. Licensee Initiates Change of Owner for Permitted Economic Interests Issued Prior to January 1, 2020. All natural persons holding a Permitted Economic Interest who seek to become a Controlling Beneficial Owner are subject to this Rule. The Regulated Marijuana Business must initiate the change of owner process for a natural person holding a Permitted Economic Interest who seeks to convert its interest and become a Controlling Beneficial Owner in a Regulated Marijuana Business. Prior to submitting a change of owner application, the Permitted Economic Interest holder must obtain a finding of suitability pursuant to Rule 2-235 including any required criminal history record check. Permitted Economic Interest holders who fail to obtain a finding of suitability to become a Controlling Beneficial Owner may remain as a Permitted Economic Interest holder.
- B. Change of Owner Involving a Publicly Traded Corporation. This Rule applies to transactions involving any Publicly Traded Corporation.
1. Publicly Traded Corporation Transactions. A Regulated Marijuana Business may transact with a Publicly Traded Corporation in the following ways:
    - a. Merger with a Publicly Traded Corporation. A Regulated Marijuana Business or a Controlling Beneficial Owner that intends to receive, directly or indirectly, an investment from a Publicly Traded Corporation, or that intends to merge or consolidate with a Publicly Traded Corporation, whether by way of merger, combination, exchange, consolidation, reorganization, sale of assets or otherwise, including but not limited to any shell company merger.
    - b. Investment by a Publicly Traded Corporation. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to transfer, directly or indirectly, ten percent or more of the Securities in the Regulated Marijuana Business to a Publicly Traded Corporation, whether by sale or other transfer of outstanding Securities, issuance of new Securities, or otherwise.
    - c. Public Offering. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to become, directly or indirectly, a Publicly Traded Corporation, whether by effecting a primary or secondary offering of its Securities, uplisting of outstanding Securities, or otherwise.
  2. Required Finding(s) of Suitability.
    - a. Pre-Transaction Findings of Suitability Required. Any Person intending to become a Controlling Beneficial Owner in a Regulated Marijuana Business in connection with any transaction identified in subparagraph (B)(1)(a) through (c) above, must obtain a finding of suitability prior to the Publicly Traded Corporation transaction closing or becoming effective.
    - b. Ongoing Suitability Requirements. Any Person who becomes a Controlling Beneficial Owner of a Publicly Traded Corporation that is a Regulated Marijuana Business must apply to the State Licensing Authority for a finding of suitability or an exemption from a finding of a suitability pursuant to Rule 2-235 within forty-five days of becoming a Controlling Beneficial Owner. A Publicly Traded Corporation that is a Regulated Marijuana Business must notify any Person that becomes a Controlling Beneficial Owner of the suitability requirements as soon as the Regulated Marijuana Business becomes aware of the ownership subjecting the Person to this requirement; however, the Controlling Beneficial Owner's obligation to timely request the required finding of suitability is independent of, and unaffected by, the Regulated Marijuana Business's failure to make the notification.
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3. Change of Owner Application(s) Required. A Licensee entering into a transaction permitted in subparagraph (B)(1)(a)-(c) above with Publicly Traded Corporation must submit any required change of owner application to the Division prior to the transaction closing. The change of owner application(s) may be submitted simultaneously with the requests for finding(s) of suitability required by subparagraph (B)(2) or after the request(s) for findings of suitability were submitted to the Division.
  4. Mandatory Disclosure of Required, United States Securities and Exchange Commission, Canadian Securities Administrators and/or Securities Exchange Filings. A Regulated Marijuana Business and any Controlling Beneficial Owner that is required to file any document with the United States Securities and Exchange Commission, the Canadian Securities Administrators, any other similar securities regulator or any securities exchange regarding any change of owner in subparagraphs (B)(1)(a) through (c) above must also provide a notice to the Division at the same time as the filing with the United States Securities and Exchange Commission, the Canadian Securities Administrators or the securities exchange.
  5. Ordinary Broker Transactions. Resales or transfers of Securities of a Publicly Traded Corporation that is a Regulated Marijuana Business or Controlling Beneficial Owner or Passive Beneficial Owner in ordinary broker transactions through an established trading market do not require a change of owner application or prior approval from the State Licensing Authority.
- C. Exemptions to the Change of Owner Application Requirement.
1. Entity Conversions or Change of Legal Name. A Regulated Marijuana Business or a Controlling Beneficial Owner may combine with or convert, including but not limited to under sections 7-90-201 et seq., C.R.S., for the exclusive purpose of changing its Entity jurisdiction to one of the states or territories of the United States or the District of Columbia, its Entity type or change the legal name of an Entity without filing a change of owner application. These exemptions apply only if the Controlling Beneficial Owners and their Owner's Interests will remain the same after the combination, conversion, or change of legal name, and there will not be any new Controlling Beneficial Owners (individuals or Entities). Within fourteen days of the combination, conversion, or change of legal name the Regulated Marijuana Business must submit the following to the Division:
    - a. A copy of the transaction documents;
    - b. Documents submitted to the Colorado Secretary of States;
    - c. Any document submitted to the secretary of state or similar regulator if the Entity is organized under the laws of a state of the United States other than Colorado, a territory of the United States, or the District of Columbia;
    - d. Identification of the Regulated Marijuana Business's or Controlling Beneficial Owner's registered agent;
    - e. Identification of any Passive Beneficial Owner and Indirect Financial Interest Holder for which disclosure is required by Rule 2-230; and
    - f. The fee required by Rule 2-205(F)(2)(b).
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2. Change of Owner's Interests For Controlling Beneficial Owners. A Regulated Marijuana Business may reallocate Owner's Interests among existing Controlling Beneficial Owners holding valid Owner Licenses if it provides notification of the change to the Division with its next application submission as long as there are no new Controlling Beneficial Owners. A Regulated Marijuana Business may also issue new or additional shares to one or more existing Controlling Beneficial Owners subject to the requirements of this Rule. Changes that are solely a result of adding, removing, or changing Passive Beneficial Owners are not subject to this Rule 2-245(C)(2), but are subject to the requirements in Rule 2-245(C)(5). Changes of Controlling Beneficial Owners' Owner's Interest under this Rule is subject to the following requirements:
    - a. All Owner's Interests of a Controlling Beneficial Owner may be changed to other existing Controlling Beneficial Owners;
    - b. Only consensual changes where all Controlling Beneficial Owners whose ownership percentages will change agree to the changes are permitted under this Rule. Proof that the transfer was consensual may include affirmation from all Controlling Beneficial Owners for which the Owner's Interests were changed in the required disclosure at the next application submission.
    - c. If any Controlling Beneficial Owner will not hold any Owner's Interest in a Regulated Marijuana Business following the change, that Controlling Beneficial Owner shall voluntarily surrender his or her Owner's License and identification badge within 30 days of the change;
    - d. All Controlling Beneficial Owners remain responsible for all actions of the Regulated Marijuana Business while they were a Controlling Beneficial Owner and are subject to administrative action based on the same regardless of the change; and
    - e. Disclosure and submission of the fee required by Rule 2-205(F)(2)(b) at the next application submission which shall not be longer than 365 days.
  3. Passive Beneficial Owner Licensed Prior to August 1, 2019. A Passive Beneficial Owner who was issued an Owner License prior to August 1, 2019, and who has continuously maintained that license, is not required to submit a change of owner application if he or she becomes a Controlling Beneficial Owner in the business license(s) with which the Owner License is associated but must disclose and submit the fee required by Rule 2-205(F)(2)(b) at the next application submission, which shall not be longer than 365 days.
  4. Change of Executive Officer or Member of the Board of Directors. A change of owner application is not required for a change of an Executive Officer or member of the board of directors of a Regulated Marijuana Business or an Owner Entity License of a Regulated Marijuana Business so long as the new Executive Officer or member of the board of directors does not possess ten percent or more of the Owner's Interest in the Regulated Marijuana Business or is otherwise Controlling the Regulated Marijuana Business. A Licensee must notify the Division within 45 days of any removal of Executive Officers or Members of the Board of Directors. However, a change of Executive Officer or member of the board of directors is subject to the following requirements:
    - a. Any such Executive Officer or member of the board of directors of the Regulated Marijuana Business must notify the Division of the new Controlling Beneficial Owner, Executive Officer, or member of the board of directors and submit a request for a finding of suitability as required by Rule 2-235(A)(1)(a) unless exempt under subparagraph (b) of this Rule 2-245(C)(4); or,
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- b. If exempt from a finding of suitability pursuant to Rule 2-235(E), the Regulated Marijuana Business subject to any such change of the Executive Officer or members of their board of directors, whether adding or removing, must provide notice to the Division of the new Controlling Beneficial Owner within forty-five days.
  - c. The fee required by Rule 2-205(F)(2)(b).
5. Change of Passive Beneficial Owner. Persons are not required to submit an application or obtain prior approval of their ownership, or provide notification, if: (1) the person was not a Direct Beneficial Interest Owner prior to November 1, 2019, (2) the Person will remain a Passive Beneficial Owner after the acquisition of Owner's Interests is complete, (3) the transfer will not create any previously undisclosed Controlling Beneficial Owner, and (4) disclosure is not otherwise required by section 44-10-309, C.R.S., or Rule 2-230.
- D. Change of Owner Requirements, Restrictions and Procedures Applicable to All Regulated Marijuana Businesses.
- 1. Application Signature Requirements. All applications for change of Controlling Beneficial Owner(s) must be executed by every Controlling Beneficial Owner of the involved Licensees where that Controlling Beneficial Owner is being removed or added by the change of ownership application, unless otherwise specified in the Licensee's bylaws or operating agreement, or purchase agreement signed by a Controlling Beneficial Owner whose Owners Interest is decreasing. Controlling Beneficial Owners whose Owner's Interest will not change are not required to execute the change of owner application; however, at least one Controlling Beneficial Owner and all Persons proposed to become a Controlling Beneficial Owner must execute every change of owner application.
  - 2. Process for Approval. Upon completion of the investigation of a change of owner application, the State Licensing Authority will issue a contingent approval letter. However, the State Licensing Authority will not issue the state license until:
    - a. Local Approval Required. If local approval is required, the proposed Controlling Beneficial Owner(s) demonstrates to the State Licensing Authority that local approval has been obtained and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within three to thirty days of the notification. The proposed Controlling Beneficial Owner's notification to the Division must be within 365 days of the issuance of the Division's contingent approval letter.
      - i. If a Local Licensing Authority or Local Jurisdiction requires a change of owner application and that application is denied, the State Licensing Authority will deny the State change of owner application;
    - b. No Local Approval Required. If local approval is not required, the proposed Controlling Beneficial Owner(s) demonstrates that such approval is not required and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within three to thirty days of the notification. However, the proposed Controlling Beneficial Owner's notification to the Division must be made within 365 days of issuance of the Division's contingent approval letter.
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- c. Contingent Approval. Contingent approval pursuant to this subparagraph (D)(2) is valid for one year from the date it is issued by the State Licensing Authority. If more than one year has passed since the State Licensing Authority issued contingent approval to a Person and such Person during that time has not met the requirements of Rule 2-245(D)(2)(a) or 2-245(D)(2)(b) to complete the Change of Beneficial Owner Application, then such Person shall submit a new Change of Controlling Beneficial Owner Application. The State Licensing Authority in their discretion may extend the contingent approval upon written request.
  3. Operational Restrictions Pending All Required Approvals. Unless otherwise provided under these Rules, any proposed new Controlling Beneficial Owner cannot operate the Regulated Marijuana Business for which it intends to become a Controlling Beneficial Owner until it receives any required finding of suitability and is issued all approvals and/or license(s) pursuant to any change of owner application required by this Rule. Controlling Beneficial Owners that have already been approved in connection with ownership of the Regulated Marijuana Business may continue to operate the Regulated Marijuana Business. A violation of this requirement is grounds for denial of the change of owner application, may be a violation affecting public safety, and may result in disciplinary action against existing license(s).
  4. Modifications to Change of Owner Applications. If anything in a change of owner application is modified or changed after the Division approves the application, the Licensee must submit a new change of owner application, unless exempted by the Division prior to completing the change of owner.
  5. Regulated Marijuana Business Subject to Investigation or Administrative Action. If a Regulated Marijuana Business or any of its Controlling Beneficial Owner(s) apply for a change of owner and is involved in an administrative investigation or administrative action, the following may apply:
    - a. The change of owner application may be delayed or denied until the administrative action is resolved; or
    - b. If the change of owner application is approved by the Division, the transferor, the transferee, or both may be responsible for the actions of the Regulated Marijuana Business and its prior Controlling Beneficial Owner(s), and subject to discipline based upon the same.
  6. Repealed.
- E. Refundable and Nonrefundable Deposits Permitted. A proposed Controlling Beneficial Owner may provide a selling Controlling Beneficial Owner with a refundable or nonrefundable deposit in connection with a change of owner application.
- F. Controlling Beneficial Owner Dispute.
1. In the event of a dispute between Controlling Beneficial Owner(s) not involving divestiture under Rule 2-275 and precluding or otherwise impeding the ability to comply with these Rules, a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application, notification pursuant to subparagraph (C) of this Rule, or initiate mediation, arbitration, or a judicial proceeding within 90 days of the dispute. The 90-day period may be extended for an additional 90 days upon a showing of good cause by the Regulated Marijuana Business.
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2. A Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application or notification pursuant to subparagraph (C) of this Rule within forty-five days of entry of a final court order, final arbitration award, or full execution of a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business. Any change of owner application or notification based on a final court order, final arbitration award, or fully executed settlement agreement must include a copy of the order or settlement agreement and remains subject to approval by the Division. In this circumstance, the change of owner application or notification needs to be executed by at least one remaining Controlling Beneficial Owner.
3. If mediation, arbitration, or a judicial proceeding is not timely initiated, or if a change of owner application or notification pursuant to subparagraph (C) of this Rule is not timely submitted following entry of a final court order, final arbitration award, or full execution of a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business that is not a Publicly Traded Corporation, the Regulated Marijuana Business and its Owner Licensee(s) may be subject to fine, suspension, or revocation of their license(s).

### **Basis and Purpose – 2-265**

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(2)(b)-(c), 44-10-203(2)(e), 44-10-203(2)(t)-(u), 44-10-203(2)(w), 44-10-307, 44-10-308(2), 44-10-313(6), 44-10-401(2)(c), 44-10-901(1), 24-76.5-101 *et seq.*, C.R.S. Historically, natural persons who held an Owner's Interest in a Regulated Marijuana Business were required to hold an Associated Key License. This Rule transitions the Associated Key designation to an Owner License designation after August 1, 2019. The purpose of this rule is to clarify the requirements and procedures a Person must follow when applying for or possessing either an Owner License or an Employee License. This rule also identifies factors the State Licensing Authority will consider in determining whether a natural person is a resident and whether such person possess good moral character.

### **2-265 – Owner and Employee License: License Requirements, Applications, Qualifications, and**

#### **Privileges**

- A. Repealed.
- B. Owner Licenses Required.
  1. Each Controlling Beneficial Owner must hold a valid Owner License.
  2. If a Controlling Beneficial Owner is an Entity, then its Executive Officer(s) and any natural person who indirectly holds ten percent or more of the Owner's Interests in the Regulated Marijuana Business must also hold a valid Owner's License.
    - a. The existence of an Owner Entity does not relieve the Owner Licensees from responsibility for acts and violations of the Regulated Marijuana Business.
  3. A Passive Beneficial Owner who is a natural person may elect to hold an Owner License and obtain an Owner Identification Badge provided that such Person agrees to be disclosed as holding an Owner's Interest in the Regulated Marijuana Business.
  4. Only Controlling Beneficial Owners and Passive Beneficial Owners can obtain an Owner License.

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- C. Owner License and Identification Badge or Employee License and Identification Badge Required. The following natural persons must possess a valid Owner License and Identification Badge or an Employee License and Identification Badge:
1. Any natural person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana or Regulated Marijuana Products as permitted by privileges of a Regulated Marijuana Business license;
  2. Any natural person who has access to the Inventory Tracking System or a Regulated Marijuana Business point-of-sale system; and
  3. Any natural person with unescorted access in the Limited Access Area.
- D. Escort or Monitoring Required.
1. Any natural person in a Limited Access Area that does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge is a visitor and must be escorted at all times by a person who holds a valid Owner License and Identification Badge or Employee License and Identification Badge. Failure by a Regulated Marijuana Business to continuously escort an individual who does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge in the Limited Access Area is a license violation affecting public safety.
  2. Patients, their caregiver, and consumers in a Restricted Access Area and third-party vendors in a Limited Access Area do not need to be escorted at all times but must be reasonably monitored to ensure compliance with these rules.
- E. Employee License Required to Commence or Continue Employment. Any natural person required to obtain an Employee License by these rules must obtain such license before commencing activities permitted by an Employee License.
1. Conditional License. Applicants for an Employee License may be issued a conditional License and Identification Badge upon results of an initial investigation that demonstrates the Applicant is qualified to hold such License in compliance with Rule 2-215, subject to the following requirements:
    - i. Applications for a conditional Employee License must be submitted in person to the Division to facilitate the issuance and physical transfer of the conditional License to the Applicant. Applications for a conditional Employee License must be accompanied by the Conditional Employee License Fee in Rule 2-205.
    - ii. The Employee's application remains subject to a Notice of Denial pending the complete results of the Applicant's initial fingerprint-based criminal history record check.
    - iii. If the Division issues the Applicant a Notice of Denial, the Employee License Applicant shall return the conditional License and Identification Badge within seven (7) days of the Division's mailing of the Notice of Denial.
- F. Owner License and Employee License Identification Badges Are Property of the State Licensing Authority. All Owner Licenses and Employee Licenses, and all Identification Badges are property of the State Licensing Authority.
- G. Owner and Employee Initial and Renewal Applications Required. Owner Licensees and Employee Licensees must submit initial license applications and renewal applications on Division forms and in accordance with this Rule and Rules 2-215, 2-220, and 2-225.
- H. Licenses Requiring Proof of Residency. Where a license issued by the State Licensing Authority requires the Applicant to establish Colorado residency, an Applicant may demonstrate residency by the following methods including, but are not limited to:
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1. Current valid Colorado driver's license or current Colorado identification card with a current address; or
  2. A government issued photo identification and two of the following documents showing the Applicant's correct name, current date, and current Colorado address:
    - a. Utility bill or phone bill;
    - b. Car registration;
    - c. Voter registration card;
    - d. Statement from a major creditor;
    - e. Bank statement;
    - f. Recent County tax notice;
    - g. Recent contract/mortgage statement.
- I. Owner License Qualifications and Privileges.
1. Owner License Qualifications. Each Controlling Beneficial Owner, or Passive Beneficial Owner who elects to be subject to disclosure and licensure, must meet the following criteria before receiving an Owner License:
    - a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;
    - b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;
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- c. The Division has not received notice that the Applicant has 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 receives 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.
  - d. Each Controlling Beneficial Owner required to hold an Owner License, and any Passive Beneficial Owner that elects to hold an Owner License, must be fingerprinted at least once every two years, and may be fingerprinted more often at the Division's discretion.
    - i. Repealed.
  - e. An Owner Licensee who exercises day-to-day operational control on the Licensed Premises of a Regulated Marijuana Business must possess an Identification Badge and must establish and maintain Colorado residency. Proof of residency may be accomplished by submission of the documents identified in Rule 2-265(H). A Controlling Beneficial Owner will not be deemed to exercise day-to-day operational control by reason of holding a title defined as an Executive Officer.
2. Owner License Exercising Privileges of an Employee License. A natural person who holds an Owner License and Identification Badge may exercise the privileges of an Employee License in a Regulated Marijuana Business, subject to the following limitations:
- a. If the Owner Licensee is not a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may exercise such Employee License privileges regardless of that Person's residency.
  - b. If the Owner Licensee is a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may only exercise such Employee License privileges if he or she is a Colorado resident.
3. Business License Required. A natural person cannot hold an Owner License without holding a Regulated Marijuana Business license, or without at least submitting an application for a Regulated Marijuana Business license. An Entity cannot hold an Owner Entity License without holding a Regulated Marijuana Business License, or without at least submitting an application for a Regulated Marijuana Business License.
- J. Employee License Qualifications and Privileges.
1. Employee License Qualifications and Requirements. An Employee License Applicant must meet the following criteria before receiving an Employee License:
- a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;
  - b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.
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- c. The Division has not received notice that the Applicant has 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 receives 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.
  - d. The Applicant's licensing character or record demonstrates the Applicant is suitable for licensure under the Marijuana Code.
2. Medical and Retail Employee Licenses. A natural person who holds a current, valid Employee License and Identification Badge issued pursuant to the Marijuana Code may work in any Regulated Marijuana Business.
- K. Owner Licensees and Employee Licensees Required to Maintain Licensing Qualification. An Owner Licensee or Employee Licensee's failure to maintain qualifications for licensure may constitute grounds for discipline, including but not limited to, suspension, revocation, or fine.
- L. Evaluating a Natural Person's Good Moral Character Based on Criminal History.
1. In evaluating whether a Person is prohibited from holding a license pursuant to subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person's criminal history indicates she or he is not of Good Moral Character, the Division will not consider the following:
    - a. The mere fact a person'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;
    - d. A conviction of a criminal offense in which a court issued an order of collateral relief specific to the application for state licensure;
    - e. A civil judgment or criminal conviction, discipline, or other sanction imposed under the laws of another state regarding consumption, possession, cultivation, or processing of marijuana that is lawful and consistent with professional conduct and standards of care within the State of Colorado; or
    - f. The Applicant has been adjudicated for committing a delinquent act in a juvenile proceeding.
  2. In evaluating whether a Person is prohibited from holding a license pursuant to subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person'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), except as set forth in Rule 2-265(L)(1)(e) and 2-265(L)(1)(f);
    - b. Any conviction(s) of crimes involving moral turpitude;
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- 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 criminal history in subparagraph (L)(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 Marijuana Code;
  - b. Any information provided to the Division regarding the person'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 person's most recent criminal conviction and the application for a state license;
    - iii. Successful participation in an alcohol and drug treatment program;
    - iv. That the person truthfully and fully reported the criminal conduct to the Division;
    - v. The person's employment history after conviction or release, including but not limited to whether the person was vetted and approved to hold a state or out-of-state license for the purposes of employment in a regulated industry;
    - vi. The person's successful compliance with any conditions of parole or probation imposed after conviction or release; or
    - vii. Any other facts or 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.
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