



December 29, 2023

INDUSTRY BULLETIN: 23-09

RE: Implementation of New Rules

Dear Stakeholders:

This bulletin highlights certain new rules currently in effect (rules initially adopted on an emergency basis) and rules that become effective on or after January 8, 2024. This bulletin does **not** include all rule changes. Stakeholders can access the complete Final Adopted Rules, including an annotated version of the rule revisions on the [MED Rulemaking webpage](#).

New Rules Currently in Effect

State License May be Renewed Prior to Local Approval

Under SB 23-199 and Rule 2-225(G)(a), a State-issued License that has not yet received local approval can still be renewed if the Applicant submits written documentation that demonstrates the Licensee has taken action to obtain local approval and why local approval has not yet been obtained. Examples include but are not limited to:

- An inspection notice from the Local Licensing Authority
- Email correspondence between the Applicant and the Local Licensing Authority reflecting relevant information
- An Attestation Statement from the Applicant

Online Orders and Payments for Regulated Marijuana

HB 23-1279 allows Retail Marijuana Stores to accept payment online for the sale of Retail Marijuana, similar to prior-established allowances for Medical Marijuana Stores to accept payment online.

Under Rules 5-105(L) and 6-105(K), the store shall require the customer placing the order to provide their name and date of birth. Before accepting the online order, the store must provide the customer with required warnings and educational materials and the customer must acknowledge receipt. Upon order pick-up, the store must ensure the customer's identification matches the information given at the time of the order, and for Retail Marijuana, must verify the customer is twenty-one years of age or older. Licensees must also maintain standard operating procedures regarding these requirements.

New Rules Effective January 8, 2024

Expanded Approved Sources of Regulated Marijuana

Under SB 23-271, effective January 8, 2024, Medical and Retail Marijuana Cultivation Facilities may send and accept seeds, Immature Plants, and marijuana Genetic Material from the following sources:

- Another Regulated Marijuana Cultivation Facility
- A Retail Marijuana Testing Facility

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- A cultivation or testing facility licensed to operate in another U.S. state or territory
- An Employee Licensee in Colorado
- An individual with a permit, registration, or license to work in the regulated marijuana industry in another U.S. state or territory

Please note that these new rules do not address the laws of other states or territories, which may limit or otherwise restrict a Licensee's sourcing of seeds, Immature Plants, and Genetic Material in the manner authorized under Rules 5-205(G)(2), 6-205(H)(2), and 6-705(H)(2), 1 CCR 212-3.

Consistent with existing rules, all seeds, Immature Plants, and Genetic Material are required to be accounted for in the Inventory Tracking System; see below for more details.

Plant Tagging Requirements

Rules effective January 8th adjusted the point in time at which a Licensee must attach an Inventory Tracking System tag to plants. Specifically, Regulated Marijuana plants are now required to be individually tagged when they are greater than 15 inches tall or wide.

Please note that this rule change does **not** amend the requirement that all plants are required to be entered into the Inventory Tracking System, whether or not they are required to be tagged. Any plant less than 15 inches tall or wide must still be fully accounted for in the Plant Batches section of the Inventory Tracking System in accordance with the rules.

Genetic Material - Additional Information & Specific Requirements

Mirroring existing requirements in Rule 3-810 for seeds and Immature Plants, Genetic Material must be immediately input into the Inventory Tracking System as an Immature Plant batch (*see also* Rule 3-825(C)(3)). Genetic Material must be labeled prior to Transfer to another Regulated Marijuana Business pursuant to Rule 3-1005(D)(4). Under Rule 3-905(B)(33), Licensees receiving Genetic Material must maintain records that clearly document the chain of custody of the Genetic Material. Examples include:

- Invoice identifying where the Genetic Material originated and records showing it came from an approved source (e.g. proof of a required license, registration, or permit)
- Statement or letter from an Employee Licensee accompanying the transfer to the Licensee

Reduced Testing Allowance

Reduced Testing Allowance Certification Fee

Reduced Testing Allowance is voluntary. Unless a Licensee has achieved a Reduced Testing Allowance Certification, every Harvest and Production Batch must be subject to required testing. Effective January 8, 2024, Licensees interested in reduced testing privileges will need to submit (a) an attestation form regarding their understanding of the testing rules and requirements; and (b) payment of the Reduced Testing Allowance Certification fee in Rule 2-205, which is per license and due at the time of attestation. The Reduced Testing Allowance Certification is valid for one year and must be renewed annually. The following summarizes additional requirements regarding the Reduced Testing Allowance:

- A Licensee must first submit the required attestation and fee before exercising the privileges of a Reduced Testing Allowance.
- The attestation form, along with instructions on how to submit the form and fee, will be announced in a separate bulletin and published on the Division's website on or before January 8, 2024.

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- Licensees that achieved a Reduced Testing Allowance prior to January 8, 2024 can continue exercising their Reduced Testing Allowance privileges if they submit the certification fee and attestation and comply with rules required to successfully maintain that Reduced Testing Allowance. Licensees that achieved their Reduced Testing Allowance prior to January 8, 2024 will have through Wednesday, January 31, 2024, to submit the required fee and attestation.
- The Reduced Testing Allowance fee is license specific. If a Licensee makes the same type of products under different Licenses, the fee must be submitted for each License, regardless of whether Licenses are co-located.

Reduced Testing Allowance for Microbial Contaminant Testing - Rules Effective July 2024

Effective July 1, 2024, in order for a Regulated Marijuana Cultivation Facility to achieve a Reduced Testing Allowance for microbial contaminant testing, the Licensee must comply with the following additional requirements:

Hazard Analysis and Critical Control Point (HACCP) System - Rule 4-120(B)(1)(b)

Effective July 1, 2024, to achieve or maintain a Reduced Testing Allowance for microbial contaminants, Cultivation Facilities must have a Hazard Analysis and Critical Control Point (HACCP) System. A Licensee's HACCP must contain elements defined in ASTM D8250-19: "*Standard Practice for Applying a Hazard Analysis Critical Control Points (HACCP) System for Cannabis Consumable Products*" that addresses each product type for which a microbial contaminant Reduced Testing Allowance is sought.

While Licensees can purchase a copy of the standard from the [ASTM website](#), the Division will also maintain copies of ASTM D8250-19 at each of the Division's licensing locations (Lakewood, Colorado Springs and Grand Junction) for physical inspection. View the Division's [Contact Us Webpage](#) for location information. These copies will be available to Licensees for review during regular business hours beginning in early January. Licensees are encouraged to plan ahead for reviewing the standard at a Division office. For Licensee questions regarding physical inspection of the standard at a Division office, please contact the Agent in Charge assigned to each office (contact information accessible via the "Contact Us" link above). The Division is also developing a process for Licensees to make appointments online for in-person review of the standard and will provide additional details in early 2024.

Reduced Testing Allowance Internal Audit - Rule 4-120(B)(1)(c)

Effective July 1, 2024, to achieve or maintain a Reduced Testing Allowance for microbial contaminants, Cultivation Facilities must conduct an internal audit to assess substantial compliance with rule requirements by achieving a passing score. The Licensee must demonstrate at least 80% compliance with the internal audit. The Division will provide additional information in early 2024, including a standard audit checklist to be used for the internal audit and related guidance.

Microbial Control Steps & Decontamination

Revised rules now establish distinctions between Microbial Control Steps and Decontamination processes and provide approved methods for each, along with requirements for additional safety measures, standard operating procedures, Inventory Tracking System entries, and labeling. Beginning January 8, 2024, under Rule 3-320(B), Licensees are permitted to use only the following Microbial Control Steps and Decontamination techniques to treat a Harvest Batch or Production Batch:

- Ozone treatment (non-enclosed and sealed enclosure)

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- X-ray irradiation
- Ultraviolet light (UV) irradiation
- Microwave irradiation
- Vaporized hydrogen peroxide in a sealed enclosure device
- Pasteurization

Licensees must follow safety measures required by Rule 3-320(C) and must include details regarding their Microbial Control Steps or Decontamination in their standard operating procedures as required by Rule 3-330(D)(1)(b). Finally, if performing Decontamination, the method must be documented in the Inventory Tracking System as required by Rules 3-320(D) and 3-810(C). On or before January 8, 2024, the Inventory Tracking System will be updated to include the approved methods for Licensee selection.

Hospitality

Effective January 8, 2024, Rule 6-925(G) establishes new daily sales limits for Hospitality and Sales Businesses, as follows:

- Not more than one ounce (1 oz) of Retail Marijuana flower,
- Not more than eight grams (8 g) of Retail Marijuana Concentrate, and
- Not more than 100 milligrams (100 mg) of Retail Marijuana Product that is intended for oral consumption (transfers of Retail Marijuana Product cannot contain more than 10 milligrams of active THC per serving, but multiple servings can be Transferred up to the 100 milligram limit).¹

Licensees should prioritize measures to keep their customers and the community safe. The Division is prepared to take enforcement action as necessary to protect public health and safety. To further assist Licensees and the public with employing safety measures, our partners at the Colorado Department of Transportation and the Colorado Department of Public Health & Environment offer resources regarding the [dangers of impaired driving](#), [responsible use practices for adults](#), and other [public education and youth prevention resources](#).

Additional requirements for Licensed Hospitality Businesses include, but are not limited to the following:

- **Tangible Educational Resource:** Hospitality and Sales Businesses must provide a tangible educational resource when making a sale of Retail Marijuana Concentrate (Rule 6-925(B.5)). The tangible educational resource is available in [English](#) and [Spanish](#).
- **Safe Transportation:** Hospitality Businesses must provide customers with information regarding safe transportation, which must also be reflected in their standard operating procedures and posted on the Licensed Premises (Rule 6-905(Q)). For example, Licensees can provide and post information for customers to access locally available rideshare, shuttles, or taxi services on their walls, through a QR code, or via other methods to help customers access safe transportation.
- **Preventing Overconsumption:** Hospitality and Sales Businesses must establish standard operating procedures to prevent overconsumption and to prevent the sale and consumption of marijuana by any person displaying visible signs of intoxication (Rule 6-925(G)(2)(c)).

¹ Retail Marijuana Products that are non-edible and non-psychoactive, such as skin and body products, are excluded from the daily sales limits.

Inventory Tracking System Tags

Throughout the revised rules, all references to “RFID” tags were replaced with “Inventory Tracking System” tags. Please note that these changes *do not* eliminate current requirements for RFID tags, as the Department’s existing vendor contract does not expire until 2026. The rule changes were made in anticipation of the Department’s next solicitation process for the statewide inventory tracking system and ensures broader consideration of options beyond the RFID-based technology that has been historically required. Therefore, any changes to RFID-tag requirements will only occur after the Division concludes the procurement process for the inventory tracking system. The Department’s preparation for this open, competitive solicitation process has been initiated and will continue throughout 2024. Please see the [Division’s press release](#) issued on December 11, 2023 to correct inaccuracies reported in several media stories.

The Division appreciates the diverse perspectives from stakeholders who participated in the 2023 rulemaking process that informed many of the regulatory updates reflected in this Bulletin. And while the Division is prepared to engage in regulatory oversight and enforcement measures as necessary to protect public health and safety, we also recognize the importance of prioritizing education and technical assistance to support the success of Colorado’s regulated community.

As we approach the new year, we are committed to leveraging the unique opportunity we have to reflect on our successes and lessons learned as one of the most mature adult-use cannabis markets in the nation. We look forward to continuing our work together to demonstrate a model for responsible regulation as directed by the voters of Colorado and the General Assembly.

For assistance with any questions regarding the newly adopted Rules, questions can be submitted using the [MED Inquiry Form](#).