



**COLORADO**  
Department of Revenue  
Marijuana Enforcement Division

## DRAFT RULE REVISIONS

### Colorado Marijuana Rules 1 CCR 212-3

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#### NOTES:

These draft rule revisions were presented to the August 31, 2023 and September 18, 2023 stakeholder work groups. The following draft rule revisions have been updated and are intended to solicit stakeholder feedback informing whether the draft rule revision should be incorporated into final proposed rules presented to the State Licensing Authority for final adoption.

Blue highlighting designates additional context that may assist stakeholders in understanding the proposed rule revision and intent of the proposed rule revision.

Yellow highlighting designates revisions made following the September 13, 2023 Permanent Rulemaking Notice rule revisions.

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#### Part 1 – General Applicability

##### Basis and Purpose – 1-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(j), and 44-10-103, C.R.S., and all of the Marijuana Code. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and is not intended to be a defined term, it is not capitalized. This Rule 1-115 was previously Rules M and R 103, 1 CCR 212-1 and 1 CCR 212-2.

**Please Note:** The following revised and new definitions stem from the adoption of SB 23-271 and HB 23-1021. Not all definitions added in the SB 23-271 are reflected in these proposed rules. Revised and new definitions reflected below represent those terms that are utilized in the rules throughout Parts 2 - 8. Additionally, terms like “industrial hemp” and “industrial hemp product” have been revised throughout the rules to remove “industrial” in accordance with SB 23-271. Revisions may also address other typographical errors identified by MED.

##### 1-115 – Definitions

Definitions. The following definitions of terms, in addition to those set forth in section 44-10-103, C.R.S., apply to all rules promulgated pursuant to the Marijuana Code, unless the context requires otherwise:

“Adverse Health Event” means any untoward **or unexpected** health condition or occurrence associated with the use of marijuana—this could include any unfavorable and unintended sign (including a hospitalization, emergency department visit, medical visit, abnormal laboratory finding, outbreak, death [non-motor vehicle]), symptom, or disease temporally associated with the use of a marijuana product, and may include concerns or reports on the quality, labeling, or possible adverse reactions to a specific marijuana (or hemp) product Transferred or manufactured at a Regulated Marijuana Business.

“Decontamination” means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana without changing the product type of the Regulated Marijuana **following a failed test.**

“Employee License” means a license granted by the State Licensing Authority pursuant to section 44-10-401, C.R.S., to a natural person who is not a Controlling Beneficial Owner. Any person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana, who is authorized to input data into a Regulated Marijuana Business’s Inventory Tracking System or point-of-sale system, or who has unescorted access in the Restricted Access Area or Limited Access Area must hold an Employee License. ~~Employee License includes both Key Licenses and Support Licenses.~~

~~“Notice of Destruction” means a written statement from the State Licensing Authority, articulating the objective and reasonable grounds that the health, safety, or welfare of the public requires the destruction of embargoed Regulated Marijuana.~~

~~“Notice of Embargo” means a written statement from a Division investigator who has objective and reasonable grounds to believe identified Regulated Marijuana poses a threat to the health, safety, or welfare of the public and that cannot be Transferred, transported, or destroyed unless otherwise allowed under these Rules.~~

“Remediation” means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana while changing the product type of the regulated marijuana **following a failed test.**

“Sample Increment Collection” means the gathering of Sample Increments to combine into a larger, composite Test Batch.

~~“Sample Plan” means a written, documented plan generated by Designated Test Batch Collector(s) in line with the Regulated Marijuana Business’ Standard Operating Procedure for Sample Increment Collection.~~

“Sampling Manager” means an Owner Licensee or management personnel holding an Employee Licensee designated by a Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer to receive Transfers of Sampling Units pursuant to Rules 5-230, 5-320, 6-225, and 6-320.

~~“Sample Plan” means a written, documented plan generated by Designated Test Batch Collector(s) in line with the Regulated Marijuana Business’ Standard Operating Procedure for Sample Increment Collection.~~

**“Social Equity Business” means a Regulated Marijuana Business with 51% or greater Owner’s Interest held by one or more Social Equity Licensees.**

## Part 2 – Applications and Licenses

### 2-200 Series – Applications and Licenses Rules

#### 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.

**Please Note:** *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement SB 23-199 and no substantive changes to the emergency rules have been incorporated into this draft.*

## 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.
  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 ~~U~~ 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.
  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 expires and may not 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. 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;
    - 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.
3. 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.
  4. Denial of an Application on the 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.
- D. Accelerator License Application and Qualification.
  1. License Issuance.
    - 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 this Rule.
  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)(i)(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.

**Please Note:** The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement SB 23-199 and no substantive changes to the emergency rules have been incorporated into this draft.

**Additionally, the Division has included draft rule revisions to allow a pathway for interested Licensees holding multiple licenses to align the submission of renewal applications for those licenses, which will be further expanded upon during the October 12, 2023 meeting.**

## 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 physical address of record.
2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.

### C. Renewal Deadline.

1. A Licensee must apply for the renewal of an existing license prior to the License'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
  - 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;
  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:
  - 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 – 2-235**

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

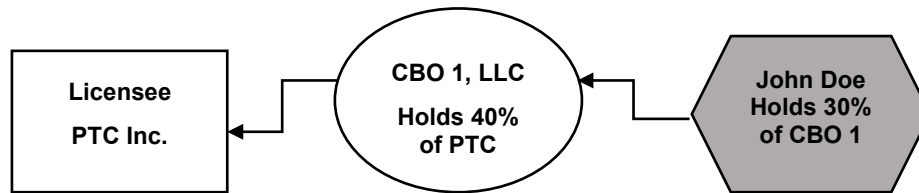
Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

2. Indirect Ownership of Ten-Percent or More Owner's Interests in **an Entity 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.
- 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(CB)(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.
- 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.
- 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.
    - 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.

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.

### 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; and
    - e. Copy of current Medical Marijuana or Retail Marijuana State Sales Tax or Wholesale license and any other documents necessary to verify tax compliance.
  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.
  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).
  2. Reallocation of Owner's Interests Among 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 reallocation to the Division with its next application submission as long as there are no new Controlling Beneficial Owners. Reallocations 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). A reallocation under this Rule is subject to the following requirements:

- a. All Owner's Interests of a Controlling Beneficial Owner may be reallocated to other existing Controlling Beneficial Owners;
  - b. Only consensual reallocations where all Controlling Beneficial Owners whose ownership percentages will change agree to the reallocation 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 reallocated 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 reallocation, that Controlling Beneficial Owner shall voluntarily surrender his or her Owner's License and identification badge within 30 days of the reallocation;
  - 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 reallocation; 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. 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,
  - 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 whose Owner's Interests are proposed to change and any Person proposed to become a Controlling Beneficial Owner(s). 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 thirty-three 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 thirty-three days of the 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.
    - 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.
  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 – 2-275

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(q), 44-10-203(2)(t), 11-10-310, 44-10-401(3)(a)-(d), C.R.S. The purpose of this rule is to establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with sections 44-10-401(3)(a)-(d), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Regulated Marijuana Business. This Rule 2-275 was previously Rules M and R 253, 1 CCR 212-1 and 1 CCR 212-2.

### 2-275 – Temporary Appointee Registrations for Court Appointees

#### A. Notice and Application Requirements for All Court Appointees.

1. Notice to the State and Local Licensing Authorities. Within seven days of accepting an appointment as a Court Appointee pursuant to sections 44-10-401(3), C.R.S., such Court Appointee must file a notice to the State Licensing Authority and the applicable Local Licensing Authority on a form required by the State Licensing Authority which must include at least:
  - a. A copy of the order appointing the Court Appointee;
  - b. A statement affirming the Court Appointee complied with the certification required by section 44-10-401(3)(a), C.R.S.;
  - c. If the Court Appointee is an entity, a list of all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business; and
  - d. A complete list of all Regulated Marijuana Businesses for which the Court Appointee was appointed and the respective dates during which the Court Appointee is currently serving, or has previously served, as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person.
2. Application for Finding of Suitability. Within 14 days of accepting an appointment as a Court Appointee pursuant to section 44-10-401(3), C.R.S., each Court Appointee must file **either** an application for a finding of suitability **or change of ownership** with the State Licensing Authority on forms required by the State Licensing Authority. Each entity and natural person for whom a notice was filed pursuant to Rule 2-275(A) must file an application for a finding of suitability. The Division may in its discretion extend the 14-day deadline to file an application for a finding of suitability upon a showing of good cause. The Division may also in its discretion rely upon a recent licensing background investigation for Court Appointees that currently hold a license or Temporary Appointee Registration issued by the State Licensing Authority and may waive all or part of the application fee accordingly.
3. Effective Date. The Temporary Appointee Registration will be issued following the State Licensing Authority's receipt of the notice required by Rule 2-275(A)(1) and is effective as of the date of the court appointment.

B. Temporary Appointee Registration.

1. Entities. If the Court Appointee is an entity, the entity and all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business must receive a Temporary Appointee Registration. Every Court Appointee that is an entity must have at least one natural person with a Temporary Appointee Registration.
2. Temporary Appointee Registrations. Every Temporary Appointee Registration issued to a Person will be treated as an Owner License except where inconsistent with section 44-10-401(3), C.R.S., or this Rule.
3. Other employees. Any other person working under the direction of a Court Appointee who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, researches, or delivers Regulated Marijuana as permitted by privileges granted under a Regulated Marijuana Business license must have a valid Employee License.
4. Licensed Premises. A Court Appointee cannot establish an independent Licensed Premises but is authorized to exercise the privileges of the Temporary Appointee Registration in the Licensed Premises of the Regulated Marijuana Business for which it is appointed.
5. Medical Marijuana Business Operators or Retail Marijuana Business Operators. A Court Appointee may retain a Medical Marijuana Business Operator or a Retail Marijuana Business Operator. If the Medical Marijuana Business Operator or Retail Marijuana Business Operator is the Court Appointee, see subparagraph E of this Rule.
6. Marijuana Code and Rules Applicable. Court Appointees are subject to the requirements of the Marijuana Code and the rules promulgated thereto. Except where inconsistent with section 44-10-401(3), C.R.S., or this Rule, the State Licensing Authority may take any action with respect to a Temporary Appointee Registration that it could take with respect to any license issued under the Marijuana Code. In any action involving a Temporary Appointee Registration, these rules will be read to include the terms “registered”, “registration”, “registrant”, or any other similar terms in lieu of “licensed”, “licensee”, and any other similar terms as the context requires when applied to a Temporary Appointee Registration.

C. Administrative Actions.

1. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Regulated Marijuana Business. In addition to any other basis for suspension, revocation, fine, or other administrative action, a Regulated Marijuana Business’s license may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, fined, or subject to other administrative action based upon its Court Appointee’s violations of the Marijuana Code, the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee’s failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect.
2. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Temporary Appointee Registration. In addition to any other basis for suspension, revocation, fine, or

other administrative action, a Temporary Appointee Registration may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, or subject to other administrative action based upon the Court Appointee's violations of the Marijuana Code or the Rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee's failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect. If a Person holding a Temporary Appointee Registration also holds any other Owner License or Employee License, the Owner License, the Employee License, and the Temporary Appointee Registration may be suspended, revoked, fined, or subject to other administrative action for any violations of the Marijuana Code or the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration, Owner License, and/or Employee License issued by the State Licensing Authority, or any order of the State Licensing Authority.

3. Suitability. If the State Licensing Authority denies an application for a finding of suitability because the Court Appointee failed to timely apply for a finding of suitability, failed to timely provide all information requested by the Division in connection with an application for a finding of suitability, or was found unsuitable, the State Licensing Authority may also pursue administrative action as set forth in this Rule.
4. Court Appointee's Responsibility to Notify Appointing Court. The Court Appointee must notify the appointing court of any action taken against the Temporary Appointee Registration by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Court Appointee must forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

D. Expiration and Renewal.

1. Conclusion of Court Appointment. A Court Appointee's Temporary Appointee Registration expires upon the conclusion of a Court Appointee's court appointment. Each Court Appointee and each Regulated Marijuana Business that has a Court Appointee must notify the State Licensing Authority within two business days of the date on which a Court Appointee's court appointment ends, whether due to termination of the appointment by the court, substitution of another Court Appointee, closure of the court case, or otherwise. For a Court Appointee that is appointed in connection with multiple court cases, the notice must be filed with the State Licensing Authority with respect to each such case.
2. Annual Renewal. If it has not yet expired pursuant to Rule 2-270(D)(1), each Temporary Appointee Registration is valid for one year, after which it must be subject to annual renewal in accordance with the Marijuana Code and the rules promulgated pursuant to the Marijuana Code. If a Court Appointee is appointed in connection with multiple court cases, the Temporary Appointee Registration is subject to annual renewal unless all such appointments have ended, whether due to termination of the appointments by the courts, substitution of other Court Appointees, closure of the court cases, or otherwise.

3. Other Termination. A Temporary Appointee Registration may be valid for less than the applicable term if surrendered, revoked, suspended, or subject to similar action.
- E. Medical Marijuana Business Operators and/or Retail Marijuana Business Operators as Court Appointees. By virtue of its privileges of licensure, a Medical Marijuana Business Operator, a Retail Marijuana Business Operator, and their respective Owner Licensees may serve as Court Appointees without a Temporary Appointee Registration subject to the following terms:
1. Notice to the State Licensing Authority of Appointment. The Medical Marijuana Business Operator or the Retail Marijuana Business Operator, and its Owner Licensee(s) are responsible for notifying the State Licensing Authority within seven days of any court appointment to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Regulated Marijuana Business. Such notice must be accompanied by a copy of the order making the appointment and must identify each Regulated Marijuana Business regarding which the Medical Marijuana Business Operator and/or Retail Marijuana Business Operator is appointed.
  2. Notice to the Appointing Court of State Licensing Authority Action. The Medical Marijuana Business Operator or the Retail Marijuana Business, and its Owner Licensee(s) are responsible for notifying the appointing court of any action taken against the Medical Marijuana Business Operator license, the Retail Marijuana Business Operator license and/or the Owner License by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Medical Marijuana Business Operator, the Retail Marijuana Business Operator and its Owner Licensee(s) must forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

### Part 3 – Regulated Marijuana Business Operations

#### 3-100 Series – General Privileges and Limitations

##### Basis and Purpose – 3-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-401(2), 44-10-701(1)(a), 44-10-701(3)(d), and 44-10-701(3)(f), C.R.S. The purpose of this rule is to clarify that, except for in a Licensed Hospitality Business, it is unlawful for a Regulated Marijuana Business to allow consumption on the Licensed Premises.

##### 3-110 – Regulated Marijuana Businesses: General Restrictions

- A. Marijuana Consumption Prohibited.
1. Applicability. This subparagraph (A) applies to all Regulated Marijuana Businesses, except Licensed Hospitality Businesses.
  2. Licensees shall not permit the consumption of marijuana or marijuana product on the Licensed Premises or in transport vehicles, including any Sampling Units Transferred to a Sampling Manager.



- B. Alcohol Beverage License Prohibited. A Person may not operate a license issued pursuant to the Marijuana Code and these rules at the same Licensed Premises as a license or permit issued pursuant to article 3, 4 or 5 of Title 44.

C. Natural Medicine Prohibited.

1. Licensees shall not transfer natural medicine or natural medicine products on the Licensed Premises or in transport vehicles.
2. A Person may not operate a license issued pursuant to the Marijuana Code and these rules at the same Licensed Premises as a license or permit issued pursuant to article 50 of Title 44.

- D. Safe Harbor Hemp Products. A Regulated Marijuana Business may not possess or Transfer Safe Harbor Hemp Products.

**3-200 Series – Licensed Premises**

**Basis and Purpose – 3-225**

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(h), 44-10-203(1)(k), 44-10-203(2)(e), 44-10-313(14), and 44-10-1001, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure adequate control of the Licensed Premises and Regulated Marijuana contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security. This Rule 3-225 was previously Rules M and R 306, 1 CCR 212-1 and 1 CCR 212-2.

**3-225 – Video Surveillance**

- A. Minimum Requirements. The following video surveillance requirements shall apply to all Regulated Marijuana Businesses, unless stated otherwise in these rules.
1. Prior to exercising the privileges of a Regulated Marijuana Business, an Applicant must install a fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this Rule.
  2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.
  3. Video surveillance records and recordings must be made available upon request to the Division, the relevant Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose.
  4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code, or for any other state or local law enforcement purpose.
- B. Video Surveillance Equipment.
1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this

Rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.
3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained, so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.
4. All video surveillance equipment shall have sufficient battery backup to support a minimum of ~~four~~ **two** hours of recording in the event of a power outage. Licensee must notify the Division of any loss of video surveillance capabilities that extend beyond four hours.

C. Placement of Cameras and Required Camera Coverage.

1. Camera coverage is required for all areas identified as Restricted Access Areas or Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Regulated Marijuana is displayed for sale, and all points of ingress and egress to the exterior of the Licensed Premises.
2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.
3. At each point-of-sale location, camera coverage must enable recording of the facial features of patients, caregivers or consumer(s), and employee(s) with sufficient clarity to determine identity.
4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.
5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Regulated Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.
6. Areas where Regulated Marijuana is grown, tested, cured, manufactured, researched, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.
7. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, or tagging activities occur.
8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.
9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment.

1. The surveillance room or surveillance area shall be a Limited Access Area.
2. Surveillance recording equipment must be housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division, and the relevant Local Licensing Authority or Local Jurisdiction, state or local law enforcement agencies for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, and service personnel or contractors.
3. Licensees must keep a current list of all authorized employees and service personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.
4. Off-site Monitoring and video recording storage of the areas identified in this Rule 3-225(C) by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site Monitoring.
5. Each Regulated Marijuana Business Licensed Premises located in a common or shared building, or commonly owned Regulated Marijuana Businesses located in the same Local Jurisdiction, must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Regulated Marijuana Businesses located in the same Local Jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned Licensed Premises. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in this section apply to the review station.
6. Licensed Premises that combine both a Medical Marijuana Business and a Retail Marijuana Business may have one central surveillance room located at the shared Licensed Premises. See Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation.

E. Video Recording and Retention Requirements.

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.
2. All surveillance recordings must be kept for a minimum of 340 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately captured video and guarantees that no alteration of the recorded image has taken place.
3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the areas identified in this Rule 3-225(C).
4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture. The date and time must be synchronized with any point-of-sale system.

5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: <http://www.time.gov>.
6. After the 340-day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to: sale or transfer of the facility or business to another Licensee; or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil, or administrative investigation, or any other proceeding for which the recording may contain relevant information.

F. Other Records.

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

### 3-300 Series – Health and Safety Regulations

#### Basis and Purpose – 3-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(f), and 44-10-1001(2), C.R.S. The purpose of this rule is to clarify the conditions under which a Regulated Marijuana Business may be subject to an inspection of its Licensed Premises by a county or municipal employee, specifically but not exclusively a fire safety inspection.

#### 3-305 – Local Safety Inspections

A Regulated Marijuana Businesses may be subject to inspection of its Licensed Premises by the local fire department, building inspector, or code enforcement officer to inspect for compliance with local health and safety regulations-confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet Local Jurisdiction restrictions related to Regulated Marijuana or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety

#### Basis and Purpose – 3-325

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(dd)(X), and 44-10-203(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to clarify that a Regulated Marijuana Business engaged in the cultivation of Regulated Marijuana is prohibited from using certain chemicals or pesticides that may cause harm to employees or consumers.

#### 3-325 – Prohibited Chemicals

- A. Applicability. This Rule 3-325 applies to Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facilities, Retail Marijuana Products Manufacturer, Accelerator Cultivator, Accelerator Manufacturer, and Marijuana Research and Development Licensees.

B. The following chemicals are prohibited and shall not be used in the production of Regulated Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Regulated Marijuana, ~~or~~ Regulated Marijuana Concentrate, Regulated Marijuana Product, or Industrial Hemp Product on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq.*, C.R.S., the Pesticide Applicators' Act, section 35-10-101 *et seq.*, C.R.S., or the rules and regulations pursuant thereto.
2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

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

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

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

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

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

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON



13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYL TIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

- C. DMSO. Except for R&D Licensees, the use of Dimethylsulfoxide (DMSO) in the production of Regulated Marijuana and the possession of DMSO upon the Licensed Premises is prohibited.

### **3-600 Series – Transport and Storage**

#### **Basis and Purpose – 3-610**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-313(14), 44-10-505(2), 44-10-605(2), and 44-

10-1001(2), C.R.S. The purpose of this rule is to establish that Regulated Marijuana may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit. This Rule 3-610 was previously Rules M and R 802, 1 CCR 212-1 and 1 CCR 212-2.

### **3-610 – Off-Premises Storage of Regulated Marijuana: All Regulated Marijuana Businesses**

A. Off-Premises Storage Permit Authorized.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility may only have one off-premises storage facility permit and may store Medical Marijuana in their Limited Access Area or in their one permitted off-premises storage facility. Medical Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.
2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, a Retail Marijuana Cultivation Facility, and a Retail Marijuana Testing Facility may only have one off-premises storage facility permit and may store Retail Marijuana in their Limited Access Area or in their one permitted off-premises storage facility. Retail Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.
3. An Accelerator Licensee may only have one off-premises storage facility permit and may store Retail Marijuana in their Limited Access Area of in their one permitted off-premises storage facility.

B. Permitting. To obtain a permit for an off-premises storage facility, a Regulated Marijuana Business must apply on current Division forms and pay any applicable fees.

1. A Medical Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Medical Marijuana Stores.
2. A Retail Marijuana Transporter may only apply for and hold an off-premises storage permit in a Local Jurisdiction that permits the operation of Retail Marijuana Stores.

C. Extension of Licensed Premises. A permitted off-premises storage facility is an extension of the Regulated Marijuana Business's Licensed Premises, subject to all applicable Regulated Marijuana regulations.

D. Limitation on Inventory to be Stored.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, and a Medical Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Medical Marijuana that is part of the particular Medical Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with, and store inventory belonging to, a Medical Marijuana Business that has identical Controlling Beneficial Owners.
2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, and a Retail Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Retail Marijuana that is part of the particular Retail Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with, and store inventory belonging to a Retail Marijuana Business that has identical Controlling Beneficial Owners.

3. A Medical Marijuana Business may share one off-premises storage facility with the same type of Retail Marijuana Business if the businesses operate a shared Licensed Premises pursuant to Rule 3-215 and if the Local Licensing Authority and Local Jurisdiction permit shared off-premises storage facilities. All Transfers of Regulated Marijuana by a Regulated Marijuana Business to or from its off-premises storage facility must be without consideration except for delivery orders packaged for delivery to patients or consumers pursuant to subparagraph E.
  4. An Accelerator Licensee possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Retail Marijuana that is part of the Accelerator Licensee's finished goods inventory. The aforementioned Accelerator Licensees may only share the off-premises storage facility with, and store inventory belonging to, an Accelerator Licensee that has identical Controlling Beneficial Owners.
- E. Privileges and Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Regulated Marijuana Business must not Transfer, cultivate, manufacture, process, test, research, or consume any Regulated Marijuana within the premises of the permitted off-premises storage facility. An off-premises storage facility shall not be used as a distribution center for Transfers to Regulated Marijuana Businesses without identical Controlling Beneficial Owners or for consideration.
1. A Medical Marijuana Store, **Accelerator Store**, or Retail Marijuana Store with a valid delivery permit may use its own off-premises storage facility to package, label, and fill orders for delivery of Regulated Marijuana to a patient or consumer after the Medical Marijuana Store, **Accelerator Store**, or Retail Marijuana Store receives an order for delivery, unless otherwise restricted by the local jurisdiction.
  2. A Medical Marijuana Transporter or Retail Marijuana Transporter shall not use its own off-premises storage facility to package, label, or fill orders for delivery of Regulated Marijuana to a patient or customer. A Medical Marijuana Transporter or a Retail Marijuana Transporter may use its own off-premises storage facility to store Regulated Marijuana that is packaged and labeled for delivery to a patient or consumer, unless otherwise restricted by the Local Licensing Authority or Local Jurisdiction.
- F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Regulated Marijuana Business's license must be displayed in a prominent place within the permitted off-premises storage facility.
- G. Local Licensing Authority or Local Jurisdiction Approval.
1. Prior to submitting an application for an off-premises storage facility permit, the Regulated Marijuana Business must obtain approval or acknowledgement from the relevant Local Licensing Authority or Local Jurisdiction.
  2. A copy of the relevant Local Licensing Authority's or Local Jurisdiction's approval or acknowledgement must be submitted by the Regulated Marijuana Business in conjunction with its application for an off-premises storage facility.
  3. No Regulated Marijuana may be stored within a permitted storage facility until the relevant Local Licensing Authority or Local Jurisdiction has been provided a copy of the off-premises storage facility permit.
  4. Any off-premises storage permit issued by the Division shall be conditioned upon the Regulated Marijuana Business's receipt of all required Local Jurisdiction approvals or acknowledgments.

- H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. See Rules 3-220 – Security Alarm and Lock Standards and Rule 3-225 – Video Surveillance.
- I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule 3-605 – Transport: All Regulated Marijuana Businesses, when transporting any Regulated Marijuana to and from a permitted off-premises storage facility.
- J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Regulated Marijuana Business shall utilize the Inventory Tracking System to track its inventories from the point of Transfer to or from a permitted off-premises storage facility. See Rules 3-805 – All Regulated Marijuana Businesses: Inventory Tracking System and Rule 3-905 – Business Records Required.
- K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.
- L. Adequate Care of Perishable Regulated Marijuana Product. A Regulated Marijuana Business must provide adequate refrigeration for perishable Regulated Marijuana Product and shall utilize adequate storage facilities and transport methods.
- M. Consumption Prohibited. A Regulated Marijuana Business shall not permit the consumption of marijuana or marijuana product on the premises of its permitted off-premises storage facility.

### **Basis and Purpose – 3-615**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(2)(dd), C.R.S. The purpose of this rule is to provide requirements for a Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter or Retail Marijuana Transporter to apply for and conduct deliveries to private residences pursuant to a delivery permit. This rule provides application and renewal requirements for a delivery permit. Additionally, the rule describes requirements for responsible vendor training, requirements for use of the inventory tracking system, Delivery Motor Vehicles requirements including security, requirements for delivery orders, requirements prior to completing a delivery to a patient or consumer at a private residence and requirements for maintaining the confidentiality of all patient and customer information.

### **3-615 – Regulated Marijuana Delivery Permits**

- A. Application, Qualification, and Eligibility for Delivery Permit.
  - 1. Beginning January 2, 2020, a Medical Marijuana Store may apply for a delivery permit. The application shall be made on Division forms and in accordance with the 2-200 Series Rules. The delivery permit application can be submitted simultaneously with a Medical Marijuana Store initial or renewal application or it can be separate from a Medical Marijuana Store application but the application must identify the Medical Marijuana Store(s) seeking to obtain the delivery permit.
  - 2. Beginning January 2, 2021, a Retail Marijuana Store, a Medical Marijuana Transporter, and a Retail Marijuana Transporter may apply for a delivery permit. The delivery permit application can be submitted simultaneously with a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter initial or renewal application or it can be separate from a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter application but the application must identify the Retail Marijuana

Store(s), Medical Marijuana Transporter(s), or Retail Marijuana Transporter(s) seeking to obtain the delivery permit.

3. Prior to the State Licensing Authority issuing an Applicant a delivery permit, the Applicant must establish the Local Licensing Authority and/or Local Jurisdiction where the Applicant is located, or for a Medical Marijuana Transporter or Retail Marijuana Transporter without a Licensed Premise, the Local Licensing Authority or Local Jurisdiction for the location where they intend to operate:
  - a. By ordinance or resolution has permitted delivery of Regulated Marijuana in the jurisdiction, and
  - b. Is currently accepting applications for delivery permits in the jurisdiction, if required.
4. Multiple Medical Marijuana Stores, Retail Marijuana Stores, Medical Marijuana Transporters, or Retail Marijuana Transporters with identical Controlling Beneficial Owners that are in the same local jurisdiction may obtain one delivery permit that allows all Medical Marijuana Stores, all Retail Marijuana Stores, all Medical Marijuana Transporters, or all Retail Marijuana Transporters in that jurisdiction to make deliveries to patients or consumers.
5. Delivery Permit Renewal.
  - a. A delivery permit must be renewed annually with the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter license it accompanies. A Medical Marijuana Store or Retail Marijuana Store must disclose to the Division any online platform provider that the Licensee has utilized during the previous year at the time of renewal.
  - b. Length of Delivery Permit.
    - i. A delivery permit issued with an initial or renewal license application is valid for **a period not to exceed** one year and will expire at the same time as the license for the associated Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter.
    - ii. A delivery permit that is not issued with an initial or renewal application will be valid for less than one year to align the license expiration date of the related Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. In all years after the first year, such a delivery permit will be valid for **a period not to exceed** one year.
  - c. In addition to any other basis for denial of renewal application, the State Licensing Authority may also consider the following facts and circumstances as an additional basis for denial of a delivery permit renewal application:
    - i. The Medical Marijuana Store or Retail Marijuana Store failed to collect the one-dollar surcharge on every delivery or failed to timely remit the one-dollar surcharge to the municipality where the Medical Marijuana Store or Retail Marijuana Store is located, or to the county if the Medical Marijuana Store or Retail Marijuana Store is in an unincorporated area.

- B. Delivery to Private Residence. Private residence includes, but is not limited to, a private premises where a person lives such as a private dwelling, place of habitation, a house, a multi-dwelling unit for residential occupants, or an apartment unit. Private residence does not include any premises located at a school, on the campus of an institution of higher education, public property, or any commercial property unit such as offices or retail space.
- C. Responsible Vendor Certification Required. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must obtain a valid responsible vendor designation pursuant to section 44-10-1202, C.R.S., and the 3-500 Series Rules including the delivery curriculum prior to conducting its first delivery.
- D. Inventory Tracking System Required. A Regulated Marijuana Business possessing a valid delivery permit must use the inventory tracking system and transport manifests to track all Regulated Marijuana delivered to the intended patient or consumer. This includes the use of a transport manifest.
- E. Delivery Motor Vehicle Requirements.
1. Any Delivery Motor Vehicle must be owned or leased by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, or an Owner Licensee of the Regulated Marijuana Business that holds the delivery permit, must be registered in the State of Colorado, and must be insured.
  2. Any Delivery Motor Vehicle must have a vehicle tracking system that is capable of real-time tracking and recording of the route taken by the Delivery Motor Vehicle while conducting deliveries that can be accessed remotely in real-time by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. The vehicle tracking system may be an application installed on a mobile device. The real-time location of the Delivery Motor Vehicle shall not be displayed to any patients or consumers.
  3. Any Delivery Motor Vehicle must not have any external markings, words, or symbols that indicate the Delivery Motor Vehicle is used for delivery of Regulated Marijuana or is owned or leased by a Medical Marijuana Business or a Retail Marijuana Business.
  4. Regulated Marijuana must not be visible from outside the Delivery Motor Vehicle.
  5. Delivery Motor Vehicle security requirements include but are not limited to:
    - a. A security alarm system, and
    - b. A secure, locked, opaque storage compartment that is securely affixed to the Delivery Motor Vehicle for the purpose of securing Regulated Marijuana.
  6. Video Surveillance Requirements.
    - a. The Delivery Motor Vehicle must be equipped with video surveillance equipment that digitally records during all deliveries. The video surveillance shall record at least the secured, locked, opaque storage compartment containing the Regulated Marijuana and the front view of the Delivery Motor Vehicle (e.g. dash camera).
    - b. Video surveillance shall be kept for a minimum of 340 days, must be capable of being embedded with the date and time, must be reproducible upon request from

law enforcement, the Division, a Local Licensing Authority or a Local Jurisdiction and must be archived in a format that ensures authentication and guarantees no alteration of the video.

7. An enclosed Delivery Motor Vehicle shall not contain more than \$10,000.00 in retail value of Regulated Marijuana. A Delivery Motor Vehicle that is not enclosed shall not contain more than \$2,000.00 in retail value of Regulated Marijuana.
8. A Delivery Motor Vehicle must not leave the State of Colorado while any amount of Regulated Marijuana is in the Delivery Motor Vehicle.
9. Only persons licensed by the State Licensing Authority and identified on the transport manifest may occupy a Delivery Motor Vehicle while conducting deliveries of Regulated Marijuana.

F. Delivery Order Requirements.

1. A Medical Marijuana Store or a Retail Marijuana Store that has a valid delivery permit may accept orders for delivery of Regulated Marijuana to patients who are at least 21 years of age, parents or guardians of patient under 18 years of age, or consumers who are at least 21 years of age at a private residence. Delivery orders to patients ages 18 to 20 are not permitted.
2. For a Medical Marijuana Store or a Retail Marijuana Store that utilizes an online platform provider:
  - a. The online platform provider must require that the patient or consumer choose a Medical Marijuana Store or Retail Marijuana Store before displaying the price of Regulated Marijuana to the patient or consumer; and
  - b. The Medical Marijuana Store or Retail Marijuana Store must receive verification that there has not already been a delivery of Regulated Marijuana to that private residence through the online platform provider that same business day.
3. All delivery orders must document the following information which must be maintained pursuant to Rule 3-905 by the Medical Marijuana Store or the Retail Marijuana Store:
  - a. The name and date of birth of the patient or consumer placing the delivery order;
  - b. The address of the private residence where the order will be delivered;
  - c. For Medical Marijuana delivery orders only, the registration number reflecting on the patient's registry identification card; and
  - d. For Medical Marijuana delivery orders only, if the patient is under 18 years of age, the parent or guardian designated as the patient's primary caregiver, and if applicable, the registration number of the primary caregiver.
4. A Medical Marijuana Store or a Retail Marijuana Store may accept payment for delivery orders using any legal method of payment, gift card pre-payments or payment on delivery, or pre-payment accounts established with a Medical Marijuana Store or Retail Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted. A Medical Marijuana Transporter or Retail Marijuana Transporter may accept payment on behalf of a Medical Marijuana Store or Retail Marijuana Store at the point of Transfer to the patient or consumer.

- a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.
  5. Regulated Marijuana must be weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store or at their off-premises storage facility after receipt of a delivery order. Regulated Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Regulated Marijuana has been packaged and labeled for delivery to the patient or consumer as required by the 3-1000 Series Rules.
  6. Medical Marijuana Transporters and Retail Marijuana Transporters shall not take delivery orders but may deliver Regulated Marijuana on behalf of Medical Marijuana Stores and Retail Marijuana Stores pursuant to a contract with the Medical Marijuana Store or Retail Marijuana Store provided that the store also holds a valid delivery permit. The Medical Marijuana Store and Medical Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905. The Retail Marijuana Store and Retail Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905.
- G. Regulated Marijuana Delivery Requirements.
1. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter shall not deliver Regulated Marijuana to patients, parents, guardians, or consumers while also transporting Regulated Marijuana between Licensed Premises in the same Delivery Motor Vehicle.
  2. Delivery of Medical Marijuana and Retail Marijuana.
    - a. A Medical Marijuana Store and Retail Marijuana Store, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners, may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.
    - b. A Medical Marijuana Transporter and Retail Marijuana Transporter, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.
    - c. A Medical Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Medical Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Medical Marijuana Store between deliveries.
    - d. A Retail Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Retail Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Retail Marijuana Store between deliveries.
  3. An Owner Licensee or Employee Licensee delivering Regulated Marijuana shall not open any Container of Regulated Marijuana in the Delivery Motor Vehicle and is prohibited from packaging or re-packaging Regulated Marijuana once the Delivery Motor Vehicle has departed from the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store.



4. A Medical Marijuana Store or Retail Marijuana Store shall not accept delivery orders for Regulated Marijuana Product that is perishable unless the Delivery Motor Vehicle that will make the delivery has the ability to secure the Regulated Marijuana Product in climate-controlled storage.
5. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must maintain a transport manifest that documents the following:
  - a. The time of delivery;
  - b. The name, and identification number of the valid, acceptable identification (e.g. driver's license) presented by the patient or consumer;
  - c. Address of the private residence;
  - d. Acknowledgement of receipt of delivery by the person receiving the delivery;
  - e. If applicable, patient registry number;
  - f. If applicable, primary caregiver registry number of the patient's parent or guardian; and
  - g. For every Regulated Marijuana delivery that could not be completed, the reason the delivery could not be completed.
6. Proof of Patient Medical Registry and Identification.
  - a. Prior to Transferring possession of the order, the Owner Licensee or Employee Licensee delivering Medical Marijuana to a patient or a patient's parent or guardian must:
    - i. Inspect the patient's or parent's or guardian's identification and registry identification card;
    - ii. Verify the possession of a valid registry identification card;
    - iii. Verify that the information provided at the time of order match the name and age on the patient's or parent or guardian's identification; and
    - iv. Verify that the identification and registry identification card belong to the person receiving the delivery.
  - b. The Owner Licensee or Employee Licensee must refuse delivery of Medical Marijuana if the person attempting to accept the delivery order cannot establish all of the requirements of subparagraph (G)(6)(a)(i) through (iv) above.
7. Proof of Consumer Identification.
  - a. The Owner Licensee or Employee Licensee delivering Retail Marijuana to a consumer must first verify that the natural person accepting the delivery has an acceptable form of identification demonstrating the person is at least 21 years of age and that the person is the same as the person that placed the order for delivery with the Retail Marijuana Store.

- b. The Owner Licensee or Employee Licensee must refuse delivery of Retail Marijuana if the natural person attempting to accept the delivery order cannot establish all the requirements of subparagraph (G)(7)(a) above.
8. Daily Delivery Limits.
- a. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver individually or in any combination, more than two ounces of Medical Marijuana, eight (8) grams of Medical Marijuana Concentrate, or Medical Marijuana Products containing more than 20,000 milligrams of THC to a patient in a single business day.
  - b. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver to a patient, parent, or guardian or private residence where the Licensee knows or reasonably should know that the patient, parent or guardian, or private residence has already received a delivery during that same business day. This does not prohibit delivery to more than one patient at the Same time and private residence.
  - c. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver individually or in any combination, more than one ounce of Retail Marijuana, 8 grams of Retail Marijuana Concentrate, or Retail Marijuana Products containing more than ten 80 milligram servings of THC to a customer in a single business day.
  - d. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver to a consumer or private residence where the Licensee knows or reasonably should know that the consumer or private residence has already received a delivery during that same business day. This does not prohibit delivery to more than one consumer at the same time and private residence.
9. An Owner Licensee or Employee Licensee who cannot complete a delivery order for any reason must return the Regulated Marijuana to the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility from which the delivery order originated. If the Container is unopened and has not been tampered with, the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility may return the Regulated Marijuana into its inventory and reconcile it with the Inventory Tracking System by the close of business that same day. Otherwise, the Regulated Marijuana must be destroyed in accordance with this Rule and Rule 3-235.
- H. Confidentiality of Patient and Consumer Personal Identifying Information. A Medical Marijuana Store, a Retail Marijuana Store, a Medical Marijuana Transporter, a Retail Marijuana Transporter, and their respective Owner Licensees and Employee Licensees must keep all personal identifying information and any health care information obtained from patients and consumers confidential and must not disclose such personally identifiable information and any health care information to any person other than those who need that information to take, process, or deliver the order or otherwise as required by the Marijuana Code, or Title 18, or Title 25 of the Colorado Revised Statutes.

### 3-700 Series – Signage and Advertising

#### Basis and Purpose – 3-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection

16(5)(a)(VIII). The purpose of this rule is to clearly delineate that a Regulated Marijuana Business is not permitted to make deceptive, false, or misleading statements in Advertising materials or on any product or document provided to a patient or consumer. This Rule 3-705 was previously Rules M and R 1102, 1 CCR 212-1 and 1 CCR 212-2.

### 3-705 – Advertising General Requirements

- A. No Deceptive, False, or Misleading Statements. A Regulated Marijuana Business shall not engage in Advertising that is deceptive, false, or misleading. A Regulated Marijuana Business shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a patient or consumer.
- B. Potential Risks of Regulated Marijuana Concentrate Overconsumption. A Regulated Marijuana Business Advertising Medical Marijuana Concentrate or Retail Marijuana Concentrate shall include a notice as determined by the Division to patients or consumers regarding the potential risks of Medical Marijuana Concentrate or Retail Marijuana Concentrate overconsumption.
- C. Health or Physical Benefit Claims Prohibited. A Regulated Marijuana Business may not Advertise any Regulated Marijuana that asserts its products are safe or that its products provide health and physical benefits.

### 3-800 Series – Inventory Tracking Requirements

**Please Note:** The draft rule revisions aim to leverage opportunities to promote efficiencies in the inventory tracking system rules including opportunities to incorporate revisions allowing batch tagging (i.e. providing Licensees the opportunity to continue utilizing individual plant tags or to utilize batch tags that are used to track multiple plants) and providing opportunities to reevaluate RFID requirements. The Division is under a current contract with the Inventory Tracking System Provider and any proposed rule revisions may require contract amendments.

#### Basis and Purpose – 3-805

The statutory authority for this rule includes but is not limited to sections, 44-10-201(1), 44-10-202(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-501(1)(b), 44-10-502(2), 44-10-503(1)(b), 44-10-505(3), 44-10-601(1)(d), 44-10-602(3), 44-10-603(1)(b), 44-10-605(3), and 44-10-610(3)(a), C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Regulated Marijuana from either seed or immature plant stage until the Regulated Marijuana is sold to a patient or consumer, or destroyed.

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

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

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

monitor its Regulated Marijuana inventory, which may include reevaluating the benefits of and alternatives to certain aspects of the current Inventory Tracking System such as RFID technology requirements. This Rule 3-805 was previously Rules M and R 309, 1 CCR 212-1 and 1 CCR 212-2.

### 3-805 – Regulated Marijuana Businesses: Inventory Tracking System

- A. Inventory Tracking System Required. A Regulated Marijuana Business is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Regulated Marijuana Business must have an Inventory Tracking System account activated and functional prior to operating or exercising any privileges of a License. Medical Marijuana Businesses converting to or adding a Retail Marijuana Business must follow the inventory transfer guidelines detailed in Rule 3-805(C) below. Because Marijuana Hospitality Businesses are not authorized to receive or conduct Transfers of Regulated Marijuana, this Rule does not apply to Marijuana Hospitality Businesses.
- B. Inventory Tracking System Access - Inventory Tracking System Administrator.
1. Inventory Tracking System Administrator Required. A Regulated Marijuana Business must have at least one Owner Licensee who is an Inventory Tracking System Administrator. A Regulated Marijuana Business may also designate additional Owner Licensees and Employee Licensees to obtain Inventory Tracking System Administrator accounts.
  2. Training for Inventory Tracking System Administrator Account. In order to obtain an Inventory Tracking System Administrator account, a Person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.
  3. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Regulated Marijuana Business may designate licensed Owners and employees who hold valid Employee Licenses as Inventory Tracking System Users. A Regulated Marijuana Business shall ensure that all Owner Licensees and Employee Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.
- C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Business.
1. Medical Marijuana Inventory Transfer to Retail Marijuana Business.
    - a. Except pursuant to Rules 5-205 and 6-205:
      - i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Business is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Medical Marijuana Cultivation Facility, from the Medical Marijuana Cultivation Facility to a Retail Marijuana Cultivation Facility.
      - ii. Each Medical Marijuana Cultivation Facility that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.

- iii. A Medical Marijuana Cultivation Facility must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.
  - iv. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Business.
  - v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Store or Medical Marijuana Products Manufacturer to any Retail Marijuana Business.
2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

D. RFID-Inventory Tracking System Tags Required.

1. Authorized Tags Required and Costs. Licensees are required to use Inventory Tracking System RFID-tags issued by a Division-approved vendor that is authorized to provide Inventory Tracking System RFID-tags for the Inventory Tracking System. Each licensee is responsible for the cost of all Inventory Tracking System RFID-tags and any associated vendor fees.
2. Use of Inventory Tracking System RFID- Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires Inventory Tracking System RFID-tag use. A Regulated Marijuana Business must ensure it has an adequate supply of Inventory Tracking System RFID-tags to properly tag Regulated Marijuana as required by the Inventory Tracking System. An Inventory Tracking System RFID-tag must be physically attached to every Regulated Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. Prior to a plant reaching a viable point to support the weight of the Inventory Tracking System RFID-tag and attachment strap, the Inventory Tracking System RFID-tag may be securely fastened to the stalk. An Inventory Tracking System RFID-tag must be assigned to all Regulated Marijuana. See Rule 3-805(D); Rule 3-1005(G) – Shipping Containers.
3. Reuse of Inventory Tracking System RFID- Tags Prohibited. A Licensee shall not reuse any Inventory Tracking System RFID-tag that has already been affixed or assigned to any Regulated Marijuana.
4. When plants reach a viable point to support the weight of the Inventory Tracking System RFID-tag and attachment strap, the Inventory Tracking System RFID-tag shall be securely fastened to a lower supporting branch.

**[PLEASE NOTE: The Division is interested in gathering feedback from stakeholders regarding batch tagging (e.g. one tag representing multiple plants) to inform potential future changes to inventory tracking requirements or contracts.]**

E. General Inventory Tracking System Use.

1. Reconciliation with Inventory. All inventory tracking activities at a Regulated Marijuana Business must be tracked through use of the Inventory Tracking System. A Licensee

must reconcile all on-premises and in-transit Regulated Marijuana inventories each day in the Inventory Tracking System at the close of business.

2. Common Weights and Measures.

- a. A Regulated Marijuana Business must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Regulated Marijuana.
- b. A scale used to weigh product prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S.

3. Inventory Tracking System Administrator and User Accounts – Security and Record.

- a. A Regulated Marijuana Business shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Regulated Marijuana Business shall update this list when a new Inventory Tracking System User is trained. A Regulated Marijuana Business must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.
- b. A Regulated Marijuana Business must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.
- c. A Regulated Marijuana Business is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities.
- d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities, and shall maintain compliance with all relevant laws.

4. Secondary Software Systems Allowed.

- a. Nothing in this Rule prohibits a Regulated Marijuana Business from using separate software applications to collect information to be used by the business including secondary inventory tracking or point-of-sale systems.
- b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.
- c. A Regulated Marijuana Business must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use the Inventory Tracking System data as the primary source of data and must be compatible with updating to the Inventory Tracking System.

5. Regulated Marijuana Cultivations: Inventory Tracking System. A Manicure Batch may be combined with a Harvest Batch containing the same plants, provided that the Regulated Marijuana is homogenized prior to sampling and testing, uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals. Manicure and Harvest

Batches must be clearly identified at the Licensed Premises with the Manicure Batch and Harvest Batch name and date as it appears in the Inventory Tracking System.

F. Conduct While Using Inventory Tracking System.

1. Misstatements or Omissions Prohibited. A Regulated Marijuana Business and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Regulated Marijuana Business and the individuals using the Inventory Tracking system are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.
2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.
3. Loss of System Access. If at any point a Regulated Marijuana Business loses access to the Inventory Tracking System for any reason, the Regulated Marijuana Business must keep and maintain comprehensive records detailing all Regulated Marijuana tracking inventory activities that were conducted during the loss of access. See Rule 3-905 – Business Records Required. Once access is restored, all Regulated Marijuana inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Regulated Marijuana Business must document when access to the system was lost and when it was restored. A Regulated Marijuana Business shall not Transfer any Regulated Marijuana to another Regulated Marijuana Business until such time as access is restored and all information is recorded into the Inventory Tracking System.

G. System Notifications.

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

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

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

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;
2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;

3. Accurately identifying when inventory is no longer on the Licensed Premises;
4. Properly indicating that a Test Batch is being used as part of achieving a Reduced Testing Allowance;
5. Accurately indicating the Inventory Tracking System category for all Regulated Marijuana; and
6. Accurately including a note explaining the reason for any destruction of Regulated Marijuana, and reason for any adjustment of weights to Inventory Tracking System packages.
7. Properly designating one or more Sampling Managers before Transferring any Sampling Units;
8. Fully and accurately tracking the Transfer of any Sampling Unit from a Regulated Marijuana Business to a Sampling Manager identified by name and license number; and
9. When entering into the Inventory Tracking System a unit of Regulated Marijuana the Inventory Tracking System Trained Administrator or Inventory Tracking System User shall also identify the net contents of each unit consistent with Rules 3-1005(B)(2)(e) and (C)(2)(a)(iv). For example, if the Inventory Tracking System User enters 1 unit of Retail Marijuana Product that contains 100 milligrams of Retail Marijuana Product, then the Inventory Tracking System User shall also identify that each unit contains 100 milligrams. Further, if the Inventory Tracking System User enters 1 unit of Medical Marijuana Product that contains 200 mg of Medical Marijuana Product, the Inventory Tracking System User shall also identify that each unit contains 200 mg.

### 3-900 Series – Business Records

#### Basis and Purpose – 3-905

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-301, and 44-10-1001(1), C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. This Rule 3-905 was previously Rules M and R 901, 1 CCR 212-1 and 1 CCR 212-2.

#### 3-905 – Business Records Required

##### A. General Requirements.

1. A Regulated Marijuana Business must maintain the information required in this Rule in a format that is readily understood by a reasonably prudent business person and may be stored electronically.
2. **Location of Required Records.** Each Regulated Marijuana Business shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.
  - a. On premises records: The Regulated Marijuana Business's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times. Electronic records that are accessible from, but not physically located at, a Licensee's Licensed Premises may also satisfy the requirements of this Rule 3-905.



- b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.
  3. Books and records necessary to fully account for the business transactions conducted under its License shall be made available to the State Licensing Authority or Division upon request.
- B. The books and records that are required to be maintained for the current calendar year and the preceding calendar year are must fully account for the transactions of the business and must include, but shall not be limited to:
1. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Regulated Marijuana Business must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.
  2. Security Alarm Systems documents required by Rule 3-220(A)(3).
  3. Advertising Records – All records related to Advertising and marketing, including, but not limited to, audience composition data.
  4. Child Resistance Certificates – A copy of the certificate that each Container into which a Licensee places Regulated Marijuana is Child Resistant.
  5. Diagram for the Licensed Premises – Diagram of all approved Limited Access Areas, Restricted Access Areas, and any permitted off-premises storage facilities.
  6. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.
  7. Repealed All records normally retained for tax purposes.
  8. Waste Log and Fibrous Waste Records – Comprehensive records regarding all waste and Fibrous Waste material that accounts for, reconciles, and evidences all waste and Fibrous Waste activity related to the disposal of marijuana.
  9. Consumer Waste Records – All contracts, standard operating procedures, and receipts relating to collection and Transfer of Marijuana Consumer Waste as required by Rule 3-240.
  10. Surveillance Logs – Surveillance logs identify all authorized employees and service personnel who have access to the surveillance system and maintenance and activity log as required by Rule 3-225.
  11. Every Licensee shall maintain a record of its identity statement and Standardized Graphic Symbol. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.
  12. Testing Records Required to be Maintained by Regulated Marijuana Testing Facilities:
    - a. All testing records required by Rule 5-450 and Rule 6-450.
    - b. Digital photographs of each Test Batch.
    - c. Any delegation of responsibilities from the laboratory director to a qualified supervisory analyst as permitted by Rule 5-240(B)9 or 6-240(B).

13. Testing Records Required to be Maintained by Regulated Marijuana Businesses and Accelerator Licensees:
  - a. Documentation of Designated Test Batch Collector Training required by Rule 4-110(C)(3).
  - b. Records regarding wet whole plant that was not tested for microbials pursuant to Rule 4-121(F)(3).
  - c. Evidence of any achieved Reduced Testing Allowance — If a Licensee utilizes any Reduced Testing Allowances, then they must maintain documentation demonstrating how it was obtained and maintained throughout the allowance with all applicable rules.
14. Sampling Unit Records – All records related to designated Sampling Managers, identified Sampling Units, and Transfers of Sampling Units. See Rules 3-810, 5-230, 5-320, 6-225, 6-320. This includes, but is not limited to, standard operating procedures that explain the requirements of sections 44-10-502(5), 44-10-503(10), 44-10-602(6) and 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements imposed by Rules 5-230, 5-320, 6-225, 6-320, 6-725, and 6-280.
15. License Application Records – All records provided by the Licensee to both the state and local licensing authorities in connection with an application for licensure pursuant to the Marijuana Code and these Rules.
16. ~~Repealed Standard Operating Procedures—All standard operating procedures as required by these Rules, including up-to-date records of employee training, as follows:~~
  - a. ~~Identification of required training of employees;~~
  - b. ~~Documentation of training topic, training method, date of initial training, date of any necessary re-training, name and signature of trainer, and name and signature of employee;~~
  - c. ~~Competency and effectiveness of employee training shall be adequately assessed in an appropriate manner determined by the Licensee that is described in the standard operating procedures.~~
17. Audited Product and/or Alternative Use Product Records – All records required to demonstrate compliance with Rule 5-325 and 6-325.
18. Corrective Action and Preventive Action records required by Rules 5-115, 5-210, 5-310, 6-110, 6-210, 6-310.
19. Certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers as required by Rule 5-310(F).
20. Records required to be maintained by Delivery Permit holders including delivery order requirements and contracts for delivery pursuant to Rule 3-615.
21. Recall records required by Rule 3-336 including the recall plan, recall notice, and results of any action taken pursuant to the recall plan.
22. All records related to Material Changes as required by Rules 3-330(D) and 3-335(L).

23. Records related to Adverse Health Events as required by Rule 3-920.
24. Internal Security Controls – Licensees must establish and maintain a security plan for each Licensed Premises, including at a minimum:
  - a. Protocols for the end-of-day handling of Regulated Marijuana and cash;
  - b. Protocols for reporting theft or burglaries when they are discovered to Local Law Enforcement, the Division, and Local Licensing Authority or Local Jurisdiction;
  - c. Protocols for reconciling inventory after a theft or burglary has been discovered;
  - d. Identification of exterior lighting of the Licensed Premises and any exterior camera angles, and protocols for maintenance of the lighting and cameras; and
  - e. Identification of ingress and egress routes for the property and identification of any access control measures taken outside of the Licensed Premises.
25. Patient Documents – Documents required for a patient to register a primary Medical Marijuana Store as required by Rule 5-1105(D).
26. Regulated Marijuana Concentrate Production Records – All records required by Rules 5-315, 6-315, and 6-815 regarding production of Regulated Marijuana Concentrate.
27. Marijuana Research and Development Facility Records – Documents and correspondence sent to or received from an independent reviewer or the Scientific Advisory Council and any testing records if required by Rule 5-725.
28. Documents Related to Pesticide Manufacturers – Affidavit from a Pesticide Manufacturer that it meets the requirements of the Rule and the written agreement between the Licensee and the Pesticide Manufacturer as required by Rule 7-115.
29. Expiration date and use-by date documents required by Rules ~~3-330(F) and~~ 3-335(M), 3-1005, and 3-1015.
30. Written report of change of management personnel as required by Rule 3-920(A)(2).
31. Current Owner and Employee List – This list must provide the full name and License number of all Owner Licensees and every employee who works for a Regulated Marijuana Business. The list shall include all employees who work for the Regulated Marijuana Business, whether or not they report to the Licensed Premises as part of their employment. A Regulated Marijuana Business can fulfill the requirements of this Rule by listing all employees in the Inventory Tracking System for each Licensed Premises. If a Regulated Marijuana Business does not use the Inventory Tracking System to list all employees, it must maintain a separate record for employees who do not report to the Licensed Premises.
32. Documentation required to demonstrate valid responsible vendor designation(s).
33. Source Genetic Material Records - Licensees receiving Genetic Material in accordance with Rules 5-305 and 6-305 must, at a minimum, maintain the following records:
  - a. The name, address, and license/registration/permit identification of the source of the Genetic Material;

- b. All certificates of analysis associated with the Genetic Material; and
- c. Any other records that clearly document the chain of custody of the Genetic Material.

34. Procedures for compliance with online sales.

35. All other records required by these Rules.

**B.5** Each Regulated Marijuana Business shall retain the following records for the current year and three immediate prior tax years.

1. Tax documents.

2. All books and records necessary to fully account for the business transactions conducted under its license.

3. Standard Operating Procedures and Training Documentation – All standard operating procedures, including revision date, as required by these Rules must be maintained for the current year and three previous calendar years. In addition to maintaining standard operating procedures, Regulated Marijuana Businesses must maintain up-to-date records of employee training, as follows

a. Identification of required training of employees;

b. Documentation of training topics, training method, date of initial training, date of any necessary re-training, name and signature of trainer, and name and signature of employee;

c. Competency and effectiveness of employee training shall be adequately assessed in an appropriate manner determined by the Licensee that is described in the standard operating procedures.

C. Records Required to be Maintained in the Inventory Tracking System. The following records must be maintained by Licensees in the Inventory Tracking System:

1. Records Related to Inventory Tracking. A Regulated Marijuana Business must maintain accurate and comprehensive inventory tracking records that account for, reconcile, and evidence all inventory activity for Regulated Marijuana from either seed or Immature Plant stage until the Regulated Marijuana is destroyed or Transferred to another Regulated Marijuana Business, a consumer, a patient, or a Pesticide Manufacturer.
2. Records Related to Transport. A Regulated Marijuana Business must maintain adequate records for the transport of all Regulated Marijuana. See Rule 3-605 – Transport: All Regulated Marijuana Businesses.
3. Employees Required to be Listed in the Inventory Tracking System. A Regulated Marijuana Business must use the Inventory Tracking System to list all employees who report to the Licensed Premises. The employee list in the Inventory Tracking System must include the full name and Employee License number of every employee who works on the premises. The Regulated Marijuana Business is responsible for updating its list of employees who work at the Licensed Premises in the Inventory Tracking System within 10 days of an employee commencing or ceasing employment.
4. Testing results.

- D. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this Rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.
- E. Violation Affecting Public Safety. Violation of this Rule may constitute a license violation affecting public safety.
- F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

### **Basis and Purpose – 3-920**

The statutory authority for this rule includes but is not limited to sections 44-10-201(4), 44-10-204(1)(a), 44-10-202(1)(c), 44-10-202(1)(a), 44-10-204(1)(a), 44-10-203(1)(k), 44-10-313(12), and 44-10-701(2)(a), C.R.S. The State Licensing Authority must be able to immediately access information regarding a Regulated Marijuana Business's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.

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

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

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

This Rule 3-920 was previously Rules M and R 904, 1 CCR 212-1 and 1 CCR 212-2.

### **3-920 – Regulated Marijuana Business Reporting Requirements**

- A. Management Personnel Change Must Be Reported.
  - 1. When Required. A Regulated Marijuana Business shall provide the Division a written report within seven days after any change in management personnel occurs. In addition, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer shall report any designation or change of Sampling Manager(s) through the Inventory Tracking System.

2. Licensee Must Maintain Record of Reported Change. A Regulated Marijuana Business must also maintain a copy of this written report with its business records as required in Rule 3-905.
  3. Consequence of Failure to Report. Failure to report a change in a timely manner may result in discipline.
- B. Reporting of Crime on the Licensed Premises or Otherwise Related to a Regulated Marijuana Business. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Regulated Marijuana Business; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Regulated Marijuana Business or Licensee may have to report criminal activity to a local law enforcement agency.
- C. Adverse Health Event Reporting. If a Regulated Marijuana Business is notified of any possible Adverse Health Event, as defined by Rule 1-115, associated with Regulated Marijuana, it must report the Adverse Health Event to the Division within 48 hours from its receipt of notification of the Adverse Health Event. To the extent known after reasonable diligence to ascertain the information, the report must contain the name and contact information of the complainant, the date the complaint was received, the nature of the complaint, the Production Batch or Harvest Batch number, and any other identifying information found on the label of the Regulated Marijuana. The Regulated Marijuana Business must maintain records of reports of Adverse Health Events in accordance with Business Records Rule 3-905.
- D. Reporting of Fire on the Licensed Premises. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the local fire department any fire that occurs on the Licensed Premises in the time frame required by the Local Jurisdiction or Local Licensing Authority. The Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any fire that occurs on the Licensed Premises within 48 hours.

### **3-1000 Series – Labeling, Packaging, and Product Safety**

#### **Basis and Purpose – 3-1005**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b), 44-10-601(2)(a), 44-10-601(5), 44-10-603(1)(d), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product Transferred between Regulated Marijuana Businesses. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production, and sale of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This Rule 3-1005 was previously Rules M and R 1001-1, 1 CCR 212-1 and 1 CCR 212-2.

#### **3-1005 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility**

- A. Applicability. This Rule establishes minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility. See Rule 3-1025 for minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Testing Facility. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product.
- B. Packaging and Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate, Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower, trim, wet whole plant, or Medical Marijuana Concentrate to another Medical Marijuana Business, or Retail Marijuana flower, trim, wet whole plant, or Retail Marijuana Concentrate to another Retail Marijuana Business:
1. Packaging of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate.
    - a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.
    - b. Each Container of Regulated Marijuana flower or trim that is Transferred to a Regulated Marijuana Business shall not exceed 50 pounds of Regulated Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rules 5-115(C),6-110(C), and 6-925(G).
    - c. A Container of wet whole plant that is Transferred to a Regulated Marijuana Business may exceed 50 pounds, but shall not exceed 100 pounds.
    - d. Each Container of Medical Marijuana Concentrate that is Transferred to a Medical Marijuana Business, or Retail Marijuana Concentrate that is Transferred to a Retail Marijuana Business, shall not exceed 50 pounds of Medical Marijuana Concentrate or Retail Marijuana Concentrate, but may include pre-weighed units that are within the applicable sales limit in Rules 5-115(C),6-110(C), and 6-925(G).
  2. Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be affixed with a label that includes at least the following information:
    - a. The license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown, or the Accelerator Cultivator where the Retail Marijuana was grown;
    - b. The Harvest Batch Number(s) assigned to the Regulated Marijuana or the Production Batch Number(s) assigned to the Regulated Marijuana Concentrate;
    - c. If applicable, the license number of the Medical Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Medical Marijuana Concentrate, the Retail Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Retail Marijuana Concentrate, or the license number of the Accelerator Cultivator;

- d. If applicable, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Marijuana Concentrate was produced, the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana Concentrate was produced, or the Accelerator Manufacturer(s) where the Retail Marijuana Concentrate was produced;
  - e. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container; and
  - f. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate as required by these rules.
  - g. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. A list of all Ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.
  - h. Expiration/Use-By Date. Beginning January 1, 2024, the expiration or use-by date as required in Rule 3-1015.
  - i. Storage Conditions. Beginning January 1, 2024, if a Licensee establishes a use-by date that is longer than nine months based on shelf stability testing in accordance with Rule 3-1015(B)(2)(a.5), then the label for the Regulated Marijuana shall include storage conditions as determined by the Regulated Marijuana Business that cultivated or manufactured the Regulated Marijuana.
- C. Packaging and Labeling of Regulated Marijuana Product Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana Product to another Medical Marijuana Business, or Transferring Retail Marijuana Product to another Retail Marijuana Business:
1. Packaging of Regulated Marijuana Product.
    - a. Transfer to a Regulated Marijuana Business Other Than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, Regulated Marijuana Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.
    - b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Medical Marijuana Store or Retail Marijuana Store, all Regulated Marijuana Product shall be packaged in a Child-Resistant Container that is ready for sale to the patient or consumer as required by the Rule 3-1010(D).
  2. Labeling of Regulated Marijuana Product.
    - a. Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label that includes at least the following information:



- i. The license number of the Regulated Marijuana Cultivation Facility(ies) where the Medical Marijuana or Retail Marijuana was grown;
    - ii. The license number of the Regulated Marijuana Products Manufacturer that produced the Medical Marijuana Product or Retail Marijuana Product;
    - iii. The Production Batch Number(s) assigned to the Regulated Marijuana Product;
    - iv. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana Product prior to its placement in the Container; and
    - v. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Regulated Marijuana Product as required by these rules.
  - b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label ready for sale to the patient or consumer including all information required by Rules 3-1010(D)(2) and 3-1015(B).
- D. Packaging and Labeling of Regulated Marijuana Seeds, ~~and~~ Imature Plants, and Genetic Material Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Regulated Marijuana seeds, ~~or~~ Imature ~~P~~plants, ~~or~~ Genetic Material to another Regulated Marijuana Business:
  1. Packaging of Regulated Marijuana Seeds.
    - a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.
    - b. Each Container of Regulated Marijuana seeds that is Transferred to a Regulated Marijuana Business shall not exceed 10 pounds of Regulated Marijuana seeds.
  2. Packaging of Imature Plants and Genetic Material. Prior to Transfer to a Regulated Marijuana Business, Imature ~~p~~Plants and Genetic Material shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.
  3. Labeling of Regulated Marijuana Seeds and Imature Plants. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana seeds and all receptacles holding an Imature ~~p~~Plant shall be affixed with a label that includes at least the license number of the Regulated Marijuana Cultivation Facility where the Regulated Marijuana that produced the seeds or the Imature ~~p~~Plant was grown.
  4. Labeling of Genetic Material. Prior to Transfer to another Regulated Marijuana Business, every receptacle of Genetic Material shall be affixed with a label that includes at least the license number of the Regulated Marijuana Cultivation Facility Transferring the Genetic Material and must be accompanied with records required in Rule 3-905.

- E. Packaging and Labeling of Sampling Units. Regulated Marijuana Cultivation Facilities and Regulated Marijuana Products Manufacturers shall comply with the following minimum packaging and labeling requirements prior to Transferring any Sampling Unit to a Sampling Manager.
1. Packaging of Sampling Units. Prior to Transfer to a Sampling Manager, a Sampling Unit must be placed in a Container. If the Sampling Unit is Regulated Marijuana flower, trim, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the Container may, but is not required to, be Child-Resistant; however, the Container shall be placed into a Child-Resistant Exit Package at the point of Transfer to the Sampling Manager. If the Sampling Unit is composed of Regulated Marijuana Product, the Sampling Unit shall be packaged in a Child-Resistant Container.
  2. Labeling of Sampling Units. Prior to Transfer to a Sampling Manager, every Container for a Sampling Unit shall be affixed with a label that includes at least the following information:
    - a. Required License Number. The license number for the Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer Transferring the Sampling Unit.
    - b. Batch Number(s). The relevant Harvest Batch number and/or Production Batch number from which the Sampling Unit was designated.
    - c. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than  $\frac{1}{2}$  of an inch by  $\frac{1}{2}$  of an inch, with the following statement directly below the Universal Symbol: **“Contains Marijuana. Keep away from children.”**
    - d. Required Potency Statement.
      - i. For a Sampling Unit composed of Regulated Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the potency of the Sampling Unit’s active THC and CBD expressed as a percentage.
      - ii. For a Sampling Unit composed of Regulated Marijuana Product, the potency of the Sampling Unit’s active THC and CBD expressed in milligrams. If the potency of the Sampling Unit’s active THC or CBD is less than 1 milligram, the potency may be expressed as “<1 mg.”
      - iii. The required potency statement shall be displayed either: (1) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (2) highlighted with a bright color, such as yellow.
    - e. Date of Transfer. The label shall include the date of Transfer to the Sampling Unit.
    - f. Patient Number. If the Sampling Unit contains Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product, the label must also include the patient registration number of the recipient Sampling Manager.
    - g. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

- i. “This product was received as a Sampling Unit and may have been produced with undisclosed allergens, solvents, or pesticides, and may pose unknown physical or mental health risks. This product is not for resale and should not be used by anyone else.”
- F. Prohibited Transfers – All Regulated Marijuana Businesses. A Regulated Marijuana Business shall not Transfer to a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business—and a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business shall not accept nor offer for sale—any Regulated Marijuana that is not packaged and labeled in conformance with the requirements of these rules or that does not provide all information necessary to permit the Medical Marijuana Store, Retail Marijuana Store, Accelerator Store or Retail Marijuana Hospitality and Sales Business to package and label the Regulated Marijuana prior to Transfer to a patient or consumer. However, a Medical Marijuana Store or Retail Marijuana Store is not required to open any tamper evident Marketing Layer received from a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or a Retail Marijuana Products Manufacturer to verify the Container is Child-Resistant or labeled.
- G. Shipping Containers. Licensees may Transfer multiple Containers of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product to a Regulated Marijuana Business in a Shipping Container.
  1. Inventory Tracking System RFID-Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an Inventory Tracking System RFID-tag, or the Shipping Container itself must have an Inventory Tracking System RFID-tag. If the Licensee elects to place the Inventory Tracking System RFID-tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Regulated Marijuana, one Production Batch of Regulated Marijuana Concentrate, or one Production Batch of Regulated Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an Inventory Tracking System RFID-tag. See Rule 3-805 – Inventory Tracking System; Rule 3-605 – Transport: All Regulated Marijuana Businesses.
  2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the consumer is not required to be labeled according to these rules.
- H. Packaging and Labeling of Regulated Marijuana Flower and Trim Prior to Transfer to a Pesticide Manufacturer or a Marijuana Research and Development Facility. The packaging and labeling requirements in these 3-1000 Series Rules also apply to any Transfer of Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product to a Pesticide Manufacturer or a Marijuana Research and Development Facility.
- I. Marijuana Research and Development Facility Transfers to Persons as Part of an Approved Research Project. Any Marijuana Research and Development Facility conducting research as part of an approved Research Project involving human subjects shall comply with all packaging and labeling requirements that are applicable to a Medical Marijuana Store prior to Transfer to a patient, unless the Marijuana Research and Development Facility requests and receives in advance a waiver of specific packaging or labeling requirements in connection with the approved Research Project.
- J. Research Transfers Prohibited. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Pesticide Manufacturer or a Licensed Research Business.

- K. Violation Affecting Public Safety. A violation of any rule in these 3-1000 Series Rules may be considered a license violation affecting public safety.

#### Part 4 – Regulated Marijuana Testing Program

##### Basis and Purpose – 4-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules for the Division's Regulated Marijuana sampling and testing program. This Rule 4-110 was previously Rules M and R 1504, 1 CCR 212-1 and 1 CCR 212-2.

##### 4-110 – Regulated Marijuana Testing Program: Sampling Procedures

###### A. Collection of Samples.

1. Sample Increment Collection. All Samples submitted for testing pursuant to this Rule must be collected by Division representatives or in accordance with the Division's sampling policy reflected in the marijuana laboratory testing reference library available at the Colorado Department of Public Health and Environment's website. This reference library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S.
2. Sample Increment Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Sample Increments, or may otherwise direct Sample Increment selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in the Inventory Tracking System from which a Regulated Marijuana Business shall select Samples for testing. A Regulated Marijuana Business, its Controlling Beneficial Owners, Passive Beneficial Owners, and employees shall not attempt to influence the Sample Increments selected by Division representatives. If the Division does not select the Harvest Batch or Production Batch to be tested, a Regulated Marijuana Business must collect and submit Sample Increments that are representative of the Harvest Batch or Production Batch being tested.
3. Adulteration or Alteration Prohibited. Pursuant to section 44-10-701(3)(b) and (9), C.R.S., it is unlawful for a Licensee or its agent to knowingly adulterate or alter, or attempt to adulterate or alter, any Sample Increments or Test Batches of Regulated Marijuana. The Sample Increments collected and submitted for testing must be representative of the Harvest Batch or Production Batch being tested. A violation of this sub-paragraph (A)(3) shall be considered a license violation affecting public safety and the person who commits adulteration or alteration of Sample Increments or Test Batches commits a class 2 misdemeanor and may be punished as provided in section 18-1.3-501, C.R.S.
4. Timing of Sample Increments for Harvest Batches and Production Batches. A Licensee shall not collect Sample Increments or submit Test Batches for testing until the Test Batch has completed all required steps and is in its final form as outlined in the standard operating procedures of the Licensee submitting the Test Batch, with the exception of packaging and labeling requirements which shall comply with Rule 3-1025.
  - a. The following examples illustrate various methods, which are not limited to those listed herein, that a Licensee's standard operating procedures may include to

verify a Test Batch completed all required steps and is in its final form pursuant to this Rule:

- i. The Licensee's standard operating procedures may include procedures that ensure the addition of all Ingredients or Additives has occurred and that the Harvest Batch or Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules. This also includes creating Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;
      - ii. For a Production Batch of Concentrate, the Licensee's standard operating procedure may include procedures that ensure the entire Production Batch associated with the Test Batch has completed all sifting, extracting, purging, winterizing, and steps to remove plant pigments and ensuring the addition of all Ingredients and Additives has occurred.
      - iii. For a Production Batch of Regulated Marijuana Product, the Licensee's standard operating procedure may include procedures that ensure the addition of all Ingredients and Additives has occurred and the Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules.
    - b. A Test Batch from a Harvest Batch or Production Batch shall be packaged and labeled according to Series 3-1025 prior to Transfer to a Regulated Marijuana Testing Facility.
    - c. This Rule 4-110(A)(4) does not apply for the submission of Test Batches submitted for R&D testing.
  5. Vaporizer Delivery Device. This subsection (A)(5) is effective January 1, 2022. Retail Marijuana Concentrate that has been placed into a Vaporizer Delivery Device must be sampled and tested using a methodology that allows the laboratory to analyze the emission of the contents of the Vaporizer Delivery Device.
- B. Designated Test Batch Collector Training, Documentation, and Designation.
1. Required Sample Increment Collection Training. To become a Designated Test Batch Collector an Owner Licensee or Employee Licensee involved in the Sample Increment Collection of Regulated Marijuana must be designated by a manager or Owner Licensee as such and must also complete either in-house training provided by the Regulated Marijuana Business or training from a third-party vendor. Nothing in this rule requires a Designated Test Batch Collector to be employed by the Regulated Marijuana Business making the designation.
  2. Designated Test Batch Collection Training Required Topics. The training required to become a Designated Test Batch Collector must include at least the following topics:
    - a. Part 4–100 Series Rules - Regulated Marijuana Testing Program;
    - b. The Marijuana Business's standard operating procedures on creating a Sampling Plan and Test Batches, and the CDPHE's Sampling Procedures.
    - c. "Guidance on Marijuana Sampling Procedures" Training Video or an equivalent training covering the following subjects:

- i. Introduction to Sample Increment Collection:
          - A. Cross contamination as it relates to Sample Increment Collection;
          - B. Sample Increment Collection and how it works;
          - C. Sample Increment Collection documentation and record keeping requirements;
          - D. Penalties for Sample Increment or Test Batch adulteration or alteration;
          - E. Use of and disinfection of the Designated Test Batch Collection Area; and
          - F. Use of the Sample Plan.
  3. Documentation of Designated Test Batch Collector Training. Any individual receiving the Designated Test Batch Collector training must sign and date a document which shall be maintained by the Regulated Marijuana Business as a business record pursuant to Rule 3-905. The document must acknowledge the following:
    - a. The identity of the Person that created the training, such as the Regulated Marijuana Business or a third-party vendor; and
    - b. That all required topics of the training identified in this Rule have been reviewed and understood by the Owner Licensee or Employee Licensee.
- C. Test Batch Collection Requirements.
1. Required Minimum of Two Test Batch Collectors. At a minimum, two Designated Test Batch Collectors shall be involved in the collection of Sample Increments such that at least one Designated Test Batch Collector is responsible for collecting the Sample Increments and another Designated Test Batch Collector is responsible for reviewing documentation associated with the collection of Sample Increments in a timely manner and prior to any Transfer of the Production Batch or Harvest Batch from which Sample Increments were collected. This review can be completed in person or may be completed remotely by reviewing image(s) of the Test Batch and associated documentation. **All Designated Test Batch Collectors must be identified as such in the Inventory Tracking System account associated with the Regulated Marijuana Business.**
  2. Sample Plan Required. A Designated Test Batch Collector must establish a Sample Plan consistent with the Regulated Marijuana Business's Standard Operating Procedure for Sample Increment Collection. At a minimum, a Sample Plan must include the following:
    - a. The date, amount or weight, and specific location for each Sample Increment collected;
    - b. Identification of and acknowledgements from all Designated Test Batch Collectors involved in the Sample Increment Collection; and
    - c. If applicable, the strain name(s) for each Harvest Batch from which Sample Increments are collected.

- D. Minimum Number of Sample Increments Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Unless a greater amount is required to comply with these rules or is required by a Regulated Marijuana Testing Facility to perform all requested testing, each Test Batch of Regulated Marijuana must contain at least the number of Sample Increments prescribed by this Section.
1. A Test Batch of Regulated Marijuana must be packaged and labeled according to Rule 3-1025.
  2. The minimum number of Sample Increments required to be collected for each Test Batch from a Harvest Batch of Retail Marijuana or Medical Marijuana shall be determined by Table 4-110.D.2.T.
  3. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Audited Product and Alternative Use Product shall be determined by Table 4-110.D.2.T.
    - a. The Retail Marijuana Products Manufacturer or Medical Marijuana Products Manufacturer shall determine what constitutes a “Serving” and thus how many Servings are contained in a Production Batch of Regulated Marijuana Product, except that no serving of Edible Retail Marijuana Product can contain more than 10mg of active THC
    - b. Because all Test Batches of Regulated Marijuana Product, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are required to be submitted for testing in their final form, in the event the required number of Sample Increments does not match up within a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Regulated Marijuana Products, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are submitted for testing. For example, if a Production Batch of 4000 chocolate bars is manufactured, with each bar containing 100 mg THC and 10 servings per bar, the Production Batch would contain 40,000 Sample Increments which would require collection of at least 33 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 40 Sample Increments for testing (4 complete chocolate bars in final form).
    - c. No matter how small the Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana a minimum of two finished packages in final form must be submitted for a Test Batch.
  4. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate shall be determined by Table 4-110.D.2.T.
    - a. Because all Test Batches of Retail Marijuana Concentrate and Medical Marijuana Concentrate are required to be submitted for testing in their final form, in the event the required number of Sample Increments does not match up with the number of Sample Increments in a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Marijuana Concentrate are submitted for testing. For example, if a Production Batch of 4,000 Vaporizer Delivery Devices is manufactured, with each Vaporizer Delivery Device containing 500 milligrams of Marijuana Concentrate, the Production Batch would contain 2,000 grams of

Marijuana Concentrate, which would require collection of at least 15 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 16 Sample Increments for testing (8 vaporizer Delivery Devices in final form).

- b. No matter how small the Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate, a minimum of two finished packages must be submitted for a Test Batch.

**Table 4-110.D.2.T**

Minimum Number of Sample Increments Required to be Collected per Test Batch	Regulated Marijuana (Sample Increment = 0.5 grams)		
	Total Weight of Harvest Batch (lbs)	Total Weight of Harvest Batch (grams)	Minimum Weight of Test Batch (grams)
<b>5</b>	0.000 -0.999	0.0 -453.5	<b>2.50</b>
<b>8</b>	1.00 -9.999	453.6 -4535.9	<b>4.00</b>
<b>15</b>	10.000 -19.999	4536.0 - 9071.8	<b>7.50</b>
<b>22</b>	20.000 -39.999	9071.9 - 18143.6	<b>11.00</b>
<b>33</b>	40.000 -99.999	18143.7 - 45359.2	<b>16.50</b>
<b>43</b>	100.000 - 199.999	45359.3 - 90718.4	<b>21.50</b>
<b>53</b>	200.000 - 499.999	90718.5 -226796.1	<b>26.50</b>
<b>80</b>	500 or more	226796.2 or more	<b>40.00</b>

Minimum Number of Sample Increments Required to be Collected per Test Batch	Regulated Marijuana Concentrate (Sample Increment = 0.25 g)		
	Total Weight of Production Batch (lbs)	Total Weight of Production Batch (grams)	Minimum Weight of Test Batch (grams)
<b>5</b>	0.000 -0.999	0.0-453.5	<b>1.25</b>
<b>8</b>	1.00 - 1.999	453.6-907.1	<b>2.00</b>
<b>15</b>	2.00 - 4.999	907.2-2267.9	<b>3.75</b>
<b>22</b>	5.000 - 14.999	2268.0-6803.8	<b>5.50</b>
<b>33</b>	15.000 – 49.999	6803.9-22679.6	<b>8.25</b>
<b>43</b>	50.000 – 99.999	22679.7-45359.2	<b>10.75</b>



53	100.000 – 249.999	45359.3-113398.0	13.25
80	250 or more	113398.1 or more	20.00

Minimum Number of Sample Increments Required to be Collected per Test Batch	Regulated Marijuana Products (Sample Increment = 1 Serving)				
	Number of Servings within Production Batch	Minimum Number of Units for a Test Batch for a 5-Serving Unit*	Minimum Number of Units for a Test Batch for a 10-Serving Unit*	Minimum Number of Units for a Test Batch for a 20-Serving Unit*	Minimum Number of Units for a Test Batch for a 100-Serving Unit*
5	0 - 99	2	2	2	2
8	100 - 999	2	2	2	2
15	1000 - 4999	3	2	2	2
22	5000 - 9999	5	3	2	2
33	10000 - 49999	7	4	2	2
43	50000 - 99999	9	5	3	3
53	100000 - 249999	11	6	3	3
80	250000 or more	16	8	4	4

\*Other serving amounts per unit are acceptable. These are provided as examples.

Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana								
Minimum Number of Sample Increments Required to be Collected per Test Batch	Number of Pre-Rolls within the Production Batch	Minimum Number of Pre-Rolls for a Test Batch when each Pre-Roll is						
		< or = 0.39 g	0.40g to 0.50g	0.51g to 0.75g	0.76g - 1.00g	1.01g - 2.00g	2.01g - 3.00g	3.01g +
5	0 - 99	5	4	3	2	2	2	2
8	100 - 999	8	5	4	3	2	2	2
15	1000 - 4999	15	10	8	5	4	2	2

22	5000 - 9999	22	14	11	8	6	3	2
33	10000 - 49999	33	21	17	11	9	5	3
43	50000 - 99999	43	27	22	15	11	6	4
53	100000 - 249999	53	34	26	18	14	7	5
80	250000 or more	80	50	40	27	20	10	7

- E. Regulated Marijuana Testing Facility Selection. Unless otherwise restricted or prohibited by these rules or ordered by the State Licensing Authority, a Regulated Marijuana Business may select which Medical Marijuana Testing Facility or Retail Marijuana Testing Facility will test a Test Batch made up of Sample Increments collected pursuant to this Rule. However, the Division may elect, at its sole discretion, to assign a Regulated Marijuana Testing Facility to which a Regulated Marijuana Business must submit for testing any Test Batch made up of Sample Increments collected pursuant to this Rule.
- F. Industrial-Hemp Product Sampling Procedures. Absent sampling and testing standards established by the Colorado Department of Public Health and Environment for the sampling and testing of Industrial-Hemp Product, a Person Transferring an Industrial-Hemp Product to a Licensee pursuant to the Marijuana Code and these Rules shall comply with the sampling and testing standards set forth in these 4-100 Series Rules – Regulated Marijuana Testing Program and as required by these Rules.
- G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

**Basis and Purpose – 4-135**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division’s Regulated Marijuana Sampling and Testing Program. This Rule 4-135 was previously Rules M and R 1507, 1 CCR 212-1 and 1 CCR 212-2.

**4-135 – Regulated Marijuana Testing Program: Contaminated Product and Failed Test Results and Procedures**

- A. Quarantining of Product.
  - 1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Regulated Marijuana is contaminated or presents a risk to public safety, then the Division may require a Regulated Marijuana Business to quarantine it until the completion of the Division’s investigation, which may include, but is not limited to, the receipt of any test results.
  - 2. If a Regulated Marijuana Business is notified by any local or state agency, or by a Regulated Marijuana Testing Facility that a Test Batch failed a contaminant or potency

testing, then the Regulated Marijuana Business shall quarantine any Regulated Marijuana from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to this Rule.

3. Except as provided by this Rule, Regulated Marijuana that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Regulated Marijuana.
4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Regulated Marijuana unless otherwise permitted by these rules.

B. Failed Contaminant Testing: All Contaminant Testing Except Microbial and Water Activity Testing of Regulated Marijuana Flower, Wet Whole Plant, Trim, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Pesticide Testing, and Elemental Impurities Testing of Regulated Marijuana Flower or Trim. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial and water activity testing of Regulated Marijuana flower or trim, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana, Pesticide testing, and elemental impurities testing of Regulated Marijuana flower or trim), then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated With that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule 3-230 – Waste Disposal;
2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, **if possible**, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.
  - a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;
  - b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;
  - c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.
3. The Regulated Marijuana Business may Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch that failed contaminant testing to another Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, or an Accelerator Manufacturer for Decontamination, **if possible**, and create two new Test Batches after Decontamination has occurred, each containing the requisite number of

Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

- a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;
- b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;
- c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.

C. Failed Contaminant Testing: Microbial Testing of Regulated Marijuana Flower, Wet Whole Plant, Trim, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, wet whole plant, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed microbial testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal;
2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, **if possible**, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.
  - a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.
  - b. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
  - c. If one or both of the Test Batches do not pass microbial testing, then the Regulated Marijuana Business must:

- i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;
    - ii. Decontaminate and re-test in accordance with this Paragraph (C)(2); or
    - iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.
3. In lieu of Decontamination pursuant to Paragraph (C)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, and Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further processes the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.
  - a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, ~~if possible~~, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.
    - i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities
    - ii. If both Test Batches pass the required microbial testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
    - iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C)(3)(a) do not pass microbial testing, the Regulated Marijuana Business must either:
      - A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;

- B. Decontaminate and re-test in accordance with this paragraph;
  - C. Attempt Remediation pursuant to Paragraph (C)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or
  - D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C)(3)(b).
- b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.
- i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.
  - ii. The Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) – Regulated Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to microbial and mycotoxins contamination. Such testing must comport with the sampling procedures under Rule 4-110.
  - iii. If the Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) fails contaminant testing, the Regulated Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate pursuant to Rule 3-230 – Waste Disposal.
4. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.
- C.5. Failed Contaminant Testing: Water Activity Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed water activity testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal; or
2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, **if possible**, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test prior to Transfer. The microbial contaminant test is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(E), wet whole plant is exempt from water activity testing.
  - a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.
  - b. If both Test Batches pass the required water activity testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
  - c. If one or both of the Test Batches do not pass water activity testing, then the Regulated Marijuana Business must:
    - i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;
    - ii. Decontaminate and re-test in accordance with this Paragraph (C.5)(2); or
    - iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.
3. In lieu of Decontamination pursuant to Paragraph (C.5)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, or Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further process the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.
  - a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, **if possible**, and create two new Test Batches, each containing the requisite number

of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test prior to Transfer. The microbial contaminant testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

- i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities
- ii. If both Test Batches pass the required testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
- iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C.5)(3)(a) do not pass water activity testing, the Regulated Marijuana Business must either:
  - A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;
  - B. Decontaminate and re-test in accordance with this paragraph;
  - C. Attempt Remediation pursuant to Paragraph (C.5)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or
  - D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C.5)(3)(b).
- b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.
  - i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.





2. Request that the Regulated Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule 4-110.
  - a. If both retesting analyses pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
  - b. If one or both of the retesting analyses do not pass elemental impurities testing, then the Regulated Marijuana Business must either destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 – Waste Disposal or Remediate the Inventory Tracking System package or Harvest Batch pursuant to Paragraph (3).
3. If the failed Test Batch is not deemed hazardous waste per the Resource Conservation and Recovery Act or other applicable federal, state, or local regulations, then the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages or Harvest Batch associated with that failed Test Batch to a Regulated Marijuana Products Manufacturer for Remediation.
  - a. The Regulated Marijuana Business that Transfers the Retail Marijuana that failed elemental impurities testing must comply with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.
  - b. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package or Harvest Batch associated with the failed Test Batch by processing it into a Regulated Marijuana Concentrate. The Regulated Marijuana Products Manufacturer is prohibited from adding any other Regulated Marijuana to the Regulated Marijuana Concentrate it manufactures pursuant to this Rule.
  - c. In addition to all applicable regulations, the Regulated Marijuana Products Manufacturer must comply with 3-230 (C)(1), 5-315(D)(9), and 6-315 (D)(9).
  - d. The Regulated Marijuana Concentrate that was manufactured pursuant to Paragraph (D.1)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) Regulated Marijuana Testing Program Contaminant Testing, potency testing pursuant to Rule 4-125 - Regulated Marijuana Testing Program - Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to elemental impurities testing. Such testing must comport with the sampling procedures under Rule 4- 110.
  - e. For elemental impurities testing, the Regulated Marijuana Business must create two new Test Batches from the Remediated Production Batch, each containing the requisite number of Samples, and have those Test Batches tested. Such testing must comport with the sampling procedures under Rule 4-110.
    - i. A Licensee must either (1) submit both new Test Batches to the same Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Marijuana Testing Facilities.
    - ii. If both Test Batches pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch associated

- with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.
- iii. If one or both of the Test Batches do not pass elemental impurities testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 - Waste Disposal.
  - f. All Production Batches undergoing Remediation for elemental impurities must be tested and are not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.
4. Nothing in this Rule eliminates or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed elemental impurities testing from complying with the requirement to pay excise tax pursuant to article 28.8 of Title 39, C.R.S.
- E. Failed Potency Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:
- 1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal; or
  - 2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Such testing must comport with the sampling procedures under Rule 4-110.
    - a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.
    - b. If both new Test Batches pass potency testing, then the Inventory Tracking System package or Production Batch associated with each Test Batch may be Transferred.
    - c. If one or both of the Test Batches do not pass potency testing, then the Regulated Marijuana Products Manufacturer must destroy and document the destruction of Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal.
- F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## Part 5 – Medical Marijuana Business License Types

### 5-100 Series – Medical Marijuana Stores

#### Basis and Purpose – 5-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(7), 44-10-313(4), 44-10-313(14), 44-10-401(2)(a)(I), 44-10-501, and

44-10-505, C.R.S. The purpose of this rule is to establish a Medical Marijuana Store's license privileges. This Rule 5-105 was previously Rule M 401, 1 CCR 212-1.

**Please Note:** The following proposed revisions seek to align Medical Marijuana Store license privileges with revised Retail Marijuana Store and Accelerator Store license privileges as amended in HB 23-1279.

### 5-105 – Medical Marijuana Store: License Privileges

- A. Licensed Premises. To the extent authorized by Rule 3-215 – Medical Marijuana Business and Retail Marijuana Business – Shared Licensed Premises and Operational Separation, a Medical Marijuana Store may share a Licensed Premises with a commonly-owned Retail Marijuana Store. However, a separate license is required for each specific business or business entity, regardless of geographical location.
- B. Authorized Sources of Medical Marijuana. A Medical Marijuana Store may only Transfer Medical Marijuana that was obtained from a Medical Marijuana Business.
- C. Authorized Transfers. A Medical Marijuana Store may only Transfer Medical Marijuana to a patient, a primary caregiver, another Medical Marijuana Store, a Medical Marijuana Cultivation Facility, a Medical Marijuana Products Manufacturer, or a Medical Marijuana Testing Facility.
- D. Samples Provided for Testing. A Medical Marijuana Store may provide Samples of its products to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Store shall maintain the testing results as part of its business books and records. See Rule 3-905 – Business Records Required.
- E. Authorized On-Premises Storage. A Medical Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.
- F. Authorized Marijuana Transport. A Medical Marijuana Store is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken and delivered is a licensed Medical Marijuana Business. Nothing in this Rule prevents a Medical Marijuana Store from transporting its own Medical Marijuana.
- G. Performance-Based Incentives. A Medical Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.
- H. Authorized Transfers of ~~Industrial~~ Hemp Products. ~~This rule is effective July 1, 2020.~~ A Medical Marijuana Store may Transfer ~~Industrial~~ Hemp Product to a patient only after it has verified:
  - 1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Medical Marijuana Testing Facility; and
  - 2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Medical Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.
- I. Medical Marijuana Store Delivery Permit. A Medical Marijuana Store with a valid delivery permit may accept delivery orders and deliver Medical Marijuana to a patient who is 21 years of age or older, or the patient's parent or guardian who is also the patient's primary caregiver pursuant to Rule 3-615. A Medical Marijuana Store that does not possess a valid delivery permit cannot deliver Medical Marijuana to a patient, parent, or guardian.

- J. Automated Dispensing Machines. A Medical Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to patients without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:
1. Health and safety standards,
  2. Testing,
  3. Packaging and labeling requirements,
  4. Inventory tracking,
  5. Identification requirements, and
  6. Transfer limits to patients.
- K. Walk-up or Drive-Up Window. A Medical Marijuana Store may serve patients through a walk-up window or drive-up window pursuant to the requirements of this rule.
1. Modification of Premises Required. Before accepting orders for sales of Medical Marijuana to a patient through either a walk-up window or a drive-up window, a Medical Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or a drive-up window.
  2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.
  3. Order and Identification Requirements.
    - a. Prior to accepting an order or Transferring Medical Marijuana to a patient, the Employee Licensee or Owner Licensee must physically view and inspect the patient's identification and the patient's registry identification card.
    - b. The Medical Marijuana Store may accept internet or telephone orders or may accept orders from the patient at the walk-up or drive-up window.
    - c. All orders received through a walk-up window or drive-up window must be placed by the patient from a menu. The Medical Marijuana Store may not display Medical Marijuana at the walk-up window or drive-up window.
  4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods are permitted for payment for Medical Marijuana at the walk-up window or drive-up window.
  5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Medical Marijuana Store's video surveillance must enable the recording of the patient's identity (and patient's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the patient's identification, registry identification card, and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Medical Marijuana Store utilizing a walk-up or drive-up window must ensure that all Medical Marijuana is packaged and labeled in accordance with Rules 3-1010 and Rule 3-1015 prior to Transfer to the patient.
7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Licensing Authority.

L. Sales over the Internet. A Medical Marijuana Store may accept orders and payment for Medical Marijuana over the internet.

1. Online Order Requirements.

- a. Online orders must include the customer's name and date of birth.
- b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:
  - i. A digital copy of the pregnancy warning required in Rule 5-120; and
  - ii. If accepting an order for Medical Marijuana Concentrate, the Medical Marijuana Store must also provide the educational resource required in Rule 5-115(C.5).
- c. Licensees must maintain standard operating procedures documenting their compliance with the requirements of this subparagraph (L).

2. Transfer of Medical Marijuana to the Patient.

- a. The patient or primary caregiver must be physically present on the Licensed Premises to take possession of Medical Marijuana.
- b. The Medical Marijuana Store must verify the patient's or primary caregiver's physical identification matches the name and date of birth the patient or primary caregiver provided at the time of the order.

3. Delivery. A Medical Marijuana Store that holds a valid delivery permit may make sales of Medical Marijuana over the internet in accordance with Rule 3-615.

4. Approved Sources of Payment. Medical Marijuana store may accept payment using any legal method of payment, gift card pre-payments, or pre-payment accounts established with a Medical Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted.

- a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

## 5-400 Series – Medical Marijuana Testing Facilities

### Basis and Purpose – 5-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), and 44-10-504,

C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-420 was previously Rule M 704, 1 CCR 212-1.

**5-420 – Medical Marijuana Testing Facilities: Personnel**

- A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Medical Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.
1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Medical Marijuana Testing Facility.
  2. The laboratory director for a Medical Marijuana Testing Facility must meet one of the following qualification requirements:
    - a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;
    - b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;
    - c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or
    - d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.
- B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. See Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.
- C. Responsibilities of the Laboratory Director. The laboratory director must:
1. Ensure that the Medical Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;
  2. Establish and adhere to a written standard operating procedure used to perform the tests reported;
  3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;
5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;
6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;
7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;
8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;
9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;
10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;
11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;
12. Ensure that reports of test results include pertinent information required for interpretation;
13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;
14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;
15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;
16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interest, and whenever necessary, identify needs for remedial training or continuing education to improve skills;
17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and
18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether



supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

- D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Medical Marijuana Testing Facility, the Medical Marijuana Testing Facility shall:
1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director's departure; and
  2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.
  3. The Medical Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.
  4. Notwithstanding the requirement of subparagraph (D)(3), the Medical Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Medical Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.
- E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and two years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the two years of full-time laboratory experience.

**Please Note: The following revisions are clean-up from rule revisions adopted in 2022, as proposed by the Science & Policy Work Group.**

- F. Laboratory Testing Analyst.
1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or:
    - a. Have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing;
    - b. ~~Have at least a bachelor's degree in one of the natural sciences;~~
    - e. Have earned an associated degree in a laboratory science from an accredited institution; or
    - ~~dc.~~ Have education and training equivalent to that specified in subparagraph (F)(1) of this Rule that includes at least 60 semester hours, or equivalent, from an accredited institution that, at a minimum, include:
      - i. 24 semester hours of science courses that include six semester hours of chemistry, six semester hours of biology, and twelve semester hours of chemistry, biology, or cannabis laboratory sciences in any combination; and
      - ii. Have a laboratory training that includes at least three months documented laboratory training each testing category in which the individual performs testing; or

- ed. Have at least five years of full time experience in laboratory testing and have laboratory training that includes at least three months documented laboratory training in each testing category in which the individual performs testing.
2. Responsibilities. In order to independently perform any test for a Medical Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.
- G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

### **Basis and Purpose – 5-455**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), C.R.S. The purpose of this rule is to require Medical Marijuana Testing Facilities to provide failed test results to the Medical Marijuana Business or Person submitting the sample and to report any failed test result in the inventory tracking system. This Rule 5-455 was previously Rule M 712(D), 1 CCR 212-1.

### **5-455 – Notification of Medical Marijuana Business**

If Medical Marijuana failed a contaminant test, then the Medical Marijuana Testing Facility must immediately (1) notify the Medical Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project being conducted by a Marijuana Research and Development Facility; and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(C), **except as otherwise authorized in Rule 5-415(C)(12).**

### **Basis and Purpose – 5-460**

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(3)(c), 44-10-401(2)(b)(IV), and 44-10-6504, C.R.S. The purpose of this rule is to establish a framework for suspending and reinstating a testing category certification for Medical Marijuana Testing Facilities. This rule also provides the ability for a Medical Marijuana Testing Facility to request a hearing following suspension of a testing category certification.

### **5-460 – Medical Marijuana Testing Facilities: Certification Suspension, Recertification, and Request for Hearing**

- A. Certification Suspension. When the Division has objective and reasonable grounds to believe and finds that a Medical Marijuana Testing Facility has been guilty of deliberate and willful violation(s) or that the public health, safety, or welfare imperatively require emergency action, the Division may immediately suspend the Medical Marijuana Testing Facility's testing category certification in accordance with section 24-4-104, C.R.S., and the 8-200 Series Rules.
- B. Re-certification. A Medical Marijuana Testing Facility must provide evidence of corrective actions taken to resolve the certification suspension and may request that the Division re-certify the Medical Marijuana Testing Facility for a particular testing category in accordance with the requirements in Rule 5-415, if the Medical Marijuana Testing Facility provides documentation requested by the Division and/or the CDPHE demonstrating such corrective actions.

### **Part 6 – Retail Marijuana Business License Types**

## 6-100 Series – Retail Marijuana Stores

### Basis and Purpose – 6-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd), 44-10-313(14), 44-10-401(2)(b)(I), 44-10-601, and 44-10-605, C.R.S. The purpose of this rule is to the license privileges of a Retail Marijuana Store licensee. This Rule 6-105 was previously Rule R 401.

**Please Note:** The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.

### 6-105 – Retail Marijuana Store: License Privileges

- A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share, and operate at, the same Licensed Premises with a commonly-owned Medical Marijuana Store. However, a separate License is required for each specific business or business entity, regardless of geographical location.
- B. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.
- C. Samples Provided for Testing. A Retail Marijuana Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. See Rule 3-905 – Business Records Required.
- D. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.
- E. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana.
- F. Performance-Based Incentives. A Retail Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.
- G. Authorized Transfers of ~~Industrial~~ Hemp Products. This rule is effective July 1, 2020. A Retail Marijuana Store may Transfer ~~Industrial~~ Hemp Product to a consumer only after it has confirmed:
  - 1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and
  - 2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.
- H. Retail Marijuana Store Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Stores are prohibited from delivering Regulated Marijuana to consumers.
  2. After January 2, 2021, a Retail Marijuana Store with a valid delivery permit may accept delivery orders deliver Retail Marijuana to consumers pursuant to Rule 3-615.
  3. A Retail Marijuana Store that does not possess a valid delivery permit cannot deliver Retail Marijuana.
- I. Automated Dispensing Machines: A Retail Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:
1. Health and safety standards,
  2. Testing,
  3. Packaging and labeling requirements,
  4. Inventory tracking,
  5. Identification requirements, and
  6. Transfer limits to consumers.
- J. Walk-up Window or Drive-up Window. A Retail Marijuana Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this Rule.
1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, a Retail Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.
  2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.
  3. Order and Identification Requirements.
    - a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.
    - b. The Retail Marijuana Store may accept telephone or internet orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Retail Marijuana Stores may not accept payment for Retail Marijuana over the internet.~~
    - c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Retail Marijuana Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods, including online payments are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.
5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Retail Marijuana Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.
6. Packaging and Labeling Requirements. A Retail Marijuana Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.
7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

K. Sales over the Internet. A Retail Marijuana Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

- a. Online orders must include the customer's name and date of birth.
- b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:
  - i. A digital copy of the pregnancy warning required in Rule 6-115; and
  - ii. If accepting an order for Retail Marijuana Concentrate, the Retail Marijuana Store must also provide the educational resource required in Rule 6-110(C.5).
- c. Licensees must maintain standard operating procedures documenting their compliance with the requirements of this subparagraph (K).

2. Transfer of Retail Marijuana to the Customer.

- a. A Customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.
- b. The Retail Marijuana Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

3. Delivery. A Retail Marijuana Store that holds a valid delivery permit may make sales of Retail Marijuana over the internet in accordance with Rule 3-615.

4. Approved Sources of Payment. A Retail Marijuana store may accept payment using any legal method of payment, gift card pre-payments, or pre-payment accounts established with a Retail Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted.

- a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

### Basis and Purpose – 6-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-401(2)(b)(l), 44-10-701(1)(a), 44-10-701(3)(d) and (f), and 44-10-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

This Rule 6-110 was previously Rule R 402, 1 CCR 212-2.

**Please Note:** *The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.*

### 6-110 – Retail Marijuana Sales: General Limitations or Prohibited Acts

- A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.
- B. Age Verification. Licensees must verify on two separate occasions that a Person is 21 years of age or older. First, prior to permitting a Person to enter the Restricted Access Area, a Licensee must verify that the Person has a valid government-issued photo identification showing that the Person is 21 years of age or older. Second, prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.
- C. Quantity Limitations On Sales.
1. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A Retail Marijuana Store may also Transfer up to six (6) seeds in addition to the one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:
  - a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.
  - b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.
- C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, a Retail Marijuana Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.
- D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.
- E. ~~Sales over the Internet. Only a Retail Marijuana Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet. Repealed.~~
- F. Delivery Outside Colorado Prohibited. A Retail Marijuana Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.
- G. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an ~~Industrial~~ Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.
- H. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana to a consumer for any reason.
- I. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.
- J. Storage and Display Limitations.
  1. A Retail Marijuana Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or a designated Restricted Access Area.
  2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.
    - a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.
    - b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

- K. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product to a consumer.
- L. Transfer Restriction.
1. Sampling Units. A Retail Marijuana Store may not possess or Transfer Sampling Units.
  2. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer, or a Marijuana Research and Development Facility.
- L.5. Standard Operating Procedures. A Retail Marijuana Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.
1. A Retail Marijuana Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.
- M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.
1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:
    - a. The distinct shape of a human, animal, or fruit; or
    - b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
  2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.
  3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and
  4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.
- N. Adverse Health Event Reporting. A Retail Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.
- O. Corrective and Preventive Action. This paragraph O shall be effective January 1, 2021. A Retail Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. See Rule 3-905. The written procedures shall include requirements, as appropriate, for:
1. What constitutes a Nonconformance in the Licensee's business operation;



2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;
  3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;
  4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;
  5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;
  6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;
  7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and
  8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.
- P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## 6-400 Series – Retail Marijuana Testing Facilities

### Basis and Purpose - 6-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-401(2)(b)(IV), 44-10-604, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-420 was previously Rule R 704, 1 CCR 212-2.

### 6-420 – Retail Marijuana Testing Facilities: Personnel

- A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.
1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.
  2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:
    - a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

- b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;
  - c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or
  - d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.
- B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. See Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.
- C. Responsibilities of the Laboratory Director. The laboratory director must:
1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;
  2. Establish and adhere to a written standard operating procedure used to perform the tests reported;
  3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;
  4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;
  5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;
  6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;
  7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;
  8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;
  9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;
  10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;
  12. Ensure that reports of test results include pertinent information required for interpretation;
  13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;
  14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;
  15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;
  16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interests, and whenever necessary, identify needs for remedial training or continuing education to improve skills;
  17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and
  18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.
- D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Retail Marijuana Testing Facility, the Retail Marijuana Testing Facility shall:
1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director's departure; and
  2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.
  3. The Retail Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.
  4. Notwithstanding the requirement of subparagraph (D)(3), the Retail Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Retail Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.
- E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and two years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific

testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the two years of full-time laboratory experience.

**Please Note: The following revisions are clean-up from rule revisions adopted in 2022, as proposed by the Science & Policy Work Group.**

F. Laboratory Testing Analyst.

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or:

a. Have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing;

~~b. Have at least a bachelor's degree in one of the natural sciences;~~

~~eb.~~ Have earned an associated degree in a laboratory science from an accredited institution; or

~~ec.~~ Have education and training equivalent to that specified in subparagraph (F)(1) of this Rule that includes at least 60 semester hours, or equivalent, from an accredited institution that, at a minimum, include:

i. 24 semester hours of science courses that include six semester hours of chemistry, six semester hours of biology, and twelve semester hours of chemistry biology, or cannabis laboratory sciences in any combination; and

ii. Have a laboratory training that includes at least three months documented laboratory training each testing category in which the individual performs testing; or

~~ed.~~ Have at least five years of full time experience in laboratory testing and have laboratory training that includes at least three months documented laboratory training in each testing category in which the individual performs testing.

2. Responsibilities. In order to independently perform any test for a Retail Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

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

**Basis and Purpose – 6-455**

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to clarify a Retail Marijuana Testing Facility's responsibility to notify the Retail Marijuana Business and accurately report in the inventory tracking system any failed contaminant test result. This Rule 6-455 was previously Rule R 712(D), 1 CCR 212-2.

**6-455 – Notification of Retail Marijuana Business**

If Retail Marijuana failed a contaminant test, then the Retail Marijuana Testing Facility must immediately (1) notify the Retail Marijuana Business that submitted the Test Batch or Sample for testing and any

Person as directed by an approved Research Project (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(B), **except as otherwise authorized in Rule 6-415(C)(12).**

## 6-1100 Series – Accelerator Store Licenses

### Basis and Purpose – 6-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-203(2)(dd), 44-10-401(2)(b)(l), 44-10-601, 44-10-605, and 44-10-611, C.R.S. The purpose of this rule is to establish the license privileges of an Accelerator Store.

**Please Note: The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.**

### 6-1105 – Accelerator Store: License Privileges

#### A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Store may operate on the same Licensed Premises as a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.
2. Separate Licensed Premises. An Accelerator Store may operate on a separate premises in the possession of a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.
3. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, an Accelerator Store may share, and operate at, the same Licensed Premises as an Accelerator-Endorsed Licensee’s Retail Marijuana Store that shares a Licensed Premises with a Medical Marijuana Store.

#### B. Authorized Sources of Retail Marijuana. An Accelerator Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

#### C. Samples Provided for Testing. An Accelerator Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Accelerator Store shall maintain the testing results as part of its business books and records. See Rule 3-905 – Business Records Required.

#### D. Authorized On-Premises Storage. An Accelerator Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

#### E. Authorized Marijuana Transport. An Accelerator Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Store from transporting its own Retail Marijuana.

#### F. Performance-Based Incentives. An Accelerator Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

- G. Authorized Transfers of ~~Industrial~~ Hemp Products. An Accelerator Store may Transfer ~~Industrial~~ Hemp Product to a consumer only after it has confirmed:
1. That the ~~Industrial~~ Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and
  2. That the Person Transferring the ~~Industrial~~ Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.
- H. Automated Vending Machine. An Accelerator Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:
1. Health and safety standards,
  2. Testing,
  3. Packaging and labeling requirements,
  4. Inventory tracking,
  5. Identification requirements, and
  6. Transfer limits to consumers.
- I. Walk-up Window or Drive-up Window. An Accelerator Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this rule.
1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, an Accelerator Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.
  2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.
  3. Order and Identification Requirements.
    - a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.
    - b. The Accelerator Store may accept telephone orders or may accept orders from the customer at the walk-up window or drive-up window. ~~Accelerator Stores may not accept orders or payment for Retail Marijuana over the internet.~~
    - c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Accelerator Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods, including online payments, are permitted ~~for payments~~ for Retail Marijuana at the walk-up window or drive-up window.
5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Accelerator Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.
6. Packaging and Labeling Requirements. An Accelerator Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.
7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

J. Sales over the Internet. An Accelerator Store may accept orders and payment for Retail Marijuana over the internet.

1. Online Order Requirements.

- a. Online orders must include the customer's name and date of birth.
- b. Prior to accepting the order, the store must provide and the customer must acknowledge receipt of:
  - i. A digital copy of the pregnancy warning required in Rule 6-1115; and
  - ii. If accepting an order for Retail Marijuana Concentrate, the Accelerator Store must also provide the educational resource required in Rule 6-1110(C.5).
- c. Licensees must maintain standard operating procedures documenting their compliance with the requirements of this subparagraph (L).

2. Transfer of Retail Marijuana to a customer.

- a. A customer must be physically present on the Licensed Premises to take possession of Retail Marijuana.
- b. The Accelerator Store must verify the customer's physical identification matches the name and date of birth the customer provided at the time of the order, and verify that the customer is twenty-one years of age or older, in accordance with these Rules.

3. Delivery. An Accelerator Marijuana Store that holds a valid delivery permit may make sales of Retail Marijuana over the internet in accordance with Rule 3-615.

4. Approved Sources of Payment. An Accelerator store may accept payment using any legal method of payment, gift card pre-payments, or pre-payment accounts established with a Accelerator Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted.

- a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

### Basis and Purpose – 6-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-401(2)(b)(l), 44-10-601, 44-10-611, 44-10-701(1)(a), and 44-10-701(3)(d) and (f), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Store. Such limitations include, but are not limited to, quantity limitations on sales and equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Accelerator Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

***Please Note: The State Licensing Authority adopted the following proposed revisions on an emergency basis on August 8, 2023 to implement HB 23-1279 and no substantive changes to the emergency rules have been incorporated into this draft.***

### 6-1110 – Accelerator Store: General Limitations or Prohibited Acts

- A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.
- B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.
- C. Quantity Limitations On Sales.
1. An Accelerator Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product or more than six Retail Marijuana seeds in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Accelerator Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-1110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).
  2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:
    - a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.



- b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.
- C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, an Accelerator Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.
- D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.
- ~~E. Sales over the Internet. Only an Accelerator Store holding a valid delivery permit taking orders for delivery may make sales over the internet. Only a Retail Marijuana Store holding a valid delivery permit and/or a Retail Marijuana Transporter holding a valid delivery permit may deliver Retail Marijuana to a private residence. All other Retail Marijuana Store and Retail Marijuana Transporter Licensees are prohibited from selling Retail Marijuana over the internet. Repealed.~~
- ~~F. Delivery Outside Colorado Prohibited. An Accelerator Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.~~
- G. Prohibited Items. An Accelerator Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an ~~Industrial~~ Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.
- H. Free Product Prohibited. An Accelerator Store may not give away Retail Marijuana to a consumer for any reason.
- I. Nicotine or Alcohol Prohibited. An Accelerator Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 3, 4, or 5 of Title 44, C.R.S.
- J. Storage and Display Limitations.
1. An Accelerator Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.
  2. Any Retail Marijuana Concentrate displayed in an Accelerator Store must include the potency of the concentrate on a sign next to the name of the product.
    - a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.
    - b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.
- K. Transfer of Expired Product Prohibited. An Accelerator Store shall not Transfer any expired Retail Marijuana Product to a consumer.
- L. Transfer Restriction.
1. Sampling Units. An Accelerator Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. An Accelerator Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.
- L.5. Standard Operating Procedures. An Accelerator Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.
1. An Accelerator Store must provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.
- M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.
1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:
    - a. The distinct shape of a human, animal, or fruit; or
    - b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
  2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.
  3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and
  4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.
- N. Adverse Health Event Reporting. An Accelerator Store must report Adverse Health Events pursuant to Rule 3-920.
- O. Corrective and Preventive Action. An Accelerator Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. See Rule 3-905. The written procedures shall include requirements, as appropriate, for:
1. What constitutes a Nonconformance in the Licensee's business operation;
  2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;
  3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;
  5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;
  6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;
  7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and
  8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.
- P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

## Part 8 – Enforcement and Discipline

### 8-100 Series - Enforcement

#### Basis and Purpose – 8-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(f), 44-10-202(1)(g), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-207, 44-10-203(1)(k), and 44-10-902, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Regulated Marijuana. This Rule 8-110 was previously Rules M and R 1202, 1 CCR 212-1 and 1 CCR 212-2.

**Please Note: The following proposed rule revisions are intended to implement HB 23-1021.**

#### 8-110 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Embargos, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

- A. Applicants and Licensees Shall Cooperate with Division Employees.
1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Marijuana Code.
  2. No Applicant or Licensee shall by any means interfere with, obstruct, or impede the State Licensing Authority or any employee of the Division from exercising their duties pursuant to the provisions of the Marijuana Code and all rules promulgated pursuant to it. This would include, but is not limited to:
    - a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from

exercising their duties. The term “threatening force” includes the threat of bodily harm to such individual or to a member of his or her family;

- b. Denying investigators of the Division access to premises where the Licensee’s Regulated Marijuana are grown, stored, cultivated, manufactured, tested, distributed, or Transferred during business hours or times of apparent activity;
  - c. Providing false or misleading statements;
  - d. Providing false or misleading documents and records;
  - e. Failing to timely produce requested books and records required to be maintained by the Licensee; or
  - f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.
3. License Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

B. Administrative Hold.

1. Notice of Administrative Hold. To prevent destruction of evidence, diversion, or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation of an alleged violation of the Marijuana Code or Marijuana Rules, a Division investigator may order an administrative hold of Regulated Marijuana pursuant to the following procedure:
  - a. If during an investigation or inspection of a Licensee, a Division investigator develops objective and reasonable grounds to believe certain Regulated Marijuana constitute evidence of acts in violation of the Marijuana Code or Marijuana Rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Regulated Marijuana pending further investigation of an alleged violation of the Marijuana Code or Marijuana Rules. The notice of administrative hold shall provide a documented description of the Regulated Marijuana to be subject to the administrative hold and a concise statement that is promptly issued and approved by the Director, or his or her designee, regarding the reasons for issuing the administrative hold. Following the issuance of a notice of administrative hold, the Division will identify the Regulated Marijuana subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.
  - b. Following the issuance of a notice of administrative hold, the Division will identify the Regulated Marijuana subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule 3-805 Regulated Marijuana Businesses: Inventory Tracking System. The Senior Director, or their designee, shall promptly approve and issue a concise statement regarding the reasons for issuing the administrative hold and outlining the estimated time required to complete the investigation. The estimated time required to complete the investigation is not binding and may be adjusted at any time. If the estimated time is adjusted, the Division will provide the Licensee written notice.

- 2e. The Licensee shall completely and physically segregate the Regulated Marijuana subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.
- ad. While the administrative hold is in effect, the Licensee is prohibited from, giving away, Transferring, transporting, or destroying the Regulated Marijuana subject to the administrative hold, except as otherwise authorized by these rules.
- be. While the administrative hold is in effect, the Licensee must safeguard the Regulated Marijuana subject to the administrative hold, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Marijuana Code and the Marijuana Rules of the State Licensing Authority.
- cf. Nothing herein shall prevent a Licensee from voluntarily surrendering Regulated Marijuana that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Regulated Marijuana.
- dg. Nothing herein shall prevent a Licensee from the continued possession, cultivation or harvesting of the Regulated Marijuana subject to the administrative hold. All Regulated Marijuana subject to an administrative hold must be put into separate Harvest Batches.
- e. If the Division determines that the need to preserve evidence has subsided, the Licensee may destroy the Regulated Marijuana subject to an administrative hold at its expense, with advance approval from and in coordination with the Division, and in accordance with Rule 3-230 – Waste Disposal.
- 3h. Lift, Expiration, or Extension of Administrative Hold.
- a. At any time after the initiation of the administrative hold, the administrative hold may be lifted by order of the State Licensing Authority or a Division Investigator, or by agreement between the State Licensing Authority and the Licensee subject to the administrative hold. Division may lift the administrative hold, order the continuation of the administrative hold pending the administrative process, or seek other appropriate relief. If a Division investigator determines to lift the administrative hold, the investigator will send the Licensee written notification of the reason the administrative hold is being lifted.
- b. At any time after the initiation of the administrative hold, the State Licensing Authority may lift, revise, or extend the administrative hold.
- c. An administrative hold expires after 120 days unless an administrative action has been initiated concerning the Regulated Marijuana subject to the administrative hold, or the State Licensing Authority extends the administrative hold.
- d. The State Licensing Authority's order to extend the administrative hold will identify the reasons for extending the administrative hold. The State Licensing Authority will only consider the following factors when deciding whether to extend an administrative hold:
- i. The need to preserve evidence for a pending administrative action;

- ii. The existence of a new or continued threat of diversion;
- iii. The existence of a new or continued threat of public safety;
- iv. The Licensee's failure to cooperate with Division investigators;
- v. The Licensee's failure to maintain security and inventory controls, including record keeping and inventory tracking requirements, video surveillance, Security Alarm System, or lock requirements;
- vi. The Licensee's failure to maintain all required state or local licenses; or
- vii. The Licensee's current tax noncompliance.

B.5. Embargo.

1. Notice of Embargo.

- a. The Division may embargo Regulated Marijuana when there are objective and reasonable grounds to believe the Regulated Marijuana poses a risk to health, safety, or welfare of the public that imperatively requires emergency action.
- b. A Division investigator will issue a Notice of Embargo including a description of the Regulated Marijuana and identifying any permitted activities regarding the Regulated Marijuana subject to the embargo. Following the issuance of a Notice of Embargo, the Division will identify the Regulated Marijuana subject to embargo in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. See Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.
- c. The Senior Director, or their designee, shall promptly approve and issue a concise statement regarding the reasons for issuing the embargo.

2. The Effect of Embargo.

- a. The Licensee shall completely and physically segregate the Regulated Marijuana subject to the embargo in a Limited Access Area of the Licensed Premises.
- b. While the embargo is in effect, the Licensee is prohibited from Transferring, or transporting the Regulated Marijuana subject to the embargo, except as otherwise authorized by these Rules. The Licensee can choose to destroy the Regulated Marijuana that is the subject of the embargo at its expense, with advance approval from and in coordination with the Division and in accordance with Rule 3-230 – Waste Disposal.
- c. While the embargo is in effect, the Licensee must safeguard the Regulated Marijuana subject to the embargo, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Marijuana Rules.

3. Release, Destruction, and Opportunity for Hearing.

- a. At any time after service of a Notice of Embargo, the Division or the State Licensing Authority may lift, revise, or extend the embargo by agreement

between the Division or the State Licensing Authority and the Licensee subject to the embargo.

- b. If a Notice of Destruction has not been issued after 120 days of the Notice of Embargo, the Licensee may submit a written request for a hearing before a Department of Revenue Hearing Officer. The issue at the hearing will be whether there are reasonable grounds to support that the Regulated Marijuana poses a risk to public health or safety and should be subject to destruction, should be subject to continued embargo, or does not pose a risk to public health and safety and should be released from the embargo.
- c. Within 60 days of receiving a Notice of Destruction, a Licensee may request a hearing pursuant to Rule 8-220(B). Failure to request a hearing within the 60-day time period automatically results in the Notice of Destruction becoming an order of destruction.
- d. If a Licensee requests a hearing, the hearing will be conducted by a Department of Revenue Hearing Officer pursuant to section 24-4-105, C.R.S. The sole issue at the hearing will be whether the Regulated Marijuana subject to the embargo poses a threat to the health, safety, or welfare of the public and therefore should be destroyed. Following the hearing, the Hearing Officer will issue an Initial Decision that is subject to exceptions and judicial review.
- e. If a destruction is ordered pursuant to this Rule 8-110(B.5)(3), the Licensee is responsible for completing the destruction in coordination with the Division and in accordance with the Marijuana Rules. The Licensee is also responsible for all expenses related to the embargo and destruction of Regulated Marijuana.

4. The Division may seek the assistance of the Department of Public Health and Environment in connection with an embargo or a hearing seeking destruction of Regulated Marijuana.

C. Voluntary Surrender of Regulated Marijuana.

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

- a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.
- b. Such voluntary surrender may require destruction of any Regulated Marijuana in the presence of a Division investigator and at the Licensee's expense.
- c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

## 8-200 Series – Discipline and Administrative Hearings

### Basis and Purpose – 8-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), [44-10-203\(2\)\(g\)](#), 44-10-203(2)(l), 44-10-204(1)(a), 44-10-701, 44-10-901, 24-4-104, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish what entity conducts the administrative hearings, the procedures governing administrative hearings, and other general hearings issues. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause, and to clarify that an answer is required only for two types of administrative notices: an Order to Show Cause and a Notice of Grounds for Denial. This Rule 8-220 was previously Rules M and R 1304, 1 CCR 212-1 and 1 CCR 212-2.

**Please Note: The following proposed rule revisions are intended to implement HB 23-1021.**

### 8-220 – Administrative Hearings

#### A. General Procedures.

1. Hearing Location. Hearings will generally be conducted by the Department's Hearings Division. Hearings will be held virtually unless otherwise ordered by the hearing officer for good cause. "Good cause" for an in-person hearing means that there are unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person. The Division, Respondent or Denied Applicant may request a hearing officer order an in-person hearing upon a showing of good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer.
2. Scope of Hearing Rules. This Rule shall be construed to promote the just and efficient determination of all matters presented.
3. Right to Legal Counsel. Any Denied Applicant or Respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the Denied Applicant's or Respondent's expense. Unless a Denied Applicant or Respondent that is an entity satisfies the exception in section 13-1-127(2), C.R.S., the Denied Applicant or Respondent must be represented by an attorney admitted to practice law in the state of Colorado.
4. Service. An Order to Show Cause, [a Notice of Destruction](#), or a Notice of Denial must be served on a Respondent or Denied Applicant personally or by first-class mail. Service of pleadings or other papers on a Denied Applicant, Respondent, or any attorney representing a party, may be made by hand delivery, by mail to the party's last known address, or by electronic mail. Service of pleadings or other papers on the Division in an



administrative hearing may be made to the attorney(s) of record, as identified on the Certificate of Service to the Order to Show Cause, Order of Summary Suspension, Notice of Destruction, or Notice of Denial, by electronic mail or first-class mail.

B. Requesting a Hearing.

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

C. When a Responsive Pleading is Required.

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

D. Hearing Notices.

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

E. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings.
2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with subsections (D)(2)(b) and (c) of this Rule.
3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file

exhibits with the hearing officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

- a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.
  - b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
  - c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and Denied Applicant or Respondent using letters.
  - d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.
4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.
  5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

F. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.
2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor\_regulatoryhearings@state.co.us.
3. The hearing officer shall administer oaths or affirmations to all witnesses at hearing. The hearing officer may question any witness.
4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.
  - a. Reports and other information that would otherwise be confidential pursuant to subsection 44-10-204(1)(a), C.R.S., may be introduced as exhibits at hearing.
  - b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.
5. Court Rules.

- a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.
  - b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.
6. Exhibits.
- a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.
  - b. The Division shall use numbers to mark its exhibits.
  - c. The Denied Applicant or Respondent shall use letters to mark its exhibits.
7. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.
- G. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an Initial Decision subject to review by the State Licensing Authority pursuant to the Colorado Administrative Procedure Act and as set forth in Rule 8-230 – Administrative Hearing Appeals/Exceptions to Initial Decision.
- H. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the State Licensing Authority, or with conflicts counsel representing the hearing officer or State Licensing Authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the State Licensing Authority in connection with a hearing or with the exceptions process.
- I. Marijuana Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.