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September 21, 2018

INDUSTRY-WIDE BULLETIN

RE: INDUSTRIAL HEMP TESTING

Dear Marijuana and Hemp Industry Stakeholders:

The Department of Revenue's Marijuana Enforcement Division, Department of Agriculture, and Department of Public Health and Environment (collectively "the Departments") jointly issue this industry bulletin regarding the scope and extent of permitted testing on industrial hemp by retail marijuana testing facility licensees.

Under section 35-61-105.5, Colorado Revised Statutes (C.R.S.), a person registered pursuant to article 61 ("CDA Registrant") may request a retail marijuana testing facility to conduct testing on the industrial hemp that person is cultivating. Section 35-61-105.5, C.R.S., also provides that a licensed retail marijuana testing facility shall provide the test results to the CDA Registrant and Commissioner of Agriculture ("Commissioner"). Further, under section 12-43.4-405(1), C.R.S., a retail marijuana testing facility licensee may test industrial hemp, provided that prior to performing testing, the licensee verifies that the person requesting the testing has received a registration from the Commissioner as required by section 35-61-104, C.R.S.

Industrial hemp, as defined at Colorado Constitution, article XVIII, section 16 (Amendment 64), means "the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis." The definition of industrial hemp provided in section 35-61-101(7), C.R.S., mirrors this definition.

Further, in 2018, the General Assembly passed House Bill 18-1295, which added a definition of "industrial hemp products" to the Colorado Food and Drug Act at section 25-5-426(2)(g.5), C.R.S. Pursuant to section 25-5-426(2)(g.5), C.R.S., "industrial hemp product" means "a finished product containing industrial hemp that: (I) is a cosmetic, food, food additive, or herb; (II) is for human use or consumption; (III) contains any part of the hemp plant, including naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, resins, or derivatives; and (IV) contains a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent." Under House Bill 18-1295, industrial hemp products produced by wholesale food manufacturing facilities registered by the Colorado Department of Public Health and Environment ("CDPHE Registrants"), shall not be deemed adulterated by virtue of the products containing industrial hemp. Pursuant to requirements of the Department of Public Health and Environment, CDPHE Registrants are subject to lab testing of industrial hemp products to verify such products do not exceed three-tenths percent in delta-9 tetrahydrocannabinol concentration.

The Departments have learned that persons other than CDA Registrants (e.g. third-party processors/manufacturers of industrial hemp obtained from CDA Registrants, including CDPHE Registrants) seek testing of industrial hemp and industrial hemp products by retail marijuana testing facilities.

Particularly in light of the new definition of “industrial hemp product,” the Departments interpret the term “industrial hemp,” as used in the Industrial Hemp Regulatory Act, at sections 35-61-101 *et seq.*, C.R.S., and in the Retail Marijuana Code, at section 12-43.4-405, C.R.S., to include only plant material, and not processed and manufactured products. Consequently, statute provides that a retail marijuana testing facility licensee may only accept and test industrial hemp if the sample submitted consists of unprocessed plant material, and only if the retail marijuana testing facility licensee first verifies that the person requesting the testing is a CDA Registrant pursuant to section 35-61-104, C.R.S. Further, the Retail Marijuana Rules, 1 CCR 212-2, only permit retail marijuana testing facilities to conduct potency testing on industrial hemp plant material submitted by CDA Registrants. However, as a result of stakeholder feedback, the Department of Revenue’s Marijuana Enforcement Division is facilitating proposed rule amendments to Rule R 701, 1 CCR 212-2, to allow submission of samples of industrial hemp plant material for testing other than potency testing.

The Departments acknowledge the public health and safety benefits in permitting retail marijuana testing facilities to test industrial hemp and industrial hemp products derived from hemp cultivated by a CDA Registrant. Therefore, it is the Departments’ position that taking any enforcement action against such testing is not currently a priority for the Departments, absent evidence of public health and safety risks or other conduct in violation of Colorado statutes or regulations, and so long as:

- i. The person submitting the sample for testing provides the retail marijuana testing facility with a CDA Registration number indicating the origin of the material to be tested;
- ii. The sample submitted for testing is tracked through the radio frequency-based inventory tracking system; and
- iii. If the sample submitted for testing is a sample of a product to be used in the manufacture of an “industrial hemp product” as defined in section 25-5-426(2)(g.5), C.R.S., the manufacturer of the industrial hemp product possesses a CDPHE Registration.

The Departments will engage with stakeholders to discuss recommendations for statutory amendments to address the scope and extent of industrial hemp and industrial hemp-derived product testing in Colorado. The first meeting for such stakeholder engagement is scheduled **Monday, October 1, 2018, from 9:30 a.m. to 12:00 p.m., at the Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021.**

The Departments are committed to engaging with stakeholders to support a statutory and regulatory framework for commercial marijuana and industrial hemp that prioritizes the public health and safety of the citizens and visitors of Colorado.

Sincerely,

The Colorado Department of Revenue’s Marijuana Enforcement Division,
Colorado Department of Public Health and Environment, and
Colorado Department of Agriculture