

## Basis and Purpose – R 103

The statutory authority for this rule is found at subsection 12-43.4-202(2)(b), C.R.S. 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 not intended to be a defined term, it is not capitalized.

With regard to the definition of Child-Resistant, the State Licensing Authority relied extensively upon written commentary provided by a public health agency within a Colorado hospital, which had conducted a health impact assessment of packaging regulations, looking at accidental ingestion of medical marijuana. The assessment was supported by others in the public, including industry representatives and a physician specializing in medical toxicology.

With regard to the definition of Restricted Access Area, the State Licensing Authority relied extensively upon written commentary provided by a consumer advocate.

## R 103 – Definitions

Definitions. The following definitions of terms, in addition to those set forth in section 12-43.4-103, C.R.S., shall apply to all rules promulgated pursuant to the Retail Code, unless the context requires otherwise:

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

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

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

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

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

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

“Certified Industrial Hygienist” means an individual who holds a valid and current certification from the American Board of Industrial Hygiene.

“Child-Resistant” means special packaging that is:

- a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995) and ASTM classification standard D3475-13, <http://www.astm.org/Standards/D3475.htm>. Note that this rule does not include any later amendments or editions to the Code of Federal Regulations or the ASTM classification standards. The Division has maintained a copy of the applicable federal regulation and ASTM classification standard, which are available to the public.
- b. Opaque so that the product cannot be seen from outside the packaging;
- c. Closable for any product intended for more than a single use or containing multiple servings, and
- d. Labeled properly as required by the R 1000 Series.

"Container" means the sealed package in which Retail Marijuana or a Retail Marijuana Product is placed for sale to a consumer and that has been labeled according to the requirements set forth in Rules R 1002 *et seq.*

"Denied Applicant" means any Person whose application for licensure pursuant to the Retail Code has been denied.

"Department" means the Colorado Department of Revenue.

"Director" means the Director of the Marijuana Enforcement Division.

"Division" means the Marijuana Enforcement Division.

"Division Approved Sampler" means an individual who has completed all approval requirements, which may include but need not be limited to training, examination and continuing education, and has a current approval from the Division to collect and transport Samples.

"Edible Retail Marijuana Product" means any Retail Marijuana Product which is intended to be consumed orally, including but not limited to, any type of food, drink, or pill.

"Executive Director" means the Executive Director of the Department of Revenue.

"Exit Package" means a sealed Container or package provided at the retail point of sale, in which any Retail Marijuana or Retail Marijuana Product already within a Container are placed.

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

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

"Flowering" means the reproductive state of *Cannabis* in which the plant is in a light cycle intended to stimulate production of flowers, trichomes, and cannabinoids characteristic of marijuana.

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

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

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

"Good Moral Character" means an individual who has a personal history demonstrating honesty, fairness, and respect for the rights of others and for the law.

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

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

"Immature plant" means a nonflowering Retail Marijuana or Medical Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling.

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

"Licensed Premises" means the premises specified in an application for a license pursuant to the Retail Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test Retail Marijuana in accordance with the provisions of the Retail Code and these rules.

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

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

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

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

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

"MITS" means Marijuana Inventory Tracking Solution.

"MITS Trained Administrator" means an Owner or an occupationally licensed employee of a Retail Marijuana Establishment who has attended and successfully completed MITS training and who has completed any additional training required by the Division.

"MITS User" means an Owner or occupationally licensed Retail Marijuana Establishment employee who is granted MITS User account access for the purposes of conducting inventory tracking functions in the MITS system and who has been successfully trained by a MITS Trained Administrator in the proper and lawful use of MITS.

"Medical Code" means the Colorado Medical Marijuana Code found at sections 12-43.3-101 *et. seq.*, C.R.S.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the Medical Code and includes seeds and Immature Plants.

"Medical Marijuana Business" means a Medical Marijuana Center, a Medical Marijuana-Infused Product Manufacturer, or an Optional Premises Cultivation Operation.

"Medical Marijuana Center" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-402, C.R.S., and sells medical marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

"Medical Marijuana Concentrate" means a specific subset of Medical Marijuana that was produced by extracting cannabinoids from Medical Marijuana. Categories of Medical Marijuana Concentrate include Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate and Solvent-Based Medical Marijuana Concentrate.

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

"Medical Marijuana-Infused Products Manufacturer" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-404, C.R.S.

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

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

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

"Occupational License" means a license granted to an individual by the State Licensing Authority pursuant to section 12-43.3-401 or 12-43.4-401, C.R.S.

"Optional Premises Cultivation Operation" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-403, C.R.S.

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

"Owner" means the Person or Persons whose beneficial interest in the license is such that they bear risk of loss other than as an insurer, have an opportunity to gain profit from the operation or sale of the establishment, and have a controlling interest in a Retail Marijuana Establishment license, and includes any other Person that qualifies as an Owner pursuant to Rule R 204.

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

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

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

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

"Proficiency Testing Samples" means performing the same analyses on the same samples and comparing results to ensure the Samples are homogenous and stable, and also that the set of samples analyzed are appropriate to test and display similarities and differences in results.

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

"RFID" means Radio Frequency Identification.

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

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

"Retail Code" means the Colorado Retail Marijuana Code found at sections 12-43.4-101 *et. seq.*, C.R.S.

"Retail Marijuana" means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment. "Retail Marijuana" does not include industrial hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

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

"Retail Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana to Retail Marijuana Establishments, but not to consumers.

"Retail Marijuana Establishment" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Testing Facility.

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

"Retail Marijuana Products Manufacturing Facility" means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and sell Retail Marijuana and Retail Marijuana Product only to other Retail Marijuana Products Manufacturing Facilities and Retail Marijuana Stores.

"Retail Marijuana Store" means an entity licensed to purchase Retail Marijuana from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product from a Retail Marijuana Products Manufacturing Facility and to sell Retail Marijuana and Retail Marijuana Product to consumers.

"Retail Marijuana Testing Facility" means a public or private laboratory licensed and certified, or approved by the Division, to conduct research and analyze Retail Marijuana, Retail Marijuana Products and Retail Marijuana Concentrate for contaminants and potency.

"Sample" means anything collected by Division personnel or a Division Approved Sampler from a Retail Marijuana Establishment or Medical Marijuana Business that is provided to a Retail Marijuana Testing Facility for testing. The following is a non-exhaustive list of types of Samples: Retail Marijuana, Retail Marijuana Product, Retail Marijuana Concentrate, Medical Marijuana, Medical Marijuana-Infused Product, Medical Marijuana Concentrate, soil, growing medium, water, solvent or swab of a counter or equipment.

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and

systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

"Shipping Container" means any container or wrapping used solely for the transport of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product in bulk to other Retail Marijuana Establishments.

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

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

"State Licensing Authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana and Retail Marijuana in Colorado, pursuant to section 12-43.3-201, C.R.S.

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

"Test Batch" means a group of Samples that are collectively submitted to a Retail Marijuana Testing Facility for testing purposes. A Test Batch may not be a combination of any two or three of the following: Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating Retail Marijuana or a Retail Marijuana Product is within a Container.

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

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

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

## Basis and Purpose - R 211

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a), 12-43.4-202(3)(b)(IX), and 12-43.4-202(4)(b) and sections 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S.. The purpose of this rule is to clarify that existing Medical Marijuana Businesses may apply to convert a Medical Marijuana Business License to a Retail Marijuana Establishment License or may apply to obtain one additional license to operate a Retail Marijuana Establishment. It is important to note that the State Licensing Authority considers each license issued as separate and distinct. Each license, whether it is in the same location or not, is fully responsible to maintain compliance with all statutes and rules promulgated regardless of whether or not they are located in a shared address.

A Medical Marijuana Business may only obtain one Retail Marijuana Establishment License, whether it converts the Medical Business License or obtains a Retail Marijuana Establishment License, for each Medical Marijuana Business License it holds. In order to ensure all Retail Marijuana and Retail Marijuana Product are tracked in MITS and as a condition of licensure, a Medical Marijuana Business must declare in MITS all Medical Marijuana and Medical Marijuana Infused-Product that are converted for sale as Retail Marijuana or Retail Marijuana Product prior to initiating or allowing any sales. This declaration may be made only once, in part, due to the excise tax issues that may be implicated if a Licensee makes multiple conversions from Medical Marijuana or Medical Marijuana-Infused Product to Retail Marijuana or Retail Marijuana Product.

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

The rule also establishes a means by which to manage the overall production of retail marijuana. This rule is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana. The Division intends to replace this rule with a permanent production management system in the spring or summer of 2014.

## R 211 – Conversion - Medical Marijuana Business to Retail Marijuana Establishment

- A. Medical Marijuana Business Applying for a Retail Marijuana Establishment License. A Medical Marijuana Business in good standing or who had a pending application as of December 10, 2012 that has not yet been denied, and who has paid all applicable fees may apply for a Retail Marijuana Establishment license in accordance with the Retail Code and these rules on or after October 1, 2013. A Medical Marijuana Business meeting these conditions may apply to convert a Medical Marijuana Business license to a Retail Marijuana Establishment license or may apply for a single Retail Marijuana Establishment of the requisite class of license in the Medical Marijuana Code for each Medical Marijuana Business License not converted.
- B. Retail Marijuana Establishment Expiration Date.
  1. A Medical Marijuana Business converting its license to a Retail Marijuana Establishment license shall not be required to pay a license fee at the time of application for conversion.

2. If a Medical Marijuana Business licensee is scheduled to renew its license during the processing of its conversion to a Retail Marijuana Establishment license, the Medical Marijuana Business must complete all renewal applications and pay the requisite renewal licensing fees.
3. A Retail Marijuana Establishment license that was fully converted from a Medical Marijuana Business license will assume the balance of licensing term previously held by the surrendered Medical Marijuana Business license.

C. Retail Marijuana Establishment Licenses Conditioned

1. It shall be unlawful for a Retail Marijuana Establishment to operate without being issued a Retail Marijuana Establishment license by the State Licensing Authority and receiving all relevant local jurisdiction approvals. Each Retail Marijuana Establishment license issued shall be conditioned on the Licensee's receipt of all required local jurisdiction approvals and licensing, if required.
2. Each Retail Marijuana Establishment license issued shall be conditioned on the Medical Marijuana Business' declaration of the amount of Medical Marijuana or Medical Marijuana-Infused Product it intends to transfer from the requisite Medical Marijuana Business for sale as Retail Marijuana or Retail Marijuana Product. A Licensee that converts to a Retail Marijuana Establishment shall not exercise any of the rights or privileges of a Retail Marijuana Establishment until such time as all such Medical Marijuana and Medical Marijuana-Infused Product are fully transferred and declared in the MITS system as Retail Marijuana and Retail Marijuana Product. *See also*, Rule R 309 – Marijuana Inventory Tracking Solution (MITS).

D. One-Time Transfer. Once a Retail Marijuana Establishment has declared Medical Marijuana and Medical Marijuana-Infused Product as Retail Marijuana or Retail Marijuana Product in MITS and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana-Infused Product can be transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.

E. Production Management

1. Applicability. Paragraph E of this rule shall apply to all Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility licenses granted or renewed prior to July 1, 2014.
2. Additional Application Disclosures.
  - a. At the time of application for a Retail Marijuana Store license an Applicant must designate the Medical Marijuana Center license intended to be used to obtain the Retail Marijuana Store license, whether or not that license will be converted, by providing its business license number.
  - b. At the time of application for a Retail Marijuana Products Manufacturing Facility license an Applicant must designate the Medical Marijuana Infused-Products Manufacturer license intended to be used to obtain the Retail Marijuana Products Manufacturing license, whether or not that license will be converted, by providing its business license number.
3. Production Management.

- a. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 1 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 3,600 plants in aggregate at any one time.
  - b. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 2 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 6,000 plants in aggregate at any one time.
  - c. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 3 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 10,200 plants in aggregate at any one time.
  - d. If the Medical Marijuana-Infused Products Manufacturer designated by an Applicant for a Retail Marijuana Products Manufacturing License had an Optional Premises Cultivation associated with it, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Products Manufacturing License may not cultivate more than 1,000 plants in aggregate at any one time.
4. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in paragraph E(3) of this rule on an industry-wide aggregate basis for all Retail Marijuana Establishments subject to that limitation.
  5. Application for Additional Plants.
    - a. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if the designated Medical Marijuana Infused-Products Manufacturer had previously received a waiver from the Division to cultivate more than 1,000 medical marijuana plants. In its waiver application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its receipt of a waiver for its Medical Marijuana Infused-Products Manufacturer and must provide any other information requested to aid the Division in its evaluation of the waiver application. If granted, the Retail Marijuana Products Manufacturing Facility will be permitted to grow the same number of plants that the Medical Marijuana Infused-Products Manufacturer is permitted to grow.
    - b. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule based upon its demonstrated business needs. In its application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its business need for additional production capacity to meet the requirements of potential or existing contracts with licensed Retail Marijuana Stores for the purchase of Retail Marijuana Product and must provide any other information requested to aid the Division in its evaluation of the waiver application.
    - c. A Retail Marijuana Store may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if it can provide documentation evidencing that it is selling at least 85% of what it is permitted to cultivate under its current plant count restriction and

any other information requested to aid the Division in its evaluation of the waiver application. If a Retail Marijuana Store waiver application is approved by the Division, then the Retail Marijuana Store:

1. Be permitted to cultivate no more than 6,000 plants in aggregate at any one time at all of its associated Retail Marijuana Cultivation Facilities if the Retail Marijuana Store was previously permitted to cultivate less than 6,000 plants in aggregate at any one time, provided that it pays an extended plant fee of \$5,000.00.
2. Be permitted to cultivate no more than 10,200 plants in aggregate at any one time at its associated Retail Marijuana Cultivation Facilities if the Retail Marijuana Store was previously permitted to cultivate less than 10,200 plants in aggregate at any one time, provided that it pays an extended plant fee of \$5,250.00.

## Basis and Purpose – R 307

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), and 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish waste disposal requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after its Medical Marijuana rules.

## R 307 – Waste Disposal

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

- F. After Waste is Made Unusable and Unrecognizable. Licensees shall not dispose of Retail Marijuana waste in an unsecured waste receptacle not in possession and control of the Licensee. After the Retail Marijuana waste is made unusable and Unrecognizable, then the rendered waste shall be:
1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing body;
  2. Deposited at a compost facility that has a Certificate of Designation from the Department of Public Health and Environment; or
  3. Composted on-site at a facility owned by the generator of the waste and operated in compliance with the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) in the Department of Public Health and Environment.
- G. Proper Disposal of Waste. A Licensee shall not dispose of Retail Marijuana and Retail Marijuana Product waste in an unsecured waste receptacle not in possession and control of the Licensee.
- H. Inventory Tracking Requirements
1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize MITS to ensure its post-harvest waste materials are identified, weighed and tracked while on the Licensed Premises until disposed of.
  2. All Retail Marijuana waste must be weighed before leaving any Retail Marijuana Establishment. A scale used to weigh Retail Marijuana waste prior to entry into the MITS system shall be certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S. See Rule R 309 – Retail Marijuana Establishments: Marijuana Inventory Tracking Solution (MITS).
  3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of Marijuana. See Rule R 901 – Business Records Required.
  4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Retail Marijuana plant prior to harvest, which must include weighing and documenting all waste. Unless required by a MITS procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. All waste, whether produced prior or subsequent to harvest, must be disposed of in accordance with this rule and be made unusable and unrecognizable.

## Basis and Purpose – R 406

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Store. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

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

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

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

C. Independent Health and Sanitary Audit

1. State Licensing Authority May Require a Health and Sanitary Audit
  - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Store to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Store is in compliance with the requirements set forth in this rule and other applicable health, sanitary or food handling laws, rules and regulations.
  - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Store. However, the Division always

retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

- c. The Retail Marijuana Store will be responsible for all costs associated with the independent health and sanitary audit.
2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
    - a. The Division has reasonable grounds to believe that the Retail Marijuana Store is in violation of one or more of the requirements set forth in this rule or other applicable public health or sanitary laws, rules or regulations; or
    - b. The Division has reasonable grounds to believe that the Retail Marijuana Store was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
  3. Compliance Required. A Retail Marijuana Store must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this rule.
  4. Suspension of Operations.
    - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Store's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
    - b. Prior to or following the issuance of such an order, the Retail Marijuana Store may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
      - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
      - ii. If an agreement to suspend operations is reached, then the Retail Marijuana Store may continue to care for its inventory and conduct any necessary internal business operations but it may not sell any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to a consumer or to any other Retail Marijuana Establishment during the period of time specified in the agreement.
- D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.



## Basis and Purpose – R 504

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), and 12-43.4-202(3)(b)(IX), C.R.S. The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Cultivation Facilities. The rule prohibits a Retail Marijuana Cultivation Facility from treating or otherwise adulterating Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Cultivation Facility. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit.

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

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

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

- C. Pesticide Application. A Retail Marijuana Cultivation Facility may only use Pesticide in accordance with the "Pesticide Act," 35-9-101 et. seq., C.R.S., "Pesticides Applicators' Act," 35-10-101 et. seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide.
- D. Application of Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility may only use agricultural chemicals, other than Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules and regulations.
- E. Required Documentation.
1. Standard Operating Procedures. A Retail Marijuana Cultivation Facility must establish written standard operating procedures for the cultivation of Retail Marijuana. The standard operating procedures must at a minimum include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.
  2. Material Change. If a Retail Marijuana Cultivation Facility makes a Material Change to its standard operating procedures, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the Licensed Premises of the Retail Marijuana Cultivation Facility.
  3. Material Safety Data Sheet. A Retail Marijuana Cultivation Facility must obtain a material safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Retail Marijuana Cultivation Facility must maintain a current copy of the material safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.
  4. Labels of Pesticide and Other Agricultural Chemicals. A Retail Marijuana Cultivation Facility must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.
  5. Pesticide Application Documentation. A Retail Marijuana Cultivation Facility that applies any Pesticide or other agricultural chemical to any portion of a Retail Marijuana plant, water or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:
    - a. The name, signature and Occupational License number of the individual who applied the Pesticide or other agricultural chemical;
    - b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with "Pesticides Applicators' Act," 35-10-101 et. seq., C.R.S.;
    - c. The date and time of the application;
    - d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;

- e. Any of the active ingredients of the Pesticide or other agricultural chemical(s) applied;
  - f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;
  - g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;
  - h. The RFID tag number of the Retail Marijuana plant(s) to which the Pesticide or other agricultural chemical(s) were applied, or, if the Pesticide or other agricultural chemical(s) were applied to all plants throughout the Licensed Premises, a statement to that effect; and
  - i. The total amount of each Pesticide or other agricultural chemical applied.
- F. Prohibited Chemicals. The following chemicals shall not be used in Retail Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this rule. Prohibited chemicals are:

Chemical Name

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, ISOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-187

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

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

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

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

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

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

## Basis and Purpose – R 505

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(XI), and 12-43.4-2-2(3)(b)(IX), C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Cultivation Facility and standards for the production of Retail Marijuana Concentrate.

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

- A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may only produce Water-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated for concentrate production on the current diagram of the Licensed Premises. See Rule R 901- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of a Retail Marijuana Cultivation Facility unless the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.
- B. Safety and Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Owners and Occupational Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon a Retail Marijuana Products Manufacturing Facility that produces Retail Marijuana Concentrate, including all general requirements. **See** Rule R 605 – Sanitary Requirements and Rule R 606 – Concentrate Production.
- C. Possession of Other Categories of Retail Marijuana Concentrate. It shall be considered a violation of this rule if a Retail Marijuana Cultivation Facility possess a Retail Marijuana Concentrate other than a Water-Based Retail Marijuana Concentrate on its Licensed Premises unless the Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturing Facility license.

## Basis and Purpose – R 604

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(IX), and 12-43.4-404(3), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Products Manufacturing Facilities. It requires all Owners and occupational licensees to demonstrate an understanding of basic food handling safety practices or attend a food handler training course prior to manufacturing any Edible Retail Marijuana Product. It sets forth general standards and basic sanitary requirements for Retail Marijuana Products Manufacturing Facilities. It covers the physical premises where the products are made as well as the individuals handling the products. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Products Manufacturing Facility. This rule explains when a health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

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

### A. Training.

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

course required by this rule and is in good standing. A copy of the documentation must be kept on file at any Licensed Premises where that Owner or Occupational Licensee is engaged in the manufacturing of an Edible Retail Marijuana Product.

B. General Standards

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

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

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for Retail Marijuana or Retail Marijuana Product shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and/or in Retail Marijuana Product preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
3. That all persons working in direct contact with preparation of Retail Marijuana or Retail Marijuana Product shall conform to hygienic practices while on duty, including but not limited to:
  - a. Maintaining adequate personal cleanliness;
  - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of a Retail Marijuana Concentrate or manufacture of a Retail Marijuana Product and at any other time when the hands may have become soiled or contaminated; and
  - c. Refraining from having direct contact with preparation of Retail Marijuana or Retail Marijuana Product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.

4. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of Retail Marijuana or Retail Marijuana Product;
5. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana or Retail Marijuana Product are exposed;
6. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
7. That there is adequate safety-type lighting in all areas where Retail Marijuana or Retail Marijuana Product are processed or stored and where equipment or utensils are cleaned;
8. That the Licensed Premises provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
9. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
10. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Retail Marijuana Products Manufacturing Facility and used in accordance with labeled instructions;
11. That toxic cleaning compounds, sanitizing agents, solvents used in the production of Retail Marijuana concentrate and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance;
12. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs;
13. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable and waste water lines;
14. That each Retail Marijuana Products Manufacturing Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;

15. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;
16. That Retail Marijuana or Retail Marijuana Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms; and
17. That storage and transport of finished Retail Marijuana Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any container.

D. Standard Operating Procedures.

1. A Retail Marijuana Products Manufacturing Facility must have written standard operating procedures for each category of Retail Marijuana Concentrate and type of Retail Marijuana Product that it produces.
  - a. All standard operating procedures for the production of a Retail Marijuana Concentrate must follow the requirements in Rule R 605.
  - b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Products Manufacturing Facility.
2. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its standard Retail Marijuana Concentrate or Retail Marijuana Product production process, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

E. Additives. A Retail Marijuana Products Manufacturing Facility shall not include any Additive that is toxic within a Retail Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children or misleading consumers.

F. Independent Health and Sanitary Audit

1. State Licensing Authority May Require An Independent Health and Sanitary Audit

- a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Products Manufacturing Facility to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Products Manufacturing Facility is in compliance with the requirements set forth in this rule or other applicable food handling laws, rules or regulations or compliance with the concentrate production rules in Rule R 605 or other applicable laws, rules and regulations.
- b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Products Manufacturing Facility. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

- c. The Retail Marijuana Products Manufacturing Facility will be responsible for all costs associated with the independent health and sanitary audit.
2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:
  - a. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the food handling training required for Owners or Occupational Licensees engaged in the production of Edible Retail Marijuana Product to the Division;
  - b. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the production of Retail Marijuana Concentrate, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, training of Owners or Occupational Licensees, or production batch specific records;
  - c. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility is in violation of one or more of the requirements set forth in this rule or Rule R 605;
  - d. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product; or
  - e. Multiple Production Batches of Retail Marijuana Concentrate or Retail Marijuana Product produced by the Retail Marijuana Products Manufacturing Facility failed contaminant testing.
3. Compliance Required. A Retail Marijuana Products Manufacturing Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this rule.
4. Suspension of Operations.
  - a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Products Manufacturing Facility's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
  - b. Prior to or following the issuance of such an order, the Retail Marijuana Products Manufacturing Facility may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
    - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly

institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.

- ii. If an agreement to suspend operations is reached, then the Retail Marijuana Products Manufacturing Facility may continue to care for its inventory and conduct any necessary internal business operations but it may not sell, transfer or wholesale Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to another Retail Marijuana Establishment during the period of time specified in the agreement. Depending on the condition of the Retail Marijuana Products Manufacturing Facility and required remedial measures, the Division may permit a Retail Marijuana Products Manufacturing Facility to produce Retail Marijuana Concentrate or manufacture Retail Marijuana Product while operations have been suspended.

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

## Basis and Purpose – R 605

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(XI), and 12-43.4-2-2(3)(b)(IX), C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturing Facility and establish standards for the production of Retail Marijuana Concentrate.

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

Paragraph B of this rule is not effective until March 1, 2014.

Paragraph C of this rule is not effective until April 1, 2014.

Paragraph D of this rule is not effective until July 1, 2014.

#### A. Permitted Categories of Retail Marijuana Concentrate Production.

1. A Retail Marijuana Products Manufacturing Facility may produce Water-Based Retail Marijuana Concentrate and Food-Based Retail Marijuana Concentrate.
2. A Retail Marijuana Products Manufacturing Facility may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO<sub>2</sub>, ethanol, isopropanol, acetone and heptane. The use of any other solvent is expressly prohibited unless and until it is approved by the Division.
3. Beginning on July 1, 2014, a Retail Marijuana Products Manufacturing Facility may submit a request to the Division to consider the approval of solvents not permitted for use under this rule during the next formal rulemaking.

#### B. General Applicability. A Retail Marijuana Products Manufacturing Facility that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. See Rule R 901- Business Records Required.
2. Ensure that all applicable sanitary rules are followed. See R 604.
3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate on its Licensed Premise includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:
  - a. Conduct all necessary safety checks prior to commencing production;
  - b. Prepare Retail Marijuana for processing;

- c. Extract cannabinoids and other essential components of Retail Marijuana;
  - d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,
  - e. Clean all equipment, counters and surfaces thoroughly; and
  - f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. See Rule R 307 – Waste Disposal.
4. Establish written and documentable quality control procedures designed to maximize safety for Owners and Occupational Licensees and minimize potential product contamination.
5. Establish written emergency procedures to be followed by Owners or Occupational Licensees in case of a fire, chemical spill or other emergency.
6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate on its Licensed Premises. The training manual must include, but need not be limited to, the following topics:
  - a. All standard operating procedures for each method of concentrate production used at that Licensed Premises;
  - b. The Retail Marijuana Products Manufacturing Facility's quality control procedures;
  - c. The emergency procedures for that Licensed Premises;
  - d. The appropriate use of any necessary safety or sanitary equipment;
  - e. The hazards presented by all solvents used within the Licensed Premises as described in the material safety data sheet for each solvent;
  - f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and
  - g. Any additional periodic cleaning required to comply with all applicable sanitary rules.
7. Provide adequate training to every Owner or Occupational Licensee prior that to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.
  - a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.
  - b. The individual training an Owner or Occupational Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner or Occupational Licensee can safely produce a Retail Marijuana Concentrate. See Rule R 901- Business Records Required.

- c. The Owner or Occupational Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional period cleaning required to maintain compliance with all applicable sanitary rules. *See Rule R 901- Business Records Required.*
  8. Maintain clear and comprehensive records of the name, signature and Owner or Occupational License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. *See Rule R 901- Business Records Required.*
- C. Water-Based Retail Marijuana Concentrate and Food-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate must:
  1. Ensure that all equipment, counters and surfaces used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.
  2. Ensure that all equipment, counters, and surfaces used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.
  3. Ensure that any room in which dry ice is stored or used in the processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO<sub>2</sub>.
  4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner or Occupational Licensee engaged in the production of a Water-Based Retail Marijuana Concentrate or Food-Based Retail Marijuana Concentrate.
  5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Water-Based Retail Marijuana Concentrate.
  6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.
  7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Water-Based Retail Marijuana Concentrate or a Food-Based Retail Marijuana Concentrate.
- D. Solvent-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturing Facility that engages in the production of Solvent-Based Retail Marijuana Concentrate must:

1. Obtain a report from a Certified Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Certified Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (<http://www.iccsafe.org>), the International Fire Code of 2012 (<http://www.iccsafe.org>) or the National Electric Code of 2014 (<http://www.nfpa.org>), as appropriate. Note that this rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;
  - a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Certified Industrial Hygienist or Professional Engineer must:
    - i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;
    - ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;
    - iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and
    - iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
  - b. CO2 Solvent Determination. If CO2 is used as solvent at the Licensed Premises, then the Certified Industrial Hygienist or Professional Engineer must determine whether a CO2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO2 is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
  - c. Exhaust System Determination. The Certified Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.
  - d. Material Change. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its Licensed Premises, equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from a Certified Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its Licensed Premises and equipment as well.

- e. Manufacturer's Instructions. The Certified Industrial Hygienist or Professional Engineer may review and consider any information provided to the Retail Marijuana Products Manufacturing Facility by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.
  - f. Records Retention. A Retail Marijuana Products Manufacturing Facility must maintain copy of all reports received from a Certified Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule or regulation, compliance with this rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.
2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;
  3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;
  4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;
    - a. UL or ETL Listing.
      - i. If the system is UL or ETL listed, then a Retail Marijuana Products Manufacturing Facility may use the system in accordance with the manufacturer's instructions.
      - ii. If the system is UL or ETL listed but the Retail Marijuana Products Manufacturing Facility intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Retail Marijuana Products Manufacturing Facility must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
      - iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.
    - b. Ethanol or Isopropanol. A Retail Marijuana Products Manufacturing Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

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

## Basis and Purpose – R 712

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), and 12-43.4-405, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish the portion of the Division's Mandatory Testing and Random Sampling program that is applicable to Retail Marijuana Testing Facilities.

### R 712 – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program

- A. Division Authority. The Division may elect to require that a Test Batch be submitted to a specific Retail Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.
- B. Test Batches.
  - 1. Retail Marijuana and Retail Marijuana Concentrate. A Retail Marijuana Testing Facility must establish a standard minimum weight of Retail Marijuana and Retail Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.
  - 2. Retail Marijuana Product. A Retail Marijuana Testing Facility must establish a standard number of finished product(s) it requires to be included in each Test Batch of Retail Marijuana Product for every type of test that it conducts.
- C. Rejection of Test Batches and Samples.
  - 1. A Retail Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.
  - 2. Beginning on July 1, 2014, a Retail Marijuana Testing Facility may not accept a Test Batch or Sample that it knows was not taken in accordance these rules or any additional Division sampling procedures or was not collected by Division personnel or a Division Approved Sampler.
- D. Notification of Retail Marijuana Establishment. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product failed a contaminant test, then the Retail Marijuana Testing Facility must immediately notify the Retail Marijuana Establishment that submitted the sample for testing and report the failure in accordance with all MITS procedures.
- E. Permissible Levels of Contaminants. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is found to have a contaminant in levels exceeding those established as permissible under this rule, then it shall be considered to have failed contaminant testing. Notwithstanding the permissible levels established in this rule, the Division reserves the right to determine, upon good cause and reasonable grounds, that a particular Test Batch presents a risk to the public health or safety and therefore shall be considered to have failed a contaminant test.
  - 1. Microbials (Bacteria, Molds, Mildew, Fungus, Filth)

|  |  |
|--|--|
| Escherichia coli - Bacteria  | Negative – None Detected   |
| Salmonella species - Bacteria  | Negative – None Detected   |
| Bile tolerant gram negative bacteria.<br>(Enterobacteriaceae, Pseudomonas,<br>Aeromonas) | Max Limit: 10000 CFU   |
| Aspergillus sp. – Molds, Fungus  | Negative – None Detected   |
| Mucor sp. – Molds, Fungus  | Negative – None Detected   |
| Penicillium sp. – Molds, Fungus  | Negative – None Detected   |
| Thermophilic Actinomycetes sp. – Molds,<br>Fungus  | Negative – None Detected   |
| Aflatoxin  | Max Limit – 20 ppb   |
| Filth Analysis   | <p>Insect Filth – Average of 5% or more insect infested pieces by weight</p> <p>Mammalian excreta – Average of 1 mg or more mammalian excreta per pound</p> <p>Rodent filth – Average of 2 or more rodent hairs per 10 grams</p> |

## 2. Residual Solvents and Metals

|                                |                                |
|--------------------------------|--------------------------------|
| N-Butane                       | < 50.0 Parts Per Million (PPM) |
| Iso-Butane                     | < 50.0 Parts Per Million (PPM) |
| Propane                        | < 50.0 Parts Per Million (PPM) |
| Heptane                        | < 10.0 Parts Per Million (PPM) |
| 2-propanol (isopropyl alcohol) | < 10.0 Parts Per Million (PPM) |
| Ethanol                        | < 10.0 Parts Per Million (PPM) |

|   |  |
|---|--|
| Any solvent not permitted for use pursuant to Rule R 605. | None Detected  |
| Metals (Arsenic, Cadmium, Lead and Mercury)               | Lead – Max Limit: 0.1 ppm<br><br>Arsenic – Max Limit: 30 ppb<br><br>Cadmium – Max Limit: 0.5 ppm<br><br>Mercury – Max Limit: 0.5 ppm |

3. Other Contaminants.

|            |  |
|------------|--|
| Pesticide  | If testing identifies the use of a banned Pesticide or the improper application of a permitted Pesticide, then that Test Batch shall be considered to have failed contaminant testing. |
| Chemicals  | If Test Batch is found to contain levels of any chemical that could be toxic if consumed, then the Division may determine that the Test Batch has failed contaminant testing.          |
| Microbials | If Test Batch is found to contain levels of any microbial that could be toxic if consumed, then the Division may determine that the Test Batch has failed contaminant testing.         |

4. Division Notification. A Retail Marijuana Testing Facility must notify the Division if a Test Batch is found to contain levels of a contaminant not listed within this rule that could be injurious to human health if consumed.

F. Potency Testing.

1. Cannabinoids Potency Profiles. A Retail Marijuana Testing Facility may test and report results for any cannabinoid provided the test is conducted in accordance with the Division's Retail Marijuana Testing Facility Certification Policy Statement.
2. Reporting of Results.

- a. For potency tests on Retail Marijuana and Retail Marijuana Concentrate, results must be reported by listing a single percentage concentration for each cannabinoid that represents an average of all samples within the Test Batch.
  - b. For potency tests conducted on Retail Marijuana Product, results must be reported by listing the total number of milligrams contained within a single individually packaged product for each cannabinoid and whether the THC content is homogenous.
3. Dried Flower. All potency tests conducted on Retail Marijuana must occur on dried and cured Retail Marijuana that is ready for sale.
4. Failed Potency Tests for Retail Marijuana Products
  - a. If an individually packaged Edible Retail Marijuana Product contained within a Test Batch is determined to have more than 100 mgs of THC within it, then the Test Batch shall be considered to have failed potency testing.
  - b. If the THC content of a Marijuana Product is determined through testing to not be homogenous, then it shall be considered to have failed potency testing. A Retail Marijuana Product shall be considered to not be homogenous if 10% of the infused portion of the Retail Marijuana Product contains more than 20% of the total THC contained within entire Retail Marijuana Product.

## R 1500 Series – Retail Marijuana Testing Program

### Basis and Purpose – R 1501

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the process validation portion of the Division's Retail Marijuana Sampling and Testing Program.

### R 1501 – Retail Marijuana Testing Program – Process Validation

This rule shall be effective on October 1, 2014.

- A. Contaminant Testing Required. Until a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has been validated, it shall not wholesale, transfer, or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless Samples from the Harvest Batch or Production Batch from which that Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product was derived was tested by a Retail Marijuana Testing Facility for contaminants and passed all contaminant tests required by paragraph C of this rule.
- B. Validation of Process.
  1. Retail Marijuana. A Retail Marijuana Cultivation Facility's cultivation process shall be deemed valid if every Harvest Batch that it produced during a 12 week period passed all contaminant tests required by paragraph C of this rule. This must include at least 12 Test Batches that were submitted at least six days apart and contain Samples from entirely different Harvest Batches.
  2. Retail Marijuana Concentrate or Retail Marijuana Product. A Retail Marijuana Cultivation Facility's or a Retail Marijuana Products Manufacturing Facility's production process shall be deemed valid if every Production Batch that it produced during a 4 week period passed all contaminant tests required by paragraph C of this rule. This must include at least 4 Test Batches that were submitted at least six days apart which contain Samples from entirely different Production Batches.
- C. Required Contaminant Tests.
  1. Microbial Contaminant Testing. Each Harvest Batch of Retail Marijuana and Production Batch of Retail Marijuana Concentrate and Retail Marijuana Product must be tested for microbial contamination by a Retail Marijuana Testing Facility. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and amounts present of Salmonella sp., Escherichia coli. and other bile tolerant bacteria.
  2. Mold Contaminant Testing. Each Harvest Batch of Retail Marijuana and Production Batch of Retail Marijuana Concentrate and Retail Marijuana Product must be tested for mold contamination by a Retail Marijuana Testing Facility. The mold contamination test must include, but need not be

limited to, testing to determine presence and the level of *Aspergillus* sp., *Mucor* sp., *Penicillium* sp., and Thermophilic Actinomycetes sp.

3. Filth Contaminant Testing. Each Harvest Batch of Retail Marijuana produced by a Retail Marijuana Cultivation Facility must be tested for filth and other visible contamination by a Retail Marijuana Testing Facility. The filth contamination test must include, but need not be limited to, the detection, separation, quantification, identification and interpretation of extraneous materials (including insects, rodent droppings, visible adulterants and other contaminants) in Retail Marijuana flowers and trim.
  4. Residual Solvent Contaminant Testing. Each Production Batch of Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility must be tested for residual solvent contamination by a Retail Marijuana Testing Facility. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, butane, propane, ethanol, isopropanol, acetone, and heptane.
- D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility wholesaling, transferring, or processing into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch. Additional tests may include, but need not be limited to, screening for Pesticide, harmful chemicals, adulterants or other types of microbials, molds, filth or residual solvents.
- E. Exemptions.
1. Retail Marijuana Concentrate. A Production Batch of Retail Marijuana Concentrate shall be considered exempt from this rule if the Retail Marijuana Products Manufacturing Facility that produced it does not wholesale or transfer any of portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate produced using butane, propane, ethanol, isopropanol, acetone or heptane must still be submitted for a residual solvent contaminant test.
  2. CO2 Only. A Retail Marijuana Products Manufacturing Facility shall not be required to have residual solvent testing conducted on the Product Batch of a Solvent-Based Retail Marijuana Concentrate if only CO2 was used during the production of the Retail Marijuana Concentrate.
- F. Required Re-Validation.
1. Material Change Re-validation. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility makes a Material Change to its cultivation or production process, then it must have the first five Harvest Batches or Production Batches produced using the new standard operating procedures tested for all of the contaminants required by paragraph C of this rule regardless of whether its process has been previously validated. If any of those tests fail, then the Retail Marijuana Establishment's process must be re-validated.
    - a. Pesticide. It shall be considered a Material Change if a Retail Marijuana Cultivation Facility begins using a new or different Pesticide during its cultivation process and the first five Harvest Batches produced using the new or different Pesticide must also be tested for Pesticide.

- b. Solvents. It shall be considered a Material Change if a Retail Marijuana Products Manufacturing Facility begins using a new or different solvent or combination of solvents.
  - c. Notification. A Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility that makes a Material Change must notify the Retail Marijuana Testing Facility that conducts contaminant testing on the first five Harvest Batches or Production Batches produced using the new standard operating procedures.
  - d. Testing Required Prior to Wholesale, Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this rule, the Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility that produced it may not wholesale, transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any of the Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch.
2. Failed Contaminant Testing Re-Validation. If six of the ten most recently tested Test Batches produced by a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility fail contaminant testing, then the Retail Marijuana Establishment shall be required to re-validate its process.
- G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1502

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Retail Marijuana Sampling and Testing Program.

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

This rule shall be effective on July 1, 2014.

- A. Required Sample Submission. A Retail Marijuana Establishment may be required by the Division to submit a Sample(s) of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product it possesses to a Retail Marijuana Testing Facility at any time regardless of whether its process has been validated and without notice.
1. Samples collected pursuant to this rule may be tested for potency or contaminants which may include, but may not be limited to, Pesticide, microbials, molds, filth, residual solvents, harmful chemicals and adulterants.
  2. When a Sample(s) is required to be submitted for testing, the Retail Marijuana Establishment may not sell, wholesale, transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from the package, Harvest Batch or Production Batch from which the Sample was taken.
- B. Methods for Determining Required Testing.
1. Ongoing Testing. Once a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has been validated, the Division shall require Samples to be submitted for testing through any one or more of the following processes: random process, risk-based process or other internally developed process.
  2. Inspection or Enforcement Tests. The Division may require a Retail Marijuana Establishment to submit a Sample for testing if the Division has reasonable grounds to believe that:
    - a. Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or mislabeled;
    - b. A Retail Marijuana Establishment is in violation of any product safety, health or sanitary law, rule or regulation; or
    - c. The results of a test would further an investigation by the Division into a violation of any law, rule or regulation.
  3. Beta Testing. Prior to October 1, 2014, the Division may require a Retail Marijuana Establishment to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing.

- C. Minimum Required Testing. Each Retail Marijuana Cultivation Facility and Retail Marijuana Product Manufacturing Facility shall be required to have Samples taken from at least 10% of the Harvest Batches or Production Batches it produces on an annual basis and have those Samples submitting to a Retail Marijuana Testing Facility to be tested for potency or contaminants.
- D. Additional Sample Types. The Division may also require a Retail Marijuana Establishment to submit Samples comprised of items other than Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, filth, residual solvents, harmful chemicals and adulterants. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:
1. Specific plant(s) or any portion of a plant(s),
  2. Any growing medium, water or other substance used in the cultivation process,
  3. Any water, solvent or other substance used in the processing of a Retail Marijuana Concentrate,
  4. Any ingredient or substance used in the manufacturing of a Retail Marijuana Product; or
  5. Swab of any equipment or surface.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1503

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the potency testing portion of the Division's Retail Marijuana Sampling and Testing Program.

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

Paragraphs A, D and E of this rule shall be effective on May 1, 2014. Paragraphs B and C of this rule shall be effective on June 1, 2014.

### A. Potency Testing – General.

1. Test Batches. A Test Batch submitted for potency testing may only be comprised of Samples that are of the same strain of Retail Marijuana or from the same Production Batch of Retail Marijuana Concentrate or Retail Marijuana Product.
2. Cannabinoid Profile. A potency test conducted pursuant to this rule must at least determine the level of concentration of THC, THCA, CBD, CBDA and CBN.

### B. Potency Testing for Retail Marijuana.

1. Initial Potency Testing. A Retail Marijuana Cultivation Facility must have potency tests conducted by a Retail Marijuana Testing Facility on four Harvest Batches, created a minimum of three weeks apart, for each strain of Retail Marijuana that it cultivates.
  - a. The first potency test must be conducted on each strain prior to the Retail Marijuana Cultivation Facility wholesaling, transferring or processing into a Retail Marijuana Concentrate any Retail Marijuana of that strain.
  - b. All four potency tests must be conducted on each strain no later than December 1, 2014 or six months after the Retail Marijuana Cultivation Facility begins cultivating that strain, whichever is later.
2. Ongoing Potency Testing. After the initial four potency tests, a Retail Marijuana Cultivation Facility shall have each strain of Retail Marijuana that it cultivates tested for potency at least once every six months.

### C. Potency Testing for Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must have a potency test conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Concentrate that it produces prior to wholesaling, transferring or processing into a Retail Marijuana Product any of the Retail Marijuana Concentrate from that Production Batch.

### D. Potency Testing for Retail Marijuana Product.

1. Potency Testing Required. A Retail Marijuana Products Manufacturing Facility shall have potency tests conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Product that it produces prior to transferring or wholesaling any of the Retail Marijuana Product from that Production Batch.
  2. Required Tests. Potency tests conducted on Retail Marijuana Product must determine the level of concentration of the required cannabinoids and whether or not THC is homogeneously distributed throughout the product.
  3. Partially Infused Retail Marijuana Products. If only a portion of a Retail Marijuana Product is infused with Retail Marijuana, then the Retail Marijuana Products Manufacturing Facility must inform the Retail Marijuana Testing Facility of exactly which portions of the Retail Marijuana Product are infused and which portions are not.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1504

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules governing the selection of Division Approved Samplers and Retail Marijuana Testing Facilities for the Division's Retail Marijuana Sampling and Testing Program.

## R 1504 – Retail Marijuana Testing Program – Sampling Procedures and Selection of Division Approved Sampler and Retail Marijuana Testing Facility

This rule shall be effective on July 1, 2014.

### A. Collection of Samples.

1. Sample Collection. All Samples submitted for testing pursuant to this rule must be collected by Division personnel or a Division Approved Sampler in accordance with the Division's sampling procedures.
2. Sample Selection. A Retail Marijuana Establishment, its Owners and employees may not select Samples or attempt to influence the Samples selected by Division personnel or a Division Approved Sampler.
3. Division Approved Sampler Selection. The Division will generally permit a Retail Marijuana Establishment to select which Division Approved Sampler collects a Sample pursuant to this rule. However, the Division may elect, at its sole direction, to assign Division personnel or a Division Approved Sampler to collect the Sample.

### B. Samples for Test Batches of Retail Marijuana and Retail Marijuana Concentrate. Each Test Batch of Retail Marijuana or Retail Marijuana Concentrate must be comprised of a representative selection of Samples.

1. Minimum Number of Samples. At a minimum, each Test Batch of Retail Marijuana or Retail Marijuana Concentrate must be comprised of at least following number of separately taken Samples:
  - a. For Test Batches comprised of Harvest Batches or Production Batches weighing up to 10 pounds, eight separate Samples must be taken.
  - b. For Test Batches comprised of Harvest Batches or Production Batches weighing more than 10 pounds but less than 20 pounds, 12 separate Samples must be taken.
  - c. For Test Batches comprised of Harvest Batches or Production Batches weighing 20 pounds or more but less than 30 pounds, 15 separate Samples must be taken.
  - d. For Test Batches comprised of Harvest Batches or Production Batches weighing 30 pound or more but less than 40 pounds, 18 separate Samples must be taken.

- e. For Test Batches comprised of Harvest Batches or Production Batches weighing 40 pounds or more but less than 100 pounds, 23 separate Samples must be taken.
  - f. For Test Batches comprised of Harvest Batches or Production Batches weighing 100 pounds or more, 29 separate Samples must be taken.
2. Multiple Harvest Batches or Production Batches. If more than one Harvest Batch or Production Batch is combined into a single Test Batch, then that Test Batch must include at least one Sample from each Harvest Batch or Production Batch.
- C. Samples for Test Batches of Retail Marijuana Product.
1. Finished Product. Test Batches of Retail Marijuana Product must be comprised of finished product that is packaged for sale.
  2. Multiple Production Batches. If more than one Production Batch of Retail Marijuana Product is combined into a single Test Batch, then that Test Batch must include at least one finished product that is packaged for sale from each Production Batch combined into that Test Batch.
- D. Third-Party Samplers.
1. A Retail Marijuana Establishment may not employ a Division Approved Sampler.
  2. A Retail Marijuana Establishment may not have an ownership interest in a company that employs a Division Approved Sampler.
  3. A Division Approved Sampler may not have an Ownership interest in a Retail Marijuana Establishment.
- E. Retail Marijuana Testing Facility Selection. The Division will generally permit a Retail Marijuana Establishment to select which Retail Marijuana Testing Facility will test a Sample collected pursuant to this rule. However, the Division may elect, at its sole discretion, to assign a Retail Marijuana Testing Facility to test the Sample.
- F. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## Basis and Purpose – R 1505

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing Test Batches for the Division's Retail Marijuana Sampling and Testing Program.

## R 1505 – Retail Marijuana Testing Program – Test Batches

### This rule shall be effective on May 1, 2014.

- A. No Combination of Product Types. A Test Batch may not be a combination of any two or three of the following: Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.
  
- B. Combining Samples.
  1. Harvest Batches and Production Batches. The Division will generally permit a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility to combine Samples from any number of Harvest Batches or Production Batches created within a 7 day period into a single Test Batch for any contaminant testing required by rule. However, the Division may elect, at its sole discretion, to require a Test Batch to be comprised of Samples from only one Harvest Batch, Production Batch or a specifically identified quantity of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Production.
  2. Packages. The Division will generally permit a Retail Marijuana Establishment to combine Samples from any number of packages of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product into a single Test Batch for any contaminant testing required by rule. However, the Division may elect, at its sole discretion, to require a Test Batch to be comprised of Samples from only one package or a specifically identified quantity of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Production.
  
- C. Same Processes.
  1. General Applicability. All Harvest Batches or Production Batches combined into a single Test Batch must be cultivated or produced using the same standard operating procedure.
  2. Retail Marijuana. All Harvest Batches of Retail Marijuana combined into a single Test Batch must be cultivated using the same Pesticide and other agricultural chemicals. If a Retail Marijuana Cultivation Facility applies a Pesticide or other agriculture chemical to only a specific set of plants, then Samples from those plants must be placed within a separate Test Batch.
  3. Retail Marijuana Concentrate. All Production Batches of Retail Marijuana Concentrate combined into a single Test Batch must be of the same category and produced using the same extraction methods and combination of solvents.
  4. Retail Marijuana Product. All Production Batches of Retail Marijuana Product combined into a single Test Batch must be of the exact same product type and made using the same ingredients.

- D. Failed Contaminant Testing. If a Test Batch fails a contaminant test, then each Harvest Batch or Production Batch that was combined into that Test Batch shall be considered to have failed contaminant testing. See Rule R 1507.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## **Basis and Purpose – R 1506**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules requiring Retail Marijuana Establishments to cover certain costs associated with the Division's Retail Marijuana Sampling and Testing Program.

## **R 1506 – Retail Marijuana Testing Program – Costs**

**This rule shall be effective on May 1, 2014.**

Costs. The cost for all sampling and tests conducted pursuant to these rules shall be the financial responsibility of the Retail Marijuana Establishment that is required to submit the Sample for testing.

## Basis and Purpose – R 1507

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Retail Marijuana Sampling and Testing Program.

## R 1507 – Retail Marijuana Testing Program – Contaminated Product and Failed Test Results

This rule shall be effective on May 1, 2014.

### A. Quarantining of Product.

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, package or quantity of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or presents a risk to public safety, then the Division may require a Retail Marijuana Establishment to quarantine it until the completion of the Division's investigation, which may include the receipt of any test results.
2. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed a contaminant or potency testing, then the Retail Marijuana Establishment shall quarantine any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from any package, Harvest Batch or Production Batch combined into that Test Batch and must follow the procedures established pursuant to paragraph B of this rule.
3. Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product that has been quarantined pursuant to this rule must be physically separated from all other inventory and may not be sold, wholesaled, transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

### B. Failed Contaminant Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch failed contaminant testing, then for each package, Harvest Batch or Production Batch combined into that Test Batch the Retail Marijuana Establishment must either:

1. Destroy and document the destruction of the entire portion of the package, Harvest Batch or Production Batch that it possesses, See Rule R 307 – Waste Disposal; or
2. Decontaminate the portion of the package, Harvest Batch or Production Batch that it possesses, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the identified contaminant by a different Retail Marijuana Testing Facility.
  - a. If both new Test Batches pass the required contaminant testing, then any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from any package, Harvest Batch or Production Batch included in that Test Batch may be sold, wholesaled, transferred or processed into a Retail Marijuana Concentrate or Retail Marijuana Product.

- b. If one or both of the Test Batches do not pass contaminant testing, then the Retail Marijuana Establishment must destroy and document the destruction of the entire portion of the package, Harvest Batch or Production Batch included in that Test Batch that it possesses. See Rule R 307 – Waste Disposal.
- C. Failed Potency Testing. If a Retail Marijuana Establishment is notified by the Division or a Retail Marijuana Testing Facility that a Test Batch of Retail Marijuana Product failed potency testing, then for the package or Production Batch from which that Test Batch was produced the Retail Marijuana Establishment must either:
  - 1. Destroy and document the destruction of the entire portion of the package or Production Batch that it possesses, See Rule R 307 – Waste Disposal; or
  - 2. Attempt corrective measures, if possible, and create two new Test Batches and have those Test Batches tested for potency by a different Retail Marijuana Testing Facility.
    - a. If both new Test Batches pass potency testing, then any Retail Marijuana Product from the Production Batch included in the Test Batch may be sold, wholesaled or transferred.
    - b. If one or both of the Test Batches fail potency testing, then the Retail Marijuana Products Manufacturing Facility must destroy and document the destruction of the entire portion of the package or Production Batch that it possesses. See Rule R 307 – Waste Disposal.
- D. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.