PLANNING COMMISSION MEETING

April 8, 2014
AGENDA

I. CALL TO ORDER – 7:00 p.m., Council Chambers

II. ROLL CALL/ESTABLISHMENT OF QUORUM

III. APPROVAL OF MINUTES

A. March 4, 2014

IV. PUBLIC COMMENT

Comment from the audience on any item not listed on the agenda for discussion or public hearing.

V. PLANNING DEPARTMENT REPORT

Update on Planning and Development Department activities.

VI. OTHER BUSINESS

A. Recreational Marijuana* (Jones)

Summary: Review and discuss proposed options for regulating State licensed marijuana uses in the City.

VII. ADJOURNMENT

The City of Auburn Planning Commission is an eight member advisory body that provides recommendations to the Auburn City Council on the preparation of and amendments to land use plans and related codes such as zoning. Planning Commissioners are appointed by the Mayor and confirmed by the City Council.

Actions taken by the Planning Commission are not final decisions; they are in the form of recommendations to the City Council who must ultimately make the final decision.

DRAFT
PLANNING COMMISSION

March 4, 2014

MINUTES

I. CALL TO ORDER

Chair Judi Roland called the meeting to order at 7:01 p.m. in the Council Chambers located on the first floor of Auburn City Hall, 25 West Main Street, Auburn, WA.

II. ROLL CALL/ESTABLISHMENT OF QUORUM

Planning Commission Members present were: Chair Judi Roland, Vice-Chair Copple, Commissioner Couture, Commissioner Mason, Commissioner Baggett, and Commissioner Smith.

Staff present included: City Attorney Dan Heid, Senior Planner David Jones, and Community Development Secretary Tina Kriss.

III. APPROVAL OF MINUTES

A. February 4, 2014

Commissioner Copple asked that the word "hear", used in the sentence under Public Hearing, page 1, be changed to "hearing".

Commissioner Copple moved and Commissioner Baggett seconded to approve the minutes from the February 4, 2013 meeting as corrected.

Motion carried unanimously. 7-0

IV. PUBLIC COMMENT

There were no public comments on any item not listed on the agenda for discussion or public hearing.

V. PLANNING DEPARTMENT REPORT

Senior Planner David Jones reported that the Trek Apartment project continues to move forward, they are currently working on concrete and framing construction.

Within the next couple months, staff anticipates that Teutsch Partners, LLC will be submitting their building application to move forward with the development of the two downtown SE blocks. O'Reilly Auto Parts has begun construction of their new store off A Street SE.

Staff distributed a neighborhood workshop schedule to update the public on creating a new Comprehensive Plan to guide the City's future "Imagine Auburn" first phase process.

Saars Market has submitted a permit application for improvements to occupy the recently vacated Top Food & Drug store off Auburn Way North.

VI. OTHER BUSINESS

A. **Recreational Marijuana**

Commissioner Pondelick voluntarily recused himself on the matter of Recreational Marijuana, stating that he has been asked to be a potential business partner, or investor in a recreational marijuana business. He abstained from participation on the topic and excused himself from the meeting.

Senior Planner David Jones reported that on January 22, 2014, City Planning and Legal staff presented additional review and analysis materials for the Planning Commission regarding State Initiative 502 (I-502) which allows the State to license and regulate cannabis productions, processing, distribution, and possession for persons over 21. At the conclusion of the meeting, the Planning Commission identified several areas they would like additional information and materials regarding the initiative.

Staff reviewed additional information regarding the disposal of solid and liquid cannabis waste covered in WAC Section 314-55-097. After discussing the additional information on disposal, the Commission asked if staff could provide an example of what the disposal regulations might look like if the City was to adopt regulations. Staff explained that if the Commission determines that they want to go forward on to develop proposed regulations on Option 3, at that time staff could assist the Commission in working through potential regulations.

A discussion was held regarding the current zoning as it relates to cannabis licensed uses, and discussed the potential for any future changes in the zoning code relating to I-502. In answer to the question if the related zoning code uses could be changed, staff explained that if the Commission were to select Option 3, the potential for an amendment or change to the existing zoning code uses exists. Staff also reviewed the City of Auburn Police Department total number of cannabis related arrests for the past three years.

The Planning Commission and Staff discussed the application review process for Option 1, Prohibition of Cannabis Uses; Option 2, Comply with State Requirements Only; and, Option 3, Adopt Additional City Zoning Requirements to state Requirements.

A discussion was held regarding the potential distribution of taxable revenue by the State, staff explained that at this time there is no direct money coming to any jurisdiction based off of taxable revenue. The Commission and staff discussed the ability to charge a tax for the retail sales; City Attorney Heid stated that the City does not have any legal authority to impose a tax on a retailer.

Staff pointed out that the main difference between Option 2 and Option 3 is that while both would result in cannabis uses/businesses being able to operate, under Option 2 the City is not granting any permits or approving any activity that is illegal under federal law. Under Option 3, the City would be granting approvals that would conflict with current federal law. The Commission and staff discussed various liability issues on a Federal and State level if the City were to adopt Option 1.

A discussion was held regarding the three options and the next steps moving forward. The Planning Commission expressed their desire to obtain input from the public on recreational marijuana uses licensed in the City of Auburn.

Staff explained that they will be meeting with other City staff to determine if there are other facts related to the recreational marijuana to report to the Commission, as they continue to work through their recommendations.

The Commission asked if staff could provide the regulations the State of Colorado adopted regarding the disposal of solid and liquid cannabis waste.

At the April 8, 2014 meeting staff intends to bring back additional information that will assist the Commission in further understanding various aspects of I-502 and the State of Colorado's solid and liquid disposal regulations on cannabis.

There will be a Planning Commission and Planning and Community Development Committee Joint Session on March 18, 2014. Staff will provide an update confirming the time.

VII. ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Roland adjourned the meeting at 8:31 p.m.

MEMORANDUM

TO: Judi Roland, Chair, Planning Commission
Ron Copple, Vice-Chair, Planning Commission
Planning Commission Members

CC: Mayor Nancy Backus
Jeff Tate, Assistant Director, Community Development Services
Elizabeth Chamberlain, AICP, Planning Services Manager

FROM: David L. Jones, AICP, Senior Planner

DATE: April 8, 2014

RE: **RECREATIONAL MARIJUANA (CANNABIS) cont. discussion**

Overview

On January March 4, 2014, staff presented additional review and analysis materials for the Planning Commission regarding State Initiative 502 (I-502) which allows the State to license and regulate cannabis production, processing, distribution, and possession for persons over 21. As part of the continued discussion of these materials, the Planning Commission identified a need for additional information on the following:

1. Review of Colorado Law regarding waste disposal
2. Auburn Vote on I-502
3. Need for public feedback

Additional items:

1. Clarification of Option 3 on current regulations of Medical Cannabis uses
2. Anticipated schedule for adoption of Recreational Cannabis regulations
3. Additional Information: Washington Court of Appeals – Kent medical marijuana decision

Colorado Waste Disposal

The disposal of solid and liquid cannabis waste is covered in Section R 307 - Waste Disposal, of the Permanent Rules Related to the Colorado Retail Marijuana Code, date September 9, 2013, prepared by Colorado Department of Revenue Marijuana Enforcement Division 1 Code of Colorado Regulations (CCR) 212-2.

Please see Attachment A for “Permanent Rules Related to the Colorado Retail Marijuana Code” in its entirety.

The state of Colorado does not identify a quantity of waste limit that is allowed to be stored on-site prior to be taken off-site to a solid waste or compost facility.

Waste product that is properly mixed as 50/50 with other compostable elements is allowed to be composted on-site at the facility owned by the generator of waste and operated in compliance with the regulations pertaining to solid waste sites and facilities as detailed in the Department of Public Health and Environment.

Auburn I-502 Vote

Vote	Vote Count	Vote %
Yes	**12,457**	**53%**
No	**10,561**	**45%**
Blank Ballot	**563**	**2%**

State vote: 56% YES, 44% NO

1,896 more YES votes in Auburn

Proposal for a Public Input

At the March 4, 2014 meeting, the Commission voiced a desire to garner public input on the topic of recreational cannabis uses in the City. As such, staff recommends conducting a community/public workshop some time in May prior to the second scheduled meeting of the month (May 20, 2014). The materials presented would be a synopsis of the information staff has presented to the Planning Commission to date.

The tentative outline of the workshop is:

1. Staff presentation (15 - 20 minutes)
    a. Overview of I-502
    b. Regulation review
    c. Recreational v. Medical regulatory differences
    d. Auburn zoning as it currently stands with I-502 regulation
    e. Presentation of general elements of each regulating option
2. Open forum for discussion and questions directed at staff (30 - 45 minutes)
3. Complete brief questionnaire (5 - 10 minutes)

The intent of the public workshop is to obtain public feedback and information to understand the desires of residents as it pertains to I-502 in an effort to assist the Planning Commission moving forward.

Clarification of Option 3

Upon further discussion, Planning and Legal staff wanted to ensure that the Commission was aware that Option 3 would dissolve the City's current prohibition regulations on medical cannabis, as detailed in ACC Chapter 9.22 (Attachment B). As that code section prohibits the City from permitting any activity that is illegal under state or federal law.

Anticipated Schedule for Adoption

Based on feedback from the Commission, the following is staff's anticipated schedule for adoption of regulations in regard to I-502:

- Public Workshop (May 2014)
- Present additional research and public workshop information to Planning Commission on May 20, 2014 meeting (second scheduled meeting of the month)
- Planning Commission meeting, review draft code language (June 3, 2014)
- Planning Commission holds public hearing and makes a recommendation if ready to do so (July 8, 2014)
- Present Planning Commission's recommendation to the Planning and Community Development Committee (July 28, 2014)
- Planning and Community Development Committee additional review or make recommendation to full City Council (August 11, 2014)
- City Council action (August 18, 2014)

Additional Information

On March 31, 2014, the Washington State Court of Appeals rendered its decision in the Kent Medical Marijuana case; please see Attachment C. The case was initially before the State Supreme Court, but they shipped it back to the Court of Appeals for them to consider. This decision upheld Kent's position on prohibiting medical marijuana uses, but in light of the basis of the decision, it may not provide much guidance to us in our consideration of the Recreational Marijuana options. But, again, it is good information for you to have. If you have any questions of us in its regard, please let us know.

Next Steps

Staff anticipates bringing back to the Commission the findings and data from the community/public workshop and its recommendation on how to proceed forward at the May 20, 2014 meeting.

Attachments:

Attachment A – Permanent Rules Related to the Colorado Retail Marijuana Code
Attachment B – Auburn City Code Chapter 9.22
Attachment C – COURT OF APPEALS 70396-0-I Cannabis Action Coalition et al., Appellants v. City of Kent et al., Respondents

Attachment A

Colorado
Department of Revenue

Marijuana Enforcement Division
1 CCR 212-2

Permanent Rules Related to the
Colorado Retail Marijuana Code

September 9, 2013

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-5610
Fax (303) 866-2400

John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

September 9, 2013

STATEMENT OF BASIS AND PURPOSE – COLORADO RULES GOVERNING RETAIL MARIJUANA

On November 6, 2012, Colorado voters approved an amendment to the Colorado Constitution, Article XVIII, Section 16, popularly known as "Amendment 64," which directed the Colorado Department of Revenue to promulgate rules governing businesses that cultivate and sell Retail Marijuana. The amendment was proclaimed into the Colorado Constitution on December 10, 2012.

Because Amendment 64 presented issues of first impression in Colorado and the United States, along with very short timeframes for implementation, Governor John Hickenlooper established the Amendment 64 Implementation Task Force, co-chaired by Executive Director of the Department of Revenue Barbara Brohl and the Governor's Chief Legal Counsel Jack Finlaw, on December 10, 2012. The Governor directed the Task Force "to identify the legal, policy, and procedural issues that must be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken, for the effective and efficient implementation of Amendment 64." The Task Force, assisted by several Working Groups, provided extensive policy recommendations to the Colorado General Assembly.

The Colorado General Assembly adopted three bills during the 2013 legislative session to implement Amendment 64, and Colorado Governor John Hickenlooper signed those bills into law on May 28, 2013. Amendment 64 and the implementing legislation (particularly, House Bill 13-1317) required that the State Licensing Authority, the Executive Director of the Colorado Department of Revenue, promulgate certain rules on or before July 1, 2012. To comply with those requirements within the short period between adoption of the legislation and required promulgation of rules, the State Licensing Authority adopted emergency rules governing Retail Marijuana in the state of Colorado.

Immediately after adopting the emergency regulations, the Department of Revenue convened five representative groups, known as working groups, which provided input and substantive suggestions regarding proposed rules governing Retail Marijuana Establishments and Medical Marijuana Businesses in Colorado. Each working group discussed a different set of issues, broken down as follows: Licensing, Licensed Premises, Transportation, and Storage; Licensed Entities and Inventory Tracking; Record Keeping, Enforcement and Discipline; Labeling, Packaging, Product Safety & Marketing; and Medical Differentiation. Representatives from law enforcement, the Governor's Office, the Attorney General's Office, the Department of Public Health and Environment, local authorities, industry members, trade

industries, child protection advocates, and subject matter experts in the fields of substance abuse, toxicology, pharmacology and marketing participated in the working groups.

On July 15, 2013, the State Licensing Authority filed a Notice of Rulemaking with the Colorado Secretary of State. Since that time, many written comments from the public have been submitted. On August 20 and 21, 2013, a rulemaking hearing was held regarding the proposed rules, and many members of the public provided oral testimony. The public was informed that written comments on the proposed rules would be accepted until 5:00 p.m. on August 27, 2013, and many additional written comments were submitted.

The State Licensing Authority has considered the rulemaking record. That record includes all materials considered by or produced by the Governor's Amendment 64 Implementation Task Force and its working groups; the oral and written record of the meetings of the State Licensing Authority's rulemaking working groups; all written comments submitted regarding the proposed rules; and all oral testimony provided during the August 20 and 21, 2013 rulemaking hearing.

The State Licensing Authority has also considered the direction provided by the United States Department of Justice through an August 29, 2013 letter from United States Attorney General Eric Holder to Governors John Hickenlooper of Colorado and Jay Inslee of Washington, and an accompanying memorandum to all United States Attorneys from Deputy Attorney General James M. Cole. Through this correspondence, the United States Department of Justice has clarified that it will continue to enforce the Controlled Substances Act in Colorado, but that it will not challenge Colorado's ability to regulate the Retail Marijuana industry in accordance with state law, based upon the expectation that the state and local governments will implement strong and effective regulatory and enforcement systems that address public safety, public health and other law enforcement interests. Some of those federal law enforcement priorities of particular relevance to these rules include preventing the distribution of marijuana to minors, preventing the diversion of marijuana from states where it is legal under state law to other states, and preventing the exacerbation of adverse public health consequences associated with marijuana use. As an illustration, Deputy Attorney General Cole noted that the federal interest in preventing the distribution of marijuana to minors "would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors."

In adopting these rules, the State Licensing Authority is complying with the mandates and objectives set forth by the people of the State of Colorado through Amendment 64 and the Colorado General Assembly through House Bill 1317. These rules are designed not to make the operation of Retail Marijuana Establishments unreasonably impracticable, but also promote public safety and ensure compliance with constitutional and statutory guidelines. These rules must implement the extensive regulatory requirements set forth in Amendment 64 and House Bill 13-1317. Above all though, these rules accomplish the state of Colorado's guiding principle through this process: to create a robust regulatory and enforcement environment that protects public safety and prevents diversion of Retail Marijuana to individuals under the age of 21 or to individuals outside the state of Colorado.

STATE OF COLORADO

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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

STATEMENT OF ADOPTION

To: Ron Kammerzell, Senior Director of Enforcement

From: Barbara J. Brohl

Re: Statement of Adoption

1 CCR 212-2, Series R 100 through Series R 1400, Retail Marijuana Rules

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2013), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following rules:

New Permanent Rules, Retail Marijuana - Rule R 100 Series – General Applicability;

New Permanent Rules, Retail Marijuana - Rule R 200 Series – Licensing;

New Permanent Rules, Retail Marijuana - Rule R 300 Series – The Licensed Premises;

New Permanent Rules, Retail Marijuana - Rule R 400 Series – Retail Marijuana Stores;

New Permanent Rules, Retail Marijuana - Rule R 500 Series – Retail Marijuana Cultivation Facilities;

New Permanent Rules, Retail Marijuana - Rule R 600 Series – Retail Marijuana Manufacturing Facilities;

New Permanent Rules, Retail Marijuana - Rule R 700 Series – Retail Marijuana Testing Facilities;

New Permanent Rules, Retail Marijuana - Rule R 800 Series – Transport and Warehousing;

New Permanent Rules, Retail Marijuana - Rule R 900 Series – Business Records and Reporting;

New Permanent Rules, Retail Marijuana - Rule R 1000 Series – Labeling, Packaging, and Products Safety;

New Permanent Rules, Retail Marijuana - Rule R 1100 Series –Signage and Advertising;

New Permanent Rules, Retail Marijuana - Rule R 1200 Series – Enforcement;

New Permanent Rules, Retail Marijuana - Rule R 1300 Series – Discipline; and

New Permanent Rules, Retail Marijuana - Rule R 1400 Series – Division, Local Jurisdiction, and Law Enforcement Procedures

In addition, upon the effective date of these rules, I repeal all remaining Retail Marijuana emergency rules that were promulgated and effective June 28, 2013 and all Retail Marijuana emergency rules that were promulgated and effective September 9, 2013.

The new rules are adopted this 9th day of September, 2013.

Barbara J. Brohl

Barbara J. Brohl
Executive Director and State Licensing Authority

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R 100 Series – General Applicability

Basis a Purpose – R 102

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 clarify that each rule is independent of the others, so that if one is found to be invalid, the remainder will stay in effect. This will give the regulated community confidence in the rules even if one is challenged.

R 102 – Severability

If any portion of the rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

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.

"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.

“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 D3475-12, 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.

"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.

“Flower” means the gametophytic or reproductive state of *Cannabis* in which the plant in in a light cycle intended to produce flowers, trichromes, and cannabinoids characteristic of marijuana.

“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 with 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 herbicides, pesticides, and fungicides, 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 and that is in a growing/cultivating container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom.

“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%).[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.

“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 “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 Manufacturing Business, 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-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 Manufacturing Business" 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.

“Production Batch” means a group of Retail Marijuana Product created from a production run of marijuana product.

“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 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 concentrated Retail Marijuana and Retail Marijuana Product that are comprised of Retail Marijuana and other ingredients and are 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 an entity licensed and certified to analyze and certify the safety and potency of Retail Marijuana.

“Sample” means any Retail Marijuana, Retail Marijuana Product, Medical Marijuana, or Medical Marijuana-Infused Product provided for testing or research purposes to a Retail Marijuana Testing Facility by a Retail Marijuana Establishment or Medical Marijuana Business.

"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 or Retail Marijuana Product in bulk, or in a quantity for other Retail Marijuana Establishments.

"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.

"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.

"Vegetation" means the sporophytic state of the *Cannabis* plant that is a form of asexual reproduction in plants during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

Basis and Purpose – R 104

The statutory authority for this rule exists in subsections 12-43.4-(3)(a)(IX) and 24-4-105(11), and section 12-43.4-201, C.R.S. The purpose of this rule is to establish a system by which a Licensee may petition the Division to get a formal position by the State Licensing Authority on issues that will likely be applicable to other Licensees. By utilizing this system, Licensees can ensure that their due process rights are protected because the Administrative Procedure Act will apply. This system works for other divisions within the Department of Revenue and helps the regulated community get clarity on yet-unknown issues.

R 104 – Declaratory Orders Concerning the Retail Code

A. Who May Petition for Statement of Position. Any person as defined in section 24-4-102(12), C.R.S., may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of the Retail Code, or any regulation of the State Licensing Authority. The Division shall respond with a written statement of position within 30 days of receiving a proper petition.

B. Petition for Declaratory Order. Any person who has properly petitioned the Division for a statement of position, and who is dissatisfied with the statement of position or who has not received a response within 30 days, may petition the State Licensing Authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. A petition shall set forth the following:

    1. The name and address of the petitioner.

    2. Whether the petitioner is licensed pursuant to the Retail Code, and if so, the type of license and address of the Licensed Premises.

    3. Whether the petitioner is involved in any pending administrative hearings with the State Licensing Authority or relevant local jurisdiction.

    4. The statute, rule, or order to which the petition relates.

    5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.

    6. A concise statement of the legal authorities, if any, and such other reasons upon which petitioner relies.

    7. A concise statement of the declaratory order sought by the petitioner.

C. State Licensing Authority Retains Discretion Whether to Entertain Petition. The State Licensing Authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the State Licensing Authority decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner failed to properly petition the Division for a statement of position, or if a statement of position was issued, the petition for declaratory order was filed with the State Licensing Authority more than 30 days after statement of position was issued.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.

3. The petition involves a subject, question or issue which is currently involved in a pending hearing before the state or any local licensing authority, or which is involved in an on-going investigation conducted by the Division, or which is involved in a written complaint previously filed with the State Licensing Authority.

4. The petition seeks a ruling on a moot or hypothetical question.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.

D. If State Licensing Authority Entertains Petition. If the State Licensing Authority determines that it will entertain the petition for declaratory order, it shall notify the petitioner within 30 days, and the following procedures shall apply:

1. The State Licensing Authority may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing.

2. In the event the State Licensing Authority determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, a hearing shall be conducted in accordance with Rules R 1304 – Administrative Hearings, R 1305 – Administrative Subpoenas, and R 1306 – Administrative Hearing Appeals. The petitioner will be identified as Respondent.

3. The parties to any proceeding pursuant to this rule shall be the petitioner/Respondent and the Division. Any other interested person may seek leave of the State Licensing Authority to intervene in the proceeding and such leave may be granted if the State Licensing Authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

4. The declaratory order shall constitute a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.

E. Mailing Requirements. A copy of any petition for a statement of position to the Division and of any petition for a declaratory order to the State Licensing Authority shall be mailed, on the same day that the petition is

filed with the Division or State Licensing Authority, to the relevant local jurisdiction. Any petition filed with the Division or authority shall contain a certification that the mailing requirements of this paragraph have been met.

F. Public Inspection. Files of all petitions, requests, statements of position, and declaratory orders will be maintained by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

G. Posted on Website. The Division shall post a copy of all statements of positions or declaratory orders constituting Final Agency Orders on the Division's web site.

Basis and Purpose – R 105

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 clarify that any reference to days means calendar days.

R 105 – Computation of Time

The word "days" as used in these rules means calendar days.

R 200 Series – Licensing

Basis and Purpose – R 201

The statutory authority for this rule is found at subsections 12-43.4-104(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), and 12-43.4-309(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to establish that only materially complete applications for licenses, accompanied by all required fees, will be accepted and processed by the Division. The State Licensing Authority understands there may be instances where an application is materially complete and accepted, but further information is required before it can be fully processed. In such instances, the applicant must provide the additional requested information within the time frame given by the Division in order for the application to be acted on in a timely manner.

R 201 – Complete Applications Required: Retail Marijuana Establishments

A. General Requirements

1. All applications for licenses authorized pursuant to section 12-43.4-401, C.R.S., shall be made upon current forms prescribed by the Division. Applications submitted to the Division may include, but not be limited to, new business premises, individuals as Owners, transfers of ownership, change of locations, premises modifications, and changes in trade name.

2. A license issued by a Division to a Retail Marijuana Establishment constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure rests at all times with the Applicant.

3. If required by the forms supplied by the Division, each application shall identify the relevant local jurisdiction.

4. Applicants must submit a complete application to the Division before it will be accepted or considered.

    a. All applications must be complete in every material detail.

    b. All applications must include all attachments or supplemental information required by the current forms supplied by the Division.

    c. All applications must be accompanied by a full remittance for the whole amount of the application and license fees.

5. The Division may refuse to accept an incomplete application.

B. Additional Information May Be Required

1. Upon request by the Division, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Division no later than seven days after of the request is made unless otherwise specified by the Division.

2. An Applicant's failure to provide the requested information by the Division deadline may be grounds for denial of the application.

C. Information Must Be Provided Truthfully. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made intentional or purposeful misstatements, omissions, misrepresentations or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.

D. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

E. Other Considerations Regarding Medical Marijuana Business Applications. The Applicant, if not an individual, must be comprised of individuals:

1. Whose criminal history background checks establish they are all of Good Moral Character; and

2. Who have met all other licensing requirements.

Basis and Purpose – R 202

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I), and 12-43.4-304(1), and sections 24-4-104 and 24-76.5-101 *et. seq.,*C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish basic requirements for all Division applications for new Retail Marijuana Establishment licenses. It helps the regulated community understand the procedural licensing requirements.

R 202 – Process for Issuing a New License: Retail Marijuana Establishments

A. General Requirements

1. All applications for licenses authorized pursuant to section 12-43.4-401, C.R.S., shall be made upon current forms prescribed by the Division. Each application for a new license shall identify the relevant local jurisdiction.

2. All applications for new Retail Marijuana Establishments must include application and licensing fees for each premises. *See* Rules R 207 - Schedule of Application Fees: Retail Marijuana Establishments and R 208 - Schedule of Business License Fees: Retail Marijuana Establishments.

3. Each Applicant for a new license shall provide, at the time of application, the following information:

a. Suitable evidence of proof of lawful presence, residence, if applicable, and Good Moral Character as required by the current forms prescribed by the Division;

b. All requested information concerning financial and management associations and interests of other Persons in the business;

i. If the Applicant for any license pursuant to the Retail Code is a corporation or limited liability company, it shall submit with the application the names, mailing addresses, and Owner's background forms of all of its principal officers, directors, and Owners; a copy of its articles of incorporation or articles of organization; and evidence of authorization to do business within this State. In addition, each Applicant shall submit the names, mailing addresses and Owner's background applications of all Persons owning any of the outstanding or issued capital stock, or of any Persons holding a membership interest.

ii. If the Applicant for any license pursuant to this section is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, it shall submit with the application the names, mailing addresses, and Owner's background forms of all of its partners and a copy of its partnership agreement.

c. Department of Revenue tax payment information;

d. Proof of good and sufficient surety bond, if applicable;

e. Accurate floor plans for the premises to be licensed; and

f. The deed, lease, contract, or other document governing the terms and conditions of occupancy of the premises licensed or proposed to be licensed.

Nothing in this section is intended to limit the Division's ability to request additional information it deems necessary or relevant to determining an Applicant's suitability for licensure.

4. Failure to provide such additional information by the requested deadline may result in denial of the application.

5. All applications to reinstate a license will be deemed applications for new licenses. This includes, but is not limited to, licenses that have been expired for more than 90 days, licenses that have been voluntarily surrendered, and licenses that have been revoked.

B. Other Factors

1. The Division will either approve or deny a complete application not less than 45 days and not more than 90 days of its receipt.

2. The Division will send applications for a new Retail Marijuana Establishment and half the application fee to the relevant local jurisdiction within seven days of receiving the application.

3. If the Division grants a license before the relevant local jurisdiction approves the application or grants a local license, the license will be conditioned upon local approval. Such a condition will not be viewed as a denial pursuant to the Administrative Procedure Act. If the local jurisdiction fails to approve or denies the application, the state license will be revoked.

4. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing through the relevant local jurisdiction. Should the Applicant fail to obtain local jurisdiction approval or licensing within the specified period, the state license shall expire and may not be renewed.

5. An Applicant is prohibited from operating a Retail Marijuana Establishment prior to obtaining all necessary licenses or approvals from both the State Licensing Authority and the relevant local jurisdiction.

Basis and Purpose – R 203

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(I), and section 12-43.4-310, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how licenses can be renewed.

R 203 – Process for Renewing a License: Retail Marijuana Establishments

A. General Process for License Renewal

1. The Division will send a Notice for License Renewal 90 days prior to the expiration of an existing license by first class mail to the Licensee's mailing address of record.

2. A Licensee may apply for the renewal of an existing license no less than 30 days prior to the license's expiration date. If the Licensee files a renewal application within 30 days prior to expiration, the Licensee must provide a written explanation detailing the circumstances surrounding the late filing. If the Division accepts the application, then it may elect to administratively continue the license beyond the expiration date while it completes the renewal licensing process.

3. An application for renewal will only be accepted if it is accompanied by:

   a. The requisite licensing fees. *See* Rule R 209 - Schedule of Business License Renewal Fees: Retail Marijuana Establishments; and

   b. A copy of the relevant local jurisdiction's approval. If the relevant local jurisdiction does not approve such activity, the Licensee must submit a copy of the local jurisdiction's written acknowledgment of receiving the approval with the application for renewal.

4. The Division will send a copy of the Licensee's application for renewal of an existing license to the relevant local jurisdiction within seven days of receiving the application for renewal.

B. Failure to Receive a Notice for License Renewal. Failure to receive a Notice for License Renewal does not relieve a Licensee of the obligation to renew all licenses as required.

C. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a late renewal application and remitted all of the required fees.

1. In the event the license is not renewed prior to expiration, a Retail Marijuana Establishment may not operate.

2. If a former Licensee files a late application and the requisite fees with the Division within 90 days of expiration of the license, the Division may administratively continue the license from the date the late application is received until it can complete its renewal application process and investigate the extent to which the Licensee operated with an expired license.

3. If a former Licensee files a renewal application after 90 days from date of expiration, the application will be treated as a new license application.

Basis and Purpose – R 204

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-312(1), C.R.S. The purpose of this rule is to clarify what elements the State Licensing Authority generally considers when determining who has a beneficial interest in a license to such an extent that one is considered an Owner. The Division will review whatever relevant information exists to determine who ultimately owns or controls, *i.e.*, is in charge of a business. This rule sets forth the general elements that will help the Division make the proper determination.

R 204 – Factors Considered When Evaluating Ownership of a License: Retail Marijuana Establishments

A. Licenses Held By Owners. Each Retail Marijuana Establishment License must be held by the Owner or Owners of the licensed establishment. The Division may consider the following non-exhaustive list of elements when determining who is an Owner:

    1. Who bears risk of loss and opportunity for profit;

    2. Who is entitled to possession of the Licensed Premise or premises to be licensed;

    3. Who has final decision making authority over the operation of the licensed Retail Marijuana Establishment;

    4. Who guarantees the Retail Marijuana Establishment's debts or production levels;

    5. Who is a beneficiary of the Retail Marijuana Establishment's insurance policies;

    6. Who acknowledges liability for the Retail Marijuana Establishment's federal, state, or local taxes; or

    7. Who is an officer or director of a Retail Marijuana Establishment.

B. Management Companies. Any Person contracted to manage the overall operation of a Licensed Premises may be considered an Owner.

C. Role of Managers. Owners may hire managers, and managers may be compensated on the basis of profits made, gross or net. A Retail Marijuana Establishment license may not be held in the name of the manager.

D. Entities. A partnership interest, limited or general, a joint venture interest, a licensing agreement, ownership of a share or shares in a corporation or a limited liability company which is licensed, or having a secured interest in furniture, fixtures used directly in the manufacture or cultivation of Retail Marijuana or Retail Marijuana Product, equipment or inventory constitutes ownership and a direct financial interest. Secured notes or loans shall constitute an indirect financial interest. It shall be unlawful to fail to completely report all financial interests in each license issued.

Basis and Purpose – R 205

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-304, 12-43.4-306, 12-43.4-309(2), and sections 12-43.4-308 and 24-76.5-101 *et. seq.,*C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish protocol for ownership transfers.

R 205 – Transfer of Ownership and Changes in Business Structure: Retail Marijuana Establishments

A. General Requirements

1. All applications for transfers of ownership or changes in corporate entities by licensed Retail Marijuana Establishments authorized pursuant to section 12-43.4-401, C.R.S., shall be made upon current forms prescribed by the Division. Each application shall identify the relevant local jurisdiction.

2. All applications for transfers of ownership and changes in Retail Marijuana Establishments must include application fees and be complete in every material detail.

3. Each Applicant for a transfer of ownership shall provide suitable evidence of a Person's proof of lawful presence, residence and good character and reputation that the Division may request. Each Applicant shall also provide all requested information concerning financial and management associations and interests of other Persons in the business, Department of Revenue tax payment information, proof of good and sufficient surety bond and the deed, lease, contract, or other document governing the terms and conditions of occupancy of the Licensed Premises. Nothing in this section is intended to limit the Division's ability to request additional information it deems necessary relevant to determining an Applicant's suitability for licensure.

4. Failure to provide such additional evidence by the deadline specified by the Division may result in denial of the application.

5. The Division will send applications for a transfer of ownership to the relevant local jurisdiction within seven days of receiving the application. *See* Rule R 1401 - Instructions for Local Jurisdictions and Law Enforcement Officers.

6. The Division will not approve a transfer of ownership application without first receiving written notification from the relevant local jurisdiction approving the transfer. If a local jurisdiction elects not

to approve or deny a transfer of ownership application, the local jurisdiction must provide written notification acknowledging receipt of the application.

B. As It Relates to Corporations and Limited Liability Companies

1. If the Applicant for any license pursuant the Retail Code is a corporation or limited liability company, it shall submit with the application the names, mailing addresses, and Owner's background forms of all of its principal officers, directors, and Owners; a copy of its articles of incorporation or articles of organization; and evidence of its authorization to do business within this State. In addition, each Applicant shall submit the names, mailing addresses of all Persons owning any of the outstanding or issued capital stock, or of any Persons holding a membership interest.

2. Any proposed transfer of capital stock or any change in principal officers or directors of a corporation shall be reported and approved by the Division and the relevant local jurisdiction prior to such transfer or change. If a local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

3. Any proposed transfer of membership interest or any change in members of any limited liability company holding a license shall be reported and approved by the Division and the relevant local jurisdiction prior to such transfer or change. If a local jurisdiction elects not to approve or deny this type of activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

C. As It Relates to Partnerships

1. If the Applicant for any license pursuant to the Retail Code is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, it shall submit with the application the names, mailing addresses, and Owner's background forms of all of its partners and a copy of its partnership agreement.

2. Any proposed transfer of partnership interest or any change in general or managing partners of any partnership holding a license shall be reported and approved by the Division and relevant local jurisdiction prior to such transfer or change. If a local jurisdiction elects not to approve or deny this type of activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

D. As It Relates to Entity Conversions. Any Licensee that qualifies for an entity conversion pursuant to sections 7-90-201, C.R.S., *et. seq*., shall not be required to file a transfer of ownership application pursuant to section 12-43.4-308, C.R.S., upon statutory conversion, but shall submit a report containing suitable evidence of its intent to convert at least 30 days prior to such conversion. Such evidence shall include, but not be limited to, any conversion documents or agreements for conversion at least ten days prior to the date of recognition of conversion by the Colorado Secretary of State. The Licensee shall submit to the Division the names and mailing addresses of any officers, directors, general or managing partners, and all Persons having an ownership interest.

E. Approval Required. It may be considered a license violation affecting public safety if a Licensee engages in any transfer of ownership without prior approval from the Division and the relevant local jurisdiction.

F. Applications for Reinstatement Deemed New Applications. The Division will not accept an application for transfer of ownership if the license to be transferred is expired for more than 90 days, is voluntarily surrendered, or is revoked. *See* Rule R 202 - Process for Issuing a New License: Retail Marijuana Establishments.

Basis and Purpose – R 206

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), and 12-43.4-202(3)(a)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify the application process for changing location of a Licensed Premises.

R 206 – Changing Location of Licensed Premises: Retail Marijuana Establishments

A. Application Required to Change Location of Licensed Premises

1. An Owner or other authorized representative of a Retail Marijuana Establishment must make application to the Division for permission to change location of its Licensed Premise.

2. Such application shall:

   a. Be made upon current forms prescribed by the Division;

   b. Be complete in every material detail and include remittance of all applicable fees;

   c. Explain the reason for requesting such change;

   d. Be supported by evidence that the application complies with the relevant local jurisdiction requirements; and

   e. Contain a report of the relevant local jurisdiction(s) in which the Retail Marijuana Establishment is to be situated, which report shall demonstrate the approval of the local jurisdiction(s) with respect to the new location. If the relevant local jurisdiction elects not to approve or deny a change of location of Licensed Premises application, the local jurisdiction must provide written notification acknowledging receipt of the application.

B. Permit Required Before Changing Location

1. No change of location shall be permitted until after the Division considers the application, and such additional information as it may require, and issues to the Applicant a permit for such change.

2. The permit shall be effective on the date of issuance, and the Licensee shall, within 120 days, change the location of its business to the place specified therein and at the same time cease to operate a Retail Marijuana Establishment at the former location. At no time may a Retail Marijuana Establishment operate or exercise any of the privileges granted pursuant to the license in both locations. For good cause shown, the 120 day deadline may be extended for an additional 90 days.

3. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains.

C. General Requirements

1. An application for change of location to a different local jurisdiction shall follow the same procedures as an application for a new Retail Marijuana Establishment license, except that licensing fees will not be assessed until the license is renewed. *See* Rule R 202 - Process for Issuing a New License: Retail Marijuana Establishments.

2. An Applicant for change of location within the same local jurisdiction shall file a change of location application with the Division and pay the requisite change of location fee. *See* Rule R 207 - Schedule of Application Fees: Retail Marijuana Establishments.

Basis and Purpose – R 207

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-104(1)(a)(I), and 12-43.4-202(3)(a)(II), 12-43.4-501, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to clarify the schedules of application fees for new retail business Licensees.

R 207 – Schedule of Application Fees: Retail Marijuana Establishments

A. Application Fee for Existing Medical Marijuana Licensees in Good Standing and Qualified Applications

1. A Person licensed pursuant to the Medical Code, section 12-43.3-401, C.R.S., shall pay a $500 application fee, for each application submitted, to operate a Retail Marijuana Establishment if the following are met:

   a. The Licensee is operating; and

   b. The Licensee's license is in good standing. A license in good standing has complied consistently with Article XVIII, Section 14 of the Colorado Constitution, the provisions of the Medical Code, and regulations adopted thereto.

2. A Person who had a pending application with the State Licensing Authority for a license pursuant to the Medical Code prior to December 10, 2012, shall pay a $500 application fee to operate a Retail Marijuana Establishment if the following are met:

   a. The Applicant is operating in compliance with the Medical Code and regulations adopted thereto;

   b. The application has not been denied; and

   c. The Person paid all applicable application and licensing fees prior to December 10, 2012.

B. Application Fee for New Applicants. Applicants that do not meet the criteria in Part A. of this rule are required to pay a $5000 application fee that must be submitted with each application before it will be considered.

C. Transfer of Ownership Fee (New Owner Applicants). The transfer of ownership fee is $2500 if any new Owner is applying plus any additional applicable fees.

D. Transfer of Ownership Fee (Reallocation of Ownership Among Current Owners). The transfer of ownership fee is $1000 per application.

E. Change of Location of License Premises Fee

1. If an Applicant is changing the location of a Licensed Premises within the same local jurisdiction, the Applicant must pay a $1000 fee.

2. An application to change the location of a Licensed Premises to a different local jurisdiction will be treated as a new application. *See* Rule R 202 – Process for Issuing a New Application: Retail Marijuana Establishments. An Application to change the location of a Licensed Premises to a different local jurisdiction must be accompanied by a $5000 fee, and the Division will forward one half of the fee and a copy of the application to the relevant local jurisdiction within seven days. No new license fees will be assessed unless otherwise required for a License to be renewed.

F. When Application Fees Are Due. All application fees are due at the time an application is submitted. An Applicant must follow Division policies regarding payment to local jurisdictions.

Basis and Purpose – R 208

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), 12-43.4-304(1), and 12-43.4-305, and section 24-4-104, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 208 – Schedule of Business License Fees: Retail Marijuana Establishments

A. License Fees. The State Licensing Authority intends to revisit the fee structure prior to July 1, 2014. Initially, Licensee fees will be set at:

1. Medical Marijuana Center 1 Applying For A Retail Marijuana Store License – $3,750.00

2. Medical Marijuana Center 2 Applying For A Retail Marijuana Store License – $8,750.00

3. Medical Marijuana Center 3 Applying For A Retail Marijuana Store License – $14,000.00

4. Retail Marijuana Cultivation Facility License – $2,750.00

5. Retail Marijuana Products Manufacturing License – $2,750.00

6. Retail Marijuana Testing Facility License – $2,750.00

B. When License Fees Are Due. All license fees are due at the time an application is submitted.

C. If Application is Denied. If an application is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 209

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), 12-43.4-304(1), and 12-43.4-305, and section 24-4-104, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 209 – Schedule of Business License Renewal Fees: Retail Marijuana Establishments

A. License Renewal Fees. The State Licensing Authority intends to revisit the fee structure prior to July 1, 2014. Initially, the License fees will be set at:

1. Medical Marijuana Center 1 Applying For A Retail Marijuana Store License – $3,750.00

2. Medical Marijuana Center 2 Applying For A Retail Marijuana Store License – $8,750.00

3. Medical Marijuana Center 3 Applying For A Retail Marijuana Store License – $14,000.00

4. Retail Marijuana Cultivation Facility License – $2,750.00

5. Retail Marijuana Products Manufacturing License – $2,750.00

6. Retail Marijuana Testing Facility License – $2,750.00

B. When License Renewal Fees Are Due. License renewal fees are due at the time the renewal application is submitted.

C. If Renewal Application is Denied. If an application for renewal is denied, an Applicant may request that the State Licensing Authority refund the license fee after the denial appeal period has lapsed or after the completion of the denial appeal process, whichever is later.

Basis and Purpose – R 210

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), and12-43.4-304(1), and section 24-4-104, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection

16(5)(a)(II). The purpose of this rule is to establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.

R 210 – Schedule of Administrative Service Fees: All Licensees

A. Administrative Service Fees. The State Licensing Authority intends to revisit this fee structure prior to July 1, 2014. Initially, administrative service fees will be set at:

    1. Entity Conversion - $1000

    2. Change of Trade Name - $50

    3. Modification of License Premises - $150

    4. Duplicate Business License or Certificate of Application - $50

    5. Duplicate Occupational License - $10

B. When Administrative Service Fees Are Due. All administrative service fees are due at the time each applicable request is made.

Basis and Purpose - R 211

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.3-202(3)(a), and 12-43.4-202(4)(b)(I)(a), section 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.

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.

Basis and Purpose – R 230

The statutory authority for this rule is found at subsections 12-43.4-104(2)(a), 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), and 12-43.4-309(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to establish that only materially complete applications for licenses, accompanied with all required fees, will be accepted and processed by the Division. The State Licensing Authority understands there may be instances where an application is materially complete, but further information is required before it can be fully processed. In such instances, the applicant must provide the additional requested information within the time frame given by the Division in order for the application to be acted on in a timely manner.

R 230 – Complete Applications Required: Individuals

A. General Requirements

1. All applications for licenses authorized pursuant to subsection 12-43.4-401(1)(e), C.R.S., shall be made upon current forms prescribed by the Division. Applications submitted to the Division may include, but not be limited to, individuals as Owners and transfers of ownership.

2. A license issued by the Division to Owners and Occupational License Licensees constitutes a revocable privilege. The burden of proving an Applicant's qualifications for licensure rests at all times with the Applicant.

3. Applicants must submit a complete current application to the Division before it will be accepted or considered.

    a. All applications must be complete in every material detail.

    b. All applications must include all attachments or supplemental information required by the forms supplied by the Division.

    c. All applications must be accompanied by a full remittance for the whole amount of the application, license, or other relevant fees.

4. The Division may refuse to accept an incomplete application.

B. Additional Information May Be Required

1. Each Applicant shall provide any additional information required that the Division may request to process and fully investigate the application.

2. An Applicant's failure to provide the requested evidence or information by the Division deadline may be grounds for denial. The additional information must be provided to the Division no later than seven days of the request unless otherwise specified by the Division. Each Applicant shall provide any additional information required that the Division may request to process and fully investigate the application.

C. Application Forms Accessible. All application forms supplied by the Division and filed by an Applicant for a license, including attachments and any other documents associated with the investigation, shall be accessible by the State Licensing Authority, local jurisdictions and any state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

Basis and Purpose – R 231

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(III), 12-43.4-305, and 12-43.4-306 and section 24-76.5-101 *et. seq.,*C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III). The purpose of this rule is to clarify the qualifications for licensure, including, but not limited to, the requirement for a fingerprint-based criminal history record check for all Owners, officers managers, contractors, employees, and other support staff of licensed entities.

R 231 – Qualifications for Licensure: Individuals

A. General Requirements

1. All Applicants shall submit information to the Division in a full, faithful, truthful, and fair manner. The Division may recommend denial of an application where the Applicant made intentional misstatements, purposeful omissions, misrepresentations, or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis of additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.

2. The Division may deny the application of an Applicant who fails to provide the requested evidence or information by the Division deadline.

B. Other Licensing Requirements

1. Fingerprints Required

a. All Applicants for initial licensure shall be fingerprinted for a fingerprint-based criminal history record check.

b. A renewal Applicant shall be fingerprinted at the Director's discretion.

c. An Applicant shall also be fingerprinted if the Director has required the Applicant to submit a new application. The Director may require a new application for the following non-exhaustive list of reasons:

i. An Applicant is re-applying after more than one year since the expiration of his or her most recent license;

ii. If an Applicant's previous license was denied or revoked by the State Licensing Authority; or

iii. When the Division needs additional information in order to proceed with a background investigation.

2. Other Documents May Be Required. Any Applicant may be required to establish his or her identity and age by any document required for a determination of lawful presence.

3. Maintaining Ongoing Suitability For Licensing: Duty to Report Offenses. An Applicant or Licensee shall notify the Division in writing of any felony criminal charge and felony conviction against such person within ten days of such person's arrest or felony summons, and within ten days of the disposition of any arrest or summons. Failure to make proper notification to the Division may be grounds for disciplinary action. Licensees shall cooperate in any investigation conducted by the Division. This duty to report includes, but is not limited to, deferred sentences or judgments that are not sealed. If the Division lawfully finds a disqualifying event and an Applicant asserts that the record was sealed, the Division may require the Applicant to provide proof from a court evidencing the sealing of the case.

4. Application Forms Accessible to Law Enforcement and Licensing Authorities. All application forms supplied by the Division and filed by an Applicant for license shall be accessible by the State Licensing Authority, local jurisdictions, and any state or local law enforcement agent.

C. Owners. An Owner Applicant must meet the following criteria before receiving a license:

1. The Applicant must pay the annual application and licensing fees;

2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;

3. The Applicant is not employing, or financed in whole or in part, by any other Person whose criminal history indicates that he or she is not of Good Moral Character;

4. The Applicant is at least 21 years of age;

5. The Applicant has paid all taxes, interest, or penalties due the Department of Revenue relating to a Retail Marijuana Establishment;

6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;

7. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a Person if the Person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the Person were convicted of the offense on the date he or she applied for a license;

8. The Applicant can establish that he or she does not employ another person who does not have a valid Occupational License issued pursuant to either the Retail Code or the Medical Code.

9. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;

10. The Applicant can establish that its premises proposed to be licensed is not currently licensed as a retail food establishment or wholesale food registrant;

11. The Applicant has been a resident of Colorado for at least two years prior to the date of the Application. *See* Rule R 232 – Factors Considered When Determining Residency: Individuals.

D. Occupational Licenses. An Occupational License Applicant must meet the following criteria before receiving a license:

1. The Applicant must pay the annual application and licensing fees;

2. The Applicant's criminal history must indicate that he or she is of Good Moral Character;

3. The Applicant is at least 21 years of age;

4. The Applicant can establish that he or she is currently a resident of Colorado.

5. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;

6. The Applicant can prove that he or she has not discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 27, 2013, whichever is longer, except that the State Licensing Authority may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for a license;

7. The Applicant can establish that he or she is not a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the State Licensing Authority or a local jurisdiction;

E. Current Medical Marijuana Occupational Licensees

1. An individual who holds a current, valid Occupational License issued pursuant to the Medical Code may also work in a Retail Marijuana Establishment; no separate Occupational License is required.

2. An individual who holds a current, valid Occupational License issued pursuant to the Retail Code and these rules shall not work at a Medical Marijuana Business unless he or she also holds a current, valid Occupational License issued pursuant to the Medical Code.

Basis and Purpose – R 232

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-306(1)(k), and 12-43.4-309(5), C.R.S. The purpose of this rule is to interpret residency requirements set forth in the Retail Code.

R 232 – Factors Considered When Determining Residency: Individuals

This rule applies to individual Applicants who are trying to obtain licenses issued pursuant to the Retail Code. This rule does not apply to patrons of Retail Marijuana Stores. When the State Licensing Authority determines whether an Applicant is a resident, the following factors will be considered:

A. Primary Home Defined. The location of an Applicant's principal or primary home or place of abode ("primary home") may establish Colorado residency. An Applicant's primary home is that home or place in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A primary home is a permanent building or part of a building and may include, by way of example, a house, condominium, apartment, room in a house, or manufactured housing. No rental property, vacant lot, vacant house or cabin, or other premises used solely for business purposes shall be considered a primary home.

B. Reliable Indicators That an Applicant's Primary Home is in Colorado. The State Licensing Authority considers the following types of evidence to be generally reliable indicators that a person's primary home is in Colorado.

    1. Evidence of business pursuits, place of employment, income sources, residence for income or other tax purposes, age, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences outside of Colorado and the amount of time spent at each such residence, and any motor vehicle or vessel registration;

    2. Duly authenticated copies of the following documents may be taken into account: A current driver's license with address, recent property tax receipts, copies of recent income tax returns where a Colorado mailing address is listed as the primary address, current voter registration cards, current motor vehicle or vessel registrations, and other public records evidencing place of abode or employment; and

    3. Other types of reliable evidence.

C. Totality of the Evidence. The State Licensing Authority will review the totality of the evidence, and any single piece of evidence regarding the location of a person's primary home will not necessarily be determinative.

D. Other Considerations for Residency. The State Licensing Authority may consider the following circumstances:

    1. Members of the armed services of the United States or any nation allied with the United States who are on active duty in this state under permanent orders and their spouses;

    2. Personnel in the diplomatic service of any nation recognized by the United States who are assigned to duty in Colorado and their spouses; and

    3. Full-time students who are enrolled in any accredited trade school, college, or university in Colorado. The temporary absence of such student from Colorado, while the student is still enrolled at any such trade school, college, or university, shall not be deemed to terminate their residency. A student shall be deemed "full-time" if considered full-time pursuant to the rules or policy of the educational institution he or she is attending.

E. Entering Armed Forces Does Not Terminate Residency. An individual who is a Colorado resident pursuant to this rule does not terminate Colorado residency upon entering the armed services of the United States. A member of the armed services on active duty who resided in Colorado at the time the person entered military service and the person's spouse are presumed to retain their status as residents of Colorado throughout the member's active duty in the service, regardless of where stationed or for how long.

Basis and Purpose – R 233

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-401(1)(e), C.R.S. The purpose of this rule is to clarify when an individual must be licensed or registered with the Division before commencing any work activity at a licensed Retail Marijuana Establishment. The rule also sets forth the process for obtaining a license or registration and explains what information may be required before obtaining such license or registration.

R 233 – Medical Code or Retail Code Occupational Licenses Required

A. Medical Code or Retail Code Occupational Licenses and Identification Badges

1. Any person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports or delivers Retail Marijuana or Retail Marijuana Product as permitted by privileges granted under a Retail Marijuana Establishment License must have a valid Occupational License.

2. Any person who has the authority to access or input data into MITS or a Retail Marijuana Establishment point of sale system must have a valid Occupational License.

3. Any person within a Restricted Access Area or Limited Access Area that does not have a valid Occupational License shall be considered a visitor and must be escorted at all times by a person who holds a valid Owner or Occupational License. Failure by a Retail Marijuana Establishment to continuously escort a person who does not have a valid Occupational License within a Limited Access Area may be considered a license violation affecting the public safety. See Rule R 1307 – Penalties.

B. Occupational Licensees Commencing Employment. Any person required to be licensed pursuant to this rule shall obtain all Division approvals and obtain a Division-issued identification badge before commencing activities permitted by the Retail Code or Medical Code Occupational License. *See also* Rule R 231 – Qualifications for Licensure: Individuals.

C. Identification Badges Are Property of State Licensing Authority. All identification badges shall remain the property of the State Licensing Authority, and all identification badges shall be returned to the Division upon demand of the State Licensing Authority or the Division. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

Basis and Purpose – R 250

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 24-4-105(2), and 12-43.4-601(2), C.R.S. The purpose of this rule is to clarify that a Licensee must keep its mailing address current with the Division.

R 250 – Licensee Required to Keep Mailing Address Current with the Division: All Licensees

A. Timing of Notification. A Licensee shall inform the Division in writing of any change to its mailing address within 30 days of the change. The Division will not change a Licensee's information without explicit written notification provided by the Licensee or its authorized agent.

B. Division Communications. Division communications are sent to the last mailing address furnished by an Applicant or Licensee to the Division.

C. Failure to Change Address Does Not Relieve Licensee's or Applicant's Obligation. Failure to notify the Division of a change of mailing address does not relieve a Licensee or Applicant of the obligation to respond to a Division communication.

D. Disciplinary Communications. The State Licensing Authority will send any disciplinary or sanction communication, as well as any notice of hearing, to the mailing address contained in the license and, if different, to the last mailing address furnished to the Division by the Licensee.

Basis and Purpose – R 251

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XV), 12-43.4-202(3)(a)(XVI), and 12-43.4-305, and sections 24-4-104 and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(I). The purpose of this rule is to establish what factors the State Licensing Authority will consider when denying an application for licensure.

R 251 – Application Denial and Voluntary Withdrawal: All Licensees

A. Applicant Bears Burden of Proving It Meets Licensing Requirements

1. At all times during the application process, an Applicant must be capable of establishing that it is qualified to hold a license.

2. An Applicant that does not cooperate with the Division during the application phase may be denied as a result. For example, if the Division requests additional evidence of suitability and the Applicant does not furnish such evidence by the date requested, the Applicant's application may be denied.

B. Applicants Must Provide Accurate Information

1. An Applicant must provide accurate information to the Division during the entire Application process.

2. If an Applicant provides inaccurate information to the Division, the Applicant's application may be denied.

C. Grounds for Denial

1. The State Licensing Authority will deny an application from an Applicant that forms a business including but not limited to a sole proprietorship, corporation, or other business enterprise, with the purpose or intent, in whole or in part, of transporting, cultivating, processing, transferring, or distributing Retail Marijuana or Retail Marijuana Product without receiving prior approval from all relevant local jurisdictions.

2. The State Licensing Authority will deny an application for Good Cause, as defined in subsection 12-43.4-305(1), C.R.S., of the Retail Code.

3. The State Licensing Authority will deny an Applicant's application that is statutorily disqualified from holding a license.

D. Voluntary Withdrawal of Application

1. The Division and Applicant may mutually agree to allow the voluntary withdrawal of an application for licensing in lieu of a denial proceeding.

2. Applicants must first submit a notice to the Division requesting the voluntary withdrawal of the application. In such instances, an Applicant waives his or her right to a hearing in the matter once the voluntary withdrawal is approved.

3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant the request with or without prejudice or deny the request.

4. The Division will notify the Applicant and relevant local jurisdiction of its acceptance of the voluntary withdrawal and the terms thereof.

5. If the Applicant agrees to a voluntary withdrawal granted with prejudice, then the Applicant is not eligible to apply again for licensing or approval until after expiration of one year from the date of such voluntary withdrawal.

E. An Applicant May Appeal a Denial

1. An Applicant may appeal an application denial pursuant to the Administrative Procedure Act.

2. *See also* Rules R 1304 – Administrative Hearings, R 1305 – Administrative Subpoenas, and R 1306 – Administrative Hearing Appeals.

Basis and Purpose – R 252

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-309(5), C.R.S. The purpose of this rule is to clarify that Retail Marijuana Establishment licenses are valid for one year unless suspended, revoked, or otherwise disciplined.

R 252 – License Must Be Renewed Each Year: All Licensees

A. All Retail Code Licenses. All Licenses issued pursuant to the Retail Code and these rules are valid for one year, except those fully converted from a Medical Marijuana Business license.

B. License May Be Valid for Less Than One Year. A License may be valid for less than one year if revoked, suspended, or otherwise disciplined.

R 300 Series – The Licensed Premises

Basis and Purpose – R 301

The statutory authority for this rule is found at subsection 12-43.4-202(2)(b) and section 12-43.4-105, C.R.S. The purpose of this rule is to establish Limited Access Areas for Licensed Premises under the control of the Licensee to only individuals licensed by the State Licensing Authority.

R 301 – Limited Access Areas

A. Proper Display of License Badge. All persons in a Limited Access Area as provided for in section 12-43.4-105, C.R.S., shall be required to hold and properly display a current license badge issued by the Division at all times. Proper display of the license badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the Licensee visible.

B. Visitors in Limited Access Areas

1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.

2. Visitors shall be escorted by the Retail Marijuana Establishment's licensed personnel at all times. No more than five visitors may be escorted by a single employee.

3. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division or relevant local jurisdiction.

4. All visitors must provide proof of age and must be at least 21 years of age. *See* Rule R 404 – Acceptable Forms of Identification.

5. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log. *See* Rule R 404 – Acceptable Forms of Identification.

6. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.

C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors."

D. Diagram for Licensed Premises. All Limited Access Areas shall be clearly identified to the Division or relevant local jurisdiction and described in a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, and retail sales areas. *See* Rule R 901 – Business Records Required.

E. Modification of Limited Access Area. A Licensee's proposed modification of designated Limited Access Areas must be approved by the Division and, if required, the relevant local jurisdiction prior to any modifications being made. *See* Rule R 303 – Changing, Altering, or Modifying Licensed Premises.

F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this rule, nothing shall prohibit investigators and employees of the Division, authorities from relevant local jurisdiction or state or local law enforcement, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

Basis and Purpose – R 302

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-307(1)(b), C.R.S. The purpose of this rule is to establish and clarify the means by which the Licensee has lawful possession of the Licensed Premises.

R 302 – Possession of Licensed Premises

A. Evidence of Lawful Possession. Persons licensed pursuant to sections 12-43.4-402, 12-43.4-403, 12-43.4-404, or 12-43.4-405, C.R.S., or those making application for such licenses, must demonstrate proof of lawful possession of the premises to be licensed or Licensed Premises. Evidence of lawful possession consists of properly executed deeds of trust, leases, or other written documents acceptable to licensing authorities.

B. Relocation Prohibited. The Licensed Premises shall only be those geographical areas that are specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location application and obtaining approval from the Division and the relevant local jurisdiction. If the local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application. Licensees shall not add additional contiguous units or areas, thereby altering the initially-approved premises, without filing an Application and receiving approval to modify the Licensed Premises on current forms prepared by the Division, including any applicable processing fee. *See* Rule R 303 - Changing, Altering, or Modifying Licensed Premises

C. Subletting Not Authorized. Licensees are not authorized to sublet any portion of Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Division and the relevant local jurisdiction. If the local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

Basis and Purpose – R 303

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-304, and 12-43.4-309(2), C.R.S. The purpose of this rule is to establish guidelines for changing, altering or modifying the Licensed Premises.

R 303 – Changing, Altering, or Modifying Licensed Premises

A. Application Required to Change, Alter, or Modify Licensed Premises. After obtaining a license, the Licensee shall make no physical change, alteration, or modification of the Licensed Premises that materially or substantially alters the Licensed Premises or the usage of the Licensed Premises from the plans originally approved, without the Division's prior written approval and, written approval or written acknowledgement from the relevant local jurisdiction. The Licensee whose Licensed Premises are to be materially or substantially changed is responsible for filing an application for approval on current forms provided by the Division.

B. What Constitutes a Material Change. Material or substantial changes, alterations, or modifications requiring approval include, but are not limited to, the following:

1. Any increase or decrease in the total physical size or capacity of the Licensed Premises;

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes Limited Access Areas, such as the cultivation, harvesting, manufacturing, or sale of Retail Marijuana or Retail Marijuana Product within the Licensed Premises;

3. Within a Retail Marijuana Store, the permanent addition of a separate sales counter that creates an additional point-of-sale location, and the permanent addition of a display case, all of which would require the installation of additional video surveillance cameras. *See* Rule R 306 – Video Surveillance.

4. The installation or replacement of electric fixtures or equipment for purposes of increasing production, the lowering of a ceiling, or electrical modifications made for the purpose of increasing power usage to enhance cultivation activities; or

5. The addition or deletion of a Retail Marijuana Cultivation Facility license that will be, or has been, combined with other commonly owned cultivation licenses in a common area for the purpose of growing and cultivating Retail Marijuana.

C. Attachments to Application. The Division and relevant local jurisdiction may grant approval for the types of changes, alterations, or modifications described herein upon the filing of an application by the Licensee and payment of any applicable fee. The Licensee must submit all information requested by the Division, including but not limited to, documents that verify the following:

1. The Licensee will continue to have possession of the Licensed Premises, as changed, by ownership, lease, or rental agreement; and

2. The proposed change conforms to any local restrictions related to the time, manner, and place of Retail Marijuana Establishment regulation.

Basis and Purpose – R 304

The statutory authority for this rule is found at subsections 12-43.4-104(1)(a)(V), 12-43.4-202(2)(b), 12-43.4-401(2), and 12-43.4-404(2), C.R.S. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Licensee may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a medical marijuana operation from Retail Marijuana Establishment operation.

R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation

A. Licensed Premises – General Requirements

1. A Medical Marijuana Center that prohibits patients under the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate a dual retail business operation on the same Licensed Premises if the relevant local jurisdiction permits a dual operation at the same location and the two are commonly owned.

2. A Medical Marijuana Center that authorizes medical marijuana patients under the age of 21 years to be on the premises is prohibited from sharing its Licensed Premises with a Retail Marijuana Establishment. Even when the two are commonly owned, the two shall maintain distinctly separate Licensed Premises; including, but not limited to, separate sales and storage areas, separate entrances and exits, separate inventories, separate point-of-sale operations, and separate record-keeping.

3. An Optional Premises Cultivation Operation and a Retail Marijuana Cultivation Facility may share a single Licensed Premises in order to operate a dual cultivation business operation if the relevant local jurisdiction permits a dual operation at the same location and the two are commonly owned.

4. A Medical Marijuana-Infused Products Manufacturing Business Licensee may also apply to also hold a Retail Marijuana Products Manufacturing Facility License and operate a dual manufacturing business on the same Licensed Premises, if the relevant local jurisdiction permits a dual operation at the same location and the two are commonly owned.

B. Separation of Co-located Licensed Operations

1. Cultivation Operations. A Licensee that operates an Optional Premises Cultivation Operation and a Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation of the facilities, marijuana plants, and marijuana inventory. Record-keeping for the business operations and labeling of product must enable the Division and relevant local jurisdictions to clearly distinguish the inventories and business transactions of the Medical Marijuana Business from the Retail Marijuana Establishment.

2. Manufacturing Operations. A Licensee that operates a Medical Marijuana-Infused Products Manufacturing Business and Retail Marijuana Products Manufacturing Facility shall maintain either physical or virtual separation of the facilities, product ingredients, product manufacturing, and final product inventory. Record-keeping for the business operations and labeling of products must enable the Division and Local Jurisdictions/Local Licensing Authorities to clearly distinguish the inventories and business transactions of Medical Marijuana-Infused Product from Retail Marijuana Product.

3. Raw Ingredients May Be Shared. Nothing in this rule prohibits a co-located Retail Marijuana Establishment and Medical Marijuana Business from sharing raw ingredients in bulk, for example flour or sugar, except that Retail Marijuana and Medical Marijuana may not be shared under any circumstances.

4. Retail Store and Medical Center Operations: No Patients Under The Age of 21 Years. Persons operating a Medical Marijuana Center that prohibits the admittance of patients under the age of 21 years and a Retail Marijuana Store may share their Licensed Premises. Such a Medical Marijuana Center Licensee must post signage that clearly conveys that persons under the age of 21 years may not enter. Under these circumstances, and upon approval of the State Licensing Authority, the Medical Marijuana Center and the Retail Marijuana Store may share the same entrances and exits. Also under these circumstances, Medical Marijuana and Retail Marijuana and Medical Marijuana-Infused Product and Retail Marijuana Product must be separately displayed on the same sale floor. Record-keeping for the business operations of both must enable the Division and relevant local jurisdictions to clearly distinguish the inventories and business transactions of Medical Marijuana and Medical Marijuana-Infused Products from Retail Marijuana and Retail Marijuana Product. Violation of the restrictions in this rule by co-located Medical Marijuana Centers and Retail Marijuana Stores may be considered a license violation affecting public safety.

5. Retail Stores and Medical Marijuana Centers: Patients Under The Age of 21 Years. A co-located Medical Marijuana Center and Retail Marijuana Store shall maintain separate Licensed Premises, including entrances and exits, inventory, point of sale operations, and record keeping if the Medical Marijuana Center serves patients under the age of 21 years or permits admission of patients under the age of 21 years on its Licensed Premises.

6. Clear Separation of Inventory. A Licensee that operates both a Medical Marijuana Business and Retail Marijuana Establishment within one location is required to maintain separate and distinct inventory tracking processes for Medical Marijuana and Retail Marijuana inventories. The inventories must be clearly tagged or labeled so that the product can be reconciled to a particular Medical Marijuana Business or a Retail Marijuana Establishment.

Basis and Purpose – R 305

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(V), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV). The purpose of this rule is to ensure adequate control of the Licensed Premises and Retail Marijuana and Retail Marijuana Product contained therein. This rule also establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security.

R 305 – Security Alarm Systems and Lock Standards

A. Security Alarm Systems – Minimum Requirements. The following Security Alarm Systems and lock standards apply to all Retail Marijuana Establishments.

1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.

2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.

3. A Licensee shall maintain up-to-date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. *See* Rule R 901 – Business Records Required.

4. Upon request, Licensees shall make available to agents of the Division or relevant local jurisdiction or state or local law enforcement agency, for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.

5. Any outdoor Retail Marijuana Cultivation Facility, or greenhouse cultivation, is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this rule. An outdoor or greenhouse Retail Marijuana Cultivation Facility must provide sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals. This shall include, at a minimum, perimeter fencing designed to prevent the general public from entering the Limited Access Areas. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to a Retail Marijuana Cultivation Facility located in an indoor Licensed Premises so it can be fully secured and alarmed.

B. Lock Standards – Minimum Requirement

1. At all points of ingress and egress, the Licensee shall ensure the use of a commercial-grade, non-residential door locks.

2. Any outdoor Retail Marijuana Cultivation Facility, or greenhouse cultivation, must meet all of the requirements for the lock standards described in this rule.

Basis and Purpose – R 306

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b),12-43.4-202(2)(d), and 12-43.4-202(3)(a)(V), and section 12-43.4-701, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure adequate control of the Licensed Premises and Retail Marijuana and Retail Marijuana Product contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security.

R 306 - Video Surveillance

A. Minimum Requirements. The following video surveillance requirements shall apply to all Retail Marijuana Establishments.

1. Prior to exercising the privileges of a Retail Marijuana Establishment, an Applicant must install a fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this rule.

2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.

3. Video surveillance records and recordings must be made available upon request to the Division, the relevant local jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the relevant local jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

B. Video Surveillance Equipment

1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.

3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained, so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.

4. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage. Licensee must notify the Division of any loss of video surveillance capabilities that extend beyond four hours.

C. Placement of Cameras and Required Camera Coverage

1. Camera coverage is required for all Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Retail Marijuana or Retail Marijuana Product is displayed for sale, and all points of ingress and egress to the exterior of the Licensed Premises.

2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.

3. At each point-of-sale location, camera coverage must enable recording of the customer(s) and employee(s) facial features with sufficient clarity to determine identity.

4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.

5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Retail Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.

6. Areas where Retail Marijuana is grown, tested, cured, manufactured, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.

7. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, or tagging activities occur.

8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.

9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment

1. The surveillance room or surveillance area shall be a Limited Access Area.

2. Surveillance recording equipment must be housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division and relevant local jurisdiction, state or local law enforcement agencies for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose, and service personnel or contractors.

3. Licensees must keep a current list of all authorized employees and service personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.

4. Off-site Monitoring and video recording storage of the Licensed Premises by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site Monitoring.

5. Each Retail Marijuana Licensed Premises located in a common or shared building, or commonly owned Retail Marijuana Establishments located in the same local jurisdiction, must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Retail Marijuana Establishments located in the same local jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned retail facilities. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in this section apply to the review station.

6. Licensed Premises that combine both a Medical Marijuana Business and a Retail Marijuana Establishment may have one central surveillance room located at the shared Licensed Premises. *See* Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment: Shared Licensed Premises and Operational Separation.

E. Video Recording and Retention Requirements

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.

2. All surveillance recordings must be kept for a minimum of 40 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately-captured video and guarantees that no alteration of the recorded image has taken place.

3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the Licensed Premises.

4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture.

5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: http://www.time.gov/timezone.cgi?Mountain/d/-7/java

6. After the 40 day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to: sale or transfer of the facility or business to another Licensee; or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil or administrative investigation, or any other proceeding for which the recording may contain relevant information.

F. Other Records

1. All records applicable to the surveillance system shall be maintained on the Licensed Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list, and operating instructions for the surveillance equipment.

2. A chronological point-of-sale transaction log must be made available to be used in conjunction with recorded video of those transactions.

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)(XI), C.R.S. The purpose of this rule is to establish sanitary 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 the applicable Water Quality Control Division statutes and regulations.

C. Hazardous Waste. Disposal of hazardous and chemical waste must be conducted in a manner consistent with federal, state and local laws.

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 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.

Basis and Purpose – R 308

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-301(2) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(f). The purpose of this rule is to establish hours of operation requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after the Colorado Department of Revenue's liquor rules. Based upon written comments and testimony during working groups and public hearings, this rule was amended to permit the transport of Retail Marijuana and Retail Marijuana Product between the hours 12:01 am and 7:59 am, provided the delivery began prior to 12:01 am. This change was made to accommodate the impact inclement weather can have on driving conditions and other unpredictable events that could delay a delivery.

R 308 – Selling, Serving, Distributing and Transporting Retail Marijuana and Retail Marijuana Product - Hours of Operation

A. Hours of Operation. Retail Marijuana Establishments shall not sell, serve, distribute, or initiate the transport of Retail Marijuana or Retail Marijuana Product at any time other than between the hours of 8:00 am and 12:00 am, Mountain Standard Time, Monday through Sunday.

B. Local Jurisdictions May Further Restrict Hours. Nothing in this rule shall prohibit a local jurisdiction from further restricting hours of operation within its jurisdiction.

Basis and Purpose – R 309

The statutory authority for this rule is found at subsections 12-43.4-201(1), 12-43.4-202(2)(b), 12-43.4-402(1)(e), 12-43.4-402(4), 12-43.4-403(2)(d), and 12-43.4-404(1)(b), C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Retail Marijuana and Retail Marijuana Product from either seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to the customer or destroyed.

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

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

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate MITS to promote an effective means for this industry to account for and monitor its Retail Marijuana inventory.

R 309 – Retail Marijuana Establishments: Marijuana Inventory Tracking Solution (MITS)

A. MITS Required. A Retail Marijuana Establishment is required to use MITS as the primary inventory tracking system of record. A Retail Marijuana Establishment must have a MITS account activated and functional prior to operating or exercising any privileges of a license. Medical Marijuana Businesses converting to or adding a Retail Marijuana Establishment must follow the inventory transfer guidelines detailed in Rule R 309(C) below.

B. MITS Access - MITS Administrator

1. MITS Administrator Required. A Retail Marijuana Establishment must have at least one individual Owner who is a MITS Administrator. A Retail Marijuana Establishment may also designate additional Owners and occupationally licensed employees to obtain MITS Administrator accounts.

2. Training for MITS Administrator Account. In order to obtain a MITS Administrator account, a person must attend and successfully complete all required MITS training. The Division may also require additional ongoing, continuing education for an individual to retain his or her MITS Administrator account.

3. MITS Access - MITS User Accounts. A Retail Marijuana Establishment may designate licensed Owners and employees who hold valid Occupational Licenses as MITS Users. A Retail Marijuana Establishment shall ensure that all Owners and Occupational License Licensees who are granted

MITS User account access for the purposes of conducting inventory tracking functions in the system are trained by MITS Administrators in the proper and lawful use of MITS.

C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Establishment

1. Medical Marijuana Inventory Transfer to Retail Marijuana Establishments. Each Medical Marijuana Business that is either converting to or adding a Retail Marijuana Establishment license must create a Retail Marijuana MITS account for each license it is converting or adding. A Medical Marijuana Business must transfer all relevant Medical Marijuana inventory into the Retail Marijuana Establishment's MITS accounts and affirmatively declare those items as Retail Marijuana and Retail Marijuana Product.

2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

D. RFID Tags Required

1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provision RFID tags for MITS. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where MITS requires RFID tag use. A Retail Marijuana Establishment must ensure it has an adequate supply of RFID tags to properly tag Retail Marijuana and Retail Marijuana Product as required by MITS.

E. General MITS Use

1. Reconciliation with Inventory. All inventory tracking activities at a Retail Marijuana Establishment must be tracked through use of MITS. A Licensee must reconcile all on-premises and in-transit Retail Marijuana and Retail Marijuana Product inventories each day in MITS at the close of business.

2. Common Weights and Measures.

a. A Retail Marijuana Establishment must utilize a standard of measurement that is supported by MITS to track all Retail Marijuana and Retail Marijuana Product.

b. A scale used to weigh product 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.

3. MITS Administrator and User Accounts – Security and Record

a. A Retail Marijuana Establishment shall maintain an accurate and complete list of all MITS Administrators and MITS Users for each Licensed Premises. A Retail Marijuana Establishment shall update this list when a new MITS User is trained. A Retail Marijuana

Establishment must train and authorize any new MITS Users before those Owners or employees may access MITS or input, modify, or delete any information in MITS.

b. A Retail Marijuana Establishment must cancel any MITS Administrators and MITS Users from their associated MITS accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

c. A Retail Marijuana Establishment is accountable for all actions employees take while logged into MITS or otherwise conducting Retail Marijuana or Retail Marijuana Product inventory tracking activities.

4. Secondary Software Systems Allowed

a. Nothing in this rule prohibits a Retail Marijuana Establishment from using separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems.

b. A Licensee must ensure that all relevant MITS data is accurately transferred to and from MITS for the purposes of reconciliations with any secondary systems.

c. A Retail Marijuana establishment must preserve original MITS data when transferred to and from a secondary application(s). Secondary software applications must use MITS data as the primary source of data and must be compatible with updating to MITS.

F. Conduct While Using MITS

1. Misstatements or Omissions Prohibited. A Retail Marijuana Establishment and its designated MITS Administrator(s) and MITS User(s) shall enter data into MITS that fully and transparently accounts for all inventory tracking activities. A Retail Marijuana Establishment is responsible for the accuracy of all information entered into MITS. Any misstatements or omissions may be considered a license violation affecting public safety.

2. Use of Another User's Login Prohibited. Individuals entering data into the MITS system shall only use that individual's MITS account.

3. Loss of System Access. If at any point a Retail Marijuana Establishment loses access to MITS for any reason, the Retail Marijuana Establishment must keep and maintain comprehensive records detailing all Retail Marijuana and Retail Marijuana Product tracking inventory activities that were conducted during the loss of access. *See* Rule R 901 – Business Records Required. Once access is restored, all Retail Marijuana and Retail Marijuana Product inventory tracking activities that occurred during the loss of access must be entered into MITS. A Retail Marijuana Establishment must document when access to the system was lost and when it was restored. A Retail Marijuana Establishment shall not transport any Retail Marijuana or Retail Marijuana Product to another Retail Marijuana Establishment until such time as access is restored and all information is recorded into MITS.

G. System Notifications

1. Compliance Notifications. A Retail Marijuana Establishment must monitor all compliance notifications from MITS. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in MITS until the Retail Marijuana Establishment resolves the compliance issues detailed in the notification.

2. Informational Notifications. A Retail Marijuana Establishment must take appropriate action in response to informational notifications received through MITS, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

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

I. MITS Procedures Must Be Followed. A Retail Marijuana Establishment must utilize MITS in conformance with these rules and MITS procedures.

R 400 Series – Retail Marijuana Stores

Basis and Purpose – R 401

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-402(1)(a), 12-43.4-402(1)(d), 12-43.4-402(3)(a), 12-43.4-402(3)(b), 12-43.4-402(4), 12-43.4-402(5), 12-43.4-309(7)(a), and 12-43.4-901(4)(f), C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Store to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.

R 401 – Retail Marijuana Store: License Privileges

A. Privileges Granted. A Retail Marijuana Store shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share a location with a commonly-owned Medical Marijuana Center. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only sell Retail Marijuana that it has purchased from a Retail Marijuana Cultivation Facility or that the retailer has cultivated itself, after first obtaining a Retail Marijuana Cultivation Facility License. *See* Rule R 501 – Retail Marijuana Cultivation Facility: License Privileges.

D. Authorized Sources of Retail Marijuana Product. A Retail Marijuana Store may only sell Retail Marijuana Product that it has purchased from a Retail Marijuana Products Manufacturing Facility, so long as such product is pre-packaged and labeled upon purchase from the manufacturer.

E. Samples Provided for Testing. A Retail Marijuana Store may provide samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. *See* Rule R 901 – Business Records Required.

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

Basis and Purpose – R 402

The statutory authority for this rule is found at subsections 12-43.4-105, 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(IX), 12-43.4-402(1)(c)(I), 12-43.4-402(1)(c)(II), 12-43.4-402(1)(d), 12-43.4-402(3)(a), 12-43.4-402(3)(b), 2-43.4-402(7)(a), 12-43.4-402(7)(b), 12-43.4-402(7)(c), 12-43.4-402(9); 12-43.4-901(1), and 12-43.4-901(4), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections

16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

R 402 – Retail Marijuana Sales: General Limitations or Prohibited Acts

A. Temporary Wholesale Sales and Purchase Limitation. From January 1, 2014 to September 30, 2014, a Retail Marijuana Store shall only sell Retail Marijuana that was grown in its commonly-owned Retail Marijuana Cultivation Facility and subsequently purchased or transferred from the cultivation, with the following exceptions:

1. Purchase Restriction. A Retail Marijuana Store may purchase up to 30 percent of its total on-hand Retail Marijuana inventory, in aggregate, from any Retail Marijuana Establishments that are not its designated Retail Marijuana Cultivation Facility. Licensees shall calculate the percentage limitation using the total weight of its on-hand inventory at the end of the month preceding the purchase.

2. Sales Restriction. A Retail Marijuana Store may sell up to 30 percent of its total on-hand Retail Marijuana inventory, in aggregate, to other Retail Marijuana Establishments with which it does not share common ownership. Licensees shall calculate the percentage limitation using the total weight of its on-hand inventory at the end of the month preceding the sale.

3. When Waiver Allowed. On the occasion where a Licensee experiences a catastrophic event, the Licensee may petition the Director for a waiver to exceed the limits mandated in this section.

B. Sales to Persons Under 21 Years. Licensees are prohibited from selling, giving, or distributing Retail Marijuana or Retail Marijuana Product to persons under 21 years of age.

C. Age Verification. Prior to initiating the sale of Retail Marijuana or Retail Marijuana Product, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

D. Quantity Limitations On Sales. A Retail Marijuana Store and its employees are prohibited from selling more than one ounce of Retail Marijuana or its equivalent in Retail Marijuana Product during a single sales transaction to a Colorado resident. A Retail Marijuana Store and its employees are prohibited from selling more than a quarter ounce of Retail Marijuana or its equivalent in Retail Marijuana Product during a single sales transaction to a person who does not have a valid government-issued photo identification card showing that the person is a resident of the state of Colorado. See Rule R 404 – Acceptable Forms of Identification for Retail Sales.

E. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to sell Retail Marijuana or Retail Marijuana Product to a customer.

F. Sales over the Internet. A Licensee is prohibited from selling Retail Marijuana or Retail Marijuana Product over the internet. All sales and transfers of possession of Retail Marijuana and Retail Marijuana Product must occur within the Retail Marijuana Store's Licensed Premises.

G. Purchases Only Within Restricted Access Area. A customer must be physically present within the Restricted Access Area of the Retail Marijuana Store's Licensed Premises to purchase Retail Marijuana or Retail Marijuana Product.

H. Evidence of Excise Tax Paid. If an excise tax on Retail Marijuana is approved by voters in the 2013 general election, a Retail Marijuana Store is prohibited from accepting Retail Marijuana from a Retail Marijuana Cultivation Facility or Retail Marijuana Manufacturing Facility unless the Retail Marijuana Store Licensee has received evidence that any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., was paid.

I. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

J. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana or Retail Marijuana Product to a consumer for any reason.

K. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from selling Retail Marijuana or Retail Marijuana Product that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 46 or 47 of Title 12, C.R.S.

L. Consumption Prohibited. A Licensee shall not permit the consumption of marijuana or marijuana product on the Licensed Premises.

M. Storage and Display Limitations. A Retail Marijuana Store shall not display Retail Marijuana and Retail Marijuana Product outside of a designated Restricted Access Area or in a manner in which Retail Marijuana or Retail Marijuana Product can be seen from outside the Licensed Premises. Storage of Retail Marijuana and Retail Marijuana Product shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

N. Sale of Expired Product Prohibited. A Retail Marijuana Store shall not sell any expired Retail Marijuana Product.

Basis and Purpose – R 403

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VI), and 12-43.4-202(3)(a)(IX), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that a Retail Marijuana Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age.

R 403 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Retail Marijuana or Retail Marijuana Product are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12

inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – No One Under 21 Years of Age Allowed."

B. Customers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when customers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owners and Occupational Licensees shall make reasonable efforts to limit the number of customers in relation to the number of Owners or employees in the Restricted Access Area at any time.

C. Display of Retail Marijuana. The display of Retail Marijuana and Retail Marijuana Product for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the customer must be supervised by the Owner or Occupational Licensees at all times when customers are present.

Basis and Purpose – R 404

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(b)(VII), and 12-43.4-402(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V). The purpose of this rule is to establish guidelines for the acceptable forms of identification for verifying the lawful sale of Retail Marijuana or Retail Marijuana Product.

R 404 – Acceptable Forms of Identification for Retail Sales

A. Valid Identification to Verify Age Only. A Licensee shall refuse the sale of Retail Marijuana or Retail Marijuana Product to anyone, unless such person can produce a form of valid identification of 21 years of age. If the identification contains a picture and date of birth, the kind and type of identification deemed adequate shall be limited to the following, so long as such identification is valid and not expired:

1. An operator's, chauffeur's or similar type driver's license, issued by any state within the United States, any U.S. Territory;

2. An identification card, issued by any state for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2- 303, C.R.S.;

3. A United States military identification card;

4. A passport; or

5. Enrollment card issued by the governing authority of a federally recognized Indian tribe located in the state of Colorado, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2- 303, C.R.S.

6. *See* paragraph C of this rule for valid identification to verify Colorado residency.

B. Affirmative Defense and Licensee's Burden. It shall be an affirmative defense to any administrative action brought against a Licensee for alleged sale to a minor if the minor presented fraudulent identification of the type established in paragraph A above and the Licensee possessed an identification book issued within the past three years, which contained a sample of the specific kind of identification presented for compliance

purposes. As an affirmative defense, the burden of proof is on the Licensee to establish by a preponderance of the evidence that the minor presented fraudulent identification.

C. Valid Identification to Verify Colorado Residency. A Licensee shall refuse the sale of more than one quarter of an ounce of Retail Marijuana or its equivalent in Retail Marijuana Product to anyone, unless such person can produce a form of valid identification of Colorado residency. As long as it contains a picture and date of birth, the kind and type of identification deemed adequate to establish Colorado residency for purchase shall be limited to the following:

1. Valid state of Colorado driver's license;

2. Valid state of Colorado identification card; or

3. Any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

4. No combination of identification or documents may be used to establish residency.

Basis and Purpose – R 405

The statutory authority for this rule is found at subsections 12-43.4-202(1), 12-43.4-202(2)(b), and 12-43.4-402(1)(e), C.R.S. The purpose of this rule is to establish a Retail Marijuana Store's obligation to account for and track all inventories on the Licensed Premises from the point they are transferred from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility to the point of sale.

R 405 – Retail Marijuana Store: Marijuana Inventory Tracking Solution

A. Minimum Tracking Requirement. A Retail Marijuana Store must use MITS to ensure its inventories are identified and tracked from the point they are transferred from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility through the point of sale, given to a Retail Marijuana Testing Facility, or otherwise disposed of. *See also* Rule R 309 – Retail Marijuana Establishment: Marijuana Inventory Tracking Solution (MITS). The Retail Marijuana Store must have the ability to reconcile its inventory records with MITS and the associated transaction history and sale receipts. *See also* Rule R 901 – Business Records Required.

1. A Retail Marijuana Store is prohibited from accepting any Retail Marijuana or Retail Marijuana Product from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility without receiving a valid transport manifest generated from MITS.

2. A Retail Marijuana Store must immediately input all Retail Marijuana and Retail Marijuana Product delivered to the Licensed Premises, accounting for all RFID tags, into MITS at the time of delivery from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility. All delivered Retail Marijuana must be weighed and the scale used shall be certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S. A Retail Marijuana Store must account for all variances.

3. A Retail Marijuana Store must reconcile transactions from their point of sale processes and on-hand inventory to MITS at the close of business each day.

Basis and Purpose – R 406

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(X), C.R.S. The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Stores. 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. 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 pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of Retail Marijuana 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.

R 500 Series – Retail Marijuana Cultivation Facilities

Basis and Purpose – R 501

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4- 403(1), and 12-43.4-403(5), C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Cultivation Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 501 – Retail Marijuana Cultivation Facility: License Privileges

A. Privileges Granted. A Retail Marijuana Cultivation Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. To the extent authorized by Rule R 304 – Medical Marijuana Business and Retail Marijuana Establishment – Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share a location with a commonly-owned Optional Premises Cultivation Operation. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Cultivation of Retail Marijuana Authorized. A Retail Marijuana Cultivation Facility may Propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana, whether in concentrated form or otherwise.

D. Authorized Sales. A Retail Marijuana Cultivation Facility may only sell Retail Marijuana to a Retail Marijuana Store, Retail Marijuana Products Manufacturing Facility, and other Retail Marijuana Cultivation Facility(-ies), subject to the temporary limitations set forth in Rules R 402 – Retail Marijuana Sales: General Limitations or Prohibited Acts and R 502 – Retail Marijuana Cultivation Facilities: General Limitations or Prohibited Acts.

E. Authorized On-Premises Storage. A Retail Marijuana Cultivation Facility is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premise must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

Basis and Purpose – R 502

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(X), 12-43.4-403(2)(a), 12-43.4-403(2)(b), 12-43.4-403(2)(c), 12-43.4-403(3), 12-43.4-403(6), and 12-43.3-901(2)(a), and section 12-43.4-404, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility.

R 502 – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Temporary Limitations

1. Issuance of Cultivation Licenses. From January 1, 2014 to September 30, 2014, a Retail Marijuana Cultivation Facility license shall only be issued to a Person who has been issued a Retail Marijuana Store license or a Retail Marijuana Products Manufacturing Facility license.

2. Temporary Sales Limitation. From January 1, 2014 to September 30, 2014, any Retail Marijuana that is grown in a licensed Retail Marijuana Cultivation Facility must be sold or transferred to its designated and commonly-owned Retail Marijuana Store. However, a Retail Marijuana Cultivation Facility may sell up to 30 percent of its processed and finished Retail Marijuana inventory to other Retail Marijuana Establishments. A Licensee shall calculate the percentage limitation using the total weight of its on-hand inventory at the end of the month preceding the purchase.

B. Packaging and Labeling Standards Required. A Retail Marijuana Cultivation Facility is prohibited from selling Retail Marijuana that is not packaged and labeled in accordance with these rules. *See* Rules R 1001 – Packaging Requirements: General Requirements and R 1002 – Labeling Requirements: General Requirements.

C. Sale to Consumer Prohibited. A Retail Marijuana Cultivation Facility is prohibited from selling Retail Marijuana to a consumer.

D. Consumption Prohibited. A Retail Marijuana Cultivation Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Excise Tax Paid. If an excise tax on Retail Marijuana is approved by voters in the 2013 general election, a Retail Marijuana Cultivation Facility shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., and shall provide verification to purchasers of the Retail Marijuana that any required excise tax was paid.

Basis and Purpose – R 503

The statutory authority for this rule is found at subsections 12-43.4-202(1), 12-43.4-202(2)(b), and 12-43.4-403(4), C.R.S. The purpose of this rule is to establish a Retail Marijuana Cultivation Facility's obligation to account for and track all inventories on the Licensed Premises from seed or cutting to transfer or sale to other Retail Marijuana Establishments.

R 503 – Retail Marijuana Cultivation Facility: Marijuana Inventory Tracking Solution (MITS)

A. Minimum Tracking Requirement. A Retail Marijuana Cultivation Facility must use MITS to ensure its inventories are identified and tracked from the point Retail Marijuana is Propagated from seed or cutting to the point when it is delivered to a Retail Marijuana Establishment. *See also* Rule R 309 – Marijuana Inventory Tracking Solution (MITS). A Retail Marijuana Cultivation Facility must have the ability to reconcile its Retail Marijuana inventory with MITS and the associated transaction history and sale receipts. *See also* Rule R 901 – Business Records Required.

B. Transport of Retail Marijuana Without Transport Manifest Prohibited. A Retail Marijuana Cultivation Facility is prohibited from transporting any Retail Marijuana without a valid transport manifest generated by MITS.

C. Accepting Retail Marijuana Without Transport Manifest Prohibited. Retail Marijuana Facility is prohibited from accepting any Retail Marijuana from another Retail Marijuana Cultivation Facility without receiving a valid transport manifest generated from MITS.

D. Input Into MITS Required. A Retail Marijuana Cultivation Facility must immediately input all Retail Marijuana delivered to its Licensed Premises, accounting for all RFID tags, into MITS at the time of delivery from another Retail Marijuana Cultivation Facility.

E. Inventory Must Be Reconciled Daily. A Retail Marijuana Cultivation Facility must reconcile its transaction history and on-hand inventory to MITS at the close of business each day.

Basis and Purpose – R 504

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(VIII), 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 Cultivation Facilities

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 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 used in the production of Retail Marijuana concentrates, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of Retail Marijuana, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance;

9. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana 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 sanitizing agents registered with the Environmental Protection Agency shall be used in a Retail Marijuana Products Manufacturing 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 facility's 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 facility. 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. Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana concentrates, all areas in which those concentrates are produced shall be subject to all of sanitary requirements for a Retail Marijuana Manufacturing Facility. *See* Rule R 605 – Sanitary Requirements.

D. 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, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-187

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

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

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

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

E. The use of Dimethylsulfoxide ("DMSO") in the production of Retail Marijuana shall be prohibited and possession of DMSO upon the Licensed Premises is prohibited.

F. That all sanitary requirements shall also apply to any Occupational Licensee making a Retail Marijuana concentrate on the Licensed Premises.

G. Retail Marijuana Cultivation Facilities may only produce water based Retail Marijuana concentrates on its Licensed Premises and only in an area so designated clearly on the current diagram of the Licensed Premises. *See* Rule R 901- Business Records Required. A Retail Marijuana Cultivation Facility is prohibited from engaging in any other method of extraction.

Basis and Purpose – R 505

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-403(5), C.R.S. The purpose of this rule is to establish that Retail Marijuana Cultivation Facilities may provide Samples for testing and research purposes.

R 505 – Retail Marijuana Cultivation Facilities: Testing Requirements

A. Samples on Demand. A Retail Marijuana Cultivation Facility shall, upon request of the Division, submit a sufficient quantity of Retail Marijuana to a Retail Marijuana Testing Facility to enable laboratory or chemical analysis thereof. The Division will notify the Licensee of the results of the analysis.

B. Samples Provided for Testing. A Retail Marijuana Cultivation Facility may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. *See* Rule R 901 – Business Records Required.

R 600 Series – Retail Marijuana Products Manufacturing Facilities

Basis and Purpose – R 601

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-306(1)(j), 12-43.4-309(7)(a), 12-43.4-404(1)(a), 12-43.4-404(1)(b), and 12-43.4-404(6), C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Products Manufacturing Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 601 – Retail Marijuana Products Manufacturing Facilities: License Privileges

A. Privileges Granted. A Retail Marijuana Products Manufacturing Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturing Facility may share a location with a commonly owned Medical Marijuana-Infused Products Manufacturing Business. However, a separate license is required for each specific business or business entity, regardless of geographical location.

C. Sales Restricted. A Retail Marijuana Products Manufacturing Facility may only sell Retail Marijuana Product to Retail Marijuana Stores and to other Retail Marijuana Products Manufacturing Facilities.

D. Manufacture of Retail Marijuana Product Authorized. A Retail Marijuana Products Manufacturing Facility may manufacture, prepare, package, store, and label Retail Marijuana Product, whether in concentrated form or that are comprised of marijuana and other ingredients intended for use or consumption, such as edible products, ointments, or tinctures.

E. Location Prohibited. A Retail Marijuana Products Manufacturing Facility may not manufacture, prepare, package, store, or label Retail Marijuana Product in a location that is operating as a retail food establishment or a wholesale food registrant.

F. Samples Provided for Testing. A Retail Marijuana Products Manufacturing Facility may provide samples of its Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Products Manufacturing Facility shall maintain the testing results as part of its business books and records.

Basis and Purpose – R 602

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(e), 12-43.4-202(3)(a)(VI), 12-43.4-202(3)(a)(VII)(K), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(c)(V), 12-43.4-309(7)(a), 12-43.4-404(1)(c)(I), 12-43.4-404(1)(d), 12-43.4-404(1)(e)(I), 12-43.4-404(4), 12-43.4-404(5), 12-43.4-404(9), and 12-43.3-901(2)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturing Facility.

R 602 – Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts

A. Temporary Sales Limitation. From January 1, 2014 to September 30, 2014, a Retail Marijuana Products Manufacturing Facility shall not sell any of the Retail Marijuana that was cultivated in its commonly-owned Retail Marijuana Cultivation Facility to any other Retail Marijuana Establishment. Such Retail Marijuana shall be used solely in Retail Marijuana Product produced by the Retail Marijuana Products Manufacturing Facility.

B. Packaging and Labeling Standards Required. A Retail Marijuana Products Manufacturing Facility is prohibited from selling Retail Marijuana Product that are not properly packaged and labeled. *See* R 1000 Series – Labeling, Packaging, and Product Safety.

C. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule R 1004 – Labeling Requirements: Specific Requirements, Edible Retail Marijuana Product.

D. Sale to Consumer Prohibited. A Retail Marijuana Products Manufacturing Facility is prohibited from selling Retail Marijuana or Retail Marijuana Product to a consumer.

E. Consumption Prohibited. A Retail Marijuana Products Manufacturing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

F. Evidence of Excise Tax Paid. If an excise tax on Retail Marijuana is approved by voters in the 2013 general election, a Retail Marijuana Products Manufacturing Facility is prohibited from accepting Retail Marijuana from a Retail Marijuana Cultivation Facility or Retail Marijuana Manufacturing Facility Licensee unless the manufacturer has received evidence that any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S., was paid.

G. Adequate Care of Perishable Product. A Retail Marijuana Products Manufacturing Facility must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

H. Homogeneity of Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility must ensure that its manufacturing processes are designed so that the cannabinoid content of any Edible Retail Marijuana Product is homogenous.

Basis and Purpose – R 603

The statutory authority for this rule is found at subsections 12-43.4-202(1), 12-43.4-202(2)(b), and 12-43.4-404 (1)(b), 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 require all Retail Marijuana Products Manufacturing Facilities to track all inventory from the point it is received from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility, through any manufacturing processes, to the point of sale or transfer to another Retail Marijuana Establishment.

R 603 – Retail Marijuana Products Manufacturing Facility: Marijuana Inventory Tracking Solution (MITS)

Minimum Tracking Requirement. A Retail Marijuana Products Manufacturing Facility must use MITS to ensure its inventories are identified and tracked from the point they are transferred from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility through wholesale transaction or transfer. *See also* Rule R 309 – Marijuana Inventory Tracking Solution (MITS). A Retail Marijuana Products Manufacturing Facility must have the ability to reconcile its inventory records with MITS and the associated transaction history and sale receipts. *See also* Rule R 901 – Business Records Required.

1. A Retail Marijuana Products Manufacturing Facility is prohibited from accepting any Retail Marijuana or Retail Marijuana Product from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility without receiving a valid transport manifest generated from MITS.

2. A Retail Marijuana Products Manufacturing Facility must immediately input all Retail Marijuana and Retail Marijuana Product delivered to the Licensed Premises, accounting for all RFID tags, into MITS at the time of delivery from a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility.

3. A Retail Marijuana Products Manufacturing Facility must reconcile transactions to MITS at the close of business each day.

Basis and Purpose – R 604

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(VIII), 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 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. 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. 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 manufacturers 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.

B. 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 facility 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 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 facility 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 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 sanitizing agents registered with the Environmental Protection Agency shall be used in Retail Marijuana Products Manufacturing Facilities and used in accordance with labeled instructions;

11. That toxic cleaning compounds, sanitizing agents, solvents used in the production of Retail Marijuana concentrates, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of Retail Marijuana 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 facility's 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 facility. 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.

R 700 Series – Retail Marijuana Testing Facilities

Basis and Purpose – R 701

The statutory authority for this rule is found at subsections 12-43.3-402(6), 12-43.3-202(1)(b), 12-12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-309(7)(a), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), and section 12-43.4-405, C.R.S. The purpose of this rule is to establish that it is unlawful for a Retail Marijuana Testing Facility Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.

R 701 - Retail Marijuana Testing Facilities: License Privileges

A. Privileges Granted. A Retail Marijuana Testing Facility shall only exercise those privileges granted to it by the State Licensing Authority.

B. Licensed Premises. A separate License is required for each specific Retail Marijuana Testing Facility and only those privileges granted by the Retail Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.

C. Testing of Retail Marijuana and Retail Marijuana Product Authorized. A Retail Marijuana Testing Facility may accept Samples of Retail Marijuana or Retail Marijuana Product from Retail Marijuana Establishments for testing and research purposes only. The Division may require a Retail Marijuana Establishment to submit a sample of Retail Marijuana or Retail Marijuana Product to a Retail Marijuana Testing Facility upon demand.

D. Product Development Authorized. A Retail Marijuana Testing Facility may develop Retail Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 12-43.4-404, C.R.S. and Rule R 601 – Retail Marijuana Manufacturing Facilities: License Privileges.

E. Medical Marijuana Occupational License for Testing and Research. A Retail Marijuana Testing Facility that has applied for and obtained a Medical Marijuana Occupational License for Testing and Research may accept Samples of Medical Marijuana or Medical Marijuana-Infused Product from Medical Marijuana Businesses for testing and research purposes only.

F. Sending Samples to Other Licensed and Certified Retail Marijuana Testing Facility. A Retail Marijuana Testing Facility may send Samples to another Retail Marijuana Testing Facility for testing. All laboratory reports provided to a Retail Marijuana Establishment must identify the Retail Marijuana Testing Facility that actually conducted the test.

Basis and Purpose – R 702

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-405(3), and 12-43.3-901(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility.

R 702 –Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is an Owner of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, a Retail Marijuana Store, or a Medical Marijuana Business shall not be an Owner of a Retail Marijuana Testing Facility.

B. Sale of Retail Marijuana Prohibited. A Retail Marijuana Testing Facility is prohibited from selling, distributing, or transferring Retail Marijuana, Retail Marijuana Product, Medical Marijuana, or Medical Marijuana-Infused Product to another Retail Marijuana Establishment, a Medical Marijuana Business, or a consumer, except that a Retail Marijuana Testing Facility may transfer a Sample to another Retail Marijuana Testing Facility.

C. Destruction of Received Retail Marijuana. A Retail Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not transferred to another Retail Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule R 307 – Waste Disposal.

D. Consumption Prohibited. A Retail Marijuana Testing Facility shall not permit the consumption of marijuana or marijuana products on its Licensed Premises.

E. Sample Rejection. A Retail Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the sample may have been tampered with.

F. Retail Marijuana Establishment Requirements Applicable. A Retail Marijuana Testing Facility shall be considered Licensed Premises. A Retail Marijuana Testing Facility shall be subject to all requirements applicable to Retail Marijuana Establishments.

G. Retail Marijuana Testing Facility – MITS Required. A Retail Marijuana Testing Facility must use MITS to ensure its Samples are identified and tracked from the point they are transferred from a Retail Marijuana Establishment or Medical Marijuana Business through the point of destruction or disposal. *See also* Rule R 309 – Retail Marijuana Establishment: Marijuana Inventory Tracking Solution (MITS). The Retail Marijuana Testing Facility must have the ability to reconcile its Sample records with MITS and the associated transaction history. *See also* Rule R 901 – Business Records Required.

Basis and Purpose – R 703

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish a frame work for certification for Retail Marijuana Testing Facilities.

R 703 –Retail Marijuana Testing Facilities: Certification Requirements

A. Certification Types. A Retail Marijuana Testing Facility may only perform tests on Samples that the Retail Marijuana Testing Facility is certified by the Division to perform.

1. Residual solvents;
2. Poisons or Toxins;
3. Harmful Chemicals;

4. Dangerous Molds, Mildew or Filth;

5. Harmful Microbials, such as E. Coli or Salmonella;

6. Pesticides; and

7. THC and other Cannabinoid potency.

B. Certification Procedures. The Retail Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in proficiency testing, and ongoing compliance with the applicable requirements in this rule.

1. Certification Inspection. A Retail Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Retail Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, proficiency testing, quality control, quality assurance, security, chain of custody, specimen retention, space, records, and results reporting.

3. Personnel Qualifications

a. Laboratory Director. A Retail Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in order to obtain and maintain certification. *See* Rule R 704 – Retail Marijuana Testing Facilities: Personnel.

b. Employee Competency. A Retail Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Retail Marijuana Testing Facility must have a written procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign and date the revised version prior to use.

b. A Retail Marijuana Testing Facility must maintain a copy of all Standard Operating Procedures to include any revised copies for a minimum of three years. *See* Rule R 901 – Business Records Required.

5. Analytical Processes. A Retail Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Retail Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Retail Marijuana Testing Facility must successfully participate in a Division approved proficiency testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Retail Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Retail Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Retail Marijuana Testing Facility must establish a system to document the complete chain of custody for samples from receipt through disposal.

10. Space. A Retail Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.

11. Records. A Retail Marijuana Testing Facility must establish a system to retain and maintain records for a period not less than three years.

12. Results Reporting. A Retail Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner.

Basis and Purpose – R 704

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility.

R 704 –Retail Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.

2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in toxicology, analytical chemistry or diagnostic laboratory testing;

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in toxicology, analytical chemistry or diagnostic laboratory testing; or

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in toxicology, analytical chemistry or diagnostic laboratory testing.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule R 901 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in a Division approved proficiency testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process specimens, perform test procedures and report test results promptly and proficiently, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for specimen processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

D. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time experience performing toxicology, analytical chemistry, or diagnostic laboratory testing.

E. Laboratory Testing Analyst

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.

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

R 705 – Basis and Purpose

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish Standard Operating Procedure Manual standards for the operation of a Retail Marijuana Testing Facility.

R 705 –Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Specimen receiving;

2. Specimen accessioning;

3. Specimen storage;

4. Identifying and rejecting unacceptable specimens;

5. Recording and reporting discrepancies;

6. Security of specimens, aliquots and extracts and records;

7. Validating a new or revised method prior to testing specimens to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Aliquoting specimens to avoid contamination and carry-over;

9. Sample retention to assure stability for one year;

10. Disposal of specimens;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical Procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results? Are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and

21. Policies and procedures to follow when specimens are requested for referral and testing by another certified laboratory.

R 706 – Basis and Purpose

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Retail Marijuana Testing Facility.

R 706 –Retail Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Retail Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;
2. Perform and document preventive maintenance as required by the manufacturer;
3. Ensure that records are maintained and readily available to the staff operating the equipment;
4. Document the performance of new columns before use;
5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;
6. Establish criteria of acceptability for variances between different aliquots and different columns; and
7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Retail Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;
2. Document the changes of septa as specified in the Standard Operating Procedure;
3. Document liners being cleaned or replaced as specified in the Standard Operating Procedure;
4. Ensure that records are maintained and readily available to the staff operating the equipment;
5. Maintain records of mass spectrometric tuning;
6. Establish written criteria for an acceptable mass-spectrometric tune;
7. Document corrective actions if a mass-spectrometric tune is unacceptable;
8. Monitor analytic analyses to check for contamination and carry-over;
9. Use selected ion monitoring within each run to assure that the laboratory compare ion ratios and retention times between calibrators, controls and specimens for identification of an analyte;
10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;
12. Define the criteria for designating qualitative results as positive;
13. When a library is used to qualitatively match an analyte, the relative retention time and mass spectra from a known standard or control must be run on the same system before reporting the results; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject samples.

C. Immunoassays. A Retail Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;
2. Ensure that records are maintained and readily available to the staff operating the equipment;
3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a sample is not included within the types of samples approved by the manufacturer; and
4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Retail Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;
2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;
3. Include in their written procedure the storage of unused thin layer chromatographic plates;
4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;
5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;
6. Measure all appropriate RF values for qualitative identification purposes;
7. Use and record sequential color reactions, when applicable;
8. Maintain records of thin layer chromatographic plates; and
9. Analyze an appropriate matrix blank with each batch of specimens analyzed.

E. High Pressure Liquid Chromatography ("HPLC"). A Retail Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;
2. Ensure that records are maintained and readily available to the staff operating the equipment;
3. Monitor and document the performance of the HPLC instrument each day of testing;
4. Evaluate the performance of new columns before use;
5. Create written standards for acceptability when eluting solvents are recycled;
6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and
7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Retail Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;
2. Ensure that records are maintained and readily available to the staff operating the equipment;
3. Maintain records of mass spectrometric tuning;
4. Document corrective actions if a mass-spectrometric tune is unacceptable;
5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;
7. Compare two transitions and retention times between calibrators, controls and specimens within each run;
8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and
9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Other Analytical Methodology. A Retail Marijuana Testing Facility using other methodology or new methodology must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:
    a. Verification of Accuracy
    b. Verification of Precision
    c. Verification of Analytical Sensitivity
    d. Verification of Analytical Specificity
    e. Verification of the LOD
    f. Verification of the LOQ
    g. Verification of the Reportable Range
    h. Identification of Interfering Substances
2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing samples.

R 707 – Basis and Purpose

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish a proficiency testing program for Retail Marijuana Testing Facilities.

R 707 – Retail Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Retail Marijuana Testing Facility must participate in a Proficiency Testing program for each approved category in which it seeks certification.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Retail Marijuana Testing Facility must have successfully participated in a Proficiency Test in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Retail Marijuana Testing Facility must participate in the designated Proficiency Testing program with continued satisfactory performance as determined by the Division as part of certification.

D. Analyzing Proficiency Testing Samples. A Retail Marijuana Testing Facility must analyze Proficiency Test Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used for product testing.

E. Proficiency Testing Challenge Attestation. The laboratory director and all testing analysts that participated in a Proficiency Test must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Test results.

G. When Remedial Action Required. A Retail Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved during a Proficiency Test. Remedial action documentation must include a review of Samples tested and results reported since the last successful Proficiency Testing challenge.

H. What Constitutes Successful or Unsatisfactory Participation in Proficiency Testing Event. Successful participation is the positive identification of 80% of the target analytes that the Retail Marijuana Testing Facility reports to include quantitative results when applicable. Any false positive results reported will be considered an unsatisfactory score for the Proficiency Testing event.

I. Consequence of Unsuccessful Participation in Proficiency Testing Event. Unsuccessful participation in a Proficiency Test may result in limitation, suspension or revocation of certification.

R 708 – Basis and Purpose

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Retail Marijuana Testing Facility.

R 708 – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Retail Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

    1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

    2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

    3. Review of the performance of validated methods used by the Retail Marijuana Testing Facility to include calibration standards, controls and the Standard Operating Procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Retail Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

    1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

    2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

    3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

    4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

    5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

    6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

    7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the Standard Operating Procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the Standard Operating Procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current Standard Operating Procedures Manual for the test or tests to be performed.

R 709 – Basis and Purpose

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish chain of custody standards for a Retail Marijuana Testing Facility. In addition, it establishes the requirement that a Retail Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains.

R 709 –Retail Marijuana Testing Facilities: Chain of Custody

General Requirements. A Retail Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not be limited to;

1. Issue instructions for the minimum Sample requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;

3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;

5. Document all transfers of Samples, aliquots, and extracts referred to another certified Retail Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Samples;

10. Ensure Samples are stored appropriately; and

11. Document the disposal of Samples, aliquots, and extracts.

Basis and Purpose – R 710

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Testing Facility.

R 710 –Retail Marijuana Testing Facilities: Records Retention

A. General Requirement. A Retail Marijuana Testing Facility must maintain all required business records. *See* Rule R 901 - Business Records Required.

B. Specific Business Records Required: Three Year Retention. A Retail Marijuana Testing Facility must establish processes to preserve records for a minimum of three years that includes, but is not limited to;

   1. Test Results;

   2. Quality Control and Quality Assurance Records;

   3. Standard Operating Procedures;

   4. Personnel Records;

   5. Chain of Custody Records;

   6. Proficiency Testing Records; and

   7. Analytical Data to include printouts generated by the instrumentation.

C. Specific Business Records Required: Five Year Retention. A Retail Marijuana Testing Facility must establish processes to preserve records for a minimum of five years of testing to include, accession numbers, specimen type, raw data of calibration standards and curves, controls and subject results, final and amended reports, acceptable reference range parameters, and identification of analyst and date of analysis.

Basis and Purpose – R 711

The statutory authority for this rule is found at subsection 12-43.4-202(3)(a)(IV) and section 12-43.4-405, C.R.S. The purpose of this rule is to establish reporting standards for a Retail Marijuana Testing Facility.

R 711 –Reporting

Required Procedures. A Retail Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise and scientifically valid prior to reporting that include the following processes;

1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;

2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the sample in duplicate prior to reporting a quantitative result;

3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;

4. Adequately document the available external chain of custody information;

5. Ensure all final reports contain the name and location of the Retail Marijuana Testing Facility Licensee, name and unique identifier of sample, submitting client, sample received date, date of report, type of specimen tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies;

6. Provide the final report to the submitting client in a timely manner; and

7. Provide copies of final reports to the Division when results of tested samples exceed maximum levels of allowable contamination within 72 hours of obtaining the final result.

R 800 Series – Transport and Storage

Basis and Purpose – R 801

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(c)(IV), 12-43.4-202(3)(a)(X), 12-43.4-309(4), 12-43.3-310(5), and 12-43.4-401(1), C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Retail Marijuana and Retail Marijuana Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

R 801 – Transport of Retail Marijuana and Retail Marijuana Product

A. Persons Authorized to Transport. The only Persons authorized to transport Retail Marijuana or Retail Marijuana Product are those licensed by the State Licensing Authority pursuant to sections 12-43.3-401 (when applicable) and 12-43.4-401, C.R.S.; including those holding Owner and Occupational Licenses. An individual who does not possess a current and valid Owner or Occupational License from the State Licensing Authority may not transport Retail Marijuana or Retail Marijuana Product between Licensed Premises.

B. Transport Between Licensed Premises. Retail Marijuana and Retail Marijuana Product shall only be transported between Licensed Premises and between Licensed Premises and a permitted off-premises storage facility. Licensees transporting Retail Marijuana and Retail Marijuana Product are responsible for ensuring that all Retail Marijuana and Retail Marijuana Product are secured at all times during transport.

C. MITS-Generated Transport Manifest Required. A Licensee may only transport Retail Marijuana or Retail Marijuana Product if he or she has a hard copy of a MITS-generated transport manifest that contains all the information required by this rule and shall be in the format prepared by the State Licensing Authority. A Licensee may transport Retail Marijuana or Retail Marijuana Product from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific licensed locations.

D. Motor Vehicle Required. Transport of Retail Marijuana and Retail Marijuana Product shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee.

E. Documents Required During Transport. Transport of Retail Marijuana or Retail Marijuana Product shall be accompanied by a copy of the originating Retail Marijuana Establishment's business license, the driver's valid Owner or Occupational License, the driver's valid motor vehicle operator's license, and all required vehicle registration information.

F. Use of Colorado Roadways. State law does not prohibit the transport of Retail Marijuana and Retail Marijuana Product on any public road within the state of Colorado as authorized in this rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Retail Marijuana or Retail Marijuana Product.

G. Preparation of Retail Marijuana and Retail Marijuana Product for Transport

1. Final Weighing and Packaging. A Retail Marijuana Establishment shall comply with the specific rules associated with the final weighing and packaging of Retail Marijuana and Retail Marijuana Product before such items are prepared for transport pursuant to this rule. The scale used to weigh product to be transported shall be certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S.

2. Preparation in Limited Access Area. Retail Marijuana and Retail Marijuana Product shall be prepared for transport in a Limited Access Area, including the packing and labeling of Shipping Containers.

3. Shipping Containers. All Shipping Containers must be affixed with an RFID tag prior to transport. Sealed packages or Containers may be placed in larger Shipping Containers, so long as such Shipping Containers are labeled in accordance with the R 1000 Series. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, local jurisdictions, and state and local law enforcement agency for a purpose authorized by the Retail Code or for any other state or local law enforcement purpose.

H. Creation of Records and Inventory Tracking

1. Use of MITS-Generated Transport Manifest. Licensees who transport Retail Marijuana or Retail Marijuana Product shall create a MITS-generated transport manifest to reflect inventory that leaves the Licensed Premises for destinations to other licensed locations. The transport manifest may either reflect all deliveries for multiple locations within a single trip or separate transport manifests may reflect each single delivery. In either case, no inventory shall be transported without a MITS-generated transport manifest.

2. Copy of Transport Manifest to Receiver. A Licensee shall provide a copy of the transport manifest to each Retail Marijuana Establishment receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate MITS-generated transport manifest for each receiving Retail Marijuana Establishment.

3. The MITS-generated transport manifest shall include the following:

    a. Departure date and approximate time of departure;

    b. Name, location address, and license number of the originating Retail Marijuana Establishment;

    c. Name, location address, and license number of the destination Retail Marijuana Establishment(s);

    d. Product name and quantities (by weight or unit) of each product to be delivered to each specific destination location(s);

    e. Arrival date and estimated time of arrival;

    f. Delivery vehicle make and model and license plate number; and

g. Name, Occupational License number, and signature of the Licensee accompanying the transport.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. *See* Rule R 901 – Business Records Required.

1. Responsibilities of Originating Licensee. Prior to departure, the originating Retail Marijuana Establishment shall adjust its records to reflect the removal of Retail Marijuana or Retail Marijuana Product. The scale used to weigh product to be transported shall be certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S. Entries to the records shall note the MITS-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

2. Responsibilities of Receiving Licensee. Upon receipt, the receiving Licensee shall ensure that the Retail Marijuana or Retail Marijuana Product received are as described in the transport manifest and shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S. Entries to the inventory records shall note the MITS-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

3. Discrepancies. A receiving Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in MITS and in any relevant business records.

K. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product during transport.

Basis and Purpose – R 802

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(X), 12-43.4-701(2), C.R.S. The purpose of this rule is to establish that Retail Marijuana or Retail Marijuana Product may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit. Rule 802.G was amended to require Retail Marijuana Establishments to submit proof of local approval or acknowledgement with an application for an off-premises storage facility. This change was made due to comments received from a local jurisdiction representative.

R 802 – Off-Premises Storage of Retail Marijuana and Retail Marijuana Product

A. Off-Premises Storage Permit Authorized. A Retail Marijuana Establishment may only store Retail Marijuana or Retail Marijuana Product in its Licensed Premises or in its one permitted off-premises storage facility.

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

C. Extension of Licensed Premises. A permitted off-premises storage facility shall constitute an extension of the Retail Marijuana Establishment's Licensed Premises, subject to all applicable Retail Marijuana regulations.

D. Limitation on Inventory to be Stored. The Retail Marijuana Establishment may only have upon the permitted off-premises storage facility Retail Marijuana or Retail Marijuana Product that are part of its finished goods inventory. The Licensee may not share the premises with, or store inventory belonging to, a Medical Marijuana Business or Retail marijuana Establishment that is not commonly-owned.

E. Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Retail Marijuana Establishment may not sell, cultivate, manufacture, process, test, or consume any Retail Marijuana or Retail Marijuana Product within the premises of the permitted off-premises storage facility.

F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Retail Marijuana Establishment's license must be displayed in a prominent place within the permitted off-premises storage facility.

G. Local Jurisdiction Approval

1. Prior to submitting an application for an off-premises storage facility permit, the Retail Marijuana Establishment must obtain approval or acknowledgement from the relevant local jurisdiction.

2. A copy of the relevant local jurisdiction's approval or acknowledgement must be submitted by the Retail Marijuana Establishment in conjunction with its application for an off-premises storage facility.

3. No Retail Marijuana or Retail Marijuana Product may be stored within a permitted storage facility until the relevant local jurisdiction has been provided a copy of the off-premises storage facility permit.

4. Any off-premises storage permit issued by the Division shall be conditioned upon the Retail Marijuana Establishment's receipt of all required local jurisdiction approvals or acknowledgments.

H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. See Rules R 305 – Security Alarm and Lock Standards and R 306 – Video Surveillance.

I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule R 801 - Transport of Retail Marijuana and Retail Marijuana Product when transporting any Retail Marijuana or Retail Marijuana Product to a permitted off-premises storage facility.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Retail Marijuana Establishment shall utilize MITS to track its inventories from the point of transfer to or from a permitted off-premises storage facility. *See* Rules R 309 – Retail Marijuana Establishment: Marijuana Inventory Tracking Solution (MITS) and R 901 – Business Records Required.

K. MITS Access and Scale. Every permitted off-premises storage facility must have a MITS terminal and a scale certified in accordance with measurement standards established in Article 14 of Title 35, C.R.S.

L. Adequate Care of Perishable Retail Marijuana Product. A Retail Marijuana Establishment must provide adequate refrigeration for perishable Retail Marijuana Product and shall utilize adequate storage facilities and transport methods.

M. Consumption Prohibited. A Retail Marijuana Establishment shall not permit the consumption of marijuana or marijuana Product on the premises of its permitted off-premises storage facility.

R 900 Series – Business Records

Basis and Purpose – R 901

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XII), and 12-43.4-701(1), and section 12-43.4-310, C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. Rule R 901.B was added due to written commentary received from an industry representative.

R 901 – Business Records Required

A. General Requirements

1. A Retail Marijuana Establishment must maintain the information required in this rule in a format that is readily understood by a reasonably prudent business person.

2. Each Retail Marijuana Establishment shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

    a. On premises records: The Retail Marijuana Establishment's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times.

    b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.

3. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:

    a. Current Employee List – This list must provide the full name and Occupational License number of each employee and all non-employee Owners, who work at a Retail Marijuana Establishment.

    b. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Retail Marijuana Establishment must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.

    c. Advertising Records - All records related to Advertising and marketing, including, but not limited to, audience composition data.

    d. Licensed Premises – Diagram of all approved Limited Access Areas and any permitted off-premises storage facilities.

    e. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.

f. All records normally retained for tax purposes.

B. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.

C. Violation Affecting Public Safety. Violation of this rule may constitute a license violation affecting public safety.

D. Records Related to Inventory Tracking. A Retail Marijuana Establishment must maintain accurate and comprehensive inventory tracking records that account for, reconcile and evidence all inventory activity for Retail Marijuana from either seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is destroyed or sold to another Retail Marijuana Establishment or a consumer.

E. Records Related to Transport. A Retail Marijuana Establishment must maintain adequate records for the transport of all Retail Marijuana and Retail Marijuana Product. *See* Rule R 801 – Transport of Retail Marijuana and Retail Marijuana Product.

F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

Basis and Purpose – R 902

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(a)(XIII), C.R.S. A Retail Marijuana Establishment must collect and remit sales tax on all retail sales made pursuant to the licensing activities. The purpose of this rule is to clarify when such taxes must be remitted to the Colorado Department of Revenue.

R 902 – Reporting and Transmittal of Taxes

A. Sales and Use Tax Returns Required. All state and state-collected sales and use tax returns must be filed, and all taxes must be remitted to the Department of Revenue, on or before the 20th day of the month following the reporting month. For example, a January return and remittance will be due to the Department of Revenue by February 20th. If the due date (20th of the month) falls on a weekend or holiday, the next business day is considered the due date for the return and remittance.

B. Excise and Retail Marijuana Sales Tax Returns Required. If an excise and an additional sales tax on Retail Marijuana are approved by voters in the 2013 general election, a Retail Marijuana Establishment shall submit any applicable tax returns and remit any payments due pursuant to Article 28.8 of Title 39, C.R.S.

C. Proof of Tax Remittance Required. If an excise and an additional sales tax on Retail Marijuana are approved by voters in the 2013 general election, all state tax payments shall require proof of remittance with the State Licensing Authority. A Retail Marijuana Cultivation Facility must maintain records evidencing the payment of all required excise taxes. Proof of retail sales taxes shall be identified in required tax records, tracking systems, and sales receipts provided to consumers.

Basis and Purpose – R 903

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XII), and 12-43.4-701(1), C.R.S. The Retail Code mandates that a Retail Marijuana Establishment must pay for an audit when the State Licensing Authority deems an audit necessary. This rule explains when an 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 903 – Independent Audit May Be Required

A. State Licensing Authority May Require Independent Audit

1. When the State Licensing Authority deems it necessary, it may require a Retail Marijuana Establishment to undergo an audit by an independent accountant. The scope of the audit may include, but need not be limited, to financial transactions and inventory control measures.

2. In such instances, the Division may attempt to mutually agree upon the selection of the independent accountant with a Retail Marijuana Establishment. However, the Division always retains the right to select the independent accountant regardless of whether mutual agreement can be reached. The independent accountant shall be a certified public accountant licensed by, and in good standing with, the Colorado State Board of Accountancy.

3. The Retail Marijuana Establishment will be responsible for all direct costs associated with the independent audit.

B. When Independent Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent accountant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

1. A Retail Marijuana Establishment does not provide requested records to the Division;

2. The Division has reason to believe that the Retail Marijuana Establishment does not properly maintain its business records;

3. A Retail Marijuana Establishment has a prior violation related to recordkeeping or inventory control;

4. A Retail Marijuana Establishment has a prior violation related to diversion.

5. As determined by the Division, the scope of an audit conducted by the Division would be so extensive as to jeopardize the regular duties and responsibilities of the Division's audit or enforcement staff.

C. Compliance Required. A Retail Marijuana Establishment must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo and audit in accordance with this rules.

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

Basis and Purpose – R 904

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(IX), and 12-43.4-309(11), C.R.S. The State Licensing Authority must be able to immediately access information regarding a Retail Marijuana Establishment's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.

R 904 – Manager Change Must Be Reported

A. When Required. A Retail Marijuana Establishment shall provide the Division a written report within seven days after any change in manager occurs.

B. Licensee Must Maintain Record of Reported Change. A Retail Marijuana Establishment must also maintain a copy of this written report with its business records.

C. Consequence of Failure to Report. Failure to report a change in a timely manner may result in discipline.

R 1000 Series – Labeling, Packaging, and Product Safety

Basis and Purpose – R 1001

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.3-202(3)(c)(III), C.R.S. The State Licensing Authority finds it essential to regulate and establish labeling and secure packaging requirements for Retail Marijuana, Retail Marijuana concentrates, and Retail Marijuana Product. The purpose of this rule, and the rules in this series, is to ensure that all Retail Marijuana and Retail Marijuana Product are sold and delivered to lawful consumers in packaging that is not easily opened by children. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors.

R 1001 – Labeling and Packaging Requirements: General Applicability

A. Ship Product Ready for Sale. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility may package smaller quantities of Retail Marijuana, Retail Marijuana concentrates, and Retail Marijuana Product in a Container prior to transport, provided the Containers are placed within a Shipping Container. See Rule R 309 – Marijuana Inventory Tracking Solution (MITS) and Rule R 801 – Transport of Retail Marijuana and Retail Marijuana Product.

B. Inventory Tracking Compliance.

1. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must package all Retail Marijuana, Retail Marijuana concentrates, and Retail Marijuana Product in accordance with all MITS rules and procedures.

2. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must place an RFID tag on every Shipping Container holding Retail Marijuana, Retail Marijuana concentrates, or Retail Marijuana Product prior to transport or transfer of possession to another Retail Marijuana Establishment. *See* Rule R 309 – Marijuana Inventory Tracking Solution (MITS) and Rule R 801 – Transport of Retail Marijuana and Retail Marijuana Product.

C. Packaging May Not Be Designed to Appeal to Children. A Retail Marijuana Establishment shall not place any content on a Container holding Retail Marijuana, Retail Marijuana concentrates, or a Retail Marijuana Product in a manner that specifically targets individuals under the age of 21, including but not limited to, cartoon characters or similar images.

D. Health and Benefit Claims. Labeling text on a Container may not make any false or misleading statements regarding health or physical benefits to the consumer.

E. Font Size. Labeling text on a Container must be no smaller than 1/16 of an inch.

F. Use of English Language. Labeling text on a Container must be clearly written or printed and in the English language.

G. Unobstructed and Conspicuous. Labeling text on a Container must be unobstructed and conspicuous. A Licensee may affix multiple labels to a Container, provided that none of the information required by these rules is completely obstructed.

Basis and Purpose – R 1002

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VII), 12-43.4-403(5), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility label each Shipping Container and Container of Retail Marijuana with all of the necessary and relevant information for the receiving Retail Marijuana Establishment. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to all Retail Marijuana as this is a public health and safety concern.

R 1002 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility

A. Packaging of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that all Retail Marijuana is placed within a sealed, tamper-evident Shipping Container that has no more than one pound of Retail Marijuana within it prior to transport or transfer of any Retail Marijuana to another Retail Marijuana Establishment.

B. Labeling of Retail Marijuana Shipping Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every Shipping Container holding Retail Marijuana that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every Shipping Container holding Retail Marijuana:

    a. The license number of the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

    b. The Harvest Batch Number(s) assigned to the Retail Marijuana;

    c. The net weight, using a standard of measure compatible with MITS, of the Retail Marijuana prior to its placement in the Shipping Container; and

    d. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana.

2. Required Statement When Tests are Performed. If a Retail Marijuana Testing Facility(-ies) conducted a test(s) on a Harvest Batch, then every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to a Shipping Container holding any Retail Marijuana from that Harvest Batch with the results of that test. The type of information that must be labeled shall be limited to the following:

    a. A cannabinoid potency profile expressed as a range of percentages that extends from the lowest percentage to highest percentage of concentration for each cannabinoid listed from

every test conducted on that strain of Retail Marijuana cultivated by the same Retail Marijuana Cultivation Facility within the last three months.

b. A statement that the product was tested for contaminants, provided that tests for the following contaminants were conducted: (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides, and fungicides, and (4) harmful chemicals.

3. Required Statement When Potency Tests Are Not Performed. If a Retail Marijuana Testing Facility(ies) did not test a Harvest Batch for potency, then every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to a Shipping Container holding any Retail Marijuana from that Harvest Batch with following the statement "The marijuana contained within this package has not been tested for potency, consume with caution."

4. Required Statement When Contaminant Tests Are Not Performed. If a Retail Marijuana Testing Facility(-ies) did not test a Harvest Batch for (1) molds, mildew and filth; (2) microbials, (3) herbicides, pesticides, and fungicides, and (4) harmful chemicals, then every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to a Shipping Container holding any Retail Marijuana from that Harvest Batch with the following statement: "The marijuana contained within this package has not been tested for contaminants."

C. Labeling of Retail Marijuana Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility packages Retail Marijuana within a Container that is then placed within a Shipping Container, each Container must be affixed with a label(s) containing all of the information required by Rule R 1002.B, except that the net weight statement required by Rule R 1002.B.1.c shall be based upon the weight in the Container and not the Shipping Container.

Basis and Purpose – R 1003

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VII), 12-43.4-403(5), 12-43.4-404(1)(e)(II), 12-43.4-404(1)(e)(III), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility labels each Shipping Container and Container of Retail Marijuana concentrates with all of the necessary and relevant information for the receiving Retail Marijuana Establishment. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to all Retail Marijuana concentrates as this is a public health and safety concern.

R 1003 – Packaging and Labeling of Retail Marijuana Concentrates by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility.

A. Packaging of Retail Marijuana Concentrates by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that all Retail Marijuana concentrates are placed within a sealed, tamper-evident Shipping Container that has no more than one pound of Retail Marijuana concentrate within it prior to transport or transfer to another Retail Marijuana Establishment.

B. Labeling Retail Marijuana Concentrate Shipping Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every Shipping Container holding a Retail Marijuana concentrate that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every Shipping Container holding a Retail Marijuana concentrate:

    a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana concentrate was grown;

    b. The license number of the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana concentrate;

    c. The Production Batch Number assigned to the Retail Marijuana concentrate contained within the Shipping Container;

    d. The net weight, using a standard of measure compatible with MITS, of the Retail Marijuana concentrate prior to its placement in the Shipping Container;

    e. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana concentrate contained; and

    f. A complete list of solvents and chemicals used to create the Retail Marijuana concentrate.

2. Required Statement When Contaminant Tests are Performed. Every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to a Shipping Container in which a Retail Marijuana concentrate is placed that contains a statement asserting that the Retail Marijuana concentrate within was tested for contaminants and the results of those tests, if:

    a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana concentrate for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals; and

    b. A Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate for residual solvents, poisons or toxins.

3. Required Statement When Potency Testing is Performed. If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate within a Shipping Container for potency, then every Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Shipping Container with a cannabinoid potency profile expressed as a percentage.

4. Required Statement When Contaminant Tests Are Not Performed. Every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Shipping Container that holds a Retail Marijuana concentrate with the statement:

"The marijuana concentrate contained within this package has not been tested for contaminants." unless:

a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana concentrate for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals; and

b. A Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate for residual solvents, poisons or toxins.

5. Required Statement When Potency Testing Is Not Performed. If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana concentrate within a Shipping Container for potency, then every Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturing Facility must ensure a label is affixed to the Shipping Container with the statement: "The marijuana concentrate contained within this package has not been tested for potency, consume with caution."

C. Labeling of Retail Marijuana Concentrate Containers by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility packages a Retail Marijuana concentrate within a Container that is then placed within a Shipping Container, each Container must be affixed with a label(s) containing all of the information required by Rule R 1003.B, except that the net weight statement required by Rule R 1003.B.1.d shall be based upon the weight in the Container and not the Shipping Container.

Basis and Purpose – R 1004

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), and 12-43.4-202(3)(a)(VII), 12-43.4-404(6), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that every Retail Marijuana Products Manufacturing Facility labels each Shipping Container and Container holding a Retail Marijuana Product with all of the necessary and relevant information for the receiving Retail Marijuana Establishment. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Retail Marijuana Product as this is a public health and safety concern.

R 1004 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

A. Packaging of Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

1. Every Retail Marijuana Products Manufacturing Facility must ensure that each Retail Marijuana Product is individually packaged within a Container prior to transport or transfer to another Retail Marijuana Establishment.

2. Every Retail Marijuana Products Manufacturing Facility must ensure that each Container holding a Retail Marijuana Product is placed in a Shipping Container prior to transport or transfer to another Retail Marijuana Establishment.

B. Labeling of Retail Marijuana Product Containers by a Retail Marijuana Products Manufacturing Facility. A Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every Container

holding a Retail Marijuana Product that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information (General). Every Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every Container holding a Retail Marijuana Product:

    a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Product was grown;

    b. The Production Batch Number(s) of Retail Marijuana concentrate(s) used in the production of the Retail Marijuana Product.

    c. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product.

    d. The Production Batch Number(s) assigned to the Retail Marijuana Product.

    e. A statement about whether the Container is Child-Resistant.

    f. A clear set of usage instructions for non-Edible Retail Marijuana Product.

    g. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Product.

    h. A complete list of solvents and chemicals used in the creation of any Retail Marijuana concentrate that was used to produce the Retail Marijuana Product.

2. Required Information (Edible Retail Marijuana Product). Every Retail Marijuana Products Manufacturing Facility must ensure that the following information or statement is affixed to every Container holding an Edible Retail Marijuana Product:

    a. Ingredient List. A list of all ingredients used to manufacture the Edible Retail Marijuana Product; which may include a list of any potential allergens contained within.

    b. Statement Regarding Refrigeration. If the Retail Marijuana Product is perishable, a statement that the Retail Marijuana Product must be refrigerated.

    c. Serving Size Statement. "The standardized serving size for this product includes no more than ten milligrams of active THC."

    d. Statement of Expiration Date. A product expiration date, for perishable Retail Marijuana Product, upon which the product will no longer be fit for consumption, or a use-by-date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a Container holding a Retail Marijuana Product, a Licensee shall not alter that date or affix a new label with a later use-by or expiration date.

3. Permissive Information (Edible Retail Marijuana Product). Every Retail Marijuana Products Manufacturing Facility may affix a label(s) with the following information to every Container holding an Edible Retail Marijuana Product:

a. The Retail Marijuana Product's compatibility with dietary restrictions; and

b. A nutritional fact panel that, if included, must be based on the number of THC servings within the Container.

4. Required Statement When Contaminant Tests are Performed. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container holding a Retail Marijuana Product with a statement asserting that the Retail Marijuana Product was tested for contaminants and the results of those tests, if:

   a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;

   b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and

   c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

5. Required Statement if Cannabinoid Potency is Tested. If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana Product within the Container for potency, then every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container with a potency profile expressed in milligrams and the number of THC servings within the Container.

6. Required Statement When No Containment Testing is Completed. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container that holds a Retail Marijuana Product with the statement: "The marijuana product contained within this package has not been tested for contaminants." unless:

   a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;

   b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and

   c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

7. Required Statement When No Potency Testing Completed. If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana Product within a Container for potency, then every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container with the a statement: "The marijuana product contained within this package has not been tested for potency, consume with caution."

C. Labeling of Retail Marijuana Product Shipping Containers by Retail Marijuana Products Manufacturing Facility. Prior to transporting or transferring any Retail Marijuana Product to another Retail Marijuana Establishment, a Retail Marijuana Manufacturing Products Facility must ensure that a label is affixed to a Shipping Container holding Retail Marijuana Product that includes all of the information required by this rule. A Retail Marijuana Products Manufacturing Facility must include the following information on every Shipping Container:

1. The number of Containers holding a Retail Marijuana Product within the Shipping Container; and

2. The license number of the Retail Marijuana Products Manufacturing Facility(-ies) that produced the Retail Marijuana Product within the Shipping Container.

Basis and Purpose – R 1005

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), 12-43.4-402(4), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that the labeling on each Container of Retail Marijuana includes necessary and relevant information for consumers, does not include health and physical benefit claims, is easily accessible to consumers, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to all Retail Marijuana as this is a public health and safety concern.

R 1005 – Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store

A. Packaging of Retail Marijuana by a Retail Marijuana Store. A Retail Marijuana Store must ensure that all Retail Marijuana is placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Retail Marijuana Store must place the Container within an Exit Package that is Child-Resistant

B. Labeling of Retail Marijuana by a Retail Marijuana Store. A Retail Marijuana Store must affix all of the information required by this rule to every Container in which Retail Marijuana is placed prior to sale to a consumer:

1. A Retail Marijuana Store must include the following information on every Container:

a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana was grown;

b. The license number of the Retail Marijuana Store that sold the Retail Marijuana to the consumer;

c. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Store that sold the Retail Marijuana to the consumer. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with

this rule. The Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol and make such information available to the State Licensing Authority upon request;

d. The Harvest Batch Number(s) assigned to the Retail Marijuana within the Container;

e. The date of sale to the consumer;

f. The net weight, in grams to at least the tenth of a gram, of the Retail Marijuana prior to its placement in the Container;

g. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch;

h. The following warning statements:

i. "There may be health risks associated with the consumption of this product."

ii. "This product is intended for use by adults 21 years and older. Keep out of the reach of children."

iii. "This product is unlawful outside the State of Colorado."

iv. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."

v. "Do not drive or operate heavy machinery while using marijuana."

i. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana.

2. Required Statement When Tests are Performed. If a Retail Marijuana Testing Facility(-ies) conducted a test(s) on a Harvest Batch, then a Retail Marijuana Store must ensure that a label is affixed to a Container holding any Retail Marijuana from that Harvest Batch with the results of that test. The type of information that must be labeled shall be limited to the following:

a. A cannabinoid potency profile expressed as a range of percentages that extends from the lowest percentage to highest percentage of concentration for each cannabinoid listed from every test conducted on that strain of Retail Marijuana cultivated by the same Retail Marijuana Cultivation Facility within the last three months.

b. A statement that the product was tested for contaminants, provided that tests for the following contaminants were conducted: (1) molds, mildew and filth; (2) microbials, (3) herbicides, pesticides, and fungicides, and (4) harmful chemicals.

3. Required Statement When Potency Tests Are Not Performed. If a Retail Marijuana Testing Facility(ies) did not test a Harvest Batch for potency, then a Retail Marijuana Store must ensure

that a label is affixed to a Container holding any Retail Marijuana from that Harvest Batch with following the statement: "The marijuana contained within this package has not been tested for potency, consume with caution."

4. Required Statement When Contaminant Tests Are Not Performed. If a Retail Marijuana Testing Facility(-ies) did not test a Harvest Batch for (1) molds, mildew and filth; (2) microbials, (3) herbicides, pesticides, and fungicides, and (4) harmful chemicals, then a Retail Marijuana Store must ensure that a label is affixed to a Container holding any Retail Marijuana from that Harvest Batch with the following statement: "The marijuana contained within this package has not been tested for contaminants."

Basis and Purpose – R 1006

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), 12-43.4-402(4), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that the labeling on each Container holding a Retail Marijuana Product includes necessary and relevant information for consumers, does not include health and physical benefit claims, is easily accessible to consumers, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Retail Marijuana Product as this is a public health and safety concern.

R 1006 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

A. Packaging of Retail Marijuana Product by a Retail Marijuana Store. A Retail Marijuana Store must ensure that each Retail Marijuana Product is placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Retail Marijuana Store must place the Container within an Exit Package that is Child-Resistant.

B. Labeling of Retail Marijuana Product by a Retail Marijuana Store. Every Retail Marijuana Store must ensure that a label(s) is affixed to every Container holding a Retail Marijuana Product that includes all of the information required by this rule prior to sale to a consumer:

1. Required Information (General). Every Retail Marijuana Store must ensure the following information is affixed to every Container holding a Retail Marijuana Product:

a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Product was grown;

b. The Production Batch Number(s) assigned to the Retail Marijuana concentrate used to produce the Retail Marijuana Product;

c. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product;

d. The Production Batch Number(s) assigned to the Retail Marijuana Product;

e. The license number of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer;

f. A statement about whether the Container is Child-Resistant;

g. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule. The Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol and make such information available to the State Licensing Authority upon request;

h. The date of sale to the consumer;

i. The following warning statements:

   i. "There may be health risks associated with the consumption of this product."

   ii. "This product is intended for use by adults 21 years and older. Keep out of the reach of children."

   iii. "This product is unlawful outside the State of Colorado."

   iv. "This product is infused with marijuana."

   v. "This product was produced without regulatory oversight for health, safety, or efficacy."

   vi. "The intoxicating effects of this product may be delayed by two or more hours."

   vii. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."

   viii. "Do not drive a motor vehicle or operate heavy machinery while using marijuana."

j. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch;

k. A clear set of instructions for proper usage for non-Edible Retail Marijuana Product;

l. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Product; and

m. A complete list of solvents and chemicals used in the creation of any Retail Marijuana concentrate used in the produce of the Retail Marijuana Product.

2. Required Information (Edible Retail Marijuana Product). Every Retail Marijuana Store must ensure that the following information or statement is affixed to every Container holding an Edible Retail Marijuana Product:

    a. Ingredient List. A list of all ingredients used to manufacture the Edible Retail Marijuana Product; which may include a list of any potential allergens contained within.

    b. Statement Regarding Refrigeration. If the Retail Marijuana Product is perishable, a statement that the Retail Marijuana Product must be refrigerated.

    c. Serving Size Statement. "The standardized serving size for this product includes no more than ten milligrams of active THC."

    d. Statement of Expiration Date. A product expiration date, for perishable Retail Marijuana Product, upon which the product will no longer be fit for consumption, or a use-by-date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a Container holding a Retail Marijuana Product, a Licensee shall not alter that date or affix a new label with a later use-by or expiration date.

3. Permissive Information (Edible Retail Marijuana Product). Every Retail Marijuana Store may affix a label(s) with the following information to every Container holding an Edible Retail Marijuana Product:

    a. The Retail Marijuana Product's compatibility with dietary restrictions; and

    b. A nutritional fact panel that, if included, must be based on the number of THC servings within the Container.

4. Required Statement When Contaminant Tests are Performed. Every Retail Marijuana Store must ensure that a label is affixed to each Container holding a Retail Marijuana Product with a statement asserting that the Retail Marijuana Product was tested for contaminants and the results of those tests, if:

    a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;

    b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and

    c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

5. Required Statement if Cannabinoid Potency is Tested. If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana Product within the Container for potency, then every

Retail Marijuana Store must ensure that a label is affixed to the Container with a potency profile expressed milligrams and the number of THC servings within the Container.

6. Required Statement When No Containment Testing is Completed. Every Retail Marijuana Store must ensure that a label is affixed to each Container that holds a Retail Marijuana Product with the statement: "The marijuana product contained within this package has not been tested for contaminants." unless:

    a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;

    b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and

    c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

7. Required Statement When No Potency Testing Completed. If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana Product within a Container for potency, then every Retail Marijuana Store must ensure that a label is affixed to the Container with the a statement: "The marijuana product contained within this package has not been tested for potency, consume with caution."

Basis and Purpose – R 1007

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), 12-43.4-402(4), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that the labeling on each Container holding a Retail Marijuana concentrate includes necessary and relevant information for consumers, does not include health and physical benefit claims, is easily accessible to consumers, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Retail Marijuana concentrate as this is a public health and safety concern.

R 1007 – Packaging and Labeling of Retail Marijuana Concentrates by a Retail Marijuana Store

A. Packaging of Retail Marijuana Concentrates by a Retail Marijuana Cultivation Facility. A Retail Marijuana Store must ensure that all Retail Marijuana concentrates are placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Retail Marijuana Store must place the Container within an Exit Package that is Child-Resistant.

B. Labeling of Retail Marijuana Concentrates by Retail Marijuana Stores. Every Retail Marijuana Store must ensure that a label(s) is affixed to every Container holding Retail Marijuana concentrate that includes all of the information required by this rule prior to sale to a consumer:

1. Every Retail Marijuana Store must ensure the following information is affixed to every Container holding a Retail Marijuana concentrate:

a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana concentrate within the Container was grown;

b. The license number of the Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana concentrate;

c. The Production Batch Number assigned to the Retail Marijuana concentrate;

d. The license number of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer;

e. The net weight, in grams to at least the tenth of a gram, of the Retail Marijuana concentrate prior to its placement in the Container;

f. The date of sale to the consumer;

g. The following warning statements:

i. "There may be health risks associated with the consumption of this product."

ii. "This product is intended for use by adults 21 years and older. Keep out of the reach of children."

iii. "This product is unlawful outside the State of Colorado."

iv. "This product contains marijuana."

v. "This product was produced without regulatory oversight for health, safety, or efficacy."

vi. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."

vii. "Do not drive a motor vehicle or operate heavy machinery while using marijuana."

h. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch;

i. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana concentrate; and

j. A complete list of solvents and chemicals used to produce the Retail Marijuana Concentrate.

2. Every Retail Marijuana Store must ensure that a label is affixed to a Container in which a Retail Marijuana concentrate is placed that contains a statement asserting that the Retail Marijuana concentrate within was tested for contaminants and the results of those tests, if:

   a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana concentrate for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals; and

   b. A Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate for residual solvents, poisons or toxins.

3. Required Statement When Potency Testing is Performed. If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate within a Container for potency, then every Retail Marijuana Store must ensure that a label is affixed to the Shipping Container with a cannabinoid potency profile expressed as a percentage.

4. Required Statement When Contaminant Tests Are Not Performed. Every Retail Marijuana Store must ensure that a label is affixed to each Container that holds a Retail Marijuana concentrate with the statement: "The marijuana concentrate contained within this package has not been tested for contaminants." unless:

   a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana concentrate for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals; and

   b. A Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana concentrate for residual solvents, poisons or toxins.

5. Required Statement When Potency Testing Is Not Performed. If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana concentrate within a Shipping Container for potency, then every Retail Marijuana Store must ensure a label is affixed to the Container with the statement: "The marijuana concentrate contained within this package has not been tested for potency, consume with caution."

R 1100 Series – Signage and Advertising

Basis and Purpose – R 1102

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(c)(I), and 12-43.4-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clearly delineate that a Retail Marijuana Establishment is not permitted to make deceptive, false, or misleading statements in Advertising materials or on any product or document provided to a consumer.

R 1102 – Advertising General Requirement: No Deceptive, False or Misleading Statements

A Retail Marijuana Establishment shall not engage in Advertising that is deceptive, false, or misleading. A Retail Marijuana Establishment shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a consumer.

Basis and Purpose R 1103

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(c)(I), and 12-43.4-901(4)(b), C.R.S. Authority also exists throughout Article XVIII, Section 16 of the Colorado Constitution. The purpose of this rule is to clarify the definition of the term "minor" as used in the Retail Code and these rules.

R 1103 – The Term "Minor" as Used in the Retail Code and These Rules

The term "minor" as used in the Retail Code and these rules means an individual under the age of 21.

Basis and Purpose – R 1104

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to television Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-

making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1104 –Advertising: Television

A. Television Defined. As used in this rule, the term "television" means a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming. Television includes any video programming downloaded or streamed via the internet.

B. Television Advertising. A Retail Marijuana Establishment shall not utilize television Advertising unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.

Basis and Purpose – R 1105

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to radio Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less

restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1105 –Advertising: Radio

A. Radio Defined. As used in this rule, the term "radio" means a system for transmitting sound without visual images, and includes broadcast, cable, on-demand, satellite, or internet programming. Radio includes any audio programming downloaded or streamed via the internet.

B. Radio Advertising. A Retail Marijuana Establishment shall not engage in radio Advertising unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.

Basis and Purpose – R 1106

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising in print media.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony

and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1106 –Advertising: Print Media

> A Retail Marijuana Establishment shall not engage in Advertising in a print publication unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the publication's readership is reasonably expected to be under the age of 21.

Basis and Purpose – R 1107

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising on the internet.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising

restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1107 –Advertising: Internet

A Retail Marijuana Establishment shall not engage in Advertising via the internet unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience for the internet web site is reasonably expected to be under the age of 21. *See also* Rule R 1114 – Pop-Up Advertising.

Basis and Purpose – R 1108

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising in a medium designed to target out-of-state residents.

The operation of Retail Marijuana Establishments in Colorado is permitted solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Colorado is one of the first two states to have authorized the regulated growth and sale of Retail Marijuana, and it has done so in the context of a longstanding federal ban on such activities. The State Licensing Authority finds that it is essential to regulate Retail Marijuana in the state of Colorado in a manner that does not negatively impact the ability of other states or the federal government to enforce their drug laws. The State Licensing Authority finds that the below restrictions on Advertising as defined in these Retail Marijuana rules are critical to prevent the diversion of Retail Marijuana outside of the state. The State Licensing Authority will continue to monitor and evaluate the best way to implement the state constitutional directive to establish appropriate Advertising restrictions for this emerging industry.

R 1108 – Advertising: Targeting Out-of-State Persons Prohibited.

A Retail Marijuana Establishment shall not engage in Advertising that specifically targets Persons located outside the state of Colorado.

Basis and Purpose – R 1109

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(c)(I), and 12-43.4-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false.

R 1109 – Signage and Advertising: No Safety Claims Because Regulated by State Licensing Authority

No Retail Marijuana Establishment may engage in Advertising or utilize signage that asserts its products are safe because they are regulated by the State Licensing Authority.

Basis and Purpose – R 1110

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(c)(I), and 12-43.4-901(4)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false.

R 1110– Signage and Advertising: No Safety Claims Because Tested by a Retail Marijuana Testing Facility

A Retail Marijuana Establishment may advertise that its products have been tested by a Retail Marijuana Testing Facility, but shall not engage in Advertising or utilize signage that asserts its products are safe because they are tested by a Retail Marijuana Testing Facility.

Basis and Purpose – R 1111

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to outdoor Advertising and signage.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-

making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1111– Signage and Advertising: Outdoor Advertising

A. Local Ordinances. In addition to any requirements within these rules, a Retail Marijuana Establishment shall comply with any applicable local ordinances regulating signs and Advertising.

B. Outdoor Advertising Generally Prohibited. Except as otherwise provided in this rule, it shall be unlawful for any Retail Marijuana Establishment to engage in Advertising that is visible to members of the public from any street, sidewalk, park or other public place, including Advertising utilizing any of the following media: any billboard or other outdoor general Advertising device; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner.

C. Exception. The prohibitions set forth in this rule shall not apply to any fixed sign that is located on the same zone lot as a Retail Marijuana Establishment and that exists solely for the purpose of identifying the location of the Retail Marijuana Establishment and otherwise complies with any applicable local ordinances.

Basis and Purpose – R 1112

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to prohibit signage and Advertising that has a high likelihood of reaching individuals under the age of 21.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include

rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The written and oral testimony and commentary included a variety of recommended standards for determining when advertising has a high likelihood of reaching minors. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than approximately 30 percent of the audience is reasonably expected to be under the age of 21. After reviewing the rulemaking record, the State Licensing Authority has determined that in order to prevent advertising that has a high likelihood of reaching minors, it is appropriate to model the Retail Marijuana Advertising restrictions on this voluntary standard used by the alcohol industry. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1112– Signage and Advertising: No Content That Targets Minors

> A Retail Marijuana Establishment shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

Basis and Purpose – R 1113

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I)(F), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to marketing directed toward location-based devices.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. Art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S.

The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The State Licensing Authority finds that the restrictions contained in this rule are necessary to prevent Advertising and signage that has a high likelihood of reaching minors. *See* §12-43.4-202(3)(c), C.R.S. The language in this rule was taken from the list of discretionary rules articulated by the General Assembly in House Bill 13-1317. *See* §12-43.4-202(3)(c)(1)(F), C.R.S. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising, marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1113 – Advertising: Advertising via Marketing Directed Toward Location-Based Devices

> A Retail Marijuana Establishment shall not engage in Advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 year of age or older and includes a permanent and easy opt-out feature.

Basis and Purpose – R 1114

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I)(C), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to pop-up Advertising.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. *See* §12-43.4-202(3)(c)(I), C.R.S. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. The State Licensing Authority finds that the restrictions contained in this rule are necessary to prevent Advertising and signage that has a high likelihood of reaching minors. The language in this rule was taken from the list of discretionary rules articulated by the General Assembly in House Bill 13-1317. *See* §12-43.4-202(3)(c)(1)(C), C.R.S. The State Licensing Authority will continue to evaluate the best way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate advertising,

marketing and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1114 – Pop-Up Advertising

A Retail Marijuana Establishment shall not utilize unsolicited pop-up Advertising on the internet.

Basis and Purpose – R 1115

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b) and 12-43.4-202(3)(c)(I), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to event sponsorship.

The operation of Retail Marijuana Establishments in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Section 16. Article XVIII, Section 16 of the Colorado Constitution prohibits the purchase, possession and consumption of Retail Marijuana by those under the age of 21. *See* for example Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), 2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(I)(b). The constitutionally mandated regulatory scheme governing Retail Marijuana Establishments must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to persons under the age of 21. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Retail Code adopted in 2013, the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* §12-43.4-202(3)(c), C.R.S. The Retail Code requires the State Licensing Authority to promulgate rules on the subject of signage, marketing and advertising restrictions that include but are not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors. Through the rulemaking process, the State Licensing Authority received extensive comments reflecting the strong influence advertising has on minors' decision-making with regard to substance use and abuse. Nearly all live testimony at the rulemaking hearing requested less restrictive advertising rules, but written commentary included multiple perspectives. This rule in particular received extensive commentary from the industry. It has been modified and clarified in response to that commentary. The written and oral testimony and commentary included a variety of recommended standards for determining when Advertising has a high likelihood of reaching minors. After reviewing the rulemaking record, the State Licensing Authority has determined that it is appropriate to utilize the current voluntary standard in the alcohol industry that Advertising that is likely to reach an audience comprise of more than 30 percent individuals under the age of 21 should be prohibited, as such advertising has a high likelihood of reaching minors. This standard is consistent with the directive in the state constitution to regulate marijuana in a manner that is similar to alcohol, while also recognizing that the legal status of the marijuana industry and the legal status of the liquor industry are not the same. These rules apply only to Advertising as defined in Rule R 103. Advertising includes marketing but not labeling. Advertising includes only those promotions, positive statements or endorsements that are obtained in exchange for consideration. The State Licensing Authority will continue to evaluate the appropriate way to implement the state constitutional directive to establish appropriate advertising restrictions for this emerging industry, and will in particular continue to monitor and evaluate Advertising and signage to protect the interests of those under the age of 21 and to prevent underage use of marijuana.

R 1115 – Advertising: Event Sponsorship

A Retail Marijuana Establishment may sponsor a charitable, sports, or similar event, but a Retail Marijuana Establishment shall not engage in Advertising at, or in connection with, such an event unless the Retail Marijuana Establishment has reliable evidence that no more than 30 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be under the age of 21.

R 1200 Series – Enforcement

Basis and Purpose – R 1201

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(I), and 12-43.4-202(3)(b)(III), and sections 12-43.4-601, 12-43.4-701, 16-2.5-101, 16-2.5-121, and 16-2.5-124.5, C.R.S. The purpose of this rule is to allow for officers and employees of the Division to investigate all aspects of a Retail Marijuana Establishment to ensure the fair, impartial, stringent, and comprehensive administration of the Retail Code and rules promulgated pursuant to it.

R 1201 – Duties of Officers and Employees of the State Licensing Authority

A. Duties of Director

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.

2. The Director may authorize investigators and employees of the Division to perform tasks delegated from the State Licensing Authority.

B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Retail Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Retail Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Retail Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Retail Code, probable cause exists that a crime related to such laws has been or is being committed;

2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Retail Marijuana and Retail Marijuana-Infused Product;

3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any Licensed Premises where Retail Marijuana or Retail Marijuana Product are grown, stored, cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed or unlicensed activity;

5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Retail Marijuana or Retail Marijuana Product;

6. Require Applicants to submit complete and current applications and fees and other information the

Division deems necessary to make licensing decisions and approve material changes made by the Applicant or Licensee;

7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Licensees and Applicants for Retail Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and

8. Exercise any other power or duty authorized by law.

Basis and Purpose – R 1202

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(II), and 12-43.4-202(3)(b)(III), and section 12-43.4-602, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the preservation of evidence, the handling of inventory under investigation and the surrender of Retail Marijuana and Retail Marijuana Product.

R 1202 – Requirement for Inspections and Investigations, Searches, Administrative Holds, and Such Additional Activities as May Become Necessary from Time to Time

A. Applicants and Licensees Shall Cooperate with Division Employees

1. Applicants and Licensees must cooperate with employees and investigators of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Retail Code.

2. No Applicant or Licensee shall by any means interfere with, obstruct or impede the State Licensing Authority or employee or investigator of the Division from exercising their duties pursuant to the provisions of the Retail Code and all rules promulgated pursuant to it. This would include, but is not limited to:

    a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from exercising their duties. The term "threatening force" includes the threat of bodily harm to such individual or to a member of his or her family;

    b. Denying employees or investigators of the Division access to a Licensed Premises during business hours or times of apparent activity;

    c. Providing false or misleading statements;

    d. Providing false or misleading documents and records;

    e. Failing to timely produce requested books and records required to be maintained by the Licensee; or

f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.

B. Administrative Hold

1. To prevent destruction of evidence, diversion or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation, a Division investigator may order an administrative hold of Retail Marijuana and Retail Marijuana Product pursuant to the following procedure:

a. If during an investigation or inspection of a Licensee, a Division investigator develops reasonable grounds to believe certain Retail Marijuana and Retail Marijuana Product constitute evidence of acts in violation of the Retail Code or rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Retail Marijuana and Retail Marijuana Product. The notice of administrative hold shall provide a documented description of the Retail Marijuana or Retail Marijuana Product to be subject to the administrative hold.

b. Following the issuance of a notice of administrative hold, the Division will identify the Retail Marijuana and Retail Marijuana Product subject to the administrative hold in MITS. The Licensee shall continue to comply with all tracking requirements. *See* Rule R 309 Retail Marijuana Establishments: Marijuana Inventory Tracking Solution (MITS).

c. The Licensee shall completely and physically segregate the Retail Marijuana and Retail Marijuana Product subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the Licensee is prohibited from selling, giving away, transferring, transporting, or destroying the Retail Marijuana and Retail Marijuana Product subject to the administrative hold.

d. Nothing herein shall prevent a Licensee from the continued cultivation or harvesting of the Retail Marijuana subject to the administrative hold. All Retail Marijuana and Retail Marijuana Product subject to an administrative hold must be put into separate Harvest Batches.

e. Following an investigation, the Division may lift the administrative hold, order the continuation of the administrative hold or seek a Final Agency order for the destruction of the marijuana.

C. Voluntary Surrender of Retail Marijuana and Retail Marijuana Product

1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to waive a right to a hearing and any associated rights, and voluntarily surrender any Retail Marijuana and Retail Marijuana Product to the Division. Such voluntary surrender may require destruction of any Retail Marijuana and Retail Marijuana Product in the presence of a Division investigator.

2. The individual signing affidavit of voluntary surrender on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

Basis and Purpose – R 1203

The statutory authority for this rule is found at subsections 12-43.4-202(1)(b)(I) and 12-43.4-602, C.R.S. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the Licensee is ordered to surrender and/or destroy Retail Marijuana or Retail Marijuana Product. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order.

R 1203 – Disposition of Unauthorized Retail Marijuana

A. After a Final Agency Order Orders the Destruction of Marijuana. If the State Licensing Authority issues a Final Agency Order pursuant to section 12-43.4-602, C.R.S., that orders the destruction of some or all of the Licensee's unauthorized Retail Marijuana or unauthorized Retail Marijuana Product, the Licensee may:

1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Retail Marijuana and unauthorized Retail Marijuana Product that are described in the Final Agency Order. If the Licensee chooses to voluntarily surrender its plants and Product:

a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.

b. The individual signing the affidavit of voluntary surrender on behalf of the Licensee must affirm that the individual has authority to represent and bind the Licensee.

2. Seek A Stay. File a petition for a stay of the Final Agency Order with the Denver district court within 15 days of the date of the Final Agency Order.

3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Retail Marijuana as set forth in section A(1)(a) of this rule; or (2) properly seek a stay of the Final Agency Order as set forth in section A(2) of this rule, the Division will enter upon the Licensed Premises and seize and destroy the marijuana plants and/or marijuana products that are the subject of the Final Agency Order. The Division will only take such action if a district attorney for the judicial district in which the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product are located has not notified the Division that the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product constitute evidence in a criminal proceeding and that it should not be destroyed.

B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Retail Marijuana and Unauthorized Retail Marijuana Product. The following requirements apply regardless of whether the Licensee voluntarily surrenders its unauthorized Retail Marijuana or unauthorized Retail Marijuana Product seeks a stay of agency action, or takes no action:

1. The 15 day period set forth in section 12-43.3-602(5), C.R.S., and this rule shall include holidays and weekends.

2. During the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product the Licensee shall not

sell, destroy, or otherwise let any unauthorized Retail Marijuana or unauthorized Retail Marijuana Product that are subject to the Final Agency Order leave the Licensed Premises, unless specifically authorized by the State Licensing Authority or Court order.

3. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Retail Marijuana or unauthorized Retail Marijuana Product that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency order and the destruction of the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product.

4. If a district attorney notifies the Division that some or all of the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product is involved in an investigation, the Division shall not destroy the unauthorized Retail Marijuana or unauthorized Retail Marijuana Product until approved by the district attorney.

R 1300 Series – Discipline

Basis and Purpose – R 1301

The statutory authority for this rule is found at sections 24-4-105 and 12-43.4-601 and subsections 12-43.4-202(2)(b) and 12-43.4-202(2)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify how the disciplinary process for non-summary license suspensions and license revocations is initiated.

R 1301 – Disciplinary Process: Non-Summary Suspensions

A. How a Disciplinary Action is Initiated

1. If the State Licensing Authority, on its own initiative or based on a complaint, has reasonable cause to believe that a Licensee has violated the Retail Code, any rule promulgated pursuant to it, or any of its orders, the State Licensing Authority shall issue and serve upon the Licensee an Order to Show Case (administrative citation) as to why its license should not be suspended or revoked.

2. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended or revoked should the charges contained in the notice be sustained upon final hearing.

B. Disciplinary Hearings. Disciplinary hearings will be conducted in accordance with Rule R 1304 – Administrative Hearings.

Basis and Purpose – R 1302

The statutory authority for this rule is found at sections 24-4-104(4)(a), 24-4-105 and 12-43.4-601 and subsections 12-43.4-202(2)(b) and 12-43.4-202(2)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to set forth the process for summary suspensions when the State Licensing Authority has cause to immediately revoke a license prior to a hearing. Such an occasion will occur when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or has committed an infraction of such magnitude that it is imperative its license be revoked to protect the public safety and welfare. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions.

R 1302 – Disciplinary Process: Summary Suspensions

A. How a Summary Suspension Action is Initiated

1. When the State Licensing Authority has reasonable grounds to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the

public health, safety, or welfare imperatively requires emergency action it shall serve upon the Licensee a Summary Suspension Order that temporarily or summarily suspends the license.

2. The Summary Suspension Order shall identify the nature of the State Licensing Authority's basis for the summary suspension. The Summary Suspension Order shall also provide an advisement that the License may be subject to further discipline or revocation should the charges contained in the notice be sustained following a hearing.

3. Proceedings for suspension or revocation shall be promptly instituted and determined after the Summary Suspension Order is issued.

B. Summary Suspension Hearings. Summary suspension hearings will be expedited to the extent practicable and will be conducted in accordance with Rule R 1304 – Administrative Hearings.

Basis and Purpose – R 1303

The statutory authority for this rule is found at sections 24-4-105, 24-4-104(4)(a), 12.43.4-601, and 12-43.4-602 and subsections 12-43.4-202(2)(b), and 12-43.4-202(2)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity). In addition, the rule clarifies what activity is always prohibited during such suspension.

R 1303 – Suspension Process: Regular and Summary Suspensions

A. Signs Required During Suspension. Every Licensee whose license has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be at least 17 inches in length and 14 inches in width containing lettering not less 1/2'' in height.

1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

RETAIL MARIJUANA LICENSES ISSUED

FOR THESE PREMISES HAVE BEEN

SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

FOR VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

NOTICE OF SUSPENSION

RETAIL MARIJUANA LICENSES ISSUED

FOR THESE PREMISES HAVE BEEN

SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

FOR ALLEGED VIOLATION OF THE COLORADO RETAIL MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this rule shall be deemed a violation.

B. Prohibited Activity During Active Suspension

1. Retail Licensee. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not permit the selling, serving, giving away, distribution, , transfer, or transport of any product, including but not limited to, Retail Marijuana or Retail Marijuana Product on the Licensed Premises, nor allow customers to enter the Licensed Premises. However, Retail Marijuana and Retail Marijuana Product shall not be removed from the Licensed Premises or destroyed unless and until the provisions described in sections 12-43.4-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule R 1203 – Disposition of Unauthorized Retail Marijuana.

2. Cultivation Licensee. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee may maintain its on hand inventory and otherwise care for its Retail Marijuana and plant inventories. However, marijuana shall not be sold or otherwise removed from the Licensed Premises or destroyed unless and until the provisions described in section 12-43.4-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule R 1203 – Disposition of Unauthorized Retail Marijuana.

3. Manufacturing Licensee. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not manufacture any Retail Marijuana Product or Retail Marijuana concentrates during a period of active license suspension nor permit the selling, distribution, transfer, or transport of Retail Marijuana or Retail Marijuana Product on or from the Licensed Premises. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee may maintain Retail Marijuana and Retail Marijuana Product on the Licensed Premises. However, Retail Marijuana Retail Marijuana Product shall not be removed from the Licensed Premises or destroyed unless and until the provisions described in section 12-43.4-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule R 1203 – Disposition of Unauthorized Retail Marijuana.

4. Retail Marijuana Testing Facility Licensee. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not receive Samples for testing, perform any test on Samples, transfer, or transport Retail Marijuana or Retail Marijuana Product on or from the Licensed Premises. Unless otherwise ordered by the State Licensing

Authority, during any period of active license suspension the Licensee must maintain the security and integrity of all previously received Samples on the Licensed Premises. However, Retail Marijuana and Retail Marijuana Product shall not be removed from the Licensed Premises or destroyed unless and until the provisions described in section 12-43.4-602, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule R 1203 – Disposition of Unauthorized Retail Marijuana.

Basis and Purpose – R 1304

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(I) and section 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish what entity conducts the administrative hearings, the scope of the administrative hearings rules, and other general hearings issues.

R 1304 – Administrative Hearings

A. General Procedures

1. Hearing Location. Hearings will generally be conducted by the Department of Revenue, Hearings Division. Unless the hearing officer orders a change of location based on good cause, as described in this Rule, hearings generally will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer. Under unusual circumstances where justice, judicial economy and convenience of the parties would be served, hearings may be held in other locations in the state of Colorado.

2. Scope of Hearing Rules. The Administrative Hearings rules shall be construed to promote the just and efficient determination of all matters presented.

3. Right to Legal Counsel. Any Denied Applicant or Respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the Denied Applicant's or Respondent's expense.

B. Requesting a Hearing

1. A Denied Applicant that has been served with a Notice of Denial may request a hearing within 60 days of the service of the Notice of Denial by making a written request for a hearing to the Division. The request must be submitted by United States mail or by hand delivery. Email or fax requests will not be considered. The request must be sent to:

Marijuana Enforcement Division

Attn: Hearing Request

455 Sherman Street, Suite 390

Denver, CO 80203

The written request for a hearing must be received by the Division within the time stated in the Notice of Denial. An untimely request will not be considered.

2. A Respondent that has been served with an Order to Show Cause shall be entitled to a hearing regarding the matters addressed therein.

3. A Denied Applicant or a Respondent may waive his or her right to a hearing by submitting a written statement to the State Licensing Authority to that effect before the hearing.

C. When a Responsive Pleading is Required

1. A Respondent shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any administrative notice or Order to Show Cause. If a Respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

2. In connection with any request for a hearing, a Denied Applicant shall provide a written response to the Notice of Denial.

D. Hearing Notices

1. Notice to Set. The Division shall send a notice to set a hearing to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record.

2. Notice of Hearing. The Hearings Division shall notify the Division and Denied Applicant or Respondent of the date, place, time and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

   a. Summary suspension hearings will be scheduled and held promptly.

   b. Continuances may be granted for good cause, as described in this rule, shown. A motion for a continuance must be timely.

   c. For purposes of this rule, good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case;

unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

E. Prehearing Matters Generally

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the Hearing Officer's own motion. If a prehearing conference is held and a prehearing order is issued by the Hearing Officer, the prehearing order will control the course of the proceedings. Such prehearing conferences may occur by telephone.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless both parties stipulate to a continuance and the hearing officer grants the continuation.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the Hearing Officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

    a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.

    b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

    c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and Denied Applicant or Respondent using letters.

    d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

F. Conduct of Hearings

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed.

3. The hearing officer may question any witness.

4. Court Rules

   a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word "court," "judge," or "jury" appears in the Colorado Rules of Evidence, such word shall be construed to mean a Hearing Officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

   b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean a Hearing Officer.

5. Exhibits

   a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.

   b. The Division shall use numbers to mark its exhibits.

   c. The Denied Applicant or Respondent shall use letters to mark its exhibits.

6. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.

G. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an Initial Decision subject to review by the State Licensing Authority pursuant to the Colorado Administrative Procedure Act and as set forth in Rule R 1306 – Administrative Hearing Appeals/Exceptions to Initial Decision.

H. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the State Licensing Authority pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to

the hearing officer or the State Licensing Authority in connection with a hearing or with the exceptions process.

I. Marijuana Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

Basis and Purpose – R 1305

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(c), and 12-43.4-202(3)(a)(I), and sections 24-4-105 and 12-43.4-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process.

R 1305 – Administrative Subpoenas

A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the Notice of Denial or Order to Show Cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.

B. Hearing Officer May Issue Subpoenas

1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.

2. Requests for subpoenas to be issued by the hearing officer must be delivered in person or by mail to the office of the Department of Revenue – Hearings Division, 1881 Pierce St. #106, Lakewood, CO 80214. Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.

3. Requests for subpoenas to be issued by the hearing officer must be made on a "Request for Subpoena" form authorized and provided by the Hearings Division. A hearing officer shall not issue a subpoena unless the request contains the following information:

a. Name of Denied Applicant or Respondent;

b. License or application number;

c. Case number;

d. Date of hearing;

e. Location of hearing, or telephone number for telephone check-in;

f. Time of hearing;

g. Name of witness to be subpoenaed; and

h. Mailing address of witness (home or business).

4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.

5. Requests for subpoenas shall be signed by the requesting party or its counsel.

6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.

C. Service of Subpoenas

1. Service of any subpoena is the duty of the party requesting the subpoena.

2. All subpoenas must be served at least two business days prior to the hearing.

D. Subpoena Enforcement

1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the Hearing Officer.

2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.

Basis and Purpose – R 1306

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(2)(c), and 12-43.4-202(3)(a)(I), and sections 24-4-105 and 12-43.4-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how parties may appeal a hearing officer's Initial Decision pursuant to the Administrative Procedure Act.

R 1306 – Administrative Hearing Appeals/Exceptions to Initial Decision

A. Exception(s) Process. Any party may appeal an Initial Decision to the State Licensing Authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the Initial Decision to the Denied Applicant or Respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these rules shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the State Licensing Authority is: State Licensing Authority, 1375 Sherman Street, 4th Floor, Denver, CO 80203.

B. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the State Licensing Authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

C. Deadline Modifications. The State Licensing Authority may modify deadlines and procedures related to the filing of exceptions to the Initial Decision upon motion by either party for good cause shown.

D. No Oral Argument Allowed. Requests for oral argument will not be considered.

Basis and Purpose – R 1307

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(XV), 12-43.4-104(6)(f), and 12-43.4-601(3)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IX). The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Retail Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule R 1307.A was amended to include additional license violations affecting public safety and Rule R 1307.C.1 was added.

R 1307 – Penalties

A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Retail Marijuana sales to persons under the age of 21 years, consuming marijuana on the Licensed Premises, Retail Marijuana sales in excess of the relevant transaction limit, permitting the diversion of Retail Marijuana outside the regulated distribution system, possessing Retail Marijuana or Retail Marijuana Product obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in MITS, failing to continuously escort a visitor in a Limited Access Area, violations related to co-located Medical Marijuana Centers and Retail Marijuana Businesses, failure to maintain books and records to fully account for all transactions of the business, Advertising violations directly targeting minors, or packaging or labeling violations that directly impact consumer safety. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate impact on the health, safety and welfare of the public at large. License violations may include but are not limited to, Advertising and/or marketing violations, packaging or labeling violations that do not directly impact consumer safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the inventory tracking procedures. The range of penalties for this category of violation may include a written warning, license suspension, a fine per individual violation, a fine in lieu of suspension of up to $50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include a verbal or written warning, license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to $10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

B. Other Factors

1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.

2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.

3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 12-43.4-601, C.R.S., in lieu of having its license suspended for all or part of the suspension.

C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Action taken by the Licensee to prevent the violation (e.g., training provided to employees).

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. Circumstances surrounding the violation, which may include, but are not limited to:

a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.

b. The dress or appearance of an underage operative used during an underage compliance check (*e.g.*, the operative was wearing a high school letter jacket).

8. Owner or manager is the violator or has directed an employee or other individual to violate the law.

9. Participation in state-approved educational programs related to the operation of a Retail Marijuana Establishment.

R 1400 Series – Division, Local Jurisdiction, and Law Enforcement Procedures

Basis and Purpose – R 1401

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(b)(II), 12-43.4-202(3)(b)(III), and 12-43.3-301(1), C.R.S. This rule gives general instructions regarding Retail Marijuana Establishment administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law enforcement's authority to investigate and take any necessary action with regard to Retail Marijuana Establishments remains unaffected by the Retail Code or any rules promulgated pursuant to it.

R 1401 – Instructions for Local Jurisdictions and Law Enforcement Officers

A. Division Protocol for Retail Marijuana Establishments

1. The Division shall forward a copy of all new Retail Marijuana Establishment applications to the relevant local jurisdiction.

2. The Division shall forward half of the total application fee with the copy of the Retail Marijuana Establishment application to the relevant local jurisdiction.

3. The Division shall notify relevant local jurisdictions when an application for a Retail Marijuana Establishment is either approved or denied. This includes new business applications, renewal business applications, change of location applications, transfer of ownership applications, premises modification applications, and off-premises storage permit applications.

4. Any license issued or renewed by the Division for Retail Marijuana Establishments shall be conditioned upon relevant local jurisdiction approval of the application. If a local jurisdiction elects not to approve or deny this activity, the local jurisdiction must provide written notification acknowledging receipt of the application.

B. Local Jurisdiction Protocol for Retail Marijuana Establishments

1. As soon as practicable, local jurisdictions that have prohibited the operation of Retail Marijuana Establishments shall inform the Division, in writing, of such prohibition and shall include a copy of the applicable ordinance or resolution.

2. If a local jurisdiction will authorize the operation of Retail Marijuana Establishments, it shall inform the Division of the local point-of-contact on Retail Marijuana regulatory matters. The local jurisdiction shall include, at minimum, the name of the division or branch of local government, the mailing address of that entity, and telephone number.

3. Local jurisdictions may impose separate local licensing or approval requirements related to the time, place, manner, and number of Retail Marijuana Establishments, and shall otherwise determine if an application meets those local requirements.

4. The relevant local jurisdiction shall notify the Division, in writing, of whether an application for a Retail Marijuana Establishment complies with local restrictions and requirements, and whether the application is approved or denied based on that review. If a local jurisdiction makes any written findings of fact, a copy of those written findings shall be included with the notification.

C. Local Jurisdiction Inspections. The relevant local jurisdictions and their investigators may inspect Retail Marijuana Establishments during all business hours and other times of apparent activity, for the purpose of inspection or investigation

D. Local Jurisdiction Authority. Nothing in these rules shall be construed to limit the authority of local jurisdictions as established by the Retail Code or otherwise by law.

E. Local Law Enforcement's Authority Not Impaired by Retail Code. Nothing in the Retail Code or any rules promulgated pursuant to it shall be construed to limit the ability of local police departments, sheriffs, or other state or local law enforcement agencies to investigate unlawful activity in relation to a Retail Marijuana Establishment, and such agencies shall have the ability to run a Colorado Crime Information Center criminal history check of an Applicant or Licensee or employee of an Applicant or Licensee during an investigation of unlawful activity related to Retail Marijuana or a Retail Marijuana Establishment. This includes, but is not limited to, inspecting and investigating Retail Marijuana Establishments to ensure they are in compliance with all local jurisdiction regulations related to time, place, manner, and number.

Chapter 9.22
CONTROLLED SUBSTANCES

Sections:

9.22.010 Marijuana prohibited.
9.22.020 Drug paraphernalia prohibited.
9.22.030 Drug paraphernalia – Definitions.
9.22.040 Drug paraphernalia – Determination.
9.22.900 Statutes incorporated by reference.

9.22.010 Marijuana prohibited.

Except as authorized by the Revised Code of Washington, it is unlawful for any person to manufacture, deliver, grow, or possess marijuana.

"Marijuana" means all parts of the plant of the genus cannabis L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

9.22.020 Drug paraphernalia prohibited.

No person shall possess any drug paraphernalia as defined in ACC 9.22.030. Possession of drug paraphernalia is a misdemeanor. An individual's first offense of this section is punishable by a mandatory penalty of 24 consecutive hours in jail and imposition of a $250.00 fine. Any subsequent offenses shall be punishable by a mandatory penalty of 24 consecutive hours in jail and a $500.00 fine. These fines shall be in addition to any other fines, assessments or penalties imposed. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

9.22.030 Drug paraphernalia – Definitions.

As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, smoking, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

A. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

B. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

C. Isomerization devices used, intended for use or designed for use in increasing the potency of any

species of plant which is a controlled substance;

D. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

E. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

G. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

H. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

I. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

J. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

K. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

L. A device “designed primarily for” such smoking or ingestion set forth in this section is a device which has been fabricated, constructed, altered, adjusted or marked especially for use in the smoking, ingestion or consumption of marijuana, hashish, hashish oil, cocaine or any other “controlled substance,” and is peculiarly adapted to such purposes by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose. Paraphernalia includes, but is not limited to, the following items or devices:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. A smokable pipe which contains a heating unit, whether the device is known as an “electric pipe” or otherwise;

10. Air-driven pipes;

11. Chillums;

12. A device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke than would otherwise be possible, whether the device is known as a “bong” or otherwise;

13. A device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a “buzz bomb” or otherwise;

14. A canister, container or other device with a tube, nozzle or other similar arrangement attached thereto so constructed as to permit the forcing of smoke accumulated therein into the user’s lungs under pressure, whether the device is known as a “power hitter” or otherwise;

15. A device for holding a marijuana cigarette, whether the device is known as a “roach clip” or otherwise;

16. A spoon for ingestion of a controlled substance through the nose;

17. A straw or tube for ingestion of a controlled substance through the nose or mouth;

18. A smokable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested;

19. Ice pipes or chillers. (Ord. 6300 § 1, 2010.)

9.22.040 Drug paraphernalia – Determination.

In determining whether an object is drug paraphernalia under this section and ACC 9.22.030, a court or other authority should consider, in addition to all other logically relevant factors, the following:

A. Statements by an owner or by anyone in control of the object concerning its use;

B. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

C. The proximity of the object, in time and space, to a direct violation of this chapter;

D. The proximity of the object to controlled substances;

E. The existence of any residue of controlled substances on the object;

F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

G. Instructions, oral or written, provided with the object concerning its use;

H. Descriptive materials accompanying the object which explain or depict its use;

I. National and local advertising concerning its use;

J. The manner in which the object is displayed for sale;

K. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

L. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

M. The existence and scope of legitimate uses for the object in the community; and

N. Expert testimony concerning its use. (Ord. 6300 § 1, 2010.)

9.22.900 Statutes incorporated by reference.

The following statutes are incorporated in this chapter by reference:

RCW

9.47A.010 Definitions [Inhaling toxic fumes]
9.47A.020 Unlawful inhalation – Exceptions
9.47A.030 Possession of certain substances prohibited – When
9.47A.040 Sale of certain substances prohibited – When
69.43.010 Report to state board of pharmacy – List of substances – Modification of list – Identification of purchasers – Report of transactions – Penalties
69.43.020 Receipt of substance from source outside state – Report – Penalty
69.43.030 Exemptions
69.43.035 Suspicious transactions – Report – Penalty
69.43.043 Recordkeeping requirements – Penalty
69.43.090 Permit to sell, transfer, furnish, or receive substance – Exemptions – Application for permit – Fee – Renewal – Penalty
69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine – Sales restrictions – Penalty
69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine – Possession of more than fifteen grams – Penalty – Exceptions
69.43.130 Exemptions – Pediatric products – Products exempted by the state board of pharmacy
69.50.4121 Drug paraphernalia – Selling or giving – Penalty [infraction]

(Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

The Auburn Municipal Code is current through Ordinance 6459, passed March 18, 2013.

Disclaimer: The City Clerk's Office has the official version of the Auburn Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

RICHARD D. JOHNSON,
Court Administrator/Clerk

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March 31, 2014

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CASE #: 70396-0-I
Cannabis Action Coalition et al., Appellants v. City of Kent et al., Respondents

King County, Cause No. 12-2-19726-1.KNT

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure

c: The Honorable Jay V. White

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAR 31 PM 12: 04

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ARTHUR WEST, Plaintiffs, STEVE SARICH, JOHN WORTHINGTON, and DERYCK TSANG, Appellants, v. CITY OF KENT, a local municipal corporation, Respondent.	DIVISION ONE No. 70396-0-I (Consolidated with No. 69457-0-I) PUBLISHED OPINION FILED: March 31, 2014

DWYER, J. — The Washington Constitution grants the governor the power to veto individual sections of a bill. The governor may exercise this power even when doing so changes the meaning or effect of the bill from that which the legislature intended. As a corollary of this power, when the governor's sectional veto alters the intent of the bill and the legislature does not override the veto, the governor's veto message becomes the exclusive statement of legislative intent that speaks directly to the bill as enacted into law.

In this case, the governor vetoed over half of the sections in a 2011 bill amending the Washington State Medical Use of Cannabis Act[1] (MUCA), substantially changing the meaning, intent, and effect of the bill. Although Engrossed Second Substitute Senate Bill (ESSSB) 5073 was originally designed to legalize medical marijuana through the creation of a state registry of lawful users, as enacted it provides medical marijuana users with an affirmative defense to criminal prosecution.

Following the governor's sectional veto and the new law's effective date, the City of Kent enacted a zoning ordinance which defined medical marijuana "collective gardens" and prohibited such a use in all zoning districts. By so doing, Kent banned collective gardens.

An organization and several individuals (collectively the Challengers) brought a declaratory judgment action challenging the ordinance. The Challengers claimed that ESSSB 5073 legalized collective gardens and that Kent was thus without authority to regulate or ban collective gardens. In response, Kent sought an injunction against the individual challengers enjoining them from violating the ordinance. The superior court ruled in favor of Kent, dismissed the Challengers' claims for relief, and granted the relief sought by Kent.

We hold that neither the plain language of the statute nor the governor's intent as expressed in her veto message supports a reading of ESSSB 5073 that legalizes collective gardens. The Kent city council acted within its authority by enacting the ordinance banning collective gardens. Accordingly, the trial court

[1] Ch. 69.51A RCW.

did not err by dismissing the Challengers' actions and granting relief to Kent.

I

In 2011, the Washington legislature adopted ESSSB 5073, which was intended to amend the MUCA.[2] The bill purported to create a comprehensive regulatory scheme, whereby—with regard to medical marijuana—all patients, physicians, processors, producers, and dispensers would be registered with the state Department of Health. The legislature's intended purpose in amending the statute, as stated in section 101 of the bill, was so that

> (a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;
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> (b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and
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> (c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

ENGROSSED SECOND SUBSTITUTE S. B. (ESSSB) 5073, § 101, 62nd Leg., Reg. Sess. (Wash. 2011) (italics and boldface omitted). The legislature also amended RCW 69.51A.005, the MUCA's preexisting purpose and intent provision, to state, in relevant part:

> Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of

[2] The MUCA, as it existed prior to the 2011 legislative session, was a product of Initiative Measure No. 692 passed by the voters in the 1998 general election and subsequently codified as chapter 69.51A RCW. The MUCA was amended in 2007 and 2010 in manners not pertinent to the issues presented herein. LAWS OF 2007, ch. 371; LAWS OF 2010, ch. 284.

cannabis, notwithstanding any other provision of law.

ESSSB 5073, § 102.

As drafted by the legislature, ESSSB 5073 established a state-run registry system for qualified patients and providers. Significantly, section 901 of the bill required the state Department of Health, in conjunction with the state Department of Agriculture, to "adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system." ESSSB 5073, § 901(1). Patients would not be required to register; rather, the registry would be "optional for qualifying patients." ESSSB 5073, § 901(6). On the one hand, if a patient was registered with the Department of Health, he or she would not be subject to prosecution for marijuana-related offenses.[3] ESSSB 5073, § 405. On the other hand, if a patient did not register, he or she would be entitled only to an affirmative defense to marijuana-related charges.[4] ESSSB 5073, § 406.

The bill also allowed qualified patients to establish collective gardens for the purpose of growing medical marijuana for personal use.[5] ESSSB 5073,

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[3] This section of the bill is now codified as follows:

> The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance.

RCW 69.51A.040.

[4] This section is now codified as RCW 69.51A.043(1), which states, "A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act may raise the affirmative defense."

[5] Now codified as RCW 69.51A.085, this section provides:

§ 403. Furthermore, even though the bill purported to legalize medical marijuana for registered patients and providers, it nevertheless granted authority to municipalities to regulate medical marijuana use within their territorial confines. Section 1102, now codified as RCW 69.51A.140, provides in relevant part:

> (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

ESSSB 5073, § 1102.

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(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

The bill was passed by both houses of the legislature and sent to Governor Gregoire for her signature.

On April 14, 2011, the United States Attorneys for the Eastern and Western Districts of Washington wrote an advisory letter to Governor Gregoire regarding ESSSB 5073. Therein, the district attorneys explained the Department of Justice's position on the bill:

> The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. . . . In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA.[6] Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA.

After receiving this missive, Governor Gregoire vetoed all sections of the bill which might have subjected state employees to federal charges. The governor vetoed 36 sections[7] of the bill that purported to establish a state registry, including section 901, and including section 101, the legislature's statement of intent. LAWS OF 2011, ch. 181. The governor left intact those sections of the bill that did not create or were not wholly dependent on the creation of a state registry. LAWS OF 2011, ch. 181. In her official veto message, Governor Gregoire explained her decision to leave parts of the bill intact:

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[6] Controlled Substances Act, Title 21 U.S.C., Ch. 13.

[7] The bill contained 58 sections as passed by the legislature. The governor vetoed 36 of those sections.

> Today, I have signed sections of Engrossed Second Substitute Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

LAWS OF 2011, ch. 181, governor's veto message at 1374-75.

The governor recognized that her extensive exercise of the sectional veto power rendered meaningless any of the bill's provisions that were dependent upon the state registry, noting that "[b]ecause I have vetoed the licensing provisions, I have also vetoed" numerous other sections. LAWS OF 2011, ch. 181, governor's veto message at 1375. However, the governor also recognized that—after her extensive vetoes—portions of some sections would remain meaningful even though references to the registry within those sections would not. Importantly, in one particular example, the governor stated:

> I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. Another section that the governor believed to have meaning, even though it referenced registered entities, was section 1102. With respect to this section, the governor stated:

> Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve

section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. The bill, now consisting only of the 22 sections not vetoed by the governor, was signed into law and codified in chapter 69.51A RCW. The legislature did not override the governor's veto.

Subsequently, Kent sought to exercise its zoning power to regulate collective gardens. On July 5, 2011 and January 3, 2012, Kent issued six month moratoria prohibiting collective gardens within the city limits. On June 5, 2012, Kent enacted Ordinance No. 4036 (the Ordinance), defining collective gardens and banning them within the city limits. The Ordinance states, in relevant part:

> A. *Collective gardens*, as defined in KCC 15.02.074, are prohibited in the following zoning districts:
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> 1. All agricultural districts, including A-10 and AG;
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> 2. All residential districts, including SR-1, SR-3, SR-4.5, SR-6, SR-8, MR-D, MR-T12, MR-T16, MR-G, MR-M, MR-H, MHP, PUD, MTC-1, MTC-2, and MCR;
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> 3. All commercial/office districts, including: NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, GC-MU, O, O-MU, and GWC;
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> 4. All industrial districts, including: MA, M1, M1-C, M2, and M3; and
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> 5. Any new district established after June 5, 2012.
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> B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, the provisions of KCC Chapter 1.04.

Thereafter, the Cannabis Action Coalition, Steve Sarich, Arthur West, John Worthington, and Deryck Tsang filed suit against Kent, seeking declaratory,

injunctive, and mandamus relief.[8] Worthington, Sarich, and West stated in their complaint that they intended to participate in a collective garden in Kent. None of the three, however, actually resided in, owned or operated a business in, or participated in a collective garden in Kent. Tsang, on the other hand, is a resident of Kent and currently participates in a collective garden in the city limits.

In the superior court proceeding, the parties filed competing motions for summary judgment. After considering all documentation submitted by the parties, the trial court ruled in favor of Kent. The trial court dismissed the claims of Cannabis Action Coalition, Sarich, West, and Worthington for lack of standing.[9] On the merits of Tsang's claims, the trial court held that "[t]he Kent City Council had authority to pass Ordinance 4036, Ordinance 4036 is not preempted by state law, and Ordinance 4036 does not violate any constitutional rights of Plaintiffs." The trial court also granted Kent's request for a permanent injunction against all plaintiffs, prohibiting them from violating the Ordinance.

The Challengers appealed to the Washington Supreme Court and requested a stay of the injunction. The Supreme Court Commissioner granted the stay. While the appeal was pending, Kent filed a motion to strike portions of Worthington's reply brief, which Worthington countered with a motion to waive Rule of Appellate Procedure (RAP) 10.3(c).[10] The Supreme Court transferred

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[8] The Cannabis Action Coalition is no longer a party to this matter. Although West filed a notice of appeal, he never filed an appellate brief; he has thus abandoned his appeal.

[9] However, the trial court stated that "even if all plaintiffs do have standing," its motion granting summary judgment in favor of Kent was "dispositive as to all plaintiffs."

[10] Kent asserts that the majority of Worthington's reply brief should be stricken because they contain arguments not raised in the trial court, they contain arguments not raised in Worthington's opening brief, and they are not in response to Kent's brief. Worthington contends

the appeal to this court, along with the two unresolved motions.

II

A

The Challengers contend that the plain language of the MUCA legalizes collective gardens.[11] This is so, they assert, because the MUCA provides that

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that this court should waive RAP 10.3(c) and that his entire reply brief should be considered in order to "meet the ends of justice and facilitate a ruling on the merits."

RAP 10.3(c) provides that, "[a] reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed." "A reply brief is generally not the proper forum to address new issues because the respondent does not get an opportunity to address the newly raised issues." City of Spokane v. White, 102 Wn. App. 955, 963, 10 P.3d 1095 (2000) (citing RAP 10.3(c); Dykstra v. Skagit County, 97 Wn. App. 670, 676, 985 P.2d 424 (1999)).

Sections A, C, G, and I of Worthington's reply brief all consist of arguments not previously raised or are premised on facts not in the record. Kent's motion is granted with respect to these sections. Kent's motion is denied with respect to sections B, D, and H.

Kent additionally moved to strike all appendices to Worthington's reply brief. "An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c)." RAP 10.3(a)(8).

Appendix D does not appear in the record, nor did Worthington seek permission from the Supreme Court to include materials not contained in the record. We therefore grant Kent's motion to strike appendix D. Kent's motion is denied with respect to Appendices A and C.

Appendix B is a copy of an unpublished federal district court decision, which Worthington cited in support of his argument in section G. As we have already stricken section G, we have no basis to consider the material in Appendix B. Kent's motion with respect to this appendix is thus moot.

Worthington contends that we should waive RAP 10.3(c) and nevertheless consider sections A, C, G, I, and Appendices B and D. RAP 18.8(a) allows this court to waive any of the RAPs "in order to serve the ends of justice." In addition to Worthington's opening brief, this court has received briefing from Sarich, Tsang, Kent, and two amici curiae. Accordingly, it is not necessary to consider Worthington's new arguments "in order to serve the ends of justice" in this case. Worthington's motion is denied.

[11] As an initial matter, Kent claims that Sarich and Worthington lack standing to assert these arguments. However, in the trial court, Kent sought and was granted affirmative relief against all plaintiffs, including Sarich and Worthington. Because Sarich and Worthington are now subject to a permanent injunction, they both have standing on appeal. Orion Corp. v. State, 103 Wn.2d 441, 455, 693 P.2d 1369 (1985); see also Casey v. Chapman, 123 Wn. App. 670, 676, 98 P.3d 1246 (2004) ("Parties whose financial interests are affected by the outcome of a declaratory judgment action have standing."). Moreover, as soon as Kent sought affirmative relief against them in the trial court, their standing was established. Vovos v. Grant, 87 Wn.2d 697, 699, 555 P.2d 1343 (1976) ("A person has standing to challenge a court order or other court action if his protectable interest is adversely affected thereby.") The critical question is whether "if the relief requested is granted," will the litigants' protectable interests be affected. Herrold v. Case, 42 Wn.2d 912, 916, 259 P.2d 830 (1953); cf. Snohomish County Bd. of Equalization v. Dep't of Revenue, 80 Wn.2d 262, 264-64, 493 P.2d 1012 (1972) ("Without a decision of this court, [the

"[q]ualifying patients may create and participate in collective gardens." RCW 69.51A.085(1). Kent, in response, contends that the plain language of the MUCA did not legalize collective gardens because collective gardens would only have been legalized in circumstances wherein the participating patients were duly registered, and the registry does not exist. The trial court properly ruled that Kent is correct.

We review issues of statutory interpretation de novo. Fiore v. PPG Indus., Inc., 169 Wn. App. 325, 333, 279 P.3d 972 (2012). "The goal of statutory interpretation is to discern and carry out legislative intent." Bennett v. Seattle Mental Health, 166 Wn. App. 477, 483, 269 P.3d 1079, review denied, 174 Wn.2d 1009 (2012). "The court must give effect to legislative intent determined 'within the context of the entire statute.'" Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (quoting State v. Elgin, 118 Wn.2d 551, 556, 825 P.2d 314 (1992)). "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." TracFone Wireless, Inc. v. Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). "In approving or disapproving legislation, the governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). Accordingly, when the governor

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plaintiffs] were placed in a position of making a determination of a difficult question of constitutional law with the *possibility of facing both civil and criminal penalties* if they made the wrong choice. One of the purposes of declaratory judgment laws is to give relief from such situations." (emphasis added) (footnotes omitted)).

vetoes sections of a bill, the governor's veto message is considered a statement of legislative intent. Dep't of Ecology v. Theodoratus, 135 Wn.2d 582, 594, 957 P.2d 1241 (1998).

The plain language of ESSSB 5073, as enacted, does not legalize medical marijuana or collective gardens. Subsection (1) of RCW 69.51A.085 delineates the requirements for collective gardens. RCW 69.51A.085 further provides that "[a] person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter." RCW 69.51A.085(3).

The "protections of this chapter" to which RCW 69.51A.085(3) refers are found in RCW 69.51A.040 and 69.51A.043. RCW 69.51A.040 provides that "[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime" if the patient meets the six listed requirements. One of the listed requirements is that

> The qualifying patient or designated provider keeps a copy of his or her *proof of registration with the registry established in *section 901 of this act* and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence.

RCW 69.51A.040(3) (emphasis added). Therefore, in order to obtain the protections provided by RCW 69.51A.040, the patient must be registered with the state.

RCW 69.51A.043, on the other hand, delineates the protections for patients who are not registered:

> *(1) A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act*

> *may raise the affirmative defense set forth in subsection (2) of this section, if:*
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> (a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;
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> (b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);
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> (c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;
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> . . .
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> (2) *A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040.* A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

(Emphasis added.) Section 901 of ESSSB 5073, referred to in both RCW 69.51A.040 and 69.51A.043, was vetoed. As a result of the governor's veto, the state registry does not exist. Thus, it is impossible for an individual to be registered with the registry. Accordingly, no individual is able to meet the requirements of RCW 69.51A.040.

Pursuant to RCW 69.51A.043, patients who are *not registered* may be entitled to an affirmative defense. As we hold today in State v. Reis, No. 69911-3-I, slip op. at 11 (Wash. Ct. App. Mar. 31, 2014), "by default, qualifying patients and designated providers are entitled only to an affirmative defense." As such, the only available "protection" to which collective garden participants are entitled pursuant to RCW 69.51A.085(3) is an affirmative

defense to prosecution.

Although such a reading may appear to render RCW 69.51A.040 meaningless, it does not, in fact, do so. RCW 69.51A.040 delineates the non-registry related conditions for possessing medical marijuana. These conditions are referenced in RCW 69.51A.043[12] and are essential components of the affirmative defense. Thus, the plain language of the statute does not legalize the use of medical marijuana.[13] Instead, it provides a defense to an assertion that state criminal laws were violated. As such, medical marijuana use, including collective gardens, was not legalized by the 2011 amendments to the MUCA.

B

All parties contend that the legislative history of ESSSB 5073 supports their reading of the Act. In order to analyze the legislative history of ESSSB 5073 as enacted, however, we must first determine which sources of legislative intent are proper for us to consider. For the reasons that follow, we hold that the

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[12] "(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1); (c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter." RCW 69.51A.043(1).

[13] In State v. Kurtz, 178 Wn.2d 466, 476, 309 P.3d 472 (2013), the Supreme Court briefly stated in dicta, "[I]n 2011 the legislature amended the Act making qualifying marijuana use a legal use, not simply an affirmative defense." As authority for this assertion, the court cited RCW 69.51A.005. RCW 69.51A.005, a preexisting provision entitled "Purpose and intent," was amended by the legislature in ESSSB 5073, section 102. Section 102 was included in the bill as passed by both houses of the legislature and accurately expresses the intent of the original bill. While the governor did not veto section 102, the governor's veto of numerous other sections of the bill significantly changed the bill's purpose. Additionally, the governor *did* veto section 101, a new statement of legislative purpose quoted, supra, at 3. Moreover, the parties in Kurtz did not address this question in their briefing to the Supreme Court and the court's footnoted statement was not important to its holding. Thus, we do not view this statement in Kurtz as controlling the outcome of this litigation. In our decision in Reis, No. 69911-3-I, we further explain our view in this regard.

governor's veto message is the sole source of relevant legislative history on the 2011 amendments to the MUCA, as enacted.

Article III, section 12 of the Washington Constitution allows for the governor to veto "one or more sections . . . while approving other portions of the bill." Prior to 1984, the long-standing rule governing the governor's sectional veto power was that the governor could only use the executive veto power in a "negative" manner, and not in an "affirmative" manner. Wash. Fed'n of State Employees, AFL-CIO, Council 28 AFSCME v. State, 101 Wn.2d 536, 545, 682 P.2d 869 (1984). Phrased another way,

> "[T]he Governor may use the veto power to prevent some act or part of an act of the legislature from becoming law. Likewise, the Governor may not use the veto power to reach a new or different result from what the legislature intended. In other words, the veto power must be exercised in a destructive and not a creative manner."

State Employees, 101 Wn.2d at 545 (alteration in original) (quoting Wash. Ass'n of Apartment Ass'ns v. Evans, 88 Wn.2d 563, 565-66, 564 P.2d 788 (1977)).

In State Employees, the Supreme Court disavowed that rule, holding that, "[i]ts use by the judiciary is an intrusion into the legislative branch, contrary to the separation of powers doctrine, and substitutes judicial judgment for the judgment of the legislative branch." 101 Wn.2d at 546 (citations omitted). From then on, "[t]he Governor [was] free to veto 'one or more sections or appropriation items', without judicial review." State Employees, 101 Wn.2d at 547. Thus, the current analytical approach is that the governor is free to veto sections of a bill even

when doing so changes the meaning of the bill from that which the legislature originally intended.

Significantly, the Supreme Court characterized the veto process as follows:

> "In approving or disapproving legislation, the Governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). In effect, the Governor holds one-third of the votes. The veto is upheld if the Legislature fails to override it. Fain v. Chapman, 94 Wn.2d 684, 688, 619 P.2d 353 (1980). To override the Governor's veto, the Senate and House must agree by a two-thirds vote. Const. art. 3, § 12 (amend. 62).

State Employees, 101 Wn.2d at 544. The legislature's power to override, the Supreme Court held, serves as an adequate "check" on the governor's veto power. State Employees, 101 Wn.2d at 547. Thus, if the legislature disapproves of the new meaning or effect of the bill resulting from the governor's veto, it can vote to override the veto and restore the bill to its original meaning or effect.

Here, Governor Gregoire vetoed 36 of the 58 sections of ESSSB 5073. This veto significantly altered the meaning and effect of the sections that remained for enactment. When returning the bill to the Senate, the governor provided a formal veto message expressing her opinion as to the meaning and effect of the bill after her veto. See Wash. State Grange v. Locke, 153 Wn.2d 475, 490, 105 P.3d 9 (2005) ("The expression of [an opinion as to the statute's interpretation] is within the governor's prerogative.") Had the legislature objected to the governor's veto, it could have overturned it by a two-thirds vote. CONST.

art. III, § 12. A legislative override would also have nullified the governor's veto message. By not overriding the veto, the legislature failed to provide an interpretation of the MUCA contrary to that articulated by Governor Gregoire. Cf. Rozner v. City of Bellevue, 116 Wn.2d 342, 349, 804 P.2d 24 (1991) (legislature's actions in not overriding veto, but later amending parts of the statute, functioned as legislative approval of governor's veto message with respect to unamended portions of the statute).

All parties urge us to consider the intent of the legislature in passing ESSSB 5073. However, ESSSB 5073, as passed by both houses of the legislature, was not the bill that was enacted. Rather, the bill that was enacted was that which existed after the governor's veto. Thus, the governor's veto message is the only legislative history that speaks directly to the law as it was enacted. It is the paramount source for us to refer to in order to discern the legislative intent behind the enacted law.

The governor's intent in vetoing a significant portion of ESSSB 5073 was that there should not be a state registry, and that medical marijuana should not be legalized. In her veto message, Governor Gregoire stated:

> *I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties* when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from criminal penalties should be conditioned on compliance with local government location and health and safety specifications.

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added). By stating that she was open to future legislation that would exempt patients from

criminal penalties, the governor indicated that she did not read *this* bill as creating any such exemptions.

Further, the governor concluded her veto message by stating:

> I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. This statement indicates that the governor realized that her veto would preclude the legislature's attempt to legalize certain medical marijuana uses. The governor affirmatively stated her understanding that only affirmative defenses to criminal prosecutions survived her veto.

These two statements, read in conjunction, demonstrate that the governor did not intend for ESSSB 5073 to legalize medical marijuana. The governor did not read the bill as enacted as exempting medical marijuana users from prosecution. Significantly, although the MUCA provides for an affirmative defense, "[a]n affirmative defense does not per se legalize an activity." State v. Fry, 168 Wn.2d 1, 10, 228 P.3d 1 (2010). Thus, the plain language of the statute, which does not read so as to legalize medical marijuana, is consonant with the governor's expressed intent in signing the bill, as amended by her vetoes.

The governor's statement regarding collective gardens does not suggest otherwise. In her veto message, Governor Gregoire stated, "Qualifying patients or their designated providers may grow cannabis for the patient's use or

participate in a collective garden without fear of state law criminal prosecutions."[14] LAWS OF 2011, ch. 181, governor's veto message at 1374-75. Two paragraphs earlier, Governor Gregoire stated, "In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions." LAWS OF 2011, ch. 181, governor's veto message at 1374. The governor's use of the phrase "state criminal prosecution[s]" in both sentences indicates that she intended for the bill to extend the *existing* legal protections to collective gardens. The 1998 ballot initiative (I-692) provided qualifying patients with an affirmative defense to drug charges. Former RCW 69.51A.040 (1999). I-692 did not legalize medical marijuana, but the governor nevertheless described it as "remov[ing] the fear of state criminal prosecution." Her use of the same phrase when describing ESSSB 5073 must be read in this light. The governor plainly did not intend for ESSSB 5073, after her vetoes, to legalize medical marijuana. The plain language of the MUCA is consonant with the governor's expressed intent.

III

A

The Challengers nevertheless contend that the plain language of the MUCA does not allow Kent to regulate collective gardens. This is so, they assert, because RCW 69.51A.085, which deals with collective gardens, is a stand-alone statute that does not grant any regulatory authority to municipalities.

[14] Kent characterizes this statement as errant. As stated above, the governor was not saying that she intended to legalize marijuana. As the bill did add an affirmative defense relating to collective gardens, the governor's statement was not errant.

We disagree.

Although RCW 69.51A.085 does not itself grant powers to municipalities, this statutory provision cannot be read in isolation. "We construe an act as a whole, giving effect to all the language used. Related statutory provisions are interpreted in relation to each other and all provisions harmonized." C.J.C. v. Corp. of Catholic Bishop of Yakima, 138 Wn.2d 699, 708, 985 P.2d 262 (1999) (citing State v. S.P., 110 Wn.2d 886, 890, 756 P.2d 1315 (1988)). RCW 69.51A.085 was passed as part of a comprehensive bill amending the MUCA. This provision must therefore be read in conjunction with the other enacted provisions of ESSSB 5073.

Importantly, ESSSB 5073, as enacted, includes a section specifically granting regulatory powers to municipalities. RCW 69.51A.140 states:

> *Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes.* Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction.

(Emphasis added.) The plain language of this section allows municipalities to regulate the production, processing, and dispensing of medical marijuana. Only "licensed dispensers" are listed as users that a city may not exclude. This necessarily implies that a city retains its traditional authority to regulate

all other uses of medical marijuana.[15] Thus, the MUCA expressly authorizes cities to enact zoning requirements to regulate or exclude collective gardens.

B

The Challengers contend that the legislative history of ESSSB 5073 does not support a reading of RCW 69.51A.140 that would allow a city to regulate or exclude collective gardens. To the contrary, it is the Challengers' interpretation of the statute that is not supported by the legislative history.

In enacting the 2011 amendments to the MUCA, the governor provided some insight into a locality's ability to regulate medical marijuana. In her veto message, the governor stated:

> Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. This statement indicates that the governor intended section 1102 to have meaning even though one provision therein was meaningless. Accordingly, the governor's understanding of section 1102 of the bill was that municipalities would be able to regulate medical marijuana production, processing or dispensing within their territorial confines.

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[15] A city's traditional authority is defined by the state constitution as the power to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." CONST. art. XI, § 11.

Further, the governor stated:

> I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. *Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.*

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added). "[L]ocation and health and safety specifications" are precisely what the Washington Constitution anticipates municipalities will address by enacting ordinances. "Municipalities derive their authority to enact ordinances in furtherance of the *public safety*, morals, *health* and welfare from article 11, section 11 of our state constitution." City of Tacoma v. Vance, 6 Wn. App. 785, 789, 496 P.2d 534 (1972) (emphasis added); accord Hass v. City of Kirkland, 78 Wn.2d 929, 932, 481 P.2d 9 (1971). The governor's message thus indicated her understanding that, in the future, if a bill succeeded in legalizing medical marijuana, municipalities should continue to retain their ordinary regulatory powers, such as zoning.

Nonetheless, the Challengers contend that the phrase "production, processing, or dispensing of cannabis or cannabis products" in RCW 69.51A.140 refers only to commercial production, processing, or dispensing. The Challengers' interpretation would render all of RCW 69.51A.140 a nullity. Commercial producers, processors, and dispensers are those producers, processors, and dispensers that would have been licensed by the Department of Health. ESSSB 5073, § 201(12), (13), (14). As a result of the governor's veto of

all sections creating a licensing system, commercial producers, processors, and dispensers do not exist. If "producers, processors, and dispensers" referred only to those commercial licensed entities, all of section 1102 would be meaningless. However, the governor did not veto section 1102 along with the other sections creating licensed producers, processors, and dispensers. Rather, the governor stated in her veto message that only those "provisions in Section 1102 that local governments' zoning requirements cannot 'preclude the possibility of siting licensed dispensers within the jurisdiction' are without meaning." LAWS OF 2011, ch. 181, governor's veto message at 1375. The governor's veto did not leave municipalities without the ability to regulate. In this regard, the Challengers' interpretation of the amended MUCA is contrary to the legislative history of the bill.

The governor clearly understood the bill to allow cities to use their zoning power to regulate medical marijuana use within their city limits. The governor's understanding is consistent with the plain language of the MUCA.

IV

The Challengers next contend that the Ordinance is invalid because, they assert, the MUCA preempts local regulation of medical marijuana and because the Ordinance conflicts with state law.[16] We disagree.

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[16] The Challengers also contend that RCW 69.51A.025 precludes cities from banning collective gardens. This provision states, "Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040." RCW 69.51A.025. Contrary to the Challengers' assertion, a city zoning ordinance is not a "rule adopted to implement" the MUCA. The cited provision refers to anticipated Department of Health regulations which would

Generally, municipalities possess constitutional authority to enact zoning ordinances as an exercise of their police power. CONST. art. XI, § 11. However, a municipality may not enact a zoning ordinance which is either preempted by or in conflict with state law. HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wn.2d 451, 477, 61 P.3d 1141 (2003).

State law preempts a local ordinance when "the legislature has expressed its intent to preempt the field or that intent is manifest from necessary implication." HJS Dev., 148 Wn.2d at 477 (citing Rabon v. City of Seattle, 135 Wn.2d 278, 289, 957 P.2d 621 (1998); Brown v. City of Yakima, 116 Wn.2d 556, 560, 807 P.2d 353 (1991)). Otherwise, municipalities will have concurrent jurisdiction over the subject matter. HJS Dev., 148 Wn.2d at 477. The MUCA does not express the intent to preempt the field of medical marijuana regulation. To the contrary, as previously discussed in section III, the MUCA explicitly recognizes a role for municipalities in medical marijuana regulation. As the MUCA explicitly contemplates its creation, the Ordinance is not directly preempted by state law.

A local ordinance that is not directly preempted may nevertheless be invalid if it conflicts with state law. Pursuant to article XI, section 11 of the Washington Constitution, "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." A city ordinance is unconstitutional under

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have been adopted as rules contained within the Washington Administrative Code, had the governor not vetoed the regulatory scheme.

article XI, section 11 if "(1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the city's police power; or (3) the subject matter of the ordinance is not local." Edmonds Shopping Ctr. Assocs. v. City of Edmonds, 117 Wn. App. 344, 351, 71 P.3d 233 (2003). Whether a local ordinance is valid under the state constitution is a pure question of law, which this court reviews de novo. Edmonds Shopping Ctr., 117 Wn. App. at 351.

Here, the Challengers contend that the Ordinance is unconstitutional because it conflicts with the MUCA.[17] Ordinances are presumed to be constitutional. HJS Dev., 148 Wn.2d at 477. As the party challenging the Ordinance, the burden is on the Challengers to prove beyond a reasonable doubt that it is unconstitutional. Edmonds Shopping Ctr., 117 Wn. App. at 355. "'In determining whether an ordinance is in "conflict" with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.'" City of Tacoma v. Luvene, 118 Wn.2d 826, 834-35, 827 P.2d 1374 (1992) (internal quotation marks omitted) (quoting City of Bellingham v. Schampera, 57 Wn.2d 106, 111, 356 P.2d 292 (1960)). "The conflict must be direct and irreconcilable with the statute, and the ordinance must yield to the statute if the two cannot be harmonized." Luvene, 118 Wn.2d at 835.

"The scope of [a municipality's] police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." State v. City of Seattle, 94 Wn.2d 162, 165, 615 P.2d 461 (1980). Generally speaking, a municipality's police powers are

[17] The Challengers do not contend that the Ordinance is unreasonable or not local.

coextensive with those possessed by the State. City of Seattle, 94 Wn.2d at 165. Without question, a municipality's plenary powers include the power to "enact ordinances prohibiting and punishing the same acts which constitute an offense under state laws." Schampera, 57 Wn.2d at 109; accord State v. Kirwin, 165 Wn.2d 818, 826-27, 203 P.3d 1044 (2009). As the plain language of the statute and the governor's veto message indicate, collective gardens are not legal activity. The Ordinance, by prohibiting collective gardens, prohibits an activity that constitutes an offense under state law. As it prohibits an activity that is also prohibited under state law, the Ordinance does not conflict with the MUCA.[18] The trial court did not err by so holding.[19]

Affirmed.

We concur:

[18] To decide this case, we need not determine whether the Ordinance would be valid had the MUCA actually legalized medical marijuana. Therefore, we decline to further address this subject.

[19] The Challengers additionally assert that the trial court erred by issuing a permanent injunction against them. We review the trial court's decision to grant a permanent injunction for an abuse of discretion. Wash. Fed'n of State Emps. v. State, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). "A party seeking an injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) actual and substantial injury as a result." Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 445-46, 300 P.3d 376 (2013). In their pleadings, each plaintiff expressed an intention to violate Kent's ordinance. Thus, the trial court did not abuse its discretion by granting the injunction.