

Basis and Purpose – R 103

The statutory authority for this rule is found at subsection 12-43.4-202(2)(b), C.R.S. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and not intended to be a defined term, it is not capitalized.

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

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

R 103 – Definitions

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

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

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

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

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

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

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

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

"Child-Resistant" means special packaging that is:

- a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995) and ASTM classification standard D3475-13, <http://www.astm.org/Standards/D3475.htm>. Note that this rule does not include

any later amendments or editions to the Code of Federal Regulations or the ASTM classification standards. The Division has maintained a copy of the applicable federal regulation and ASTM classification standard, which are available to the public.

- b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material;
- c. Resealable for any product intended for more than a single use or containing multiple servings, and
- d. Labeled properly as required by the R 1000 Series.

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

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

"Department" means the Colorado Department of Revenue.

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

"Division" means the Marijuana Enforcement Division.

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

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

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

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

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

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

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

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

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

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

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

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

"Harvested Marijuana" means post-Flowering Retail Marijuana not including trim, concentrate or waste that remains on the premises of the Retail Marijuana Cultivation Facility or its off-premises storage location beyond 60 days from harvest.

"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. Plants meeting these requirements are not attributable to a licensee's maximum allowable plant count, but must be fully accounted for in the Inventory Tracking System.

"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.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Retail Marijuana from either the seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to a customer at a Retail Marijuana Store or is destroyed.

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

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

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

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

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

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

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

"Liquid Edible Retail Marijuana Product" means an Edible Retail Marijuana Product that is a liquid beverage or food-based product and intended to be consumed orally, such as a soft drink or cooking sauce.

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

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

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

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

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

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

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

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

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

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

"Multiple-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing more than 10mg of active THC and no more than 100mg of active THC. If the overall Edible Retail Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than 10mg active THC, yet in total all pieces combined within the unit for sale contain more than 10mg of active THC, then the Edible Retail Marijuana Product shall be considered a Multiple-Serving Edible Retail Marijuana Product.

"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.

"Opaque" means that the packaging does not allow the product to be seen without opening the packaging material.

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

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

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

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

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

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

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

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

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

"RFID" means Radio Frequency Identification.

"Resealable" means that the package maintains its Child-Resistant effectiveness for multiple openings.

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

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

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

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

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

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

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

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

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

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

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

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

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

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

"Single-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10mg of active THC.

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

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

"Standardized Serving Of Marijuana" means a standardized single serving of active THC. The size of a Standardized Serving Of Marijuana shall be no more than 10mg of active THC.

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

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

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

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

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

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

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

Basis and Purpose - R 211

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

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

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

The rule establishes a means by which to manage the overall production of retail marijuana, and applies to all Medical Marijuana Businesses that are either converting to or adding a Retail Marijuana Establishment License pursuant to 12-43.4-104(1)(a)(I), C.R.S. This rule further clarifies that New Applicant Retail Marijuana Cultivation Facility Licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II) are subject to Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities

Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.

The State Licensing Authority intends to replace or revise this rule no later than December 31, 2015 with a long-term production management solution based on any one of the following methods or a combination thereof: plant count, output by weight, output by type of product, square footage, limiting available cultivation licenses, or other reasonable metrics. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

R 211 – Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 12-43.4-104(1)(a)(I), C.R.S.

- 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 Inventory Tracking System as Retail Marijuana and Retail Marijuana Product. See also, Rule R 309 –Inventory Tracking System.

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 the Inventory Tracking System and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana-Infused Product can be transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.

E. **Production Management**

1. **Applicability.** Paragraph E of this rule shall apply to all Medical Marijuana Businesses that are either converting to or adding a Retail Marijuana Establishment License pursuant to 12-43.4-104(1)(a)(I). Refer to Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S. for the production management requirements of all New Applicant Retail Marijuana Cultivation Facility licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II).

2. **Additional Application Disclosures.**

- a. At the time of application for a Retail Marijuana Store license an Applicant must designate the Medical Marijuana Center license intended to be used to obtain the Retail Marijuana Store license, whether or not that license will be converted, by providing its business license number.
- b. At the time of application for a Retail Marijuana Products Manufacturing Facility license an Applicant must designate the Medical Marijuana Infused-Products Manufacturing Business license intended to be used to obtain the Retail Marijuana Products Manufacturing license, whether or not that license will be converted, by providing its business license number.

3. **Production Management.**

- a. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 1 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 3,600 plants in aggregate at any one time.
- b. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 2 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 6,000 plants in aggregate at any one time.
- c. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 3 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 10,200 plants in aggregate at any one time.
- d. If the Medical Marijuana Infused-Products Manufacturing Business designated by an Applicant for a Retail Marijuana Products Manufacturing License had an Optional Premises Cultivation associated with it, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Products Manufacturing License may not cultivate more than 1,000 plants in aggregate at any one time.
- e. In connection with the license renewal process for Retail Marijuana Cultivation Facilities with plant limits of 6,000 or 10,200 plants, the Division will review the purchases, sales, and cultivated plant count of the Retail Marijuana Cultivation

Facility Licensee during the preceding licensing term. The Division may reduce the Licensee's maximum allowed plant count at renewal if the Licensee transferred to another Retail Marijuana Establishment less than 85% of what it produced during the three months prior to the application for renewal.

- f. Inventory Management for Retail Cultivation Facilities that harvest more than twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests more than twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous quarter.
 - g. Inventory Management for Retail Cultivation Facilities that harvest once or twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests once or twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous year.
4. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in paragraph E(3) of this rule on an industry-wide aggregate basis for all Retail Marijuana Establishments subject to that limitation.
 5. Application for Additional Plants.
 - a. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if the associated Medical Marijuana Infused-Products Manufacturing Business had previously received a waiver from the Division to cultivate more than 1,000 medical marijuana plants. In its waiver application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its receipt of a waiver for its Medical Marijuana Infused-Products Manufacturing Business and must provide any other information requested to aid the Division in its evaluation of the waiver application. If granted, the Retail Marijuana Products Manufacturing Facility will be permitted to grow the same number of plants that the Medical Marijuana Infused-Products Manufacturing Business is permitted to grow.
 - b. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule based upon its demonstrated business needs. In its application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its business need for additional production capacity to meet the requirements of potential or existing contracts with licensed Retail Marijuana Stores for the purchase of Retail Marijuana Product and must provide any other information requested to aid the Division in its evaluation of the waiver application.
 - c. A Retail Marijuana Store may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule after accruing at least two quarters of sales. The licensee shall provide documentation demonstrating that for at least three consecutive months prior to the waiver application, it has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the waiver application. If a Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility waiver application is approved by the Division, then the Retail Marijuana Store will:

1. Be permitted to cultivate no more than 6,000 plants in aggregate at any one time if it was previously permitted to cultivate 3,600 or fewer plants in aggregate at any one time, provided that it pays an extended plant fee of \$4,000.00.
2. Be permitted to cultivate no more than 10,200 plants in aggregate at any one time if it was previously permitted to cultivate between 3,600 and 6,000 plants in aggregate at any one time, provided that it pays an extended plant fee of \$8,000.00.

Basis and Purpose – R 212

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a), 12-43.4-202(3)(b)(IX), and 12-43.4-202(4)(a) and (b); and sections 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S. The purpose of this rule is to establish a means by which to manage the overall production of retail marijuana in tandem with Rule R 211. This rule is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and illegal sales of marijuana outside of the regulated environment.

The State Licensing Authority intends to replace or revise this rule no later than December 31, 2015 with a long-term production management solution based on any one of the following methods or a combination thereof: plant count, output by weight, output by type of product, square footage, limiting available cultivation licenses, or other reasonable metrics. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

Rule R 212 – New Applicant Retail Marijuana Cultivation Facilities Licensed Pursuant To 12-43.4-104(1)(b)(II), C.R.S.

- A. Applicability. This rule shall apply to all new applicant Retail Marijuana Cultivation Facility Licenses granted after September 30, 2014 pursuant to 12-43.4-104(1)(b)(II), C.R.S.
- B. Production Management.
 1. Any new applicant Retail Marijuana Cultivation Facility with a license granted after September 30, 2014 shall be authorized to cultivate 3,600 plants or less at any one time.
 2. Inventory Management for Retail Cultivation Facilities that harvest more than twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests more than twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous quarter.
 3. Inventory Management for Retail Cultivation Facilities that harvest once or twice a year. Beginning February 1, 2015, a Retail Marijuana Cultivation Facility that harvests once or twice a year may not accumulate Harvested Marijuana in excess of the total amount of inventory the Licensee produced that was transferred to another Retail Marijuana Establishment in the previous year.
 4. In connection with the license renewal process for Retail Marijuana Cultivation Facilities with plant limits of 6,000 or 10,200 plants, the Division will review the purchases, sales, and cultivated plant count of the Retail Marijuana Cultivation Facility Licensee during the preceding licensing term. The Division may reduce the Licensee's maximum allowed plant count to no more than 3,600 plants, or no more than 6,000 plants, as appropriate under the circumstances if the Licensee sold less than 85% of what it produced during the three months prior to the application for renewal.

C. Application for Additional Plants.

1. A Retail Marijuana Cultivation Facility Licensee may apply to the Division for a waiver of the plant limit described in subparagraph (B)(1) of this rule after accruing at least two quarters of sales. The Licensee shall provide documentation demonstrating that for at least three consecutive months prior to the waiver application, it has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and has transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment, and any other information requested to aid the Division in its evaluation of the waiver application. If a waiver application is approved by the Division, then the Retail Marijuana Cultivation Facility Licensee may:
 - a. Be permitted to cultivate no more than 6,000 plants at any one time at its Retail Marijuana Cultivation Facility if the Licensee was previously permitted to cultivate 3,600 or fewer plants at any one time, provided that it pays an extended plant fee of \$4,000.00.
 - b. Be permitted to cultivate no more than 10,200 plants at any one time at its Retail Marijuana Cultivation Facility if the Licensee was previously permitted to cultivate between 3,601 and 6,000 plants at any one time, provided that it pays an extended plant fee of \$8,000.00.

D. Application for Additional Retail Cultivation Facility Licenses. After accruing at least two quarters of sales, a Person who has any ownership interest in a licensed Retail Marijuana Cultivation Facility may apply to the Division for an additional Retail Marijuana Cultivation Facility license. The Person shall provide documentation demonstrating that for at least three consecutive months prior to the application, the related Retail Marijuana Cultivation Facility has consistently cultivated an amount of plants that is at or near its maximum allowed plant count, and has transferred at least 85% of the inventory it produced during that time period to another Retail Marijuana Establishment.

E. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.