

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 100—Division of Cannabis Regulation
Chapter 1—Marijuana

EMERGENCY RULE

19 CSR 100-1.180 Dispensary Facilities

PURPOSE: Under Article XIV, Sections 1 and 2 of the Missouri Constitution, the Department of Health and Senior Services has the authority to regulate and control medical and marijuana facilities and licensees. This rule explains what regulations apply to dispensary facilities and licensees.

EMERGENCY STATEMENT: This emergency rule serves to implement and enforce Article XIV and to ensure the right to, availability, and safe use of marijuana product. This emergency rule is necessary to protect a compelling governmental interest since Amendment 3 to the Missouri Constitution made significant changes to the regulation of marijuana, and new rules will be needed to effectuate those changes. As a result, the Department of Health and Senior Services finds a compelling governmental interest, which requires emergency action. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency rule is fair to all interested persons and parties under the circumstances. If an emergency is not enacted, there would be no rules explaining how the new provisions of Article XIV of the Missouri Constitution apply, and there would be much confusion as to the processes and procedures related to licensure and regulation of the marijuana industry. This emergency rule was filed January 20, 2023, becomes effective February 3, 2023, and expires August 1, 2023.

(1) Medical and Marijuana Dispensary Facilities Generally. A dispensary facility licensee's authority to engage in the process of dispensing marijuana product includes the ability to—

(A) Acquire and transfer marijuana, marijuana seeds, clones, and prerolls from a cultivation facility;

(B) Acquire and transfer marijuana-infused products and prerolls from a manufacturing facility;

(C) Acquire and transfer marijuana product from another dispensary facility;

(D) Process marijuana product for the purpose of producing and selling prerolls, which does not include the manufacture of marijuana-infused products;

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(E) Package and store (on- or off-site) marijuana product and drug paraphernalia used to administer marijuana product;

(F) Transport and sell or distribute marijuana product and drug paraphernalia to another dispensary facility, manufacturing facility, cultivation facility, testing facility, or individuals authorized to purchase marijuana product for personal or medical use, as follows:

1. A medical dispensary licensee may only sell or distribute to individuals who are qualifying patients or primary caregivers; and

2. A comprehensive or microbusiness dispensary licensee may sell or distribute to individuals who are consumers, qualifying patients, or primary caregivers; and

(G) Transfer marijuana product to or from its own offsite warehouse.

(2) Dispensary Facility and Licensee Requirements. In addition to this chapter's requirements for licensed facilities and licensees, dispensary facilities and licensees shall also comply with the following:

(A) Dispensary facility licensees must design their facility and staffing in such a way as to accomplish the following:

1. The general public may only enter the facility through one (1) public access point into an area where facility agents shall screen individuals for qualifying patient, primary caregiver, or consumer status. No marijuana product may be accessible in this area. Drive-through lanes shall not constitute an additional access point to the facility;

2. No one under the age of 21 may enter any areas beyond the facility's public access point area, unless the individual is a qualifying patient or accompanying a parent or guardian who is a qualifying patient, primary caregiver, or consumer;

3. In any limited access area where marijuana product is accessible within the facility, the facility must have at least one (1) facility agent present for every three (3) consumers, qualifying patients, or primary caregivers, combined. A facility agent serving a consumer, qualifying patient, or primary caregiver at a drive-through window or pick-up window is not available to accompany a consumer, qualifying patient, or primary caregiver in the limited access area as long as the staff person is serving the drive-through consumer, qualifying patient, or primary caregiver; and

4. Drive-through lanes and pickup windows must—

A. Utilize drawers or pneumatic tubes for dispensing marijuana product;

B. Provide for clear visibility of the consumer, qualifying patient, or primary caregiver for verification of identity. Drive-through and pick-up windows must either be constructed so that they do not open or remain closed and locked at all times; and

C. Be covered at all times by video camera monitoring and recording that meets the standards described in this chapter;

5. Dispensary facilities must have posted at each point of egress, and on, beside, or immediately above all drive-through drawers, a department-approved sign that conveys the following warning:

“It is against the law to operate a dangerous device, motor vehicle, aircraft, or motorboat while under the influence of marijuana.”

(B) Prior to sale, delivery, or distribution, dispensary licensees shall verify all of the following through the statewide track and trace system:

1. Any marijuana product the facility sells, delivers, or distributes has been tested by a testing facility, according to the provisions of this chapter, and passed all required testing for the product type, including prerolls created at a dispensary facility; and

2. The marijuana product has not been placed on administrative hold, recalled, or ordered or otherwise required to be destroyed;

(C) Dispensary licensees shall not sell, deliver, or distribute to a consumer, qualifying patient, or primary caregiver more marijuana product than the lawful amounts.

1. Licensees may not sell, deliver, or distribute to a consumer more than three (3) ounces of dried, unprocessed marijuana, or its equivalent, in a single transaction and shall report to the department any instances of consumers attempting to make multiple purchases in close succession that the licensee knows, or reasonably should know, would likely result in the consumer exceeding limits on possession.

2. Licensees may not sell, deliver, or distribute to a qualifying patient or primary caregiver on behalf of a qualifying patient, any amount of dried, unprocessed marijuana, or its equivalent, that would result in the purchase of more than that qualifying patient’s physician- or nurse practitioner-authorized amount;

(D) Transactions.

1. For every transaction, dispensary licensees must receive the transaction order directly from a consumer, qualifying patient, or primary caregiver in person, by phone, or via the internet.

A. If a dispensary licensee receives transactions via the internet, it must ensure that the third party entity providing services for online ordering—

(I) Utilizes security measures sufficient to protect the confidentiality and security of consumer, qualifying patient, and primary caregiver information;

(II) Does not collect or distribute consumer, qualifying patient, or primary caregiver data for use in any way other than for the online ordering process; and

(III) Seeks and obtains appropriate authority from the department for integration with the statewide track and trace system, if integration is necessary, prior to providing services.

2. At the time of sale or distribution, licensees must—

A. Verify through the statewide track and trace system that—

(I) Medical marijuana product transactions are made only by qualifying patients or primary caregivers who are currently authorized to purchase the amount of medical marijuana product requested;

(II) Consumers purchasing marijuana product do not exceed the purchase limits set forth above; and

(III) A consumer, qualifying patient, or primary caregiver purchasing plants is currently authorized to cultivate marijuana;

B. Verify that the marijuana product is not past its “best by” date;

C. Require production of a qualifying patient or primary caregiver identification card if applicable or production of a substantially equivalent identification card issued in another state, a valid government-issued photo ID, and in the case of marijuana seed or plant purchases, a cultivation identification card. In the case of delivery orders, such documentation must be produced at the time of delivery. Licensees must verify that—

(I) Patients acquiring medical marijuana product are at least eighteen (18) years of age or are emancipated individuals under the age of eighteen (18); or

(II) Patients under the age of eighteen (18) have a primary caregiver who is making the acquisition on their behalf; or

(III) All consumers are at least twenty-one (21) years of age or older;

D. For any transaction involving a qualifying patient, primary caregiver, or personal cultivation purchase, scan the department-issued identification card barcode in order to adequately track purchases in the statewide track and trace system;

E. Receive payment before the marijuana product leaves the dispensary facility, or, in the case of a delivery order, receive payment at any point in time up until and including the time of delivery.

(I) In the case of a delivery order, payment is subject to refund if the delivery cannot be completed.

(II) If not receiving pre-payment for a delivery order, a dispensary licensee may deliver to no more than two (2) individuals at the same address on the same day; and

F. Record the disbursement of marijuana product, including plants and seeds, in the statewide track and trace system, even in instances where prices are discounted or waived;

(E) Dispensary licensees that sell ingestible marijuana-infused products shall ensure the storage and handling of the manufactured product complies with the applicable food safety standards set forth in chapter 19 CSR 20 and any relevant statutes controlling food safety standards;

(F) Dispensary licensees shall only sell marijuana plants acquired from licensed cultivation facilities.

1. Dispensary licensees shall not sell marijuana plants to a consumer, qualifying patient, or primary caregiver who is not currently authorized to cultivate marijuana.

2. Only plants less than eight (8) inches tall and less than eight (8) inches wide may be sold by dispensary licensees, and dispensary licensees may not alter the plant or care for it in any way other than watering and providing light.

3. If a dispensary licensee chooses to sell plants, the transaction shall proceed as follows:

A. Dispensary licensees shall receive an order and payment from a consumer, qualifying patient, or primary caregiver prior to arranging for transfer of the plant from a cultivation facility to the dispensary facility. The dispensary licensee may not hold any particular plant for more than five (5) days;

B. The licensee will schedule a time for the licensed consumer, qualifying patient, or primary caregiver to pick up the order within the five- (5-) day timeframe;

C. When the licensee accepts transfer of a plant from a cultivation facility, it must store the plant, with the consumer's, qualifying patient's, or primary caregiver's name and license number, in its vault;

D. If a consumer, qualifying patient, or primary caregiver does not pick up the order, the licensee must dispose of the plant upon expiration of the five (5) days and record the disposal and method of disposal in the statewide track and trace system; and

E. In a single transaction, no more than six (6) plants less than eight (8) inches tall may be sold to a consumer or to or on behalf of a particular patient;

(G) Refunds or credits may be issued as needed, but returns of marijuana product may only be accepted for purposes of disposal;

(H) Dispensary licensees must make available to all consumers, qualifying patients, and primary caregivers educational materials, whether digital or print, that include at least the following:

1. Local resources for concerns about addiction, including the phone number for the Substance Abuse and Mental Health Services Administration's National Helpline;

2. Information about potential risks and possible side effects of marijuana use, including:

A. Marijuana use affects brain functioning, and is likely to cause physical and mental impairment;

B. Those who consume marijuana should not operate a motor vehicle or other similar equipment;

C. Women who are or may become pregnant or are breastfeeding should avoid using marijuana as it may cause pregnancy complications, harm your baby's development, and result in a lower birth weight;

D. Secondhand smoke from marijuana can have psychoactive effects, and should be avoided for all children; and

E. The risk of poisoning and the phone number for the Missouri Poison Center;

3. Information about the different ways to administer marijuana product and the differences in the anticipated time frames for the marijuana product to take affect; and

4. The Department's contact information and website address;

(I) Dispensary facilities may securely display samples of each marijuana product offered for sale.

1. Marijuana product used as a display sample may not be dispensed to consumers, qualifying patients, or primary caregivers.

2. A facility agent may remove the sample from the secure display to allow a consumer, qualifying patient, or primary caregiver to inspect the display sample but shall immediately return the sample to the secure display once such inspection is complete.

3. Display samples shall be destroyed in accordance with this chapter within five (5) business days of the inventory associated with the mandatory test sample tag number being finished;

(J) Dispensary licensees shall store all marijuana product in a locked vault, a similarly secure locked enclosure, or in a warehouse when the facility is closed for business;

(K) Dispensaries shall limit the amount of money available in any retail area of the facility and shall notify the public that there is a minimal amount of money available, including by posting of a sign;

(L) Dispensary licensees may offer marijuana product disposal services for consumers, qualifying patients, and primary caregivers.

1. Dispensary licensees may charge a reasonable disposal fee.

2. Any marijuana product received for disposal must be logged in the statewide track and trace system and disposed within forty-eight (48) hours of receipt at the dispensary facility; and

(M) Any product of any kind available in a dispensary that is not marijuana product must be displayed separately from marijuana product and in a manner that clearly communicates the non-marijuana product is not regulated by the department.

AUTHORITY: Sections 1.3.(1)(b), 1.3.(2), 2.4(1)(b), and 2.4(4) of Article XIV, Mo. Const. Emergency rule filed January 20, 2023, effective February 3, 2023, expires August 1, 2023. A proposed rule covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.