

Draft Rule: Complaints, Inspections, and Investigations

PURPOSE: Article XIV, Sections 1 and 2 of the Missouri Constitution authorizes the Department of Health and Senior Services to promulgate rules for the implementation and enforcement of the the Article and to ensure the right to, availability, and safe use of marijuana product. This section applies to complaints, inspections, and investigations of licensed or certified facilities and identification card holders.

(1) Complaints. The department may receive complaints related to any licensed or certificated medical and marijuana facilities, or any individual holding a department issued identification card. Complaints may be submitted through the department website.

(A) Upon receipt of a complaint, the department will determine whether the allegations in the complaint warrant further investigation. The department can either close the complaint or conduct an investigation.

(B) The complaint shall remain confidential until either the complaint is closed or an investigation is completed.

(C) Employees or former employees of a licensee who report potential rule violations to the department may not be subjected to retaliation of any kind because of their report.

(2) Facility Inspections and Investigations.

(A) The department may conduct an investigation related to an individual cardholder if the department has reason to believe the individual has or is violating any rule in this chapter or provision of Article XIV that could affect the individual's right to continue holding the authority granted by the department.

(B) The department may conduct an inspection or investigation of a licensee or facility at any time it determines one is needed, including an inspection of any part of the premises or records of a licensed or certified entity.

1. No medical or marijuana facility licensee may refuse representatives of the department the right to inspect the licensed premises or to audit the books and records of the medical or marijuana facility.

2. A department employee conducting an inspection or investigation may access all areas of the the licensed or certified facility, including vehicles, without a warrant and without notice to the licensee.

3. Licensed or certified entities must provide documents or records requested as part of an inspection or investigation within five (5) business days of the department issuing the request unless additional time is requested and granted.

A. Unless additional time has been granted, failure to timely provide requested documents or records may result in a fine of up to five thousand (5,000) dollars for every day the requested documents or records have not been provided after the deadline.

B. If a licensee fails to provide records, the department may impound, seize, assume control of, or summarily remove records from the licensed facility.

C. A department request for documents or records made as part of reviewing an application submitted by a licensee, such as a change request, shall be considered an inspection of records.

4. The department may request to interview any employees, contractors, owners, or volunteers of a licensed or certified facility, and the licensee shall arrange for the interview to occur as soon as possible but not later than five (5) days after the department makes the request.

5. Upon receiving a notice of investigation, licensees must preserve all records of any type related to the subject of the investigation, including security camera recordings, until the licensee receives notice that the investigation is concluded.

6. As part of an investigation, the department may take any reasonable or appropriate action to enforce this chapter, including coordinating with law enforcement.

7. As part of an inspection or investigation, the department may direct the licensee to have marijuana product tested by a certified marijuana testing facility when the department finds good cause to do so, which may include credible allegations of rule violations or other indications that the marijuana product does or would create a threat to the health or safety of the public.

8. In the course of any investigation of a licensee, the department may issue a subpoena or subpoena duces tecum to any individual or entity with documents or information related to an investigation. The department may enforce its subpoena by applying to the circuit court of Cole County or the county where the premises, records, or individuals are located.

(C) If the department determines a licensee presents a threat to the health or safety of the licensee's employees or the public, the department may require a licensee to immediately pause any part of its operations related to or causing the threat, including placing an administrative hold on marijuana product.

(3) Commencement Inspections.

(A) Facility licensees must request and pass a commencement inspection before they may begin operations under a new license or certification, occupy new space not previously approved, begin sharing space with another licensee, change the use of spaces and, in the case of microbusiness wholesale facilities, begin cultivating or manufacturing where that activity was not already approved after inspection.

1. Requests to begin operations under a new license or certification must be submitted when the licensee believes it will, within thirty (30) days, be ready to begin operations at the facility, and the request must include at least the following:

A. Blueprints of the facility showing the intended use of all spaces and how those spaces comply with the physical security requirements applicable to them;

B. All SOPs necessary for the facility licensee to show compliance with regulations applicable to it;

C. Documentation showing all required training in use of the statewide track and trace system; and

D. Documentation showing compliance with all applicable state and local requirements for the facility.

2. Requests to occupy new space at an operational facility must be submitted prior to beginning construction or renovation, and the request must include at least the following:

A. The proposed blueprints for the facility showing the intended use of all spaces and how those spaces comply with the physical security requirements applicable to them;

B. SOPs and updated SOPs related to the new space; and

C. An attestation that the proposed new space complies with the facility location requirements of this chapter and any location and zoning requirements of the local government.

3. Requests to begin sharing space with another licensee must be submitted prior to making any changes to the existing space or most recently approved plan for a space, and the request must include at least the following:

A. The proposed blueprints for the facility clearly indicating what spaces will be shared;

B. A written explanation of the operations that will occur in each shared space for each licensee sharing the space;

C. SOPs and updated SOPs related to the shared space;

D. Copies of agreements between the licensees concerning their respective roles and their relationship for management, operation, and maintenance of the shared spaces, including an acknowledgment that all licensees sharing space will be jointly responsible for compliance with the applicable department regulations for the shared spaces; and

E. An attestation that the proposed sharing of space complies with any zoning requirements of the local government.

4. Requests to change the use of spaces must be submitted prior to making any changes to the existing space or most recently approved plan for a space, and the request must include at least the following:

A. The proposed blueprints for the facility clearly indicating the spaces that will be used differently than the most recently approved use of the space;

B. A written explanation of how the spaces will comply with rules for the new use; and

C. SOPs and updated SOPs related to the new use of space;

5. Requests by microbusiness wholesale licensees to begin cultivation or manufacturing processes not already approved during a prior commencement inspection must be submitted prior to beginning construction or renovation or making any changes to the existing space or most recently approved plan for a space, and the request must include at least the following:

A. The proposed blueprints for the facility showing the intended use of all spaces and how those spaces comply with the physical security requirements applicable to them;

B. SOPs and updated SOPs related to the new space or new use of space;

C. Documentation showing all required training in use of the statewide track and trace system; and

D. Documentation showing compliance with all applicable state and local requirements for the facility.

(B) In any commencement inspection process, if the department determines the licensee who requested the commencement inspection was not prepared to complete the commencement inspection process when it made the request, the department may set aside the request and require the licensee to make a new request once it is ready to proceed.

(C) Licensees who are constructing or renovating in an operational facility are responsible for ensuring the approved spaces are secured while the unapproved spaces are being constructed, which must include at a minimum, ensuring that all access requirements for limited access areas are maintained during construction and

that operational spaces are protected from all potential contaminants related to construction.

(D) A facility licensee may not commence any operations that are subject to a commencement inspection until the department issues written approval to do so.

(4) Notices of Violation.

(A) If the department determines that a facility is not in compliance with the department's regulations, the department may issue a warning or an Initial Notice of Violation to the licensee that explains how the licensee has violated the department's regulations and what remedial actions the department expects the licensee to take.

(B) Once a licensee has been issued an Initial Notice of Violation, the licensee shall complete the specified remedial actions and notify the department of that completion within fifteen (15) days.

(C) If the department conducts a follow up inspection or review of the facility or its response to the Initial Notice of Violation and determines violations have not been corrected or remedial actions have not been taken, the department may issue a Final Notice of Violation to the facility explaining how the facility continues to violate the department's regulations, what remedial actions the department expects the facility to take, and that the license may be suspended if the specified remedial actions are not taken or the violations corrected within thirty (30) days.

(D) If the violations have not been corrected or specified remedial actions taken thirty (30) days after a Final Notice of Violation, the department may suspend or fine the licensee, up to \$5000 per day, until the corrective or remedial actions have been taken by the licensee.