

Marijuana Tax Topics: Excise Tax Transitional Guidance



The purpose of this tax topic is to provide expedited transitional guidance for retail marijuana cultivation facilities subject to the retail marijuana excise tax. Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations.

Legislation and Rulemaking

House Bill 26-1077 requires new fresh frozen categories that distinguish between fresh frozen marijuana that was cultivated indoors and outdoors and directs the Department to adopt rules to implement the bill. The new Rule 39-28.8-301 creates new categories for indoor fresh frozen bud and outdoor fresh frozen bud. The requirements for these new categories are discussed later in this publication.

On August 4, 2026, the Executive Director adopted temporary and permanent retail marijuana tax rules, including a new Rule 39-28.8-301 regarding the retail marijuana excise tax. This publication highlights certain changes made by the new rule. Taxpayers are encouraged to review the [full text of the new Department rule](#) for a complete understanding of all the provisions adopted and consult their tax advisors for guidance regarding specific situations.

Retail Marijuana Categories

Every transfer of retail marijuana from a retail marijuana cultivation facility must be categorized based upon the nature of the retail marijuana that is sold or transferred. Proper categorization and recording in the [MED Marijuana Inventory Tracking System \(METRC\)](#) allows the Department to calculate the average market rates for each category of retail marijuana. In turn, these categories and average market rates are used to calculate the retail marijuana excise tax due on certain types of taxable transfers.

New Item Categories

The new Rule 39-28.8-301 retains the existing categories for bud, trim, bud allocated for extraction, and trim allocated for extraction and creates the following new item categories:

- Physical separation-based concentrate;
- Pre-rolled marijuana;
- Infused pre-rolled marijuana;
- Indoor fresh frozen marijuana; and
- Outdoor fresh frozen marijuana.

Physical Separation-Based Concentrate

Physical separation-based concentrate is retail marijuana that was produced by separating cannabinoids from retail marijuana through the use of physical separation by grinding, sifting, or a similar process and may use water, ice, or dry ice. Physical separation-based concentrate does not include concentrate that was produced by extracting cannabinoids through the use of heat, pressure, or a solvent.

When the retail marijuana cultivation facility is required to use the average market rate, the excise tax for physical separation-based concentrate is calculated by multiplying the total transfer weight in pounds of the physical separation-based concentrate transferred by the applicable average market rate and the 15% excise tax rate.

Pre-Rolled and Infused Pre-Rolled Marijuana

Pre-rolled marijuana is retail marijuana intended for consumption by inhalation that was produced by rolling, filling, or stuffing bud, trim, or both into paper, leaves, or an equivalent wrapper, to form a joint or blunt. Each joint or blunt constitutes one unit. In addition to bud or trim (or both), infused pre-rolled marijuana includes physical separation-based concentrate.

When the retail marijuana cultivation facility is required to use the average market rate, the excise tax for pre-rolled marijuana and infused pre-rolled marijuana is calculated by multiplying the quantity of units (i.e., the number of joints or blunts) transferred by the applicable average market rate and the 15% excise tax rate.

The transferor and transferee must categorize pre-rolls as pre-rolled marijuana or infused pre-rolled marijuana regardless of whether they contain more than one category of retail marijuana (bud, trim, and/or physical separation-based concentrate). The transferor and transferee must record in METRIC the quantity of units (i.e., the number of joints or blunts) transferred. When recording the transfer in METRC, the transferor and transferee must not record the weights of the inputs into the respective categories in addition to or in lieu of recording the number of units transferred.

For example, a joint containing bud, trim, and physical separation-based concentrate must be categorized and recorded in METRC as one unit of infused pre-rolled marijuana. The retail marijuana cultivation facility must not record in METRC the weight of the bud, trim, or physical separation-based concentrate used in the joint in addition to recording the one unit.

Fresh Frozen Marijuana

To be categorized as indoor fresh frozen marijuana or outdoor fresh frozen marijuana the retail marijuana transferred must meet all of the following general rules:

- After harvest, the retail marijuana may be removed from a retail marijuana plant. Other than removing the retail marijuana from the plant, and removing the fan leaves, the retail marijuana cultivation facility may not trim, dry, cure, or process the retail marijuana prior to weighing.
- The retail marijuana must be weighed within two hours of the plant being harvested and prior to freezing.
- The retail marijuana must be packaged and frozen within 24 hours of being harvested.
- The retail marijuana cultivation facility may not trim, dry, cure, or process the retail marijuana after weighing but prior to transfer.
- The transfer weight must be equal to the weight obtained above within two hours of the plant being harvested.
- Finally, the retail marijuana must be designated for extraction for use in retail marijuana concentrate and not for direct sale to consumers. Retail marijuana transferred to a retail marijuana store for direct sale to consumers cannot be categorized as outdoor fresh frozen marijuana even if it is grown outdoors.

When the retail marijuana cultivation facility is required to use the average market rate, the excise tax for fresh frozen marijuana is calculated by multiplying the total transfer weight in pounds of the fresh frozen marijuana transferred by the applicable average market rate and the 15% excise tax rate.

Outdoor Fresh Frozen Bud

Fresh frozen marijuana must be categorized as indoor fresh frozen marijuana unless it meets all of the requirements described below to be classified as outdoor fresh frozen marijuana.

Location Designation

Before a retail marijuana plant reaches 24 inches in height, the retail marijuana cultivation facility must designate the plant as an indoor plant or an outdoor plant. This designation is made and recorded in the location type field when assigning a plant tag. If no designation is made before a retail marijuana plant reaches 24 inches in height, the plant is deemed to be an indoor plant.

If at any time after a plant reaches 24 inches in height, but before the plant is harvested, the plant is not cultivated under the growing conditions described below, the plant must be redesignated as an indoor plant. If a plant is designated as an indoor plant, it may not be redesignated as an outdoor plant after it reaches 24 inches in height.

Outdoor Growing Conditions

In order to be designated as an outdoor plant, the retail marijuana plant must be:

- Cultivated under natural sunlight without artificial light or light deprivation;
- Directly exposed to natural weather conditions including ambient temperature, precipitation, and humidity; and
- Not within an indoor facility, greenhouse, or other structure that prevents exposure to natural sunlight and natural weather conditions.

An outdoor plant may be cultivated using:

- Artificial light to maintain vegetative plants under 24 inches in height and to maintain mother plants; and
- Irrigation, fertigation, or similar agricultural practices.

Adverse Weather Events

In general, a retail marijuana plant must be directly exposed to natural weather conditions to be designated as an outdoor plant. However, a retail marijuana cultivation facility is not required to redesignate a plant as an indoor plant if:

- The facility has a contingency plan approved by the State Licensing Authority pursuant to section 44-10-602(14), C.R.S., and Colorado Marijuana Rule 6-235; and
- The facility acts pursuant to that approved contingency plan, and in compliance with Rule 6-235, to protect the plant from an adverse weather event.

Retail Marijuana Harvested Prior to Rule Adoption

Subject to the transitional rules discussed later in this publication, a retail marijuana cultivation facility may categorize a transfer of retail marijuana harvested prior to August 4, 2026, as indoor fresh frozen marijuana if it can demonstrate that the applicable requirements governing the use of the fresh frozen marijuana categories were met. For example, if a retail marijuana cultivation facility harvested a plant on August 1, 2026, packaged and froze the retail marijuana within 24 hours of harvest, and complied with the other general rules discussed above, the transfer may be categorized as indoor fresh frozen marijuana. The fresh frozen marijuana category applies even though there was no rule in effect on August 1 requiring packaging and freezing within 24 hours.

Similarly, subject to the transitional rules discussed later in this publication, a retail marijuana cultivation facility may categorize a transfer of retail marijuana as outdoor fresh frozen marijuana if it can demonstrate:

- The plant could have been designated as “outdoor unprocessed retail marijuana” under section 39-28.8-101(6.7), C.R.S., when the plant reached 24 inches in height;
- The plant was cultivated in the manner required by the outdoor growing conditions rules; and
- The general rules governing the use of the fresh frozen categories discussed above were met.

If a retail marijuana cultivation facility cannot demonstrate that the general rules governing the use of the fresh frozen categories were met, the transfer must be categorized as bud for extraction (or trim for extraction, if applicable). A retail marijuana cultivation facility may categorize a transfer as indoor fresh frozen marijuana category if it can demonstrate that the general rules governing the use of the fresh frozen categories were met but it cannot demonstrate that the outdoor growing conditions were met.

Discontinued Item Categories

The new rule discontinues the following item categories:

- Immature plant;
- Seeds; and
- Wet whole plant.

The wet whole plant category is generally replaced by the fresh frozen marijuana categories. Transfers of immature plants, seeds, and other genetic material are not subject to the retail marijuana excise tax effective September 1, 2026.

Transitional Rules for New Categories

Transitional rules apply for recording in METRC and determining the tax on any taxable transfers made between September 1, 2026, and December 31, 2026. In general, different recording rules apply depending on whether the taxable transfer is between affiliated or unaffiliated marijuana businesses, but additional criteria must also be considered.

Recording and tax calculation is required using either the old or new categories, as described below.

The old categories include the existing categories for bud, trim, bud allocated for extraction, trim allocated for extraction, and wet whole plant. The new categories include categories for bud, trim, bud allocated for extraction, and trim allocated for extraction that are retained in the new Rule 39-28.8-301, as well as the five new item categories listed earlier in this publication.

Transfers Between Unaffiliated Businesses

In general, taxable transfers between unaffiliated businesses on and after September 1, 2026, must be recorded in METRC using the new categories listed above. The Department will use the contract price data collected for transfers between September 1 and November 30, 2026, to calculate the first set of average market rates for these new categories.

Taxable transfers between unaffiliated businesses prior to January 1, 2027, must be recorded in METRC using the old categories if a contract price is not established, calculated, or documented at the time of a taxable transfer, and the tax will therefore be determined under paragraph (3)(a)(i)(B) of the new Rule 39-28.8-301 using the average market rate. The tax on these transfers will be determined by the applicable average market rate for these old categories.

Transfers Between Affiliated Businesses

In general, taxable transfers between affiliated businesses prior to January 1, 2027, must be recorded in METRC using the old categories. The average market rate for the old categories will be used to calculate the excise tax on these transfers.

Taxable transfers between affiliated businesses prior to January 1, 2027, may be recorded in METRC using the new categories if the retail marijuana transferred was previously transferred between unaffiliated retail marijuana cultivation facilities, and the conditions in paragraph (3)(a)(ii) of the new Rule 39-28.8-301 are met, so that the excise tax on the transfer between affiliated retail marijuana businesses is calculated based upon the contract price for the prior unaffiliated transfer.

Taxable transfers between affiliated businesses on and after January 1, 2027, must be recorded in METRC using the new categories. The excise tax will be based upon the average market rates for these new categories.

New Transfer Types

In general, the basis for the retail marijuana excise tax depends on whether the retail marijuana cultivation facility subject to tax is affiliated with the retail marijuana business to which the retail marijuana is transferred. Retail marijuana businesses are required to record a transfer type in METRC for each transfer to reflect, among other things, the relationship between the transferor and transferee.

New transfer types for recording transfers in METRC go into effect on September 1, 2026. Although the transfer types in METRC are changing, the new Rule 39-28.8-301 substantially continues the same tax treatment for these different transfer types.

If a taxable transfer from a retail marijuana cultivation facility is to an unaffiliated retail marijuana business, the excise tax is generally calculated based upon the contract price for the retail marijuana transferred. These transfers are currently recorded using the “Unaffiliated” transfer type. For further clarity, these transfers will use the “Unaffiliated (Contract Price)” transfer type beginning September 1, 2026.

Conversely, if a taxable transfer from a retail marijuana cultivation facility is to an affiliated retail marijuana business, the excise tax is generally calculated based upon the average market rate for the category of the retail marijuana transferred. These transfers are currently recorded using the “Affiliated” transfer type. For further clarity, these transfers will use the “Affiliated (AMR)” transfer type beginning September 1, 2026.

There are two exceptions to these general rules for which the Department has added new transfer types.

If a contract price is not established, calculated, or documented at the time of a taxable transfer, the excise tax is calculated based upon the average market rate for the category of the retail marijuana transferred. The transferor must use the average market rate even though the transferee is not an affiliated retail marijuana business. Beginning September 1, 2026, these transfers will utilize the “Unaffiliated (AMR)” transfer type.

If the first transfer of retail marijuana is between unaffiliated retail marijuana cultivation facilities, the excise tax imposed upon the subsequent taxable transfer between affiliated retail marijuana businesses is calculated based upon the contract price for the first transfer, provided that:

- At the time of the first transfer, the retail marijuana had been harvested for sale at a retail marijuana store or for extraction by a retail marijuana product manufacturing facility;
- The retail marijuana underwent no further cultivation following the first transfer; and
- A contract price was established at the time of the first transfer.

Beginning September 1, 2026, these transfers will utilize the “Affiliated (Contract Price)” transfer type.

Additional resources

The following is a list of statutes and regulations pertaining to this transitional guidance for retail marijuana excise tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-28.8-101. Definitions.
- § 39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate.
- § 39-28.8-303. Books and records to be preserved.
- [Emergency Rule 39-28.8-301](#). Retail Marijuana Excise Tax (adopted August 4, 2026).
- [Rule 39-28.8-301](#). Retail Marijuana Excise Tax (adopted August 4, 2026).
- Colorado Marijuana Rule 6-235, [1 CCR 212-3](#).