

DEPARTMENT OF REVENUE

Taxation Division

RETAIL MARIJUANA TAX

1 CCR 201-18

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Rule 39-28.8-101. Retail Marijuana Definitions.

Basis and Purpose. The bases for this rule are sections 39-21-112(1), 39-~~26-102~~, 39-28.8-101, ~~39-28.8-201~~, 39-28.8-205, and 39-28.8-308, C.R.S. The purpose of this rule is to establish definitions for terms used in 1 CCR 201-18 regarding retail marijuana sales tax and retail marijuana excise tax.

With respect to rules promulgated under article 28.8 of title 39, the ~~following~~ terms below have the following meanings:

- (1) Unless the context clearly requires otherwise, terms defined by section 39-~~26-102~~, C.R.S., 39-28.8-101, C.R.S., section 44-10-103, C.R.S., or in Rule 1-115 of 1 CCR 212-3 of the Marijuana Enforcement Division's rules related to the Colorado Marijuana Code, ~~shall~~ have the same meanings in these rules as therein defined.
- (2) "Affiliated" means being owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.
- (3) "Average market rate" ~~shall have~~ has the same meaning as defined in ~~subsection~~ section 39-28.8-101(1.5), C.R.S., and ~~shall be~~ is calculated pursuant to Rule 39-28.8-302 ~~(5) in the following categories:—1.~~
- (a) ~~Bud~~
- (b) ~~Trim~~
- (c) ~~Bud Allocated for Extraction~~
- (d) ~~Trim Allocated for Extraction~~
- (e) ~~Immature Plant~~
- (f) ~~Wet Whole Plant~~
- (g) ~~Seed~~
- (4) "Bud" ~~shall have~~ has the same meaning as the product of the "flowering" stage as set forth by Rule 1-115 of 1 CCR 212-3, including the actual flower. "Bud" includes product of any size.
- (5) "Bud allocated for extraction" means bud, other than fresh frozen bud, that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers.

- (6) ~~“Immature Plant” shall have~~ Category” means a class of retail marijuana from the same meaning as set forth by list in paragraph (2) of Rule 39-28.8-302-1-115 of 1 CCR 212-3.
- (7) “Contract price” means the invoice price charged by a retail marijuana cultivation facility to each purchaser for each transfer of retail marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. (7) — “Inventory Tracking System” shall have the same meaning as set forth. For purposes of this definition, the invoice price charged includes the aggregate value of all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt.
- (8) “Fresh frozen bud” means bud that is:
- (a) removed from the plant, but is not otherwise trimmed, dried, cured, or processed;
 - (b) weighed within two hours of the plant being harvested and prior to freezing; and
 - (c) designated for extraction of retail marijuana concentrate and not for direct sale to consumers.
- (9) “Pre-rolls” includes both “pre-rolled marijuana” and “infused pre-rolled marijuana” as those terms are defined by Rule 1-115 of 1 CCR 212-3.
- ~~(8) — “Marijuana” means Medical Marijuana or Retail Marijuana.~~
- ~~(9) — “Retail Marijuana” shall have (10) “Retailer” has the same meaning as defined in subsection section 39-28.8-101(7), 26-102, C.R.S.~~
- ~~(10) — “Retail Marijuana Concentrate” shall have the same meaning as “Retail Marijuana Concentrate” as set forth by Rule 1-115 of 1 CCR 212-3., and includes retail marijuana stores and retail marijuana hospitality and sales establishments.~~
- (11) “Retail marijuana cultivation facility” shall have has the same meaning as defined in subsection section 39-28.8-101(8), C.R.S. and includes accelerator cultivators.
- (12) “Retail marijuana excise tax” or “excise tax” means the excise tax imposed by part 3 of article 28.8 of title 39, C.R.S.
- (13) “Retail marijuana excise tax return” means the excise tax return upon which all sales or transfers of retail marijuana subject to retail marijuana excise tax, and the amount of retail marijuana excise tax are due, is reported.
- (14) “Retail marijuana plant” means a plant of the genus cannabis, other than an immature plant, whether growing or harvested, that is cultivated by a licensed retail marijuana cultivation facility.
- (15) “Retail marijuana product manufacturing facility” shall have has the same meaning as defined in subsection section 39-28.8-101(10), C.R.S. and includes accelerator manufacturers.
- (16) “Retail marijuana sales tax” means the sales tax imposed by part 2 of article 28.8 of title 39, C.R.S.
- (17) “Retail marijuana sales tax return” means the sales tax return upon which all sales of retail marijuana and retail marijuana products and the amount of state and local Retail Marijuana Sales Tax are retail marijuana sales tax due is reported.

- (18) "Retail sales tax" means the sales tax imposed by part 1 of article 26 of title 39, C.R.S.
- (19) "Test period" means the period of time used to calculate the average market rate. The test ~~Period shall be~~ periods are each ~~November~~ December 1st to the subsequent ~~January 31st, each~~ February 28th, each ~~March~~ 1st to the subsequent ~~April 30th, each~~ May 31st, each ~~June~~ 1st to the subsequent ~~July~~ August 31st, and each ~~August~~ September 1st to the subsequent ~~October 31st~~ November 30th.
- (20) "Transfer~~(s)(ed)(ing)~~" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any ~~Retail Marijuana or Retail Marijuana Product~~ regulated marijuana from one licensee to another licensee ~~or~~, to a consumer. A transfer includes the movement of ~~Retail Marijuana or Retail Marijuana Product~~ regulated marijuana from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals.
- (21) "Trim" means any part of a retail marijuana plant other than bud, fresh frozen bud, or ~~Wet Whole Plant~~ seeds. Trim includes "sweet leaf" or "sugar leaf".
- (22) "Trim allocated for extraction" means trim that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers.
- (23) "Unaffiliated" means not being owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.
- ~~(24) "Unprocessed Retail Marijuana" means all Retail Marijuana that is first Transferred by a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility, even though it may have gone through some processing, and even though it may be subject to further processing by another licensee.~~
- ~~(25) "Wet Whole Plant" means a Retail Marijuana Plant that is cut off just above the roots and is not trimmed, dried, or cured. The weight of the Wet Whole Plant includes all bud, leaves, stems, and stalk. The Wet Whole Plant must be weighed within 2 hours of the plant being harvested. The plant must not undergo any further processing prior to being weighed, and tax must be paid on the weight of the entire unprocessed plant.~~
- (24) "Wholesaler" has the same meaning as defined in section 39-26-102, C.R.S., and includes retail marijuana cultivation facilities and retail marijuana product manufacturing facilities.

Rule 39-28.8-201. Retail Marijuana Sales Tax Procedures.

- ~~(1) **Basis and Purpose.** The bases for this rule are sections 24-35-108, 39-21-112(1), 39-21-113, 39-26-103, 39-26-105, 39-26-116, 39-26-118(2), 39-28.8-201, and 39-28.8-205, C.R.S. The purpose of this rule is to establish procedures governing the collection, administration, and enforcement of the retail marijuana sales tax.~~
- (1) **General Rule.** The Department's procedures governing ~~Retail Sales Tax~~ the collection, administration, and enforcement of the retail sales tax as described in the rules promulgated under articles 21 and 26 of title 39, C.R.S., shall, to the extent not inconsistent with the provisions of article 28.8 of title 39, C.R.S., and ~~the~~ these rules ~~promulgated pursuant thereto,~~ likewise govern the ~~procedures with respect to the~~ collection, reporting administration, and ~~remittance~~ enforcement of the retail marijuana sales tax.

- (2) **Licensing.** In addition to any other licenses required by law, every retail marijuana business doing business in this state and selling at retail or at wholesale must obtain a license pursuant to section 39-26-103, C.R.S., and this rule.
- (a) *Wholesalers.* Any ~~vendor~~ person selling or transferring exclusively at wholesale must obtain a wholesale license pursuant to section 39-26-103(8), C.R.S., for each wholesale location.
 - (b) *Retailers.* Any person selling or transferring retail marijuana at retail must obtain a retail sales tax license pursuant to section 39-26-103(1), C.R.S., for each retail location.
 - (i) A separate license must be obtained and maintained for each of:
 - (A) a medical marijuana store and a retail marijuana store operating from a shared location; and
 - (B) a retail marijuana hospitality and sales business and a retail food establishment operating from a shared location.
 - (ii) A retailer making ~~sales of~~ both retail sales and wholesale sales from the same location need not obtain a separate wholesale license for that location.
 - (c) *Retail Marijuana at a Retail Marijuana Store Transporter.* A retail marijuana transporter is not required to obtain a license under this paragraph (2).
- (3) **Returns Required.** In addition to any other returns required by law, every retailer making retail sales of retail marijuana shall, on a monthly basis, file a retail marijuana sales tax return ~~for Retail Marijuana Sales Tax collected~~ and pay any retail marijuana sales tax due.
- ~~(a) — The Retail Marijuana Sales Tax Return shall be filed electronically by all such vendors. The remittance of the Retail Marijuana Sales Tax shall be made in accordance with procedures prescribed on the Department's website or on forms published by the Department.~~
 - ~~(b) — If any vendor making sales of Retail Marijuana is unable to file Retail Marijuana Sales Tax Returns electronically, such vendor may apply to the Department for a waiver of electronic filing requirements. The Department may grant such a waiver upon a showing of good cause.~~
 - (a) A retailer that makes no retail sales of retail marijuana during the month shall nonetheless file a return on or before the due date reporting that no tax is due.
 - (b) The return required by this paragraph (3) is separate from the retail sales tax return and the retail marijuana excise tax return. In addition to the retail marijuana sales tax return, every retailer shall, on a monthly basis, file a retail sales tax return reporting sales of retail marijuana subject to state-administered local sales tax, and any other sales subject to state or state-administered local sales tax, and paying the retail sales tax due as computed therein.
 - (c) A separate retail marijuana sales tax return must be filed for each location from which retail marijuana is sold at retail. A separate return is required with respect to sales made at the retail location and sales delivered to the purchaser at a location other than the retail location even if both locations are within the same taxing area.

(4) **Recordkeeping Requirements.** In addition to the books, accounts, and records required to be maintained pursuant to section 39-28.8-303, C.R.S., and the rules promulgated thereunder, every retailer shall keep and preserve, for a period of at least three years, such books, accounts, and records as may be necessary to determine the amount of retail marijuana sales tax due.

(a) All such books, accounts, and records shall be open for examination at any time by the Executive Director or the Executive Director's duly authorized agents.

(b) Should any person neglect or refuse to maintain adequate books, accounts, and records, or to open them for examination in accordance with this rule, the Executive Director shall make an estimate of the retail marijuana sales tax due from such person, based upon the information that may be available, plus penalty and interest as provided in section 39-26-118(2), C.R.S.

Rule 39-28.8-202. ~~Sales Tax on Retail Marijuana~~ Sales Tax Imposition and ~~Retail Marijuana~~ Product Collection.

Basis and Purpose. The bases for this rule are sections 39-21-112(1), 39-26-102, 39-26-105, 39-28.8-101, 39-28.8-201, 39-28.8-202, and 39-28.8-205, C.R.S. The purpose of this rule is to provide guidance regarding the imposition and collection of the retail marijuana sales tax and the applicability of the retail marijuana sales tax to wholesale sales.

(1) **Imposition of Tax.**

(a) The retail marijuana sales tax is imposed on the full-purchase price of all sales of retail marijuana and retail marijuana ~~Product~~ products at retail. The retail sale of any product that contains any amount of retail marijuana or any derivative thereof is subject to the retail marijuana sales tax on the full-purchase price ~~of paid or charged upon~~ such product.

(b) In addition to any other tax imposed, every retailer shall add the retail marijuana sales tax imposed at the rate provided in section 39-28.8-202, C.R.S., to the purchase price, showing such tax as a separate and distinct item, and when added such tax shall constitute a part of such purchase price and is a debt from the consumer or user to the retailer until paid and is recoverable at law in the same manner as other debts. The retailer is allowed to apply and credit the amount of the retailer's collections against the rate to be paid under the provisions of paragraph (1)(c) of this rule, remitting any excess of collections over said rate.

(c) Every retailer, irrespective of the provisions of paragraph (1)(b) of this rule, is liable and responsible for the payment of an amount equal to the rate provided in section 39-28.8-202, C.R.S., on all sales by the retailer as specified in paragraph (1)(a) of this rule.

(2) **Wholesale Sales.** The tax imposed by section 39-28.8-202, C.R.S., and paragraph (1) of this rule is not imposed on any wholesale sale. The seller bears the burden of proving that a sale is a wholesale sale in accordance with the requirements set forth in section 39-26-105(3), C.R.S., and the rules promulgated thereunder.

Rule 39-28.8-~~302. Retail Marijuana Excise Tax~~ 302-1. Average Market Rate.

Basis and Purpose. The bases for this rule are ~~§§~~sections 39-21-112(1), 39-28.8-101, ~~39-28.8-301, 39-28.8-302, (1.5),~~ and 39-28.8-308, C.R.S. The purpose of this rule is to establish rules governing the calculation of the average market rate for purposes of the retail marijuana excise tax.

(1) **General Rule.**

- (a) For each calendar quarter, the average market rate for each category in paragraph (2) of this rule is the median transfer price of all transfers described in paragraph (1)(b) of this rule completed during the preceding test period.
- (b) Except as provided in paragraph (4), the calculation of the median transfer price shall include for each category:
- (i) Every transfer of retail marijuana from a retail marijuana cultivation facility to an unaffiliated retail marijuana store or an unaffiliated retail marijuana product manufacturing facility, provided that a contract price was established at the time of the transfer; and
- (ii) Every transfer of retail marijuana from a retail marijuana cultivation facility to an affiliated retail marijuana store or an affiliated retail marijuana product manufacturing facility if the first transfer of the retail marijuana was between unaffiliated retail marijuana cultivation facilities, provided that:
- (A) a contract price was established at the time of the transfer between unaffiliated retail marijuana cultivation facilities;
- (B) the retail marijuana had been harvested for sale at a retail marijuana store or for extraction by a retail marijuana product manufacturing facility; and
- (C) the retail marijuana underwent no further cultivation following the transfer between unaffiliated retail marijuana cultivation facilities.
- (2) **Average Market Rate Categories.** For each test period, the Department shall calculate the average market rate for each of the following categories:
- (a) Bud;
- (b) Trim;
- (c) Pre-rolls;
- (d) Bud allocated for extraction;
- (e) Trim allocated for extraction;
- (f) Fresh frozen bud;
- (g) Physical separation-based retail marijuana concentrate;
- (h) Immature plant; and
- (i) Seed.
- (3) **Transfer Price.**
- (a) For each transfer of bud, trim, bud allocated for extraction, trim allocated for extraction, fresh frozen bud, physical separation-based retail marijuana concentrate, and pre-rolls the Department shall calculate a per-pound transfer price by dividing the contract price by the total weight transferred in pounds. No adjustment is allowed to the transfer price for fresh frozen bud on account of any water or other waste weight.

- (b) For each transfer of immature plants and seeds, the Department shall calculate a per-unit transfer price by dividing the contract price by the number of plants or seeds transferred, respectively.
- (4) In calculating the average market rate, the Department shall disregard any transfer for which the transferor, the transferee, or both, in the opinion of the Department, did not comply with the requirements of paragraph (2) of Rule 39-28.8-303, including any transaction that lists a nominal amount for the transfer price that does not reflect the actual contract price.
- (5) **Transitional Rule.**
- (a) Beginning on and after [date], but before [date], every transfer of pre-rolls, fresh frozen bud, or physical separation-based retail marijuana concentrate for which the calculation of the excise tax is based upon a contract price under paragraph (3) of Rule 39-28.8-302-2, the transferor and transferee shall record those transfers in the inventory tracking system using these new categories in accordance with paragraph (2) of Rule 39-28.8-303.
- (b) The Department shall compute the first average market rates for pre-rolls, fresh frozen bud, and physical separation-based retail marijuana concentrate for the test period from [date] to [date] using the transfers described in paragraph (5)(a) of this rule provided that those transfers comply with the requirements of paragraph (2) of Rule 39-28.8-303. For any test period ending on or after the effective date of this rule, but prior to [date], the Department shall continue to compute the average market rate for the categories, and applying the same methodology, in effect immediately prior to the effective date of this rule.
- (c) A retail marijuana cultivation facility shall not record a transfer of pre-rolls, fresh frozen bud, or physical separation-based retail marijuana concentrate for which the calculation of the excise tax is based upon the average market rate using these new categories until the Department establishes the first average market rates under paragraph (5)(b) of this rule.

Rule 39-28.8-302-2. Retail Marijuana Excise Tax Imposition and Calculation.

Basis and Purpose. The bases for this rule are sections 39-21-112(1), 39-28.8-301, 39-28.8-302, 39-28.8-308, and 44-10-503, C.R.S. The purpose of this rule is to provide guidance regarding the imposition and calculation of the retail marijuana excise tax ~~and the record keeping requirements therefor.~~

(1) **Incidence of Tax.**

- (a) The excise tax is imposed upon the ~~Retail Marijuana Cultivation Facility, which shall pay the Excise Tax to the Department on the~~ first transfer of retail marijuana to a retail marijuana store or ~~a Retail Marijuana Product Manufacturing Facility, to a retail marijuana product manufacturing facility.~~ The tax is imposed upon the retail marijuana cultivation facility that makes the first transfer to a retail marijuana store or to a retail marijuana product manufacturing facility even if the retail marijuana was transferred to such retail marijuana cultivation facility from another retail or medical marijuana cultivation facility.
- (b) No excise tax is imposed on the transfer of retail marijuana from one retail marijuana cultivation facility to another retail marijuana cultivation facility. ~~In the case of such Transfer,~~ The excise tax is imposed in the manner described in paragraph (1)(a) of this rule on the subsequent transfer of the retail marijuana to a retail marijuana store or a retail marijuana product manufacturing facility.

(c) No excise tax is imposed on the transfer of medical marijuana to a retail marijuana cultivation facility and the attendant change in designation from medical marijuana to retail marijuana. In the case of such a transfer, the excise tax is imposed in the manner described in paragraph (1)(a) of this rule on the subsequent transfer of the retail marijuana to a retail marijuana store or a retail marijuana product manufacturing facility.

(2) **Exempt Transfers.**

(a) The transfer of retail marijuana to a retail marijuana testing facility for testing purposes is exempt from retail marijuana excise tax so long as the retail marijuana is destroyed by the retail marijuana testing facility during or following the testing.

~~(3) **Inventory Tracking System.** When a Transfer is entered into the Inventory Tracking System, all Transfers between Unaffiliated Retail Marijuana business licensees must be entered in a manner that allows the contract price to be recorded in such Inventory Tracking System. The contract price recorded in the Inventory Tracking System must be the actual contract price as described in paragraph (4)(b) of this rule.~~

~~(4) (b) The transfer of retail marijuana to a medical marijuana cultivation facility, and the attendant change in designation from retail marijuana to medical marijuana, is exempt from retail marijuana excise tax. A transfer and change of designation of retail marijuana to medical marijuana pursuant to this paragraph (2)(b) is not a transaction that results in a right to refund of any retail marijuana excise tax incurred or paid prior to that transfer and change of designation.~~

(3) **Calculation and Payment of the Excise Tax.**

(a) The method for calculating retail marijuana excise tax depends on the relationship between retail marijuana business licensees.

(i) ~~Transfers from retail marijuana cultivation facilities to unaffiliated retail marijuana Stores or Unaffiliated Retail Marijuana Product Manufacturing Facilities~~ businesses.

(A) Except as provided in paragraph (3)(a)(i)(B), if the first transfer from a retail marijuana cultivation facility is to an unaffiliated retail marijuana store, or unaffiliated retail marijuana product manufacturing facility, the excise tax is calculated based on the actual contract price, as defined in paragraph (4)(b) of this rule, of for the retail marijuana transferred.

(B) If ~~no~~ a contract price is not established at the time of the first transfer referenced in paragraph ~~(4)(a)(i)(A)~~ (3)(a)(i)(A), of this rule, the excise tax is calculated based on the average market rate ~~of~~ for the category of the retail marijuana transferred. Examples of such transfers include:

(I) a temporary transfer, which does not constitute a sale, of retail marijuana from a retail marijuana cultivation facility to an unaffiliated retail marijuana product manufacturing facility that will decontaminate, process, or manufacture the retail marijuana before returning it to the retail marijuana cultivation facility or to a retail marijuana store affiliated with the retail marijuana cultivation facility; or

(II) a transfer of retail marijuana from a retail marijuana cultivation facility to an unaffiliated retail marijuana store for which a price is

not established at the time of transfer, but instead depends upon the revenue generated from the subsequent sale of the retail marijuana to the end consumer.

- (ii) *Transfers between unaffiliated retail marijuana cultivation facilities of retail marijuana harvested for sale or for extraction.*

~~(A)~~ (A) Except as provided in paragraph (3)(a)(ii)(B), if the first transfer of retail marijuana is between unaffiliated retail marijuana cultivation facilities, the excise tax is calculated based on the contract price, ~~as defined in paragraph (4)(b) of this rule,~~ provided that:

(I) the retail marijuana had, at the time of transfer between unaffiliated retail marijuana cultivation facilities, been harvested for sale at a retail marijuana store or for extraction by a retail marijuana product manufacturing facility; and

(II) the retail marijuana underwent no further cultivation following the transfer between unaffiliated retail marijuana cultivation facilities.

~~(B) The Excise Tax calculated pursuant to paragraph (4)(a)(ii)(A) of this rule shall be imposed on the first Transfer of the Retail Marijuana from the Retail Marijuana Cultivation Facility to a Retail Marijuana Store or Retail Marijuana Product Manufacturing Facility.~~

~~(C)~~ If ~~no~~ a contract price ~~is~~ was not established ~~prior to at the time of~~ the first transfer between unaffiliated retail marijuana cultivation facilities, the excise tax is calculated on the average market rate at the time of the transfer to a retail marijuana store or a retail marijuana product manufacturing facility. An example of such a transfer includes, but is not limited to:

(I) a transfer of retail marijuana between unaffiliated retail marijuana cultivation facilities for which a price is not established at the time of transfer, but instead depends on the revenue generated from the subsequent transfer to a retail marijuana store or retail marijuana product manufacturing facility.

- (iii) *Affiliated retail marijuana business licensees.* Except as provided in paragraph (3)(a)(ii) of this rule, if the first transfer from a retail marijuana cultivation facility is to an affiliated retail marijuana store or an affiliated retail marijuana product manufacturing facility, the excise tax is calculated based on the average market rate for the category of the retail marijuana transferred.

~~(A) Except as provided in paragraph (4)(a)(ii) of this rule, if the first (iv) Transfer from a Retail Marijuana Cultivation Facility is to an Affiliated Retail Marijuana Store or an Affiliated Retail Marijuana Product Manufacturing Facility, the Excise Tax is calculated based on the Average Market Rate of the Retail Marijuana Transferred.~~

~~(b) Contract Price. The contract price is the invoice price charged by and redesignation of medical marijuana. For purposes of this paragraph (3)(a), a transfer of medical marijuana to a retail marijuana cultivation facility to each licensed purchaser for each Transfer of Unprocessed Retail Marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices~~

~~reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. For the purpose of this paragraph (4)(b), the invoice price charged includes all consideration the seller receives from the buyer in whatever form, and regardless of the time of receipt.~~

~~(c) — Calculation of Average Market Rate. The Department will calculate the Average Market Rate using reported sales of each category during the Test Period. The Department will determine the best methodology to arrive at the Average Market Rate. The Department may, from time to time, the attendant change its method of calculating the Average Market Rate if, in the judgment of the Department, such change is necessary to arrive at the most accurate Average Market Rate given the market conditions in designation from medical marijuana to retail marijuana, is disregarded.~~

~~(d) — b) Average Market Rate. In the case of retail marijuana excise tax calculated using average market rate, the excise tax ~~shall be~~ is calculated based on the category of retail marijuana being transferred.~~

~~(i.e., Bud, Trim, Immature Plant, Wet Whole Plant, Seed, Bud) The retail marijuana excise tax for bud, trim, bud allocated for extraction, trim allocated for extraction, or Trim Allocated for Extraction) being Transferred. The provisions of this paragraph (4)(d) apply only to Excise Tax calculated using Average Market Rate.~~

~~(i) — For the categories of Bud, Trim, Bud Allocated for Extraction, physical separation-based retail marijuana concentrate, and Trim Allocated for Extraction, the Excise Tax pre-rolls is computed on calculated by multiplying the total weight in pounds of the retail marijuana transferred by the applicable average market rate and the applicable excise tax rate. If multiple categories of retail marijuana are included in the transfer, the excise tax ~~shall be~~ is calculated separately for each category ~~of Retail Marijuana included in the Transfer by separately calculating~~ based upon the total weight in pounds of the retail marijuana included in each category ~~and multiplying the weight~~ multiplied by the average market rate ~~off~~ or each category and the applicable excise tax rate. Notwithstanding this rule, inconsequential amounts of bud inadvertently included in a transfer that is otherwise trim ~~shall be~~ are treated as trim and not as bud.~~

~~(A)(ii) The retail marijuana excise tax for immature plants and seeds is calculated on the total number of plants or seeds transferred multiplied by the applicable average market rate.~~

~~(iii) The retail marijuana excise tax for fresh frozen bud is calculated on the total weight in pounds of the fresh frozen bud transferred, as described in this paragraph (3)(b)(iii), multiplied by the fresh frozen bud average market rate.~~

~~(A) Fresh frozen bud must be weighed within two hours of the plant being harvested and prior to freezing. Other than removing the bud from the plant, fresh frozen bud must not be trimmed, dried, cured, or processed prior to being weighed. Drying includes any direct or indirect artificial drying such as increasing the ambient temperature of the room. The fresh frozen bud must be harvested, weighed, packaged, and frozen within the same 24-hour period.~~

~~(B) The entire weight of the fresh frozen bud is subject to the excise tax because the average market rate for fresh frozen bud is based on the total weight and reflects any water weight.~~

(C) A retail marijuana cultivation facility that calculates and pays the excise tax using the fresh frozen bud rate must maintain records of the time the fresh frozen bud (identified by its RFID tag) was harvested and weighed, the weight observed, and the time the fresh frozen bud was packaged and frozen. The records must be in writing and created contemporaneously with the harvesting, weighing, packaging and freezing.

(D) If the bud is not weighed within two hours of being harvested, or it is trimmed, dried, cured, or processed before being weighed, or it is not packaged and frozen within 24 hours of harvest, the excise tax cannot be calculated and paid using the fresh frozen bud rate and must instead be calculated and paid at the bud or bud allocated for extraction rate, as applicable.

(iv) Retail marijuana categorized for the purpose of excise tax calculation as bud allocated for extraction ~~or~~ trim allocated for extraction, or fresh frozen bud may not be subsequently transferred for direct sale to consumers unless it has first been subject to extraction ~~as allocated~~.

(BA) If bud allocated for extraction ~~or~~ trim allocated for extraction, or fresh frozen bud is subsequently transferred for direct sale to consumers, and it has not been subjected to extraction, the retail marijuana cultivation facility shall amend the retail marijuana excise tax return upon which the excise tax was initially paid ~~in order to~~. The retail marijuana cultivation facility shall recalculate the excise tax, and add any applicable penalty and interest, ~~using~~. In the Average Market Rates for the category case of bud allocated for extraction or Trim, respectively fresh frozen bud, the retail marijuana cultivation facility shall recalculate the excise tax based upon the average market rate for bud. In the case of trim allocated for extraction, the retail marijuana cultivation facility shall recalculate the excise tax based upon the average market rate for trim.

(CB) The retail marijuana product manufacturing facility shall notify, ~~in writing~~, the retail marijuana cultivation facility in writing of any subsequent transfer of bud allocated for extraction ~~or~~ trim allocated for extraction, or fresh frozen bud that has not first been subjected to extraction within ~~seven (7)~~ days of the transfer by the retail marijuana product manufacturing facility. Any failure by a retail marijuana ~~Production~~ product manufacturing facility to notify a retail marijuana cultivation facility in accordance with this paragraph ~~(4)(d)(i)(C3)(b)(iv)(B)~~ shall not relieve the retail marijuana cultivation facility of liability for any additional tax, penalty, and interest due pursuant to paragraph ~~(4)(d)(i)(B3)(b)(iv)(A)~~ of this rule.

~~(ii) — The Retail Marijuana Excise Tax for Immature Plants is calculated on the total number of Immature Plants being sold or Transferred.~~

~~(iii) — The Retail Marijuana Excise Tax for Wet Whole Plants is calculated on the total weight of the entire Retail Marijuana Wet Whole Plant. The weight of the entire Retail Marijuana Wet Whole Plant is subject to the Excise Tax because the Average Market Rate for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.~~

- (4) **No Refund in Case of Transfer to Medical Marijuana Products Manufacturer.** No refund or credit is allowed in the case of a transfer of retail marijuana, upon which the excise tax has been imposed or paid, from a retail marijuana products manufacturer to a medical marijuana products manufacturer in accordance with section 44-10-503, C.R.S.

Rule 39-28.8-303. Recordkeeping Requirements.

Basis and Purpose. The bases for this rule are sections 24-35-108(1)(f), 39-21-112(1), 39-21-113, 39-26-116, 39-26-118(2), 39-28.8-301, 39-28.8-303, and 39-28.8-308, C.R.S. The purpose of this rule is to detail the recordkeeping requirements for the retail marijuana excise tax.

- (1) **General Rule.** In addition to the books, accounts, and records required to be maintained pursuant to section 39-28.8-303, C.R.S., and the rules promulgated thereunder, every retail marijuana cultivation facility shall keep and preserve for a period of at least three years such books, accounts, and records as may be necessary to determine the amount of retail marijuana excise tax due.
- (a) All such books, accounts, and records shall be open for examination at any time by the Executive Director or the Executive Director's duly authorized agents.
- (b) Should any person neglect or refuse to maintain adequate books, accounts, and records, or to open them for examination in accordance with this rule, the Executive Director shall make an estimate of the retail marijuana excise tax due from such person, based upon the information that may be available, plus penalty and interest as provided in section 39-26-118(2), C.R.S.
- (2) **Transfer Entries in Inventory Tracking System.**
- (a) Every retail marijuana business licensee who transfers retail marijuana to or receives retail marijuana from another retail marijuana business licensee shall promptly record the transfer in the inventory tracking system in a manner that will allow for the proper calculation of the retail marijuana excise tax and the average market rate. Every transfer entry must include:
- (i) The license number of the transferor and transferee;
- (ii) The date of the transfer;
- (iii) The weight or quantity of retail marijuana transferred as described in paragraph (2)(b) of this rule;
- (iv) For every transfer as described in paragraph (3)(a) of Rule 39-28.8-302-2, the contract price, if established at the time of transfer; and
- (v) The transfer type as described in paragraph (2)(c) of this rule.
- (b) *Weight or Quantity Transferred.* Every transferor and transferee shall record the weight or quantity of retail marijuana transferred, as applicable, as follows.
- (i) For transfers of bud, trim, bud allocated for extraction, trim allocated for extraction, physical separation-based retail marijuana concentrate, or pre-rolls, the transferor and transferee shall enter the total weight of the retail marijuana transferred. If multiple categories of retail marijuana are included in the transfer, the weight for each category shall be measured and entered separately; except,

however, inconsequential amounts of bud inadvertently included in a transfer that is otherwise trim shall be treated as trim and not as bud.

(ii) For transfers of immature plants or seeds, the transferor and transferee shall enter the total number of plants or seeds transferred, respectively.

(iii) For transfers of fresh frozen bud, the transferor and transferee shall enter the total weight of the fresh frozen bud transferred as described in this paragraph (2)(b)(iii).

~~(A) The Retail Marijuana Wet Whole Plant transferor must be weighed~~weigh the fresh frozen bud within two hours of the plant being harvested and ~~without any further processing, including any~~prior to freezing. Other than removing the bud from the plant, fresh frozen bud must not be trimmed, dried, cured, or processed prior to being weighed. Drying includes any direct or indirect artificial drying such as increasing the ambient temperature of the room ~~or any other form of drying, curing, or trimming.~~The Retail Marijuana Excise Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the Excise Tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates. The fresh frozen bud must be harvested, weighed, packaged, and frozen within the same 24-hour period.

~~(B) A retail marijuana cultivation facility that calculates and pays the Excise Tax using the Wet Whole Plant rate~~ must maintain records of the time each Wet Whole Plant the fresh frozen bud (identified by its RFID tag) was harvested and weighed and the weight of each Wet Whole Plant, the weight observed, and the time the fresh frozen bud was packaged and frozen. The records must be in writing and created contemporaneously with the harvesting and, weighing, packaging and freezing.

~~(iv) The Retail Marijuana Excise Tax for seeds is calculated on the total number of seeds being transferred.~~

~~(v) The Retail Marijuana Excise Tax for Retail Marijuana Concentrate produced by a Retail Marijuana Cultivation Facility shall be calculated either pursuant to paragraph (4)(d)(i) of this rule based on the weight of Bud Allocated for Extraction and/or Trim Allocated for Extraction used in the extraction or pursuant to paragraph (4)(d)(iii) of this rule based on the weight of Wet Whole Plant(s) used in the extraction.~~

~~(5)(C)~~ If the bud is not weighed within two hours of being harvested, is trimmed, dried, cured, or processed before being weighed, or is not packaged on the date of harvest, the transfer must not be recorded using the fresh frozen bud category and must instead be classified as bud or bud allocated for extraction, as applicable.

(D) The transferee must weigh the fresh frozen bud upon receipt, before performing any trimming, drying, curing, or other processing, and promptly record the weight in the inventory tracking system.

(c) Transfer Type.

- (i) Except as provided in this paragraph (2)(c), if the transferor and transferee are affiliated retail marijuana businesses, the transfer is classified as an affiliated transfer. In the case of an affiliated transfer for purposes of decontamination, the transfer is classified as an affiliated decontamination transfer.
- (ii) Except as provided in this paragraph (2)(c), if the transferor and transferee are unaffiliated retail marijuana businesses, the transfer is classified as an unaffiliated transfer. In the case of an unaffiliated transfer for purposes of decontamination, the transfer is classified as an unaffiliated decontamination transfer.
- (iii) In the case of a transfer described in paragraph (3)(a)(ii)(A) of Rule 39-28.8-302-2, the transferor and transferee shall classify the transfer as an affiliated contract price transfer and record the contract price as provided in that rule.
- (iv) In the case of a transfer described in paragraph (3)(a)(i)(B) of Rule 39-28.8-302-2, the transferor and transferee shall classify the transfer as an unaffiliated AMR transfer.

(3) Evidence of Payment of Tax.

- ~~(a) Both the Retail Marijuana Cultivation Facility and the first purchaser or transferee shall maintain documentation sufficient to determine the Excise Tax due for the Transfer. Such documentation must include:~~
- ~~(i) the name and license number of the Retail Marijuana Cultivation Facility,~~
 - ~~(ii) the name and license number of first purchaser or transferee,~~
 - ~~(iii) the category of Retail Marijuana Transferred,~~
 - ~~(iv) the date of Transfer,~~
 - ~~(v) the weight or quantity, as applicable, of the Retail Marijuana Transferred, and~~
 - ~~(vi) the contract price for the Transfer, if applicable.~~

~~Gross References~~

- ~~1. See §§ 29-2-114 and 32-1-1004, C.R.S. and the applicable local ordinance or resolution for information about the application of any local excise taxes to Retail Marijuana Transfers.~~

Rule 39-28.8-303. Books and Records of Retail Marijuana Excise Tax.

Copies of all books and records required to be maintained pursuant to section 39-28.8-303, C.R.S., must be maintained at each retail marijuana store, retail marijuana products manufacturing facility, or retail marijuana cultivation facility for a period of at least ~~four~~three years.

Rule 39-28.8-304. Retail Marijuana Excise Tax Licenses and Returns.

- ~~(1) A Retail Marijuana Cultivation Facility shall file a Retail Marijuana Excise Tax Return monthly reporting the total amount of Retail Marijuana sold or Transferred and the excise tax due thereon.~~
- ~~(a) The Retail Marijuana Excise Tax Return shall be filed electronically by all such vendors. The remittance of the Retail Marijuana Excise Tax shall be made in accordance with~~

~~procedures prescribed on the Department's website or on forms published by the Department.~~

- ~~(b) If any vendor is unable to file Retail Marijuana Excise Tax Returns electronically, such vendor may apply to the Department for a waiver of electronic filing requirements. The Department may grant such a waiver upon a showing of good cause.~~

Rule 39-28.8-308. Retail Marijuana Excise Tax Procedures.

~~The Department's~~ **Basis and Purpose.** The bases for this rule are sections 24-35-108(1)(f), 39-21-112(1), 39-21-113, 39-26-103, 39-26-105, 39-26-116, 39-26-118(2), 39-28.8-301, 39-28.8-304, and 39-28.8-308, C.R.S. The purpose of this rule is to establish procedures governing ~~Retail Sales Tax~~ the collection, administration, and enforcement of the retail marijuana excise tax.

- (1) **General Rule.** ~~The Department's procedures governing the collection, administration, and enforcement of the retail sales tax as~~ described in the rules promulgated under articles 21 and 26 of title 39, C.R.S., shall, to the extent not inconsistent with the provisions of article 28.8 of title 39, C.R.S., and ~~the these~~ rules promulgated pursuant thereto, likewise govern the ~~procedures with respect to the~~ collection, ~~reporting~~ administration, and ~~remittance~~ enforcement of the retail marijuana excise tax ~~on Retail Marijuana.~~
- (2) **Licensing.** In addition to any other licenses required by law, every retail marijuana business doing business in this state and selling at retail or at wholesale must obtain a license pursuant to section 39-26-103, C.R.S., and this rule.
- (a) Wholesalers. Any person selling or transferring exclusively at wholesale must obtain a wholesale license pursuant to section 39-26-103(8), C.R.S., for each wholesale location.
- (b) Retailers. Any person selling or transferring retail marijuana at retail must obtain a retail sales tax license pursuant to section 39-26-103(1), C.R.S., for each retail location.
- (i) A separate license must be obtained and maintained for each of:
- (A) a medical marijuana store and a retail marijuana store operating from a shared location; and
- (B) a retail marijuana hospitality and sales business and a retail food establishment operating from a shared location.
- (ii) A retailer making both retail sales and wholesale sales from the same location need not obtain a separate wholesale license for that location.
- (c) Retail Marijuana Transporter. A retail marijuana transporter is not required to obtain a license under this paragraph (2).
- (3) **Returns Required.** In addition to any other returns required by law, every retail marijuana cultivation facility shall, on a monthly basis, file a retail marijuana excise tax return and pay any retail marijuana excise tax due.
- (a) A return is required regardless of whether any retail marijuana excise tax is due.
- (b) The return required by this paragraph (3) is separate from the retail sales tax return and the retail marijuana sales tax return.

(c) A separate retail marijuana excise tax return must be filed for each retail marijuana cultivation facility from which retail marijuana is transferred.

DRAFT