



June 21, 2019

INDUSTRY-WIDE BULLETIN: 19-03

Re: House Bill 19-1090 Implementation Timeline

Dear Stakeholders:

The Division is providing this Industry Bulletin in response to inquiries regarding ownership and investment activity permitted prior to the adoption of rules required for implementation of House Bill 19-1090, Concerning Measures to Allow Greater Investment Flexibility in Marijuana Businesses (“HB19-1090”).

HB19-1090 represents a new framework for ownership, investment, disclosure, and background vetting of licensed marijuana businesses. However, passage of HB19-1090 was only the first of many steps necessary to implement this new framework. In addition to approval by the legislature and Governor, there are numerous additional steps necessary to fully implement the changes in HB19-1090. Such steps include emergency and permanent rulemaking and updates to the Division’s processes, programing, forms, budget, and staff.

HB19-1090 Mandated Rulemaking

The Division acknowledges the urgency expressed by Licensees to expand access to capital, and it has initiated measures for expeditious implementation of HB19-1090. However, such urgency cannot preempt the rulemaking process mandated by the Colorado Administrative Procedure Act, codified in Title 24, Article 4 of the Colorado Revised Statutes. First and foremost, the M and R 100 and 200 Series Rules remain in place, and Licensees must comply with existing rules where consistent with the expanded investment and ownership provided by HB19-1090.

The Division prioritized HB19-1090 rulemaking work groups with the goal of promulgating emergency rules in early August. Emergency rules are expected to repeal existing rules to the extent contrary to HB19-1090. The forthcoming emergency rulemaking is also intended to provide guidance and answer many of the questions surrounding HB19-1090-some of which cannot be answered outside the rulemaking process. While HB19-1090 provided a new framework, it identified specific, technical areas that require rulemaking for that framework to be implemented. Such areas include, without limitation:

- (1) Ownership and financial disclosure procedures and requirements;
- (2) Records retention regarding Controlling Beneficial Owners;
- (3) Procedures, requirements, exemptions and fees for required findings of suitability;
- (4) Divestiture procedures and requirements for persons found unsuitable or prohibited by statute;
and
- (5) Procedures, processes, and requirements for transfers of ownership involving a publicly traded corporation including mergers, investments and public offerings.

Division Guidance

While the Division undergoes emergency rulemaking, processes, programing, form, budget, and staff updates necessary to implement HB19-1090, the Division is providing guidance on prohibited and permitted transactions.

(1) Licensees cannot enter into: (a) a transaction requiring an application and/or mandatory disclosure under HB19-1090 (other than certain transactions involving Indirect Financial Interest Holders and/or Passive Beneficial Owners addressed below); (b) a transaction requiring any finding(s) of suitability; or (c) any transaction involving a Publicly Traded Company as these transactions require rulemaking under HB19-1090. To the extent any such transaction requires an application, those can be submitted to the Division beginning November 1, 2019, as provided in HB19-1090.

(A) Regarding the above transactions, Licensees may enter into nonbinding agreements (e.g. letter of intent), which agreements will be subject to HB19-1090 and the final emergency rules. Deposits (refundable, nonrefundable or otherwise) are not permitted in connection with these agreements.

(2) HB19-1090 permits Licensees to complete transactions with Indirect Financial Interest Holders and Passive Beneficial Owners that do not involve Publicly Traded Corporations or require disclosure, finding of suitability or application. Licensees may complete these transactions prior to the adoption of emergency rules.

(A) HB19-1090 identifies certain Indirect Financial Interest Holders and Passive Beneficial Owners subject to mandatory disclosure. These include: (a) a Person holding two or more Indirect Financial Interests; (b) an Indirect Financial Interest Holder contributing fifty percent of the Licensee's operating capital; or (c) a Person that is both an Indirect Financial Interest Holder and a Passive Beneficial Owner. **Licensees completing any of the foregoing transactions shall provide the mandatory disclosure by e-mail to DOR_MEDInformation@state.co.us** (please reference "HB19-1090" in the subject line). For questions regarding disclosures, please contact Paul Kaufhold, Financial Investigations Unit Supervisor, at paul.kaufhold@state.co.us. Prior to emergency rules and form updates necessary to standardize this disclosure process, these mandatory disclosures must, at a minimum, disclose the following:

- (i) The Person's name, address, date of birth, copies of agreements, and any other documents reflecting the details of the transaction(s) with the Indirect Financial Interest(s) and/or Passive Beneficial Owner(s) to the Division;
- (ii) If the Person is an entity, Licensees must disclose the name, address, and date of birth of its Managers and 10% and greater Beneficial Owners. If there is any uncertainty regarding disclosure, the Division encourages disclosure.

(B) Licensees must exercise reasonable care to determine their Indirect Financial Interest Holder(s), Passive Beneficial Owner(s), and Qualified Institutional Investors are not Persons prohibited by sections 44-11-306 and 44-12-305, C.R.S., as amended by HB19-1090. Rules implementing HB19-1090 will establish the process for Licensees to affirm

reasonable care was exercised. Until such time, Licensees must make good faith efforts to exercise reasonable care in determining their Indirect Financial Interest Holders, Passive Beneficial Owners, and Qualified Institutional Investors are not Persons prohibited under HB19-1090.

- (3) The Division will investigate any reports and evidence of attempts to circumvent statutory or rule requirements. Pursuant to HB19-1090, if the State Licensing Authority finds a Licensee has an Indirect Financial Interest Holder or Passive Beneficial Owner that is a Person prohibited or is unsuitable, the State Licensing Authority may deny, suspend, revoke, fine, or impose other sanctions against that Licensee.

The Division will continue to engage stakeholders with an interest in helping Licensees understand changes that may affect them and to prepare for efficient submission of applications beginning November 1, 2019. We remain committed to working with our stakeholders to enhance our regulatory system as directed by the General Assembly and develop and implement fair and sensible rules. We appreciate your continued efforts to support these commitments as responsible members of the licensed community.

For additional information regarding the Division's rulemaking process, please visit the [2019 Rulemaking Page](#) of the Division's website. Note, this includes a [summary of Colorado's ownership and investment framework under HB19-1090](#), including a summary of disclosure requirements.

Regards,

A handwritten signature in black ink, appearing to read "James Burack", written over a light blue horizontal line.

James Burack
Director
Marijuana Enforcement Division