



COLORADO DEPARTMENT OF REVENUE MARIJUANA ENFORCEMENT DIVISION

Emergency Rule Adoption

Amended Rules, 1 CCR 212-3

Rule 1-105 – Engaging in Business

Rule 2-205 – Fees

Rule 2-225 – Renewal Application Requirements

Rule 2-260 – Changing, Altering, or Modifying Licensed Premises

Rule 2-265 – Owner and Employee License: License Requirements, Applications, Qualifications, and Privileges

Rule 3-345 – Emergency Allowances, Restrictions, and Requirements in Response to COVID-19

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103 and 44-10-203, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned Colorado Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with state law, or for the preservation of public health, safety, or welfare, and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest. I find: (1) the immediate adoption of these revised rules is necessary to comply with the constitutional and statutory mandates of the Colorado Marijuana Code, sections 44-10-101 *et seq.*, C.R.S.; (2) the immediate adoption of these revised rules is necessary to preserve the public health, safety, and welfare; and (3) compliance with the notice and public hearing requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

Statutory Authority

The statutory authority for the attached rules is identified in the statement of basis and purpose preceding each rule. Statutory authority for these rules includes but is not limited to section 44-10-203(1)(f), 44-10-203(1)(j), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(e), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(2)(w), C.R.S.

Purpose for Emergency Rules Related to Social Distancing

The purpose of the revisions to these rules on an emergency basis is as follows:

- On March 11, 2020, the Governor issued [Executive Order D 2020 003](#) “Declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado.” [Executive Order D2020-018](#), signed on March 26, 2020, [Executive Order D 2020 032](#), signed on April 8, 2020, [Executive Order D 2020 058](#), signed on May 7, 2020, [Executive Order D 2020 76](#), signed on May 22, 2020, [Executive Order D 2020 109](#), signed on June 20, 2020, [Executive Order D 2020 125](#), signed on July 6, 2020 and [Executive Order D 2020 152](#), signed on August 4, 2020 each amended and extended Executive Order D 2020 003.

- On March 20, 2020, the Governor Issued [Executive Order D 2020 011](#) “Ordering the Temporary Suspension of Certain Regulatory Statutes Due to the Presence of COVID-19” suspending section 44-10-601(7) prohibiting Retail Marijuana Stores from conducting online sales. [Executive Order D 2020 029](#), signed on April 6, 2020, [Executive Order D 2020 052](#), signed on April 30, 2020, [Executive Order D 2020 084](#), signed on May 29, 2020, [Executive Order D 2020 093](#), signed June 5, 2020, [Executive Order D 2020 118](#), signed on June 27, 2020, and [Executive Order D 2020 147](#), signed on July 26, 2020 each amended and extended Executive Order D 2020 011.

The Emergency Rules seek to limit exposure to and mitigate harm caused by COVID-19, by allowing Regulated Marijuana Businesses to implement “social distancing” and related measures consistent with guidance from the Centers for Disease Control and Colorado Department of Public Health and Environment. These rule amendments allow Licensees the ability to avoid congregation of patients and consumers in high volumes and in manners inconsistent with “social distancing” to protect the public, health, safety, and welfare. For the reasons described above, the State Licensing Authority adopted the aforementioned Emergency Rules, 1 CCR 212-3, on September 15, 2020.

Purpose for Emergency Rules Related to License Reinstatement

The Emergency Rules further extend Emergency Rules originally enacted on February 7, 2020, SOS 2020-00062 and re-adopted on June 5, 2020, SOS 2020-00409 which provided for the reinstatement of an expired license in certain circumstances. Under previous law, statute¹ provided licensees a 90-day period following the expiration of a license within which to submit a renewal application; however, under SB 19-224, this provision was amended to eliminate the 90-day period. Therefore, the statute now provides any license which is not renewed **prior** to the expiration date is immediately invalid and can no longer operate.

During and following the 2019 permanent rulemaking to implement SB 19-224, the Marijuana Enforcement Division took steps to alert licensees of this statutory change. However, the Marijuana Enforcement Division also identified how this change in the law would impact retail marijuana business licenses in a disparate manner compared to medical marijuana business licenses and how the change in law could lead to public health, safety, and welfare risks. Specifically, while a regulated marijuana business with an expired license must apply for and be issued a new license prior to resuming operations, the Colorado Constitution imposes a 45-day time period before which a new retail marijuana business license can be issued. This 45-day restriction that does not apply to the issuance of medical marijuana business licenses. Further, a regulated marijuana business with an expired license can restrict the business’s access to the state’s inventory tracking system, resulting in a loss of transparency regarding the location and status of regulated marijuana inventory and related operational activities before a new regulated marijuana business license is issued.

Emergency Rules, SOS 2020-00409, will expire pursuant to the state Administrative Procedure Act on October 3, 2020. In anticipation of adopting the emergency reinstatement rule permanently through the Division’s annual rulemaking session (currently underway), the Emergency Rules re-adopt those provisions to provide consistency for licensees between October and the effective date of permanent rules.

Purpose for Emergency Rules Striking of Colorado Residency Requirement

The Emergency Rules implement [House Bill 20-1080](#) by eliminating residency requirements for employee licenses and the “workforce development program” established by [Senate Bill 17-187](#). Under previous law, persons applying for an employee license were required to establish and maintain Colorado residency at the time of application and while licensed, except for persons participating in a “workforce development program” pursuant to SB17-187. House Bill 20-1080 removed residency requirements for all employee licensees as well as the “workforce development program.”

Owner Licensees with day-to-day operational control are still required to be Colorado residents, and this requirement is preserved in the rules. House Bill 19-1080 includes a petition clause making it effective

¹ SB 19-224 repealed the previous Medical Marijuana Code, sections 44-11-101 *et seq.*, C.R.S., and Retail Marijuana Code, sections 44-12-101 *et seq.*, C.R.S., and replaced those statutes with the Colorado Marijuana Code. The license renewal statutory provisions in both the Medical Marijuana Code and the Retail Marijuana Code was substantively the same, each allowing for the 90-day grace period within which to submit a renewal application.

September 15, 2020. Therefore, the State Licensing Authority adopted the Emergency Rules 1 CCR 212-3, to align with the changes in House Bill 19-1080 which became effective on September 15, 2020.

Effective Date of Emergency Rules and Permanent Rulemaking

The attached Emergency Rules are effective immediately upon adoption.

Unless otherwise noted in the Emergency Rule provision, the attached Emergency Rules remain in effect pursuant to section 24-4-103(6), C.R.S., of the state Administrative Procedure Act, for 120 days from the date of adoption, or until repealed by the State Licensing Authority upon filing of a notice of such with the Secretary of State. The State Licensing Authority will monitor national and statewide updates to evaluate whether additional public health guidance or directives requires the re-adoption of the aforementioned Emergency Rules and/or the initiation of permanent rulemaking proceedings for such rules.

Heidi Humphreys
Interim Executive Director/Chief Operating Officer
Colorado Department of Revenue
State Licensing Authority

Date