



COLORADO

Department of Revenue

Specialized Business Group—Marijuana

**COLORADO DEPARTMENT OF REVENUE
MARIJUANA ENFORCEMENT DIVISION**

Emergency Rule Adoption

Amended Rule, 1 CCR 212-3

[Rule 2-205 – Fees](#)

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103 and 44-10-203, C.R.S., I, Mark Ferrandino, CEO and Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt amended Rule 2-205, 1 CCR 212-3 (Emergency Rule) 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, federal 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 this new rule 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 this new rule 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 State Licensing Authority promulgates this Emergency Rule pursuant to the authority granted in the Colorado Marijuana Code, 44-10-101, C.R.S., *et seq.*, Article XVIII, Section 16 of the Colorado Constitution, and Section 24-4-103, C.R.S., of the Administrative Procedure Act. The statutory authority for the Emergency Rule is identified in the statement of basis and purpose preceding the rule and includes but is not limited to Sections 44-10-203(2)(b), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-303(2)(b), 44-10-310(7), 44-10-313, 44-10-801, and 44-10-802, C.R.S. The State Licensing Authority's specific authority to establish and adjust fees is found in 44-10-801(3)(a), C.R.S.

Purpose for Emergency Rule

The purpose of this Emergency Rule is to amend license fees by 22% thereby restoring licensing fees to levels that were in place prior to fee reductions the State Licensing Authority adopted in 2016 and which became effective January 1, 2017.

In 2016, the State Licensing Authority initiated a rulemaking to reduce license fees by 22% to provide temporary relief to licensees and reduce uncommitted reserves pursuant to Section 44-10-801, C.R.S. These reduced fees have been in place since January 1, 2017.

The Marijuana Enforcement Division's (Division) operations are primarily fee funded and fees collected by the State Licensing Authority are transmitted to the Marijuana Cash Fund established in Section 44-10-801(1)(a), C.R.S. Further, Section 44-10-801, C.R.S., requires that the amount of fees collected reflect the actual direct and indirect costs of the State Licensing Authority in the administration of the Colorado Marijuana Code, 44-10-101, C.R.S., *et seq.* and that the State Licensing Authority review fees at least annually, and if necessary, adjust fees to reflect the direct and indirect costs.

The Division is currently facing a cash flow shortfall in the 2021-2022 fiscal year and is projecting a \$3M - 3.5M negative cash fund balance by the end of FY 21-22. Fees currently established by the State Licensing Authority do not reflect the direct and indirect costs to administer the Colorado Marijuana Code. Further, the 22% reinstatement will not result in fees reflecting the actual direct and indirect costs. However, as one component to a larger financial management plan and as part of a necessary incremental measure, the State Licensing Authority is adopting this Emergency Rule to reinstate the 22% reduction that became effective in 2017.

On May 25, 2021, the Division completed a [Cost-Benefit Analysis](#), which provides additional information regarding the Marijuana Cash Fund, anticipated impacts, and describes alternatives to this 22% restoration of license fees that were considered prior to the adoption of this Emergency Rule.

Effective Date of Emergency Rule and Permanent Rulemaking

The attached Emergency Rule is effective **July 1, 2021**.

Pursuant to section 24-4-103(6), C.R.S., of the Colorado Administrative Procedure Act, the Emergency Rule remains in effect 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.

On April 30, 2021, State Licensing Authority [initiated a permanent rulemaking](#) pursuant to the Colorado Administrative Procedure Act, Section 24-4-103, C.R.S. The Division facilitated two virtual public meetings to present proposed rules and provide opportunities for public comment by interested parties, followed by a virtual public rule hearing held on June 4, 2021. The State Licensing Authority issued a [Statement of Adoption](#) on June 10, 2021 to implement this 22% fee reinstatement on a permanent basis, with an effective date of August 1, 2021. The adoption of this Emergency Rule is necessary to implement the reinstated fees effective July 1, 2021.

Additional information regarding the Division's permanent rulemaking session can be accessed on the [Division's website](#).

Mark Ferrandino
CEO and Executive Director
Colorado Department of Revenue
State Licensing Authority

Date