

TITLE 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 100 – Division of Cannabis Regulation
Chapter 1 – Marijuana**EMERGENCY RULE****19 CSR 100-1.020 Generally Applicable Provisions**

PURPOSE: The Department of Health and Senior Services has the authority to promulgate rules for the enforcement of Article XIV, Sections 1 and 2 of the Missouri Constitution. This rule applies to all individuals and entities regulated under Article XIV and explains what general provisions are necessary for the enforcement of the Article.

EMERGENCY STATEMENT: This emergency rule informs citizens of the general provisions necessary for the enforcement of Article XIV of the Missouri Constitution. This emergency rule is necessary to protect a compelling governmental interest since Amendment 3 to the Missouri Constitution made significant changes to the regulation of marijuana, and new rules will be needed to effectuate those changes. As a result, the Department of Health and Senior Services finds a compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency rule is fair to all interested persons and parties under the circumstances. If an emergency is not enacted, there would be no rules explaining how the new provisions of Article XIV of the Missouri Constitution apply, and there would be much confusion as to the processes and procedures related to licensure and regulation of the marijuana industry. This emergency rule was filed January 20, 2023, becomes effective February 3, 2023, and expires August 1, 2023.

(1) Variances and Waivers.

(A) The department may waive or vary from, at its discretion and for good cause, provisions of this chapter, on its own initiative or by request.

(B) Requests for a waiver or variance from the requirements of any provision of this chapter shall be made in writing. Requests shall include:

1. An administrative and processing fee of one hundred dollars (\$100);
2. A list of each requirement and specific rule for which a variance or waiver is requested;
3. A detailed explanation for why the applicant, ID card holder, or licensee believes there is good cause to vary from or waive the requirement; and
4. For a variance, a description of an adequate alternative the entity will implement in lieu of the rule requirement.

(C) No waiver or variance request is approved unless the department issues a written approval.

(2) Limitations on facility licenses.

(A) The department will restrict the aggregate number of medical and comprehensive licenses combined, as authorized by Article XIV, § 1.3(15-17).

(B) The department will restrict the number of microbusiness licenses granted, as authorized by Article XIV, § 2.4(13).

(C) The department shall issue additional medical or marijuana licenses if the department determines additional licenses are needed to:

1. Meet the demand for marijuana product;
2. Ensure a competitive market while also preventing

an over-concentration of marijuana facilities within the boundaries of any particular local government; or

3. Maintain the minimum number of combined medical and comprehensive licenses required by Article XIV, § 1.3(15-17).

(3) In addition to other penalties specifically delineated in this chapter, the department may impose penalties on facility licenses and certifications as follows:

(A) Licenses and certifications found in violation of any rule in this chapter or provision in Article XIV may be subject to sanctions, including, but not limited to, any of the following:

1. Limitation or restriction on a license or certification;
2. Fines up to an amount equal to the daily gross receipts of the facility;
3. Revocation, suspension, or nonrenewal of a license or certification; and/or
4. Orders to immediately cease or suspend operations.

(B) Fines may be assessed for each day a licensee is in violation. Assessment of a fine does not bar additional penalties or investigation.

(C) A license will be revoked if, after issuance, the department determines the applicant provided false or misleading information in the application.

(D) The department may impose any other remedies not inconsistent with these rules or Article XIV.

(E) Prior to revoking or suspending a facility license, the Department shall issue a Notice of Pending Revocation to the designated contact for the licensee by sending such notice to the email address provided by the designated contact for the licensee. The notice shall list the basis for a pending revocation or suspension. Except where there is a credible and imminent threat to public safety, the revocation or suspension will not take effect until thirty (30) days from the date the notice is sent. During the thirty (30) day period, the licensee will have the opportunity to cure the deficiencies listed in the notice and/or respond to the allegations and submit records or information demonstrating why the license should not be revoked or suspended.

(4) Appeals.

(A) An applicant, licensee, or identification card holder may seek review of the following department decisions at the administrative hearing commission:

1. Denial of a facility license or certification;
2. Any penalties imposed by the department; and
3. Denial or revocation of patient, primary caregiver, patient cultivation, caregiver cultivation, consumer cultivation, or facility agent identification cards.

(B) Any person or entity entitled to a review under this rule must file a petition with the administrative hearing commission within thirty (30) days after the date the department decision is sent to the person or entity. An untimely appeal will not be considered.

(C) Notwithstanding the limits on licenses and certifications set forth in this rule, the department may grant additional facility licenses or certifications as a remedy to timely appeals when:

1. Ordered to do so by the administrative hearing commission or a court of competent jurisdiction; or
2. The department determines doing so in settlement of such an appeal best serves implementation of Article XIV.

(5) Marijuana Records.

(A) Qualifying patient and primary caregiver information and proprietary business information maintained by the department shall not be released outside the department

except for purposes authorized by federal law or Article XIV, including:

1. In response to a request by law enforcement officials seeking verification that a person who presented an identification card is lawfully in possession of such card and is lawfully in possession of a particular amount of marijuana product;

2. In response to a request by law enforcement officials seeking information during the process of requesting a search or arrest warrant relating to cultivation of marijuana plants;

3. For the purposes of a dispensary verifying whether a particular qualifying patient or primary caregiver may purchase an amount of marijuana product; and

4. In response to a valid grand jury, judicial, or law enforcement subpoena.

(6) Unless otherwise stated, any reference to days in this chapter will mean calendar days. In computing any period of time prescribed or allowed by the Department in this chapter, the designated period of time begins to run the day after the relevant act or event.

*AUTHORITY: Sections 1.3.(1)(b), 1.3.(2), 2.4(1)(b), and 2.4(4) of Article XIV, Mo. Const. Emergency rule filed Jan. 20, 2023, effective Feb. 3, 2023, expires Aug. 1, 2023. An emergency rule and a proposed rule covering this same material will be published in the March 1, 2023, issue of the **Missouri Register**.*

PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency rule will cost private entities forty-nine thousand, six hundred thirty-eight dollars (\$49,638) in the time the emergency is effective.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Health and Senior Services
Division Title: Division of Cannabis Regulation
Chapter Title: Marijuana**

Rule Number and Title:	19 CSR 100-1.020 Generally Applicable Provisions
Type of Rulemaking:	Emergency

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Facilities Waiver Costs	\$11,800 for the six month emergency rule period
Facility Administrative Fines	\$37,838 for the six month emergency rule period
Total =	\$49,638 for the six month emergency rule period

III. WORKSHEET**Administrative Processing Fee**

Two hundred thirty six (236) variance requests x one hundred dollars (\$100) = \$23,600 / 2 = \$11,800

Administrative Fines

Anticipated based upon current trends = \$76,675 / 2 = 37,838

IV. ASSUMPTIONS

Each time a facility applies for a variance they incur a variance processing fee. The Department received 236 variance requests in FY22. It is anticipated that the Department will continue to receive at least this many requests in the future. As such for this emergency rule we took a year's worth of fees and divided it in half.

Facilities can incur administrative fines for not following the rules and regulations set forth in the chapter. There are different fine amounts based upon the level of failure to abide by the rules. In FY 22 there were administrative fines in the amount of \$42,996 that were collected and thus far in FY23 there have been \$75,675 in fines collected. It is unknown whether the increased trend will continue, however the Division is anticipating that it will at least continue at the FY23 level. As such for this emergency rule we took a year's worth of fines and divided it in half.