

MEDICAL MARIJUANA DRAFT RULES SELECTION/LICENSING PROCESS

CULTIVATION FACILITIES

1. License Required
 - a. No person or entity shall operate a medical marijuana cultivation facility unless the person has a license issued by the commission pursuant to these rules.
 - b. Each license for a cultivation facility shall specify:
 - i. The name of the individual who holds the license;
 - ii. The address of the individual who holds the license;
 - iii. The effective dates of the license;
 - iv. The address of the licensed facility
2. Licenses Available
 - a. The commission shall issue at least four (4), but no more than eight (8), cultivation facility licenses.
 - b. It shall be within the commission's discretion to make licenses available.
 - c. When it has been determined that new licenses are available or appropriate, the commission shall notify the public at large by legal notice that it will be accepting applications for a cultivation facility license.
 - d. No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.
3. Application Process
 - a. An application for a cultivation facility license shall be submitted to the commission on a form and in a manner prescribed by the commission.
 - b. Applications will then be accepted for the cultivation facility license beginning ten (10) days after the date of publication, and no applications will be accepted after ninety (90) days of the publication date.
 - c. Applications that have been received and verified by the commission will be considered based upon the ~~[merit system or lottery]~~selection set processes set out in **Section 9**.
 - b. _____
 - e.d. Information and statements provided in an application shall become conditions of a license if the application is selected, and failure to satisfy the conditions will be cause for revocation or denial of renewal.
4. Minimum Qualifications for Applicant
 - a. An applicant for a license under this chapter shall be an individual that:
 - i. Is twenty-one (21) years of age or older;
 - ii. Is a current resident of the state of Arkansas and has been a resident for seven (7) consecutive years prior to the date of application;
 - iii. Has not previously held a license for a cultivation facility or dispensary that has been revoked;
 - iv. Has no ownership in any other cultivation facility in the state of Arkansas;
 - v. Has not been convicted of an excluded felony offense;
 - vi. If possessing a professional license, that the license is in good standing; and
 - vii. Has no outstanding tax delinquencies owed to the State of Arkansas.

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- b. If the applicant is applying on behalf of an entity, in addition to (a) of this Section, the individual
 - i. Shall be legally authorized to submit an application on behalf of the entity;
 - ii. Shall serve as the primary point of contact with the Commission;
 - iii. Shall submit sufficient proof that the entity:
 1. Has no owner, board member, or officer under the age of twenty-one (21);
 2. Has ownership composed of at least sixty percent (60%) residents of the state of Arkansas and that the ownership has been residents of the state for at least seven (7) consecutive years prior to the application date;
 3. Has no owner, board member, or officer that has previously been an owner of a dispensary or cultivation facility that has had its license revoked;
 4. Has no owner, board member, or officer that has ownership in any other cultivation facility in the state of Arkansas;
 5. Has no owner, board member, or officer that has been convicted of an excluded felony offense.
 6. If an owner, board member, or officer has or had a professional license, that the license is in good standing; and
 7. Has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas.
5. Documentation and Information for Applicant
- a. An individual applicant shall provide the following required information:
 - i. Legal name;
 - ii. Date of birth;
 - iii. Legal residence;
 - iv. Social security number or Tax Identification Number;
 - v. Mailing address or principal residence address if different from the mailing address;
 - vi. Phone number;
 - vii. Email address; and
 - viii. Statement of individual's authority to act on behalf of an entity, if applicable.
 - b. The following supporting documents shall be submitted at the time of application:
 - i. To establish legal name an applicant must present at least one (1) of the following source documents:
 1. Certified copy of a birth certificate or marriage certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth or marriage;
 2. Valid, unexpired U.S. passport or U.S. passport card;
 3. Consular report of birth abroad Form FS-240, DS-1350 or FS-545 issued by the U.S. Commission of State;
 4. Valid, unexpired permanent resident card (Form I-551) issued by the Commission of Homeland Security (DHS) or the U.S. Citizenship and Immigration Services (USCIS);

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5. Unexpired employment authorization document issued by the Commission of Homeland Security, Form I-766 or Form I-688B;
 6. Unexpired foreign passport with the following: a valid, unexpired U.S. visa affixed, and an approved I-94 form documenting the applicant's most recent admittance into the United States or a Commission of Homeland Security admittance stamp on the passport;
 7. Certificate of naturalization issued by Commission of Homeland Security, Form N-550 or Form N-570;
 8. Certificate of citizenship, Form N-560 or Form N-561, issued by Commission of Homeland Security;
 9. Court-issued, certified copy of a divorce decree; or
 10. Certified copy of a legal change of name order;
- ii. To establish date of birth an applicant must present at least one (1) of the following source documents:
 1. At least one document included in clauses (1) through (10) of subparagraph (i) of this paragraph; and
 2. A photocopy of the individual's valid, unexpired driver's license or government issued photo identification card.
 - iii. To establish residency in the State of not less than seven (7) years preceding the application, an applicant must present at least two (2) of the following source documents:
 1. Arkansas tax return Form AR1000 for each of the seven years preceding the application without schedules, worksheets, or attachments, and redacted to remove all financial information and all but the last four digits of the individual's social security number;
 2. Evidence of voter registration for the seven years preceding the application;
 3. Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;
 4. Billing statements including utility bills for the seven (7) years preceding the application; or
 5. Vehicle registration for the seven (7) years preceding the application.
 - iv. To establish proof of no excluded felony convictions or other disqualifying background information, an individual applicant shall provide consent to a background check, including fingerprinting; and
 - v. Individuals applying on behalf of an entity must also provide the following proof:
 1. Documentation of the ownership of the entity; and
 2. Documentation demonstrating that sixty percent (60%) of the entity's ownership or those persons having an ownership interest in the entity have been ~~individuals-residents~~ of the state of Arkansas for seven (7) years prior to the application. Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsection (b)(iii);

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3. Documentation proving that each of the entity's owners, board members, and officers are over the age of twenty-one (21). Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsections (b)(1) and (b)(2); and
 4. Consents for criminal background checks for each owners, board members, and officers of the entity.
 - c. Applicants shall provide proof of assets or a surety bond in the amount of \$1,000,000.00, and proof of at least \$500,000.00 in liquid assets.
 - d. The information and documents shall be submitted in a method prescribed by the commission in the notice of open application.
6. Background Checks
- a. The following are subject to background checks conducted by the commission or its designee in considering an application for a cultivation facility license:
 - i. The individual applicant;
 - ii. All owners, officers, and board members of an entity seeking a to apply for a cultivation license through its designated individual applicant; and
 - iii. Agents of any of the above persons.
 - b. A person subject to background checks as provided in subsection (a) shall be disqualified as an individual applicant, be prohibited from entering a cultivation facility, and be prohibited from having any responsibility for operating a cultivation facility if the person has been convicted of an excluded felony offense.
 - c. Each person undergoing a background check shall provide written consent and all applicable processing fees to the commission or its designee to conduct the background check.
7. Application Fee
- a. Each application for a cultivation license shall include an application fee of \$15,000.00 by certified check or cashier's check payable to state of Arkansas, delivered or mailed by certified mail, return receipt requested, to the address specified in the notice of open application.
 - b. In the event an applicant is not successful in his or her application, \$7,500.00 of the initial application fee of shall be refunded to the applicant.
 - c. An application is not complete and will not be considered unless all required information, documentation, and the application fee are timely received by the commission.
8. Verification of Application
- a. ~~After~~ No later than ten (10) business days following the receipt of an application, the commission shall verify that the application and supporting documentation is complete, and the information submitted in the application is true and valid, and meets the requirements of **Section 4** and **Section 5**.
 - b. Applications that meet the requirements of **Section 4** and **Section 5** shall be placed into the pool of applicants for further review and selection based on merit, and the commission shall notify the applicant in writing that the application was successfully verified.

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- c. Applications that do not meet the requirements of **Section 4** and **Section 5** shall be denied pursuant to **Section 12** and the commission shall notify the applicant in writing.
9. Selection Process and Criteria Based on Merit Selection and ~~or~~ Lottery for ~~Tie or~~ Final Selection.
- a. In addition to documentation establishing minimum qualifications, the applicant shall submit responses to the commission's merit criteria in a form and manner prescribed by the commission. Criterion shall be published with the initial notice of open application.
 - b. The commission shall consider the following criteria based on merit to evaluate applications verified pursuant to **Section 8**:
 - i. Ability to operate a business, including but not limited to education, knowledge, and experience with:
 - 1. Regulated industries;
 - 2. Agriculture or horticulture;
 - 3. Commercial manufacturing;
 - 4. Creating and implementing a business plan, including a timeline for opening a business;
 - 5. Creating and implementing a financial plan;
 - 6. Secure inventory tracking and control;
 - 7. The cultivation and production of marijuana;
 - 8. Owning or managing a business that required twenty-four hour security monitoring;
 - 9. Owning and managing a business that has not had its business license revoked; and
 - 10. Any other experience the applicant considers relevant.
 - ii. Affiliation with a Medical Doctor, Doctor of Osteopathy, or Doctor of Pharmacy.
 - iii. Plan for operating a medical marijuana cultivation facility in compliance with applicable laws and regulations and demonstrating planning sufficient to prove the applicant's:
 - 1. Ability to manufacture approved medical marijuana products, each with a consistent cannabinoid profile and each able to pass the required quality control testing as further described in _____;
 - 2. Ability to produce sufficient quantities of approved medical marijuana products as necessary to meet the needs of individuals with qualifying medical conditions;
 - 3. Ability to comply with the security requirements of _____.
 - 4. Ability to comply with regulations contained in _____ regarding the inventory and tracking of marijuana products;
 - 5. Ability to comply with the recordkeeping requirements of _____;
 - 6. Ability to maintain effective control against diversion of marijuana and marijuana products;
 - 7. Ability to comply with requirements for signage, packaging, labeling, and chain of custody of products;

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8. Ability to comply with the situs requirement of being located at least three thousand (3,000) feet from a public or private school, church, or daycare existing before the date of the cultivation facility application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured by nearest property line point of the cultivation facility to the nearest property line point of the school, church, or daycare facility; and
 9. Ability to comply with all other laws and regulations regarding the operation of a medical marijuana cultivation facility.
- iv. Proof, if any, that the applicant's proposed cultivation facility will positively impact the economy and diversity of the area in which the facility is to be located.
 - v. Proof that the applicant is ready, willing, and able to properly carry out the activities of a medical marijuana cultivation facility, including a plan for operating a medical marijuana cultivation facility and a timeline for opening the cultivation facility and beginning production;
 - vi. Proof of financial stability and access to financial resources, including but not limited to:
 1. Legal sources of finances immediately available to begin operating a cultivation facility;
 2. Possession of, or the right to use, sufficient real property, and equipment to properly carry on the activity described in the operating plan;
 3. A summary of financial statements in businesses previously or currently owned or operated by the applicant;
 4. A financial plan for operating a medical marijuana cultivation facility in Arkansas;
 5. Good credit history;
 6. No history of bankruptcy by the applicant or entities owned or operated by the applicant.
 - c. Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
 - d. A review panel comprised of members of the Medical Marijuana Commission shall evaluate the applications and award points for each merit criterion. The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score within each group.
 - e. Applicants scoring in the 90th percentile of all scored applicants will be entered into a lottery drawing for final selection.
 - f. Each applicant scoring in the 90th percentile of all applicants shall be notified of the date set by the commission for the final lottery draw. Each applicant, or his or her agent will be allowed to draw a number between one (1) and a number equal to the number of applicants scoring in the 90th percentile. The drawing will be conducted by the Chairperson of the commission. Position numbers may not be assigned or transferred.
 - d.g. Applicants drawing numbers 1 through the number of cultivation licenses available,

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as specified in the notice of applications, will have the first opportunity to submit the required license fee and post the performance bond required under these rules. If any applicant fails to pay the fee and post the bond within the required period of time, the next applicant in line, pursuant to the lottery draw, shall have the opportunity to pay the fee, post the bond, and acquire the license.

~~e.~~ The commission shall award a cultivation facility license to the highest scoring applicant or applicants within each group. The commission shall notify in writing each of the applicants of their respective score and ranking for their respective group.

~~f.~~ The commission shall hold unselected applications in reserve to offer a license to the next highest scoring applicant if the highest scoring applicant fails to pay the licensing fee in accordance with Section 10. When all available licenses within each pool have been issued, the commission shall remove all unselected applications from its list of reserved applications in that pool and notify all applicants.

h. The commission may initiate the selection process for cultivation facilities upon determining that there are not enough cultivation facilities to supply the dispensaries within the state.

10. Licensing Fee and Issuance of License

a. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant shall submit to the commission a cultivation facility license fee of \$100,000.00 ~~by~~ in certified funds. Any certified or cashier's check shall be made payable to ~~the~~ State of Arkansas.

b. If the licensing fee is not timely paid, the selected applicant will be disqualified, and the commission shall select the next highest scoring applicant within the segregated group of applications in accordance with Section 9, notify the next available applicant as determined by the lottery draw in Section 9.

c. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant shall submit to the commission a performance bond in the amount of \$500,000.00. The bond shall be maintained until the cultivation facility files its first required sales tax report with the Arkansas Department of Finance and Administration.

~~b.d.~~ If the performance bond is not timely posted, the selected applicant will be disqualified, and the commission shall notify the next available applicant as determined by the lottery draw in Section 9.

~~e.e.~~ Upon issuance of a cultivation facility license, the cultivation facility licensee may begin operations.

~~d.f.~~ The cultivation facility licensee shall visibly post a copy of its license at the cultivation facility covered under the license.

11. Term

- a. A license shall be valid for one (1) year from the date issued unless the license is:
- Suspended or revoked by the division; or
 - Surrendered by the cultivation facility licensee.

12. Denial of Application for or Renewal of a License

- a. The commission may deny an application for or renewal of a license for any of the following reasons:

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- i. Failure to provide the information required in this chapter;
 - ii. Failure to meet the requirements set forth in this chapter, [other medical marijuana chapters];
 - iii. Provision of misleading, incorrect, false, or fraudulent information;
 - iv. Failure to pay all applicable fees as required;
 - v. Receipt of an application evaluation score lower than the successful applicants for a cultivation facility in the pool period for which the applicant applied;
 - vi. An applicant, owner, board member, or officer has a background history that indicates the applicant does not have a reputable and responsible character or would pose a risk to the health, safety, or welfare of the public or qualifying patients; or
 - vii. Any other ground that serves the purpose of this chapter or [other medical marijuana chapters]
 - b. If the commission denies an application for or renewal of a license, the commission shall notify the applicant in writing of the commission's decision, including the reason for the denial.
 - c. A person aggrieved by a decision made pursuant to this section may appeal in accordance with this chapter.
13. License Renewal Process and Fee
 - a. A license may be renewed if the cultivation facility licensee:
 - i. Submits to the commission a renewal application on a form and in a manner prescribed by the commission at least sixty (60) days prior to the expiration date on the license;
 - ii. Is in good standing with the Arkansas Secretary of State's office
 - iii. Continues to be in good standing with the Arkansas Department of Finance and Administration; and
 - iv. Continues to meet all the requirements of this chapter and [other medical marijuana chapters].
 - b. Before renewing a license, the commission may require further information and documentation and may conduct additional background checks to determine that the licensee continues to meet the requirements of this chapter and [other medical marijuana chapters].
 - c. Within seven (7) days of receiving written notice from the commission that its renewal application has been approved, the cultivation facility licensee shall pay the annual renewal fee of ~~-\$100,000.00~~ by-in certified funds. Any certified or cashier's check shall be payable to the state of Arkansas.
 - d. A cultivation facility licensee whose license is not renewed shall cease all operations immediately upon expiration of the license, return the license to the commission, and [tender all marijuana and manufactured marijuana products in the cultivation facility licensee's possession to the ADH/ASP for destruction] pursuant to this chapter.
 - e. Upon the determination that a Cultivation Facility Licensee has not met the requirements for renewal, the Commission shall provide written notice by certified mail or personal delivery to the Licensee. The notice shall provide an explanation

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for the denial of the renewal application. The Licensee may request a hearing before the Commission pursuant to Section 18.b of these Rules.

14. Surrender of License

- a. A cultivation facility may voluntarily surrender a license to the commission at any time.
- b. If a cultivation facility voluntarily surrenders a license, the cultivation facility shall:
 - i. Return the license to the commission;
 - ii. Submit a report to the commission including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained; and
 - iii. [Tender all marijuana and manufactured marijuana products in the cultivation facility licensee's possession to the ADH/ASP for destruction]
 - iv. No portion of the licensing fee shall be returned to the cultivation facility licensee if the license is voluntarily surrendered prior to the expiration of the license.

15. Change in Information

- a. The cultivation facility licensee shall notify the commission of any changes in contact information.
- b. The cultivation facility licensee shall notify the commission in writing no less than fourteen (14) days in advance of any change that may affect the licensee's qualifications for licensure, and submit to the commission supporting documentation to prove the cultivation facility licensee continues to be qualified. In the event of a change for which a cultivation facility licensee does not have prior notice, the licensee shall notify the commission immediately upon learning of the change.
- c. Pursuant to section (b), the licensee shall notify the commission of the following:
 - i. The arrest or conviction for any felony of any individual listed in an application or subsequently identified as an applicant, licensee or individual with a financial interest;
 - ii. Any alterations to the floor plan of the facility, including, but not limited too, any increase or decrease in the total footprint or production capacity of the facility.
 - iii. The filing of bankruptcy by the entity holding the license or by any of the entity's owners;
 - iv. The temporary closure of the business for any reason for longer than fifteen (15) days; and
 - v. The permanent closure of the business.
 - vi. Any other change that may affect the licensee's qualification for licensure.
- d. If the Commission determines that the change has the potential to disqualify a licensee, the Commission shall refer the matter to the Alcoholic Beverage Control Division for adjudication pursuant to Rule _____.

16. Transfer of License

- a. Licenses shall only be effective for the individuals and entities identified in the original application.

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- b. A licensee may not sell, transfer, or otherwise dispose of his or her license to another individual without approval from the commission.
- c. An entity that holds a license through its individual agent shall not make any modification to the entity's ownership, board members, or officers as designated in the initial application without approval from the commission.
- d. A licensee's failure to obtain approval from the commission before engaging in ownership changes described in (b) and (c) above shall result in commission's revocation of that license.
- e. In order to obtain approval to transfer ownership of a license or of an entity that holds a license by its individual agent, principals in ownership, board members, or officers, the licensee shall submit to the commission an application for license transferal on a form and in a manner prescribed by the commission.
- f. If the commission denies an application for Transfer of License, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The licensee may request a hearing before the Commission pursuant to Section 18.b of this Rule.

17. Transfer of Location

- a. A Cultivation Facility license shall only be valid at the location for which it was originally issued by the commission.
- b. A licensee shall not re-locate a cultivation facility without prior approval by the commission.
- c. In order to obtain approval to transfer a cultivation facility license to another location, a licensee shall submit the following to the commission:
 - i. An application for license transferal on a form and in a manner prescribed by the commission; and
 - ii. The criteria set forth in Section 9(b)(iii) of these Rules.
- d. If the Commission denies an application for Transfer of Location, the commission shall provide written notice by certified mail or personal delivery to the Licensee. The notice shall provide an explanation for the denial of the application. The Licensee may request a hearing before the Commission pursuant to Section 18.b of these Rules.

18. Appellate Procedure following Denial of Application for License, Renewal, Transfer of License, or Location.

- a. Denial of Application for License [to be completed upon finalizing procedures for issuing Cultivation Facility Licenses]
- b. Denial of Application for Renewal of License, Transfer of License or Transfer of Location
 - i. If the Commission denies an application for the renewal of a cultivation facility license, the transfer of a license, or the transfer of the location for a license, the Licensee may request a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the Commission.
 - ii. The Commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing. The Commission shall provide notice

of the hearing to all interested parties, conduct the hearing, and issue a decision in accordance with the Arkansas Administrative Procedure Act, §25-15-201 et seq.

- iii. The Commission's decision may be appealed to the circuit court of the county in which the cultivation facility is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

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