

ARKANSAS REGISTER



Transmittal Sheet

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Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Finance and Administration

Department Medical Marijuana Commission

Contact Doralee Chandler E-mail mmc.admin@dfa.arkansas.gov Phone 501-682-1105

Statutory Authority for Promulgating Rules Ark. Const. Amend. 98, Sec 24

Rule Title: Licensure of Medicinal Marijuana Processors

Intended Effective Date

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☐ Emergency (ACA 25-15-204)

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☐ Other _____
(Must be more than 10 days after filing date.)

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Doralee Chandler

doralee.chandler@dfa.arkansas.gov

11/30/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Doralee Chandler

Signature

(501) 682-1105 mmc.admin@dfa.arkansas.gov

Phone Number

E-mail Address

Director

Title

11/30/2020

Date

ARKANSAS STATE LIBRARY



Agency Certification Form For Depositing Rules At the Arkansas State Library

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For Office Use Only

Classification Number:

Name of Agency:

Department of Finance and Administration

Division/Department/Office:

Medical Marijuana Commission

Contact Person:

Doralee Chandler

Telephone:

501-682-1105

Statutory Authority for Promulgating Rules:

Ark. Const. Amend. 98, Sec 24

Title of Rule:

Licensure of Medical Marijuana Processors

Rule Status

Date Adopted by Agency

Effective Date

New

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(Use drop down to select different status)

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☐ Other: _____
(if other, specify date)



Rule above is proposed and will be replaced by final version



Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: _____ Date: _____

Title: _____

FINAL RULE

RULES GOVERNING THE APPLICATION FOR, ISSUANCE, AND RENEWAL OF LICENSES FOR MEDICAL MARIJUANA CULTIVATION FACILITIES, DISPENSARIES, AND PROCESSORS IN ARKANSAS

SECTION I. AUTHORITY OF THE COMMISSION

These Rules Governing the Application For, Issuance, and Renewal of Licenses for Medical Marijuana Cultivation Facilities, Dispensaries, and Processors in Arkansas are duly adopted and promulgated by the Medical Marijuana Commission pursuant to Amendment No. 98 of the Constitution of the State of Arkansas of 1874, The Medical Marijuana Amendment of 2016.

SECTION II. SCOPE, PURPOSE, AND SEVERABILITY

These rules govern the application procedures for the issuance and renewal of licenses for medical marijuana cultivation facilities, dispensaries, and processors in Arkansas. These rules also govern the selection methods to be used and the criteria to be considered by the Medical Marijuana Commission in awarding licenses for medical marijuana cultivation facilities and dispensaries.

If any provision of these rules or the application thereof to any person or circumstance is held invalid for any reason the invalidity shall not affect the other provisions or any other application of these rules that can be given effect without the invalid provisions or application. Therefore, all provisions of these rules are declared to be severable.

SECTION III. DEFINITIONS

- (1) "Amendment" means the Arkansas Medical Marijuana Act of 2016.
- (2) "Applicant" means the natural person in whose name a license would be issued and any entity: (a) the natural person represents; or (b) on whose behalf the application is being submitted.

- (3) "Commission" means the Medical Marijuana Commission.
- (4) "Cultivation facility" means an entity that:
 - a. Has been licensed by the Medical Marijuana Commission;
 - b. Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary.
- (5) "Department" means the Arkansas Department of Health.
- (6) "Dispensary" means an entity that has been licensed by the Medical Marijuana Commission pursuant to the requirements of the Amendment.
- (7) "Excluded felony offense" means:
 - (a)(i)(A) A felony offense as determined by the jurisdiction where the felony offense occurred;
 - (B) The Medical Marijuana Commission, the Department of Health, or the Alcoholic Beverage Control Division shall determine whether an offense is a felony offense based upon a review of the relevant court records concerning the conviction for the offense.
 - (ii) An offense that has been sealed by a court or for which a pardon has been granted is not considered an excluded felony offense; or
 - (b) A violation of a state or federal controlled-substance law that was classified as a felony in the jurisdiction where the person was convicted, but not including:
 - (i) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten (10) or more years earlier; or
 - (ii) An offense that has been sealed by a court or for which a pardon has been granted;
- (8) "Licensed facility" means a licensed cultivation facility, licensed dispensary, licensed transporter/distributor, or licensed processor.
- (9) "Manufacture and Process"
 - a. Means the manufacturing, processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or

cannabinoid extracts; and

b. Does not mean the drying of marijuana.

(10) "Primary Entrance" means the entrance through which most people enter or exit a building.

(11) "Processor" means an entity licensed by the Commission pursuant to these Rules and that may:

a. Acquire, possess, manufacture and process, prepare, deliver, transport, and supply marijuana to a dispensary or cultivation facility; and

b. Receive compensation for providing services allowed by this section.

(12) "Qualifying medical condition" means one or more of the following:

a. Cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette's syndrome, Crohn's disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer's disease, or the treatment of these conditions;

b. A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including, without limitation those characteristic of multiple sclerosis; and

c. Any other medical condition or its treatment approved by the Department pursuant to these Rules and the Amendment.

(13) "School" means a facility or building operated by a public school district;

open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103; or a private entity including parochial schools providing preschool, elementary, or secondary education but does not include postsecondary institutions of higher education, community colleges, or the residences of students being home schooled under Ark. Code Ann. § 6-15-501 et. seq.

- (14) "Sealed" means expunge, remove, sequester, and treat as confidential the record or records of a felony offense;
- (15) "Transporter" means an entity licensed as a transporter by the Commission.
- (16) "Usable marijuana" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the marijuana plant and any mixture or preparation thereof. Usable marijuana does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food and drink.

SECTION IV. CULTIVATION FACILITY APPLICATION, LICENSING, & RENEWAL

- 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; and
 - 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 be accepted for the cultivation facility license beginning ten (10) days after the date of publication of the legal notice by the commission, 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 selection processes set out in **Section IV. 9.**
 - 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 individual applicant for a license under this chapter shall be a natural person 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 licensed facility that has been revoked;
 - iv. Has no ownership in any other cultivation facility in the state of Arkansas;
 - v. Has not been convicted of a 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 or the federal government.
- b. If the applicant is applying on behalf of an entity, in addition to (a) of this Section, the individual applicant:
 - 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:
 - 1. The entity has no owner, board member, or officer under the age of twenty-one (21);
 - 2. Sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state for at least seven (7) consecutive years prior to the application date;
 - 3. The entity has no owner, board member, or officer that has previously been an owner of a licensed facility that has had its license revoked;
 - 4. The entity has no owner, board member, or officer that has ownership in any other cultivation facility in the state of Arkansas;
 - 5. The entity has no owner, board member, or officer that has been convicted of a 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. The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas or the federal government.
 - 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.
 - i. If an applicant posts a surety bond, the bond shall be maintained until:
 - 1. An applicant withdraws an application;
 - 2. An applicant's application is denied by the commission; or
 - 3. An applicant, following selection by the commission for a cultivation facility license, pays the licensing fee and posts the performance bond required in Section IV.10.a. and Section IV.10.c.
 - d. Applicants shall provide a complete application with responses for each required item.
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);
 - 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 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 equity ownership interests in the entity are held by individuals who have been 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);
 - 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)(i) and (b)(ii); and
 - 4. Consents for criminal background checks for each owner, board members, and officers of the entity.
- c. Applicants shall provide proof that the proposed location of the

cultivation facility is 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 from the primary entrance to the cultivation facility to the nearest property line point of the school, church, or daycare facility;

- d. Applicants shall provide proof of authorization to occupy the property for the proposed cultivation facility. To establish proof the applicant shall provide one of the following:
 - i. If the property is owned by the applicant, the applicant shall provide: confirmation of land ownership, identification of any mortgagees and perfected lienholders; and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lien holders;
 - ii. If the property is not owned, but is currently leased by the applicant, the applicant shall provide a copy of the lease; confirmation of land ownership, identification of any mortgagees and perfected lienholders; a written statement from the property owner or landlord, certifying consent that the applicant, if awarded a license, may operate a medical marijuana cultivation facility on the property, and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lien holders;
 - iii. If the property is not owned or leased by the applicant, the applicant shall provide: a written statement from the property owner or landlord certifying consent that the applicant has the option to lease or purchase the property, contingent upon the issuance of a cultivation facility license; and if applicable, verification of notification by the property owner to any mortgagees and perfected lienholders that the property is to be used for a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lienholders.
- e. If the city, town, or county in which the cultivation facility would be located has enacted zoning restrictions, applicants shall submit a sworn statement certifying that the cultivation facility will operate in compliance with the restrictions.

- f. 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 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, be prohibited from being an owner, officer or board member of a cultivation facility, and be prohibited from having any responsibility for operating a cultivation facility if the person has been convicted of a 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 cash or certified funds. Certified checks or cashier's checks shall be made payable to the 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. 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 IV.4.** and **Section IV.5.**
 - b. Applications that meet the requirements of **Section IV.4.** and **Section IV.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.

- c. Applications that do not meet the requirements of **Section IV.4.** and **Section IV.5.** shall be denied pursuant to **Section IV.12.** and the commission shall notify the applicant in writing.
- 9. Selection Process and Criteria Based on Merit 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 IV.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. Plan for operating a medical marijuana cultivation facility in compliance with applicable laws and rules 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 the rules of the Arkansas Department of Health;
 - 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 as described in the rules of the Arkansas Alcoholic

- Beverage Control Division;
4. Ability to comply with rules of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division regarding the inventory and tracking of marijuana products;
 5. Ability to comply with the recordkeeping requirements of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division;
 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;
 8. Ability to comply with requirements for the transportation and marketing of products.
 9. Ability to comply with all other laws and regarding the operation of a medical marijuana cultivation facility.
- iii. 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;
- iv. 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 filings by the applicant or entities owned or operated by the applicant for eight (8) years prior to the date of application.
- c. The commission may consider the following criteria based on merit to evaluate applications verified pursuant to **Section IV.8.**:
- i. Affiliation with a Medical Doctor, Doctor of Osteopathy, or Doctor

of Pharmacy.

- ii. 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.
 1. Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors: poverty rate, population growth, per capita personal income, and unemployment rate. Consideration shall be given based on the AEDC's tier ranking of the county of the proposed cultivation facility as it exists on the date of the application.
 2. Factors that may be considered in determining an applicant's impact on the diversity of the area include, but are not limited to, ownership by minority groups, ownership by veterans, and ownership by women.
- iii. Proof, if any, that the applicant's proposed cultivation facility will provide a benefit to the community in which the facility is to be located. Factors that may be considered include, but are not limited to:
 1. Any proposed substance abuse plan to be implemented by the cultivation facility.
 2. Any proposed compassionate care plan to be implemented by the cultivation facility.
 3. Any proposed plan for research, education, and promotion of patient and public safety to be implemented by the cultivation facility.
 4. Local ownership percentage, meaning the percentage of ownership held by Arkansas residents.
- d. Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
- e. 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. The commission shall notify in writing each of the applicants of their respective score and their respective ranking among all applicants.
- f. The highest ranking applicants, equal to the amount of available licenses, shall have the first opportunity to submit the required license fee and post the performance bond required under these rules for the

available licenses. If any applicant fails to pay the fee and post the bond within the required period of time, then their application shall be denied for the appropriate reason under **Section IV.12.** of these rules. The commission shall then inform the next highest scoring applicant, and they shall have the opportunity to submit the required license fee and post the performance bond required under these rules for the available license.

- g. 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 and post the performance bond in accordance with **Section IV.10.** When all available licenses within each application period have been issued, the commission shall remove all unselected applications from its list of reserved applications and notify all applicants; however, the commission shall have the option to maintain the list of reserved applications for 24 months from the issuance date of the initial licenses in any application period.
- 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, or upon revocation of any existing license by the Alcoholic Beverage Control Division.
 - i. If the commission determines that more licenses should be issued within 24 months following the issuance of licenses in the most recent application period, and it has exercised its option to maintain the reserve list from the last application period, the commission shall offer the next highest scoring applicant from the applications held in reserve the opportunity to pay the licensing fee and post the performance bond in accordance with **Section IV.10.**
 - ii. If the commission determines more licenses should be issued, and the commission did not exercise the option to maintain a reserve list or the decision is made after the 24 months following the issuance of licenses in the most recent application period, the commission shall solicit new applications in accordance with these rules.
- i. If the commission must break a tie in scoring among applicants, the following procedure shall be followed:
 - i. Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score. Applicants will then repeat the drawing of numbers in the order determined by the first drawing. The tied applicants will be ranked according to the number pulled from the second

drawing. The applicant who draws the number (1) will have the highest rank among the tied applicants.

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 in cash or 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 group of applications in accordance with **Section IV.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 for the sale of usable marijuana.
- 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 merit selection process in **Section IV.9.**
- e. After the license fees and performance bond are timely tendered in an acceptable form, the applicant shall be awarded a license and a registration number.
- f. Upon issuance of a cultivation facility license, and following inspection required by Alcoholic Beverage Control Division Rules, the cultivation facility licensee may begin operations.
- g. The cultivation facility licensee shall visibly post a copy of its license at the cultivation facility covered under the license.
- h. A license that is initially issued between Jan. 1 and July 1 may have the licensing fee prorated up to 50 percent of the total fee as determined by the commission.

11. Term

- a. A license shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1, unless the license is:
 - i. Suspended or revoked by the division; or
 - ii. Surrendered by the cultivation facility licensee.
 - iii. Replaced with the issuance of a temporary license
- #### 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:
 - i. Failure to provide the information required in these rules;
 - ii. Failure to meet the requirements set forth in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division;
 - iii. Provision of misleading, incorrect, false, or fraudulent information;
 - iv. Failure to pay all applicable fees as required;
 - v. Failure to post a performance bond naming the state as the secured party, as required by **Section IV.10.c.**;
 - vi. Receipt of an application evaluation score lower than the successful applicants for a cultivation facility in the pool period for which the applicant applied;
 - vii. 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
 - viii. Any other ground that serves the purpose of these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- 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.

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 set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- 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 these rules, the rules of the Arkansas Department of Health, or Arkansas Alcoholic Beverage Control Division.
- 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 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 and return the license to the commission.
- e. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules.
- f. 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 for the denial of the renewal application. The licensee may request a hearing before the Commission pursuant to **Section IV.19.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. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules.
 - 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 to, 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;
- v. The permanent closure of the business; and
- 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.

16. Transfer of License

- a. Licenses shall only be effective for the individuals identified in the original application.
- b. A licensee may not sell, transfer, or otherwise dispose of his or her license to another individual without approval from the commission.
- c. A licensee may only sell, transfer or otherwise dispose of his or her license to another natural person.
- d. An individual who holds a license through its individual agent shall not make any modification to the individual's ownership, board members, or officers as designated in the initial application without approval from the commission.
- e. 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.
- f. 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.
- g. 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 IV.19.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;
 - ii. Proof that the proposed location of the cultivation facility is at least three thousand (3,000) feet from a public or private school, church, or daycare existing before the date of the cultivation facility transfer application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured from the primary entrance of the cultivation facility to the nearest property line point of the school, church, or daycare facility; and
 - iii. Copies of any changes to the criteria set forth in **Section IV.9.b.ii.** of these Rules if any changes were necessary due to the change of location.
- 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 IV.19.b.** of these Rules.

18. Issuance of Temporary License

- a. The commission may issue a temporary license to another natural person in conjunction with a cultivation facility when the natural person applicant whose name is on the license of the cultivation facility ceases to be in actual control of the cultivation facility.
- b. A temporary license will be valid for no more than 60 days from the date of issuance.
- c. The issuance of a temporary license by the commission will immediately terminate the license which is to be replaced.
- d. The natural person to whom a temporary license is issued must meet

the requirements of **Section IV.4, 5 & 6** of these rules.

- e. A temporary license can only be issued at the request of the natural person to whom a license was issued, that person's heirs, or the entity on whose behalf the individual applicant held the license.
- f. A temporary license cannot be transferred, sold or otherwise disposed of without the approval of the commission.
- g. A temporary license can be renewed in a manner consistent with a license to operate a cultivation facility under **Section IV.13** of these rules.

19. Appellate Procedure following Denial of License Renewal, Transfer of License, or Location.

- a. 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.
- b. 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.
- c. 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.

20. Hiring of Consultants

- a. The commission may retain the services of a contractor or consultant.
 - i. The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.
 - ii. The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

**SECTION V.
DISPENSARY**

APPLICATION, LICENSING, & RENEWAL

1. License Required

- a. No person shall operate a medical marijuana dispensary unless the person has a license issued by the commission pursuant to this chapter.

- b. Each license for a dispensary 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 twenty (20), but no more than forty (40), dispensary licenses.
- b. Licenses shall be distributed within eight (8) geographic zones, to assure that dispensaries are available throughout the state. A dispensary license shall only be valid in the geographic zone where it was awarded.
- c. It shall be within the commission's discretion to make licenses available.
- d. 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 dispensary license.
- e. The commission will create application pools for dispensary licenses based on the eight (8) identified geographic zones to ensure that dispensaries are distributed equally through the state. A dispensary license will only be valid for the designated zone and cannot be used in another zone.
- f. No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.
- g. In accordance with the Arkansas Medical Marijuana Amendment of 2016, there shall be no more than four (4) dispensaries in any one (1) county.

3. Application

- a. An application for a dispensary license shall include both an individual applicant and an applying entity and they shall apply to the commission on a form and in a manner prescribed by the commission.
- b. Applications will be accepted for the dispensary license beginning ten (10) days after the date of publication of the legal notice by the commission, and no applications will be accepted after ninety (90) days of the publication date.
- c. 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 a natural person

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 licensed facility that has been revoked;
 - iv. Has no ownership in any other dispensary in the state of Arkansas;
 - v. Has not been convicted of a 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 or the federal government.
- b. If the applicant is applying on behalf of an entity, in addition to (a) of this Section, the individual applicant:
- 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:
 1. The entity has no owner, board member, or officer under the age of twenty-one (21);
 2. Sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state for at least seven (7) consecutive years prior to the application date;
 3. The entity has no owner, board member, or officer that has previously been an owner of a licensed facility that has had its license revoked;
 4. The entity has no owner, board member, or officer that has ownership in any other dispensary in the state of Arkansas;
 5. The entity has no owner, board member, or officer that has been convicted of a felony offense; and
 6. If an owner, board member, or officer has or had a professional license, that the license is in good standing; and
 7. The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas or the federal government.

- c. Applicants shall provide proof of assets or a surety bond in the amount of \$200,000.00 and proof of at least \$100,000.00 in liquid assets.
 - i. If an applicant posts a surety bond, the bond shall be maintained until:
 - 1. An applicant withdraws an application;
 - 2. An applicant's application is denied by the commission; or
 - 3. An applicant, following selection by the commission for a dispensary license, pays the licensing fee and performance bond required in Section V.10.a. and Section V.10.c.
 - d. Applicants shall provide a complete application with responses for each required item.
- 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;
 - 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);

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 one (1) 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 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 equity ownership interests in the entity are held by individuals who have been 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);
 3. 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) and (c); and
 4. Consents for criminal background checks for each owner, board members, and officers of the entity.
- c. Applicants shall provide proof that the proposed location of the dispensary is at least one thousand five hundred (1,500) feet from a public or private school, church, daycare, or facility for individuals with developmental disabilities existing before the date of the dispensary application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured from the primary entrance of the dispensary to the nearest property line point of the school, church, daycare facility, or facility for individuals with developmental disabilities; and
- d. Applicants shall provide proof of authorization to occupy the property for the proposed dispensary. To establish proof the applicant shall provide one of the following:
- i. If the property is owned by the applicant, the applicant shall provide: confirmation of land ownership, identification of any mortgagees and perfected lienholders; and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lien holders;
 - ii. If the property is not owned, but is currently leased by the applicant, the applicant shall provide a copy of the lease; confirmation of land ownership, identification of any mortgagees and perfected lienholders; a written statement from

the property owner or landlord, certifying consent that the applicant, if awarded a license, may operate a medical marijuana dispensary on the property, and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lien holders;

- iii. If the property is not owned or leased by the applicant, the applicant shall provide: a written statement from the property owner or landlord certifying consent that the applicant has the option to lease or purchase the property, contingent upon the issuance of a dispensary license; and if applicable, verification of notification by the property owner to any mortgagees and perfected lienholders that the property is to be used for a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lienholders.
- e. If the city, town, or county in which the dispensary would be located has enacted zoning restrictions, applicants shall submit a sworn statement certifying that the dispensary will operate in compliance with the restrictions.
- f. 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 dispensary license:
 - i. The individual applicant;
 - ii. All owners, officers, and board members of an entity seeking to apply for a dispensary license through its designated individual applicant; and
 - iii. Agents of any of the above persons.
- b. 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 dispensary license shall include an application fee of \$7,500.00 in cash or certified funds. Any certified check or cashier's check shall be made payable to state of Arkansas, and 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, \$3,750.00 of the initial application fee shall be refunded to the applicant.
 - c. An application is not complete and will not be considered unless the application fee is received with the application by the deadline.
8. Verification of Application
- a. After 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.
 - b. Applications that meet the requirements of **Section V.4. and V.5** shall be placed into the pool of applicants for further review and selection based on merit. The commission shall notify the applicant in writing that the application was successfully verified.
 - c. Applications that do not meet the requirements of **Section V.4. and Section V.5** shall be denied pursuant to **Section V.12**, and the commission shall notify the applicant in writing.
9. Selection Process and Criteria Based on Merit 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 application.
 - b. The commission shall consider the following criteria based on merit to evaluate applications verified pursuant to **Section V.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. Plan for operating a dispensary in compliance with applicable laws and rules 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 the rules of the Arkansas Department of Health;
 - 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 as described in the rules of the Arkansas Alcoholic Beverage Control Division.
 - 4. Ability to comply with rules of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division regarding the inventory and tracking of marijuana products;
 - 5. Ability to comply with the recordkeeping requirements of Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division;
 - 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; and
 - 8. Ability to comply with all other laws and rules regarding the operation of a medical marijuana dispensary.
 - iii. Proof that the applicant is ready, willing, and able to properly carry out the activities of a medical marijuana dispensary, including a plan for operating a medical marijuana dispensary and a timeline for opening the dispensary;
 - iv. 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 dispensary;
 - 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 dispensary in Arkansas;
 5. Good credit history;
 6. No history of bankruptcy filings by the applicant or entities owned or operated by the applicant for eight (8) years prior to the date of application.
- c. The commission may consider the following criteria based on merit to evaluate applications verified pursuant to **Section V.8**:
- i. Affiliation with a Medical Doctor, Doctor of Osteopathy, or Doctor of Pharmacy.
 - ii. Proof, if any, that the applicant's proposed dispensary will positively impact the economy and diversity of the area in which the dispensary is to be located.
 1. Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors: poverty rate, population growth, per capita personal income, and unemployment rate. Consideration shall be given based on the AEDC's tier ranking of the county of the proposed dispensary as it exists on the date of the application.
 2. Factors that may be considered in determining an applicant's impact on the diversity of the area include, but are not limited to, ownership by minority groups, ownership by veterans, and ownership by women.
 - iii. Proof, if any, that the applicant's proposed dispensary will provide a benefit to the community in which the facility is to be located. Factors that may be considered include, but are not limited to:
 1. Any proposed substance abuse plan to be implemented by the dispensary.
 2. Any proposed compassionate care plan to be implemented by the dispensary.
 3. Any proposed plan for research, education, and promotion of patient and public safety to be implemented by the dispensary.
 4. Local ownership percentage, meaning the percentage of

ownership held by Arkansas residents.

- d. Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
- e. 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 geographic zone. The commission shall notify in writing each of the applicants of their respective score and their respective ranking among all applicants within the applicable geographic zone.
- f. The highest ranking applicants in each zone, equal to the amount of available licenses in each zone, shall have the first opportunity to submit the required license fee and post the performance bond required under these rules for the available licenses. If any applicant fails to pay the fee and post the bond within the required period of time, then their application shall be denied for the appropriate reason under **Section V.12.** of these rules. The commission shall then inform the next highest scoring applicant within the applicable zone, and they shall have the opportunity to submit the required license fee and post the performance bond required under these rules for the available license.
- g. The commission shall hold unselected applications in reserve to offer a license to the next highest scoring applicant within a zone if the highest scoring applicant within that zone fails to pay the licensing fee and post the performance bond in accordance with **Section V.10.** Unselected applications shall remain in reserve for 24 months from the issuance date of the initial licenses in any application period.
- h. The commission may initiate the selection process for dispensary licenses upon determining that there are not enough dispensaries to supply qualified patients within the state, or upon revocation of any existing license by the Alcoholic Beverage Control Division.
 - i. If the commission determines that more licenses should be issued within 24 months following the issuance of licenses in the most recent application period, the commission shall offer the opportunity to pay the licensing fee and post the performance bond in accordance with **Section V.10** to the next highest scoring applicant from the applications held in reserve for the zone where the commission has determined a need for the license.
 - ii. If the commission determines that more licenses should be issued after the 24 months following the issuance of licenses in the most

recent application period, the commission shall solicit new applications in accordance with these rules.

- i. If the commission must break a tie in scoring among applicants, the following procedure shall be followed:
 - i. Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score. Applicants will then repeat the drawing of numbers in the order determined by the first drawing. The tied applicants will be ranked according to the number pulled from the second drawing. The applicant who draws the number (1) will have the highest rank among the tied applicants.

10. Licensing Fee and Issuance of License

- a. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant for a dispensary license shall submit to the commission a dispensary license fee of \$15,000.00 in cash or 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 that particular zone.
- 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 \$100,000.00. The bond shall be maintained until the dispensary files its first application for renewal of the license.
- d. If the performance bond is not timely posted, the selected applicant will be disqualified, and the commission shall select the next highest scoring applicant within that particular zone.
- e. A license that is initially issued between Jan. 1 and July 1 may have the licensing fee prorated up to 50 percent of the total fee as determined by the commission.
- f. Upon issuance of a dispensary license, and following inspection required by Alcoholic Beverage Control Division Rules, the dispensary licensee may begin operations.
- g. The dispensary licensee shall visibly post a copy of its license at the dispensary covered under the license.

11. Term

- a. A license shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning

July 1, unless the license is:

- i. Suspended or revoked by the Department of Finance and Administration – Alcoholic Beverage Control Division;
- ii. Surrendered by the dispensary licensee; or
- iii. Replaced by a temporary license.

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:

- i. Failure to provide the information required in these rules;
- ii. Failure to meet the requirements set forth in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division;
- iii. Provision of misleading, incorrect, false, or fraudulent information;
- iv. Failure to pay all applicable fees as required;
- v. Failure to post performance bond, if required, naming the state as a secured party;
- vi. An applicant 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 these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.

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.

13. License Renewal Process and Fee

a. A license may be renewed if the dispensary 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 set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.

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 set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.

- c. After receiving written notice from the commission that its renewal application has been approved, the dispensary licensee shall pay the annual renewal fee of \$22,500.00 in certified funds. Any certified or cashier's check shall be payable to the State of Arkansas.
- d. A dispensary licensee whose license is not renewed shall cease all operations immediately upon expiration of the license, return the license to the commission; and
- e. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules.

14. Surrender of License

- a. A dispensary may voluntarily surrender a license to the commission at any time.
- b. If a dispensary voluntarily surrenders a license, the dispensary 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 marijuana products for destruction or for sale to another facility in accordance with the Arkansas Department of Finance and Administration – Alcoholic Beverage Control Division. No portion of the licensing fee shall be returned to the dispensary licensee if the license is voluntarily surrendered prior to the expiration of the license.

15. Change in Information

- a. The dispensary licensee shall notify the commission of any changes in contact information.
- b. The dispensary 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 dispensary licensee continues to be qualified. In the event of a change for which a dispensary 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 to, 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;
 - 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.

16. License Restrictions

- a. The dispensary license shall only be applicable for use in the geographic zone for which it is issued. A dispensary being operated outside of its designated area will result in the dispensary's license being revoked.

17. Transfer of License

- a. Licenses shall only be effective for the individuals identified in the original application.
- b. A licensee may not sell, transfer, or otherwise dispose of his or her license to another individual without approval from the commission.
- c. A licensee may only sell, transfer or otherwise dispose of her license to a natural person.
- d. 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.
- e. A licensee's failure to obtain approval from the commission before engaging in ownership changes described in (b) and (c) above shall result in the commission's revocation of that license.
- f. 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.

- g. 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 V.20.b.** of this Rule.

18. Transfer of Location

- a. A Dispensary 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 dispensary without prior approval by the commission.
- c. In order to obtain approval to transfer a dispensary 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;
 - ii. Proof that the proposed location of the dispensary is at least one-thousand five-hundred (1,500) feet from a public or private school, church, or daycare existing before the date of the dispensary application for transfer pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured by the distance between the primary entrance of the cultivation facility to the nearest property line point of the school, church, or daycare facility; and
 - iii. Copies of any changes to the criteria set forth in **Section V.9.b.ii.** of these Rules if any changes were necessary due to the change of location..
- 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 V.20.b.** of these Rules.

19. Issuance of Temporary License

- a. The commission may issue a temporary license to another natural person in conjunction with a dispensary when the natural person whose name is on the license of the dispensary ceases to be in actual control of the dispensary.
- b. In issuing a temporary license, the commission will determine the term of the temporary license, but at no time will a temporary license remain valid beyond the original term of the license it replaced.
- c. The issuance of a temporary license by the commission will

- immediately terminate the license which is to be replaced.
- d. The natural person to whom a temporary license is issued must meet the requirements of **Section V.4, 5 & 6** of these rules.
 - e. A temporary license can only be issued at the request of the natural person to whom a license was issued, that person's heir, or the entity on whose behalf the individual applicant held the license.
 - f. A temporary license cannot be transferred, sold or otherwise disposed of without the approval of the commission.
 - g. A temporary license can be renewed in a manner consistent with a license to operate a dispensary under **Section V.13** of these rules.
20. Appellate Procedure following Denial of License Renewal, Transfer of License, or Location.
- a. If the commission denies an application for the renewal of a dispensary 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.
 - b. 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.
 - c. The commission's decision may be appealed to the circuit court of the county in which the dispensary is situated or the Pulaski County Circuit Court. Appeals shall be governed by the term of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

21. Hiring of Consultants

- a. The commission may retain the services of a contractor or consultant.
 - i. The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.
 - ii. The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

**SECTION VI.
PROCESSOR
APPLICATION, LICENSING, & RENEWAL**

1. License Required

- a. No person or entity shall operate as a processor unless licensed by the

3. Renewal

- a. The Commission shall issue a renewal license within ten (10) days of the date the Commission receives a complete renewal application, including the payment of a renewal fee.
- b. A renewal application for a processor license shall be submitted to the Commission on a form and in a manner prescribed by the Commission at least thirty (30) days prior to the expiration date on the license and shall require, without limitation:
 - i. Proof that the licensee is in good standing with the Arkansas Secretary of State; and
 - ii. Proof that the licensee is in good standing with the Arkansas Department of Finance and Administration.
- c. 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 set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- d. The renewal application shall be signed and sworn before a notary as being true and correct.
- e. A processor whose license is not renewed shall cease all operations immediately upon expiration of the license, return the license to the Commission, and any marijuana or marijuana products remaining in the processor's possession shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control requirements.

4. 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:
 - i. Failure to provide the information or meet the requirements described in the Amendment, these rules, or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division;
 - ii. An owner, board member, or officer has been an owner of a dispensary, cultivation facility, transporter, distributor, or processor that has had a license revoked;
 - iii. Provision of misleading, incorrect, false, or fraudulent information;
 - iv. Failure to pay all applicable fees as required;
 - v. The applicant has an owner, board member, or officer with a background history that indicates the person 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

vi. Any other ground that serves the purpose of these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.

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 the procedures described in this rule.

5. Change in Information

a. The processor shall notify the Commission of any changes in contact information, including a change of address.

b. The processor licensee shall notify the Commission in writing no less than fourteen (14) days in advance of any change in the information provided in its original application for licensure, along with supporting documentation to prove the processor continues to be qualified. In the event of a change for which a processor licensee does not have prior notice, the licensee shall notify the Commission immediately upon learning of the change.

c. The licensee shall notify the Commission of the following:

i. The arrest or conviction for any felony of any owner, board member, or officer;

ii. Any of the licensee's owners, board members, or officers owes delinquent taxes to the State of Arkansas or the federal government.

iii. The temporary closure of the business for any reason for longer than fifteen (15) days;

iv. The permanent closure of the business;

v. The filing of bankruptcy by the entity or by any of the entity's owners; or

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.

6. Surrender of License

a. A processor may voluntarily surrender a license to the Commission at any time.

b. If a processor licensee voluntarily surrenders a license, the processor

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 to another facility in accordance with Division requirements. No portion of the licensing fee shall be returned to the processor licensee if the license is voluntarily surrendered prior to the expiration of the license.

7. FEES

Processor License Fee - \$5,000 .

Processor Renewal Fee - \$5,000 .

8. APPEALS

1. If the Commission denies an application for the issuance or renewal of a processor 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.
2. 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.
3. The Commission's decision may be appealed to the circuit court of the county in which the processor 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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

PARTMENT Medical Marijuana Comm'n (DFA)
DIVISION Alcoholic Beverage Control
PERSON COMPLETING THIS STATEMENT Doralee Chandler
TELEPHONE 501-682-2916 **FAX** 501-682-2221 **EMAIL:** Doralee.Chandler@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Licensure of Medical Marijuana Cultivation Facilities, Processors and Dispensaries

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☒ No ☐
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ Total _____

(b) What is the additional cost of the state rule?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	_____	General Revenue	_____
Federal Funds	_____	Federal Funds	_____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
Total	0	Total	0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 105,000	\$ 5,000
In the first year of licensure, a transporter is required to maintain a performance bond of \$100,000 and pay a licensure fee of \$5,000. In the second year, the licensee can discontinue the bond but must pay a license renewal fee of \$5,000.	

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 0	\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes X (first
year only) No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;