

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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Name of Department Department of Finance and Administration

Agency or Division Name Medical Marijuana Commission

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Doralee Chandler

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Name of Rule Licensure of Medical Marijuana Transporters

Newspaper Name Arkansas Democrat Gazette

Date of Publishing July 19, 2020 through July 21, 2020

Final Date for Public Comment August 25, 2020

Location and Time of Public Meeting 1515 West 7th Street, 5th Floor, 9:00 a.m.

# MEDICAL MARIJUANA COMMISSION: RULES AND REGULATIONS GOVERNING THE LICENSURE OF MEDICAL MARIJUANA TRANSPORTERS

## I. AUTHORITY OF THE COMMISSION

These Rules and Regulations Governing the Licensure of Medical Marijuana Transporters 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.

## II. SCOPE AND PURPOSE

These rules govern the application procedures for the licensure, application, and renewal of licenses for medical marijuana transporters in Arkansas.

## III. DEFINITIONS

1. “Amendment” means the Arkansas Medical Marijuana Act of 2016.
2. “Applicant” means the entity applying for licensure under these rules.
3. “Approved Laboratory” means a laboratory has been approved by the Department specifically for the testing of usable marijuana.
4. “Commission” means the Medical Marijuana Commission.
5. “Department” means the Arkansas Department of Health.
6. “Division” means the Alcoholic Beverage Control Division.
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, or licensed processor.

9. “Marijuana” means marijuana in any form described in the Amendment or the rules promulgated by the Division, Department of Health, or the Commission.

10. “Transport” - means to move medical marijuana between licensed facilities or between a licensed facility and approved laboratory.

11. “Transporter” or “distributor” means an entity licensed by the Commission pursuant to these rules and that may:

A. Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, cultivation facility, or processor; and

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

12. “Transportation vehicle” means a vehicle used by a licensed transporter to transport marijuana.

#### IV. TRANSPORTER APPLICATION, LICENSING, & RENEWAL

##### 1. License Required

A. No person or entity shall operate as a transporter unless licensed by the Commission pursuant to these rules.

B. Each license for a transporter shall specify:

(1) The name and address of the entity that holds the license;

(2) The effective dates of the license; and

(3) The address of the licensed transporter, if different from that in subsection (1).

C. A transporter licensed under this section shall not grow, manufacture, process, prepare, supply, or dispense marijuana.

D. The transporter licensee shall visibly post a copy of its license at the transporter facility covered under the license.

E. A transporter license shall expire one (1) year after the date of issuance.

## 2. Application

A. An application for a transporter license shall be submitted to the Commission on a form and in a manner prescribed by the Commission.

B. 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.

C. An applicant shall be required to submit, without limitation:

(1) The required fee;

(2) A performance bond in the amount of \$100,000.00 that names the state as the secured party.;

(3) Documentation of the entity's organization and ownership/management, including evidence that the applicant is an entity incorporated in the State of Arkansas;

(4) Sufficient proof that each of the entity's owners, board members, and officers:

(a) Is over the age of twenty-one (21);

(b) Has not previously been an owner of a dispensary, cultivation facility, transporter, or processor that has had a license revoked; and

(c) Owes no delinquent taxes to the State of Arkansas or the federal government.

(5) Consents for criminal background checks for each owner, board member, and officer of the entity, along with the required processing fees;

(6) Plan for operating a medical marijuana transporter in compliance with applicable laws and regulations and demonstrating planning sufficient to prove the applicant's:

(a) Ability to transport marijuana to approved labs in accordance with chain of custody requirements and the rules of the Arkansas Department of Health;

(b) Ability to comply with Division's rules regarding:

- i. Security requirements;
- ii. Recordkeeping requirements;
- iii. Transporting products;
- iv. Inventory reports;
- v. Advertising restrictions;
- vi. Implementation of appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana;
- vii. Inspections and investigation by Alcoholic Beverage Control Division;
- viii. Requirements for transportation vehicles; and
- ix. Personnel requirements.

(c) Ability to maintain effective control against diversion of marijuana and marijuana products;

(7) Proof of financial stability and access to financial resources, including but not limited to:

- (a) Legal sources of finances immediately available to begin operating a transporter;
- (b) Financial projections for the next five (5) years; and
- (c) No history of bankruptcy filings by the applicant or its owners, officers, or board of directors for eight (8) years prior to the date of application.

D. The application shall be signed and sworn before a notary as being true and correct.

E. The individual signing the application on behalf of the applicant must:

- (1) Be an owner, officer, or agent of the entity;
- (2) Provide evidence that the individual is legally authorized to sign the application on the applicant's behalf;
- (3) Serve as the primary point of contact with the Commission; and



(4) Provide a contact phone number and email address.

F. A person subject to background checks as provided in these rules or any rules promulgated by the Division or the Department shall be prohibited from being an owner, officer or board member of a transportation facility, be prohibited from entering a transportation facility, and be prohibited from having any responsibility for operating a transportation vehicle if the person has been convicted of an excluded felony offense.

G. Upon issuance of a transporter license, the transporter licensee may begin operations.

### 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 transporter 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:

(1) Proof that the licensee is in good standing with the Arkansas Secretary of State; and

(2) 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 transporter licensee 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 transporter's possession shall be 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:

(1) 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;

(2) 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;

(3) Provision of misleading, incorrect, false, or fraudulent information;

(4) Failure to pay all applicable fees as required;

;

(5) 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

(6) 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 transporter licensee shall notify the Commission of any changes in contact information, including a change of address.

B. The transporter 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 transporter licensee continues to be qualified. In the event of a change for which a transporter 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:



- (1) The arrest or conviction for any felony of any owner, board member, or officer;
- (2) Any of the licensee's owners, board members, or officers owes delinquent taxes to the State of Arkansas or the federal government;
- (3) The temporary closure of the business for any reason for longer than fifteen (15) days;
- (4) The permanent closure of the business;
- (5) The filing of bankruptcy by the entity or by any of the entity's owners; or
- (6) 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 transporter licensee may voluntarily surrender a license to the Commission at any time.

B. If a transporter licensee voluntarily surrenders a license, the transporter shall:

- (1) Return the license to the Commission;
- (2) 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
- (3) Tender all marijuana to another facility in accordance with Division requirements.

C. No portion of the licensing fee shall be returned to the transporter licensee if the license is voluntarily surrendered prior to the expiration of the license.

#### V. FEES

Transporter License Fee - \$5,000.

Transporter Renewal Fee - \$5,000.

#### VI. APPEALS



1. If the Commission denies an application for the renewal of a transporter 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 transporter 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.

#### VII. SEVERABILITY

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.

**Summary of Proposed New Rule or Proposed Amendment to Existing Rule:**

The Arkansas Medical Marijuana Commission is adopting rules that prescribe the licensure, application, and renewal of licenses for medical marijuana transporters (also called “distributors”) in Arkansas. The rules were adapted from the existing licensing rules for cultivation facilities and dispensaries. The rules describe the license application and license renewal procedures; imposes limitations on licensed transporters; establishes an initial license fee and renewal fee, in addition to a performance bond requirement for the first year of licensure; describes notification procedures for a licensee with information changes; and prescribes appeal procedures for denials of initial applications or license renewals.



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  - (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:

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12. “Transportation vehicle” means a vehicle used by a licensed transporter to transport marijuana.

#### IV. TRANSPORTER APPLICATION, LICENSING, & RENEWAL

##### 1. License Required

A. No person or entity shall operate as a transporter unless licensed by the Commission pursuant to these rules.

B. Each license for a transporter shall specify:

(1) The name and address of the entity that holds the license;

(2) The effective dates of the license; and

(3) The address of the licensed transporter, if different from that in subsection (1).

C. A transporter licensed under this section shall not grow, manufacture, process, prepare, supply, or dispense marijuana.

D. The transporter licensee shall visibly post a copy of its license at the transporter facility covered under the license.



E. A transporter license shall expire one (1) year after the date of issuance.

## 2. Application

A. An application for a transporter license shall be submitted to the Commission on a form and in a manner prescribed by the Commission.

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C. An applicant shall be required to submit, without limitation:

(1) The required fee;

(2) A performance bond in the amount of \$100,000.00 that names the state as the secured party.;

(3) Documentation of the entity's organization and ownership/management, including evidence that the applicant is an entity incorporated in the State of Arkansas;

(4) Sufficient proof that each of the entity's owners, board members, and officers:

(a) Is over the age of twenty-one (21);

(b) Has not previously been an owner of a dispensary, cultivation facility, transporter, or processor that has had a license revoked; and

(c) Owes no delinquent taxes to the State of Arkansas or the federal government.

(5) Consents for criminal background checks for each owner, board member, and officer of the entity, along with the required processing fees;

(6) Plan for operating a medical marijuana transporter in compliance with applicable laws and regulations and demonstrating planning sufficient to prove the applicant's:

(a) Ability to transport marijuana to approved labs in accordance with chain of custody requirements and the rules of the Arkansas Department of Health;

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(7) Proof of financial stability and access to financial resources, including but not limited to:

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(4) Provide a contact phone number and email address.

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(3) Provision of misleading, incorrect, false, or fraudulent information;

(4) Failure to pay all applicable fees as required;

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(5) 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

(6) 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.

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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 transporter 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.

#### VII. SEVERABILITY

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## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** 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 Transporters

- |   |       |                             |
|---|-------|-----------------------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact?   | Yes X | No <input type="checkbox"/> |
| 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 X | No <input type="checkbox"/> |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?  | Yes X | No <input type="checkbox"/> |

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)	_____

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

## Financial Impact Statement – Written Findings

### MMC - Licensure of MM transporters

- (1) A statement of the rule's basis and purpose;

The rule establishes the process for licensing medical marijuana transporters (also called "distributors"), which transport medical marijuana between licensed facilities and an approved lab.

- (2) The problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

Section 24 of Ark. Const. Amend. 98 requires the Medical Marijuana Commission to license transporters and distributors.

- (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;

Section 24 of Ark. Const. Amend. 98 requires the Medical Marijuana Commission to adopt rules to license transporters and distributors, which the Commission has done through this proposed rule that combines both transporters and distributors into one "transporter" license. The rule establishes an initial license fee and renewal fee, as specifically allowed by Amend. 98, both in the amount of \$5,000. Any applicant that meets the requirements will be granted a transporter license. In the initial year of licensure only, a transporter licensee must maintain a performance bond of \$100,000.

- (4) A list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

While the Commission could certainly impose lesser fees and performance bond amount, the amounts set forth in the rule are the most reasonable. The fees are comparable to those required of transporters in other states. The performance bond amount is the same as that required for licensed dispensaries in Arkansas and is only required in the first year of licensure.

- (5) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

This finding will be supplemented after the public comment period closes.



- (6) A statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

- (7) An agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
- (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The medical marijuana industry is brand-new in Arkansas. The Commission t intends to continually update and improve the rules as the industry evolves and updates and improvements become apparent and necessary.