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Proposed Rulemaking

~~Title~~

Promulgated by:
Medical Marijuana Commission

Title 20. Public Health and Welfare

Chapter XX. Medical Marijuana Commission, Alcoholic Beverage Control Division, Department of Finance and Administration

Subchapter A. Generally

Part 800. Rules Governing the Application for, Issuance, and Renewal of Licenses for Medical Marijuana Cultivation Facilities, Dispensaries, and Processors in Arkansas

Subpart 1. General Provisions

20 CAR § 800-101. Scope, purpose, and severability.

(a) This part governs the application procedures for the issuance and renewal of licenses for medical marijuana cultivation facilities, dispensaries, and processors in Arkansas.

(b) This part also governs 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.

(c)(1) If any provision of this part 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 this part that can be given effect without the invalid provisions or application.

(2) Therefore, all provisions of this part are declared to be severable.

20 CAR § 800-102. Definitions.

(1) "Amendment" means the Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98;

(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) "Arms-length transaction" means a transaction between two unrelated and unaffiliated parties who are acting in their own self-interest.

(4) "Commercially Reasonable" means a contractual arrangement furthers a legitimate business purpose of the parties to the arrangement and is sensible, considering the characteristics of the parties.

~~(3)~~(5) "Commission" means the Medical Marijuana Commission;

~~(4)~~(6) "Cultivation facility" means an entity that:

(A) Has been licensed by the Medical Marijuana Commission;

(B) Cultivates, prepares, manufactures, processes, packages, sells, and delivers usable marijuana to a dispensary.

~~(5)~~(7) "Department" means the Department of Health;

~~(6)~~(8) "Dispensary" means an entity that has been licensed by the Medical Marijuana Commission pursuant to the requirements of the Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98;

~~(7)~~(9) "Excluded felony offense" means:

(A)(i) A felony offense as determined by the jurisdiction where the felony offense occurred.

(ii) 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.

(iii) 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 an offense:

(i) For which the sentence, including any term of probation, incarceration, or supervised release, was completed ten (10) or more years earlier; or

(ii) That has been sealed by a court or for which a pardon has been granted;

~~(8)~~(10) "Licensed facility" means a licensed:

(A) Cultivation facility;

(B) Dispensary;

(C) Transporter/distributor; or

(D) Licensed processor;

(11) "Licensee" as used in this section, refers to any entity licensed by the Medical Marijuana Commission including cultivation facilities, dispensaries, or processors.

(12) "Management contract" means any contractual agreement between a licensee and a separate entity or person for services related to the licensee's sale of medical marijuana.

(A) These services include, but are not limited to, the management or supervision of:

(i) operations of a medical marijuana cultivation facility, dispensary, or processing facility;

(ii) consulting concerning the operations of a medical marijuana cultivation facility, dispensary, or processing facility;

(iii) debt and/or equity financing of the operations of a medical marijuana cultivation facility, dispensary, or processing facility;

(iv) leasing of equipment or real intellectual property that is tailored for use exclusively in the medical marijuana industry; or,

(v) provision of goods or materials that may only be used in the medical marijuana industry.

(B) A management contract does not include a contract to provide services or products that are of a type generally available to the public or other businesses not engaged in the medical marijuana industry, such as:

(i) lawn care services;

(ii) janitorial services;

(iii) accounting services;

(iv) legal services that would otherwise be provided; or,

(v) any other contract used in the regular course of business unrelated to the sale of medical marijuana.

(13) "Management company" means any entity or person that enters into a Management Contract with a licensee.

~~(9)~~(14)(A) "Manufacture and process" means the manufacturing, processing, compounding, or conversion of marijuana into cannabinoid:

(i) Products;

(ii) Concentrates; or

(iii) Extracts.

(B) "Manufacture and process" does not mean the drying of marijuana;

~~(10)~~(15) "Primary entrance" means the entrance through which most people enter or exit a building;

~~(11)~~(16) "Processor" means an entity licensed by the Medical Marijuana Commission pursuant to this part 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 subdivision (11)(A) of this section;

~~(12)~~(17) "Qualifying medical condition" means one (1) 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:

(i) Cachexia or wasting syndrome;

(ii) Peripheral neuropathy;

(iii) Intractable pain, which is pain that has not responded to ordinary medications, treatment, or surgical measures for more than six (6) months;

(iv) Severe nausea;

(v) Seizures, including without limitation those characteristic of epilepsy; or

(vi) 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 of Health pursuant to this part and the Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98;

~~(13)~~(18) "School" means a facility or building operated by a public school district, open-enrollment public charter school as defined in Arkansas Code § 6-23-103, or a private entity including parochial schools providing preschool, elementary, or secondary education but does not include:

(A) Postsecondary institutions of higher education;

(B) Community colleges; or

(C) The residences of students being home schooled under Arkansas Code § 6-15-501 et seq.,

~~(14)~~(19) "Sealed" means expunge, remove, sequester, and treat as confidential the record or records of a felony offense;

~~(15)~~(20) "Transporter" means an entity licensed as a transporter by the Medical Marijuana Commission; and

~~(16)~~(21)(A) "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.

(B) 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.

Subpart 2. Cultivation Facility Application, Licensing, and Renewal

20 CAR § 800-201. License required.

(a) No person or entity shall operate a medical marijuana cultivation facility unless the person has a license issued by the Medical Marijuana Commission pursuant to this part.

(b) Each license for a cultivation facility shall specify the:

(1) Name of the individual who holds the license;

(2) Address of the individual who holds the license;

(3) Effective dates of the license; and

(4) Address of the licensed facility.

20 CAR § 800-202. Licenses available.

(a) The Medical Marijuana Commission shall issue at least four (4), but no more than eight (8), cultivation facility licenses.

(b)(1) It shall be within the commission's discretion to make licenses available.

(2) 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.

(c) No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.

20 CAR § 800-203. Application process.

(a) An application for a cultivation facility license shall be submitted to the Medical Marijuana 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 20 CAR § 800-209.

(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.

20 CAR § 800-204. Minimum qualifications for applicant.

(a) An individual applicant for a license under this subpart shall be a natural person that:

(1) Is twenty-one (21) years of age or older;

(2) 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;

(3) Has not previously held a license for a licensed facility that has been revoked;

(4) Has no ownership in any other cultivation facility in the State of Arkansas;

(5) Has not been convicted of a felony offense;

(6) If possessing a professional license, that the license is in good standing; and

(7) 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 subsection (a) of this section, the individual applicant shall:

(1) Be legally authorized to submit an application on behalf of the entity;

(2) Serve as the primary point of contact with the Medical Marijuana Commission; and

(3) Submit sufficient proof that:

(A) The entity has no owner, board member, or officer under the age of twenty-one (21);

(B) 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;

(C) 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;

(D) The entity has no owner, board member, or officer that has ownership in any other cultivation facility in the State of Arkansas;

(E) The entity has no owner, board member, or officer that has been convicted of a felony offense;

(F) If an owner, board member, or officer has or had a professional license, that the license is in good standing; and

(G) The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas or the federal government.

(c)(1) Applicants shall provide proof of:

(A) Assets or a surety bond in the amount of one million dollars ($1,000,000); and

(B) Proof of at least five hundred thousand dollars ($500,000) in liquid assets.

(2) If an applicant posts a surety bond, the bond shall be maintained until:

(A) An applicant withdraws an application;

(B) An applicant's application is denied by the commission; or

(C) An applicant, following selection by the commission for a cultivation facility license, pays the licensing fee and posts the performance bond required in 20 CAR § 800-210(a) and (c).

(d) Applicants shall provide a complete application with responses for each required item.

20 CAR § 800-205. Documentation and information for applicant.

(a) An individual applicant shall provide the following required information:

(1) Legal name;

(2) Date of birth;

(3) Legal residence;

(4) Social Security number or tax identification number;

(5) Mailing address or principal residence address if different from the mailing address;

(6) Phone number;

(7) Email address; and

(8) 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:

(1) To establish legal name an applicant must present at least one (1) of the following source documents:

(A) 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;

(B) Valid, unexpired United States passport or United States passport card;

(C) Consular report of birth abroad Form FS-240, DS-1350, or FS-545 issued by the United States Department of State;

(D) Valid, unexpired permanent resident card (Form I-551) issued by the United States Department of Homeland Security or the United States Citizenship and Immigration Services;

(E) Unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, or Form I-688B;

(F) Unexpired foreign passport with the following:

(i) A valid, unexpired United States visa affixed; and

(ii) Either:

(a) An approved I-94 form documenting the applicant's most recent admittance into the United States; or

(b) A United States Department of Homeland Security admittance stamp on the passport;

(G) Certificate of naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;

(H) Certificate of citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;

(I) Court-issued, certified copy of a divorce decree; or

(J) Certified copy of a legal change of name order;

(2) To establish date of birth an applicant must present at least one (1) of the following source documents:

(A) At least one (1) document included in subdivisions (b)(1)(A) – (J) of this section; and

(B) A photocopy of the individual's valid, unexpired driver's license or government-issued photo identification card;

(3) 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:

(A) Arkansas tax return Form AR1000 for each of the seven (7) years preceding the application without schedules, worksheets, or attachments and redacted to remove all financial information and all but the last four (4) digits of the individual's Social Security number;

(B) Evidence of voter registration for the seven (7) years preceding the application;

(C) Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;

(D) Billing statements including utility bills for the seven (7) years preceding the application; or

(E) Vehicle registration for the seven (7) years preceding the application;

(4) 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

(5) Individuals applying on behalf of an entity must also provide the following proof:

(A) Documentation of the ownership of the entity;

(B)(i) 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.

(ii) Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subdivision (b)(3) of this section;

(C)(i) Documentation proving that each of the entity's owners, board members, and officers are over the age of twenty-one (21).

(ii) Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subdivisions (b)(1) and (2) of this section; and

(D) Consents for criminal background checks for each owner, board member, and officer of the entity.

(c)(1) Applicants shall provide proof that the proposed location of the cultivation facility is at least three thousand feet (3,000') 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, Ark. Const. amend. 98.

(2) 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:

(A) School;

(B) Church; or

(C) Daycare facility.

(d)(1) Applicants shall provide proof of authorization to occupy the property for the proposed cultivation facility.

(2) To establish proof the applicant shall provide one (1) of the following:

(A) If the property is owned by the applicant, the applicant shall provide:

(i) Confirmation of land ownership;

(ii) Identification of any mortgagees and perfected lienholders; and

(iii) If applicable, verification of notification to any mortgagees and perfected lienholders that the property is to be used as a medical marijuana cultivation facility and consent thereto by any mortgagees and perfected lienholders;

(B) If the property is not owned, but is currently leased by the applicant, the applicant shall provide:

(i) A copy of the lease;

(ii) Confirmation of land ownership;

(iii) Identification of any mortgagees and perfected lienholders;

(iv) 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

(v) If applicable, verification of notification to any mortgagees and perfected lienholders that the property is to be used as a medical marijuana cultivation facility and consent thereto by any mortgagees and perfected lienholders; or

(C) If the property is not owned or leased by the applicant, the applicant shall provide:

(i) 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

(ii) 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 Medical Marijuana Commission in the notice of open application.

20 CAR § 800-206. Background checks.

(a) The following are subject to background checks conducted by the Medical Marijuana Commission or its designee in considering an application for a cultivation facility license:

(1) The individual applicant;

(2) All owners, officers, and board members of an entity seeking to apply for a cultivation license through its designated individual applicant; and

(3) Agents of any of the above persons.

(b) A person subject to background checks as provided in subsection (a) of this section 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.

20 CAR § 800-207. Application fee.

(a) Each application for a cultivation license shall include an application fee of fifteen thousand dollars ($15,000) by cash or certified funds.

(b) 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.

(c) In the event an applicant is not successful in his or her application, seven thousand five hundred dollars ($7,500) of the initial application fee shall be refunded to the applicant.

(d) An application is not complete and will not be considered unless all required information, documentation, and the application fee are timely received by the Medical Marijuana Commission.

20 CAR § 800-208. Verification of application.

(a) No later than ten (10) business days following the receipt of an application, the Medical Marijuana Commission shall verify that:

(1) The application and supporting documentation are complete; and

(2) The information submitted in the application is true and valid and meets the requirements of 20 CAR §§ 800-204 and 800-205.

(b) Applications that meet the requirements of 20 CAR §§ 800-204 and 800-205 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 20 CAR §§ 800-204 and 800-205 shall be denied pursuant to 20 CAR § 800-212, and the commission shall notify the applicant in writing.

20 CAR § 800-209. Selection process and criteria based on merit selection.

(a)(1) In addition to documentation establishing minimum qualifications, the applicant shall submit responses to the Medical Marijuana Commission's merit criteria in a form and manner prescribed by the Medical Marijuana Commission.

(2) Criterion shall be published with the initial notice of open application.

(b) The Medical Marijuana Commission shall consider the following criteria based on merit to evaluate applications verified pursuant to 20 CAR § 800-208:

(1) Ability to operate a business, including but not limited to education, knowledge, and experience with:

(A) Regulated industries;

(B) Agriculture or horticulture;

(C) Commercial manufacturing;

(D) Creating and implementing a business plan, including a timeline for opening a business;

(E) Creating and implementing a financial plan;

(F) Secure inventory tracking and control;

(G) The cultivation and production of marijuana;

(H) Owning or managing a business that required twenty-four-hour security monitoring;

(I) Owning and managing a business that has not had its business license revoked; and

(J) Any other experience the applicant considers relevant;

(2) Plan for operating a medical marijuana cultivation facility in compliance with applicable laws and rules and demonstrating planning sufficient to prove the applicant's ability to:

(A) Manufacture approved medical marijuana products, each:

(i) With a consistent cannabinoid profile; and

(ii) Able to pass the required quality control testing as further described in the rules of the Department of Health;

(B) Produce sufficient quantities of approved medical marijuana products as necessary to meet the needs of individuals with qualifying medical conditions;

(C) Comply with the security requirements as described in the rules of the Alcoholic Beverage Control Division;

(D) Comply with rules of the Department of Health and the division regarding the inventory and tracking of marijuana products;

(E) Comply with the recordkeeping requirements of the department and the division;

(F) Maintain effective control against diversion of marijuana and marijuana products;

(G) Comply with requirements for signage, packaging, labeling, and chain of custody of products;

(H) Comply with requirements for the transportation and marketing of products; and

(I) Comply with all other laws regarding the operation of a medical marijuana cultivation facility;

(3) Proof that the applicant is ready, willing, and able to properly carry out the

activities of a medical marijuana cultivation facility, including a:

(A) Plan for operating a medical marijuana cultivation facility; and

(B) Timeline for opening the cultivation facility and beginning production; and

(4) 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 cultivation facility;

(B) Possession of, or the right to use, sufficient real property and equipment to properly carry on the activity described in the operating plan;

(C) A summary of financial statements in businesses previously or currently owned or operated by the applicant;

(D) A financial plan for operating a medical marijuana cultivation facility in Arkansas;

(E) Good credit history; and

(F) 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 Medical Marijuana Commission may consider the following criteria based on merit to evaluate applications verified pursuant to 20 CAR § 800-208:

(1) Affiliation with a:

(A) Medical doctor;

(B) Doctor of osteopathy; or

(C) Doctor of pharmacy; and

(2)(A) 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.

(B)(i) Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors:

(a) Poverty rate;

(b) Population growth;

(c) Per capita personal income; and

(d) Unemployment rate.

(ii) Consideration shall be given based on the Arkansas Economic Development Commission's tier-ranking of the county of the proposed cultivation facility as it exists on the date of the application.

(C) 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:

(i) Minority groups;

(ii) Veterans; and

(iii) Women; and

(3)(A) 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.

(B) Factors that may be considered include, but are not limited to:

(i) Any proposed:

(a) Substance abuse plan to be implemented by the cultivation facility

(b) Compassionate care plan to be implemented by the cultivation facility; and

(c) Plan for research, education, and promotion of patient and public safety to be implemented by the cultivation facility; and

(ii) Local ownership percentage, meaning the percentage of ownership held by Arkansas residents.

(d)(1) Each merit criterion will be worth a number of points announced by the Medical Marijuana Commission in the notice of open application period.

(2) A review panel comprised of members of the Medical Marijuana Commission shall evaluate the applications and award points for each merit criterion.

(3) The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score.

(4) The Medical Marijuana Commission shall notify in writing each of the applicants of their respective score and their respective ranking among all applicants.

(e)(1) 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 this part for the available licenses.

(2) 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 20 CAR § 800-212.

(3) The Medical Marijuana 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 this part for the available license.

(f)(1) The Medical Marijuana 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 20 CAR § 800-210.

(2)(A) When all available licenses within each application period have been issued, the Medical Marijuana Commission shall remove all unselected applications from its list of reserved applications and notify all applicants.

(B) However, the Medical Marijuana Commission shall have the option to maintain the list of reserved applications for twenty-four (24) months from the issuance date of the initial licenses in any application period.

(g)(1) The Medical Marijuana Commission may initiate the selection process for cultivation facilities upon:

(A) Determining that there are not enough cultivation facilities to supply the dispensaries within the state; or

(B) Revocation of any existing license by the division.

(2) If the Medical Marijuana Commission determines that more licenses should be issued within twenty-four (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 Medical Marijuana 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 20 CAR § 800-210.

(3) If the Medical Marijuana Commission determines more licenses should be issued, and the Medical Marijuana Commission did not exercise the option to maintain a reserve list or the decision is made after the twenty-four (24) months following the issuance of licenses in the most recent application period, the Medical Marijuana Commission shall solicit new applications in accordance with this part.

(4) If the Medical Marijuana Commission must break a tie in scoring among applicants, the following procedure shall be followed:

(A) Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score;

(B) Applicants will then repeat the drawing of numbers in the order determined by the first drawing;

(C) The tied applicants will be ranked according to the number pulled from the second drawing; and

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

20 CAR § 800-210. Licensing fee and issuance of license.

(a)(1) Within seven (7) days of receiving written notice of selection from the Medical Marijuana Commission, the selected applicant shall submit to the commission a cultivation facility license fee of one hundred thousand dollars ($100,000) in cash or certified funds.

(2) 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 20 CAR § 800-209.

(c)(1) 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 five hundred thousand dollars ($500,000).

(2) The bond shall be maintained until the cultivation facility files its first

required sales tax report with the 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 20 CAR § 800-209.

(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 January 1 and July 1 may have the licensing fee prorated up to fifty percent (50%) of the total fee as determined by the commission.

20 CAR § 800-211. Term.

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:

(A) Suspended or revoked by the Alcoholic Beverage Control Division;

(B) Surrendered by the cultivation facility licensee; or

(C) Replaced with the issuance of a temporary license.

20 CAR § 800-212. Denial of application for or renewal of a license.

(a) The Medical Marijuana Commission may deny an application for or renewal of a license for any of the following reasons:

(1) Failure to provide the information required in this part;

(2) Failure to meet the requirements set forth in this part or the rules of the Department of Health or Alcoholic Beverage Control Division;

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

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

(5) Failure to post a performance bond naming the state as the secured party, as required by 20 CAR § 800-210(c);

(6) Receipt of an application evaluation score lower than the successful applicants for a cultivation facility in the pool period for which the applicant applied;

(7) 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

(8) Any other ground that serves the purpose of this part or the rules of the department or the 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.

20 CAR § 800-213. License renewal process and fee.

(a) A license may be renewed if the cultivation facility licensee:

(1) Submits to the Medical Marijuana 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;

(2) Is in good standing with the Secretary of State's office;

(3) Continues to be in good standing with the Department of Finance and Administration; and

(4) Continues to meet all the requirements set out in this part or the rules of the Department of Health or the 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:

(1) This part;

(2) The rules of the Department of Health; or

(3) The division.

(c)(1) 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 one hundred thousand dollars ($100,000) in certified funds.

(2) Any certified or cashier's check shall be payable to the State of Arkansas.

(d)(1) 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.

(2) Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to division rules.

(e)(1) 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.

(2) The notice shall provide an explanation for the denial of the renewal application.

(3) The licensee may request a hearing before the commission pursuant to 20 CAR § 800-219(b).

20 CAR § 800-214. Surrender of license.

(a) A cultivation facility may voluntarily surrender a license to the Medical Marijuana Commission at any time.

(b) If a cultivation facility voluntarily surrenders a license, the cultivation facility shall:

(1) Return the license to the commission; and

(2) Submit a report to the commission including:

(A) The reason for surrendering the license;

(B) Contact information following the close of business;

(C) The person or persons responsible for the close of the business; and

(D) Where business records will be retained.

(c) Any marijuana or marijuana products remaining at the facility shall be

destroyed or transferred pursuant to Alcoholic Beverage Control Division rules.

(d) 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.

20 CAR § 800-215. Change in information.

(a) The cultivation facility licensee shall notify the Medical Marijuana Commission of any changes in contact information.

(b)(1) The cultivation facility licensee shall:

(A) 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

(B) Submit to the commission supporting documentation to prove the cultivation facility licensee continues to be qualified.

(2) 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 subsection (b) of this section, the licensee shall notify the commission of the following:

(1) 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;

(2) 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;

(3) The filing of bankruptcy by the entity holding the license or by any of the entity's owners;

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

(5) The permanent closure of the business; and

(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.

20 CAR § 800-216. 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 Medical Marijuana 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 subsections (b) and (c) of this section 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)(1) 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.

(2) The notice shall provide an explanation for the denial of the application.

(3) The licensee may request a hearing before the commission pursuant to 20 CAR § 800-219(b).

20 CAR § 800-217. Transfer of location.

(a) A cultivation facility license shall only be valid at the location for which it was originally issued by the Medical Marijuana Commission.

(b) A licensee shall not relocate 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:

(1) An application for license transferal on a form and in a manner prescribed by the commission;

(2)(A) Proof that the proposed location of the cultivation facility is at least three thousand feet (3,000') 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, Ark. Const. amend. 98.

(B) 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:

(i) School;

(ii) Church; or

(iii) Daycare facility; and

(3) Copies of any changes to the criteria set forth in 20 CAR § 800-219(b)(2) if any changes were necessary due to the change of location.

(d)(1) 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.

(2) The notice shall provide an explanation for the denial of the application.

(3) The licensee may request a hearing before the commission pursuant to 20 CAR § 800-219(b).

20 CAR § 800-218. Issuance of temporary license.

(a) The Medical Marijuana 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 sixty (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 20 CAR §§ 800-204 – 800-206.

(e) A temporary license can only be issued at the request of:

(1) The natural person to whom a license was issued;

(2) That person's heirs; or

(3) 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 20 CAR § 800-213.

20 CAR § 800-219. Appellate procedure following denial of license renewal, transfer of license or location.

(a) If the Medical Marijuana 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)(1) The commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing.

(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, Arkansas Code § 25-15-201 et seq.

(c)(1) 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.

(2) Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

20 CAR § 800-220. Hiring of consultants.

(a) The Medical Marijuana Commission may retain the services of a contractor or consultant.

(b) The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.

(c) The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

Subpart 3. Dispensary Application, Licensing, and Renewal

20 CAR § 800-301. License required.

(a) No person shall operate a medical marijuana dispensary unless the person has a license issued by the Medical Marijuana Commission pursuant to this part.

(b) Each license for a dispensary shall specify the:

(1) Name of the individual who holds the license;

(2) Address of the individual who holds the license;

(3) Effective dates of the license; and

(4) Address of the licensed facility.

20 CAR § 800-302. Licenses available.

(a) The Medical Marijuana Commission shall issue at least twenty (20) but no more than forty (40) dispensary licenses.

(b)(1) Licenses shall be distributed within eight (8) geographic zones to ensure that dispensaries are available throughout the state.

(2) A dispensary license shall only be valid in the geographic zone where it was awarded.

(c)(1) It shall be within the commission's discretion to make licenses available.

(2) 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.

(d)(1) The commission will create application pools for dispensary licenses based on the eight (8) identified geographic zones to ensure that dispensaries are distributed equally throughout the state.

(2) A dispensary license will only be valid for the designated zone and cannot be used in another zone.

(e) No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.

(f) In accordance with the Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98, there shall be no more than four (4) dispensaries in any one (1) county.

20 CAR § 800-303. Application.

(a) An application for a dispensary license shall include both an individual applicant and an applying entity, and they shall apply to the Medical Marijuana 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.

20 CAR § 800-304. Minimum qualifications for applicant.

(a) An applicant for a license under this part shall be a natural person that:

(1) Is twenty-one (21) years of age or older;

(2) 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;

(3) Has not previously held a license for a licensed facility that has been revoked;

(4) Has no ownership in any other dispensary in the State of Arkansas;

(5) Has not been convicted of a felony offense;

(6) If possessing a professional license, that the license is in good standing; and

(7) 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 subsection (a) of this section, the individual applicant shall:

(1) Be legally authorized to submit an application on behalf of the entity;

(2) Serve as the primary point of contact with the Medical Marijuana Commission; and

(3) Submit sufficient proof that:

(A) The entity has no owner, board member, or officer under the age of twenty-one (21);

(B) 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;

(C) 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;

(D) The entity has no owner, board member, or officer that has ownership in any other dispensary in the State of Arkansas;

(E) The entity has no owner, board member, or officer that has been convicted of a felony offense;

(F) If an owner, board member, or officer has or had a professional license, that the license is in good standing; and

(G) The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas or the federal government.

(c)(1) Applicants shall provide proof of:

(A) Assets or a surety bond in the amount of two hundred thousand dollars ($200,000); and

(B) At least one hundred thousand dollars ($100,000) in liquid assets.

(2) If an applicant posts a surety bond, the bond shall be maintained until:

(A) An applicant withdraws an application;

(B) An applicant's application is denied by the commission; or

(C) An applicant, following selection by the commission for a dispensary license, pays the licensing fee and performance bond required in 20 CAR § 800-310(a) and (c).

(d) Applicants shall provide a complete application with responses for each required item.

20 CAR § 800-305. Documentation and information for applicant.

(a) An individual applicant shall provide the following required information:

(1) Legal name;

(2) Date of birth;

(3) Legal residence;

(4) Social Security number;

(5) Mailing address or principal residence address if different from the mailing address;

(6) Phone number;

(7) Email address; and

(8) 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:

(1) To establish legal name an applicant must present at least one (1) of the following source documents:

(A) 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;

(B) Valid, unexpired United States passport or United States passport card;

(C) Consular report of birth abroad Form FS-240, DS-1350, or FS-545 issued by the United States Department of State;

(D) Valid, unexpired permanent resident card (Form I-551) issued by the United States Department of Homeland Security or the United States Citizenship and Immigration Services;

(E) Unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;

(F) Unexpired foreign passport with the following:

(i) A valid, unexpired United States visa affixed; and

(ii) Either:

(a) An approved I-94 form documenting the applicant's most recent admittance into the United States; or

(b) A United States Department of Homeland Security admittance stamp on the passport;

(G) Certificate of naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;

(H) Certificate of citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;

(I) Court-issued, certified copy of a divorce decree; or

(J) Certified copy of a legal change of name order;

(2) To establish date of birth, an applicant must present at least one (1) of the following source documents:

(A) At least one (1) document included in subdivisions (b)(1)(A) – (J) of this section; and

(B) A photocopy of the individual's valid, unexpired driver's license or government-issued photo identification card;

(3) 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:

(A) Arkansas tax return Form AR1000 for each of the seven (7) years

preceding the application without schedules, worksheets, or attachments and redacted to remove all financial information and all but the last four (4) digits of the individual's Social Security number;

(B) Evidence of voter registration for the seven (7) years preceding the application;

(C) Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;

(D) Billing statements including utility bills for the seven (7) years preceding the application; or

(E) Vehicle registration for the seven (7) years preceding the application;

(4) 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

(5) Individuals applying on behalf of an entity must also provide the following proof:

(A) Documentation of the ownership of the entity; and

(B)(i) 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.

(ii) Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subdivision (b)(2) of this section;

(C)(i) Board members and officers are over the age of twenty-one (21).

(ii) Documentation sufficient to satisfy this requirement shall be the same as required of an individual in this subsections and subsection (c) of this section; and

(D) Consents for criminal background checks for each owner, board member, and officer of the entity.

(c)(1) Applicants shall provide proof that the proposed location of the dispensary is at least one thousand five hundred feet (1,500') 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, Ark. Const. amend. 98.

(2) The distance specified in this section shall be measured from the primary entrance of the dispensary to the nearest property line point of the:

(A) School;

(B) Church;

(C) Daycare facility; or

(D) Facility for individuals with developmental disabilities.

(d)(1) Applicants shall provide proof of authorization to occupy the property for the proposed dispensary.

(2) To establish proof, the applicant shall provide one (1) of the following:

(A) If the property is owned by the applicant, the applicant shall provide:

(i) Confirmation of land ownership;

(ii) Identification of any mortgagees and perfected lienholders; and

(iii) If applicable, verification of notification to any mortgagees and perfected lienholders that the property is to be used as a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lienholders;

(B) If the property is not owned, but is currently leased by the applicant, the applicant shall provide:

(i) A copy of the lease;

(ii) Confirmation of land ownership;

(iii) Identification of any mortgagees and perfected lienholders;

(iv) 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

(v) If applicable, verification of notification to any mortgagees and perfected lienholders that the property is to be used as a medical marijuana dispensary and consent thereto by any mortgagees and perfected lienholders; or

(C) If the property is not owned or leased by the applicant, the applicant shall provide:

(i) 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

(ii) 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.

20 CAR § 800-306. Background checks.

(a) The following are subject to background checks conducted by the Medical Marijuana Commission or its designee in considering an application for a dispensary license:

(1) The individual applicant;

(2) All owners, officers, and board members of an entity seeking to apply for a dispensary license through its designated individual applicant; and

(3) 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.

20 CAR § 800-307. Application fee.

(a)(1) Each application for a dispensary license shall include an application fee of seven thousand five hundred dollars ($7,500) in cash or certified funds.

(2) Any certified check or cashier's check shall be:

(A) Made payable to State of Arkansas; and

(B) 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, three thousand seven hundred fifty dollars ($3,750) 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.

20 CAR § 800-308. Verification of application.

(a) After receipt of an application, the Medical Marijuana Commission shall verify that the:

(1) Application and supporting documentation is complete; and

(2) Information submitted in the application is true and valid.

(b)(1) Applications that meet the requirements of 20 CAR §§ 800-304 and 800-305 shall be placed into the pool of applicants for further review and selection based on merit.

(2) The commission shall notify the applicant in writing that the application was successfully verified.

(c) Applications that do not meet the requirements of 20 CAR §§ 800-304 and 800-305 shall be denied pursuant to 20 CAR § 800-312, and the commission shall notify the applicant in writing.

20 CAR § 800-309. Selection process and criteria based on merit selections.

(a)(1) In addition to documentation establishing minimum qualifications, the applicant shall submit responses to the Medical Marijuana Commission's merit criteria in a form and manner prescribed by the Medical Marijuana Commission.

(2) Criterion shall be published with the initial notice of application.

(b) The Medical Marijuana Commission shall consider the following criteria based on merit to evaluate applications verified pursuant to 20 CAR § 800-308:

(1) Ability to operate a business, including, but not limited to education, knowledge, and experience with:

(A) Regulated industries;

(B) Agriculture or horticulture;

(C) Commercial manufacturing;

(D) Creating and implementing a business plan, including a timeline for opening a business;

(E) Creating and implementing a financial plan;

(F) Secure inventory tracking and control;

(G) The cultivation and production of marijuana;

(H) Owning or managing a business that required twenty-four-hour security monitoring;

(I) Owning and managing a business that has not had its business license revoked; and

(J) Any other experience the applicant considers relevant;

(2) Plan for operating a dispensary in compliance with applicable laws and rules and demonstrating planning sufficient to prove the applicant's ability to:

(A) Manufacture approved medical marijuana products, each:

(i) With a consistent cannabinoid profile; and

(ii) Able to pass the required quality control testing as further described in the rules of the Department of Health;

(B) Produce sufficient quantities of approved medical marijuana products as necessary to meet the needs of individuals with qualifying medical conditions;

(C) Comply with the security requirements as described in the rules of the Alcoholic Beverage Control Division;

(D) Comply with rules of the department and the division regarding the inventory and tracking of marijuana products;

(E) Comply with the recordkeeping requirements of the department and the division;

(F) Maintain effective control against diversion of marijuana and

marijuana products;

(G) Comply with requirements for signage, packaging, labeling, and chain of custody of products; and

(H) Comply with all other laws and rules regarding the operation of a medical marijuana dispensary;

(3) Proof that the applicant is ready, willing, and able to properly carry out the activities of a medical marijuana dispensary, including a:

(A) Plan for operating a medical marijuana dispensary; and

(B) Timeline for opening the dispensary; and

(4) 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 dispensary;

(B) Possession of, or the right to use, sufficient real property and equipment to properly carry on the activity described in the operating plan;

(C) A summary of financial statements in businesses previously or currently owned or operated by the applicant;

(D) A financial plan for operating a medical marijuana dispensary in Arkansas;

(E) Good credit history; and

(F) 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 Medical Marijuana Commission may consider the following criteria based on merit to evaluate applications verified pursuant to 20 CAR § 800-308:

(1) Affiliation with a:

(A) Medical doctor;

(B) Doctor of osteopathy; or

(C) Doctor of pharmacy;

(2)(A) 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.

(B)(i) Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors:

(a) Poverty rate;

(b) Population growth;

(c) Per capita personal income; and

(d) Unemployment rate.

(ii) Consideration shall be given based on the Arkansas Economic Development Commission's tier-ranking of the county of the proposed dispensary as it exists on the date of the application.

(C) 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:

(i) Minority groups;

(ii) Veterans; and

(iii) Women; and

(3)(A) Proof, if any, that the applicant's proposed dispensary will provide a benefit to the community in which the facility is to be located.

(B) Factors that may be considered include, but are not limited to:

(i) Any proposed:

(a) Substance abuse plan to be implemented by the dispensary;

(b) Compassionate care plan to be implemented by the dispensary; and

(c) Plan for research, education, and promotion of patient and public safety to be implemented by the dispensary; and

(ii) Local ownership percentage, meaning the percentage of ownership held by Arkansas residents.

(d)(1) Each merit criterion will be worth a number of points announced by the Medical Marijuana Commission in the notice of open application period.

(2) A review panel comprised of members of the Medical Marijuana Commission shall evaluate the applications and award points for each merit criterion.

(3) 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.

(4) The Medical Marijuana 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.

(e)(1) 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 this part for the available licenses.

(2) 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 20 CAR § 800-312.

(3) The Medical Marijuana 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 this part for the available license.

(f)(1) The Medical Marijuana 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 20 CAR § 800-310.

(2) Unselected applications shall remain in reserve for twenty-four (24) months from the issuance date of the initial licenses in any application period.

(g)(1) The Medical Marijuana Commission may initiate the selection process for dispensary licenses upon:

(A) Determining that there are not enough dispensaries to supply qualified patients within the state; or

(B) Revocation of any existing license by the division.

(2) If the Medical Marijuana Commission determines that more licenses should be issued within twenty-four (24) months following the issuance of licenses in the most recent application period, the Medical Marijuana Commission shall offer the opportunity to pay the licensing fee and post the performance bond in accordance with 20 CAR §

800-310 to the next highest scoring applicant from the applications held in reserve for the zone where the Medical Marijuana Commission has determined a need for the license.

(3) If the Medical Marijuana Commission determines that more licenses should be issued after the twenty-four (24) months following the issuance of licenses in the most recent application period, the Medical Marijuana Commission shall solicit new applications in accordance with this part.

(h) If the Medical Marijuana Commission must break a tie in scoring among applicants, the following procedure shall be followed:

(1) Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score;

(2) Applicants will then repeat the drawing of numbers in the order determined by the first drawing;

(3) The tied applicants will be ranked according to the number pulled from the second drawing; and

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

20 CAR § 800-310. Licensing fee and issuance of license.

(a)(1) Within seven (7) days of receiving written notice of selection from the Medical Marijuana Commission, the selected applicant for a dispensary license shall submit to the commission a dispensary license fee of fifteen thousand dollars ($15,000) in cash or certified funds.

(2) 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)(1) 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 one hundred thousand dollars ($100,000).

(2) 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 January 1 and July 1 may have the licensing fee prorated up to fifty percent (50%) 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.

20 CAR § 800-311. Term.

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:

(1) Suspended or revoked by the Alcoholic Beverage Control Division;

(2) Surrendered by the dispensary licensee; or

(3) Replaced by a temporary license.

20 CAR § 800-312. Denial of application for or renewal of a license.

(a) The Medical Marijuana Commission may deny an application for or renewal of a license for any of the following reasons:

(1) Failure to provide the information required in this part;

(2) Failure to meet the requirements set forth in this part or the rules of the Department of Health or the Alcoholic Beverage Control Division;

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

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

(5) Failure to post a performance bond, if required, naming the state as a secured party;

(6) An applicant has a background history that indicates the applicant:

(A) Does not have a reputable and responsible character; or

(B) Would pose a risk to the health, safety, or welfare of the public or qualifying patients; or

(7) Any other ground that serves the purpose of this part or the rules of the department or the 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.

20 CAR § 800-313. License renewal process and fee.

(a) A license may be renewed if the dispensary licensee:

(1) Submits to the Medical Marijuana 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;

(2) Is in good standing with the Secretary of State's office;

(3) Continues to be in good standing with the Department of Finance and Administration; and

(4) Continues to meet all the requirements set out in this part or the rules of the Department of Health or the 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 this part or the rules of the Department of Health or the division.

(c)(1) After receiving written notice from the commission that its renewal application has been approved, the dispensary licensee shall pay the annual renewal fee of twenty-two thousand five hundred dollars ($22,500) in certified funds.

(2) Any certified or cashier's check shall be payable to the State of Arkansas.

(d)(1) A dispensary licensee whose license is not renewed shall:

(A) Cease all operations immediately upon expiration of the license; and

(B) Return the license to the commission.

(2) Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to the division rules.

20 CAR § 800-314. Surrender of license.

(a) A dispensary may voluntarily surrender a license to the Medical Marijuana Commission at any time.

(b) If a dispensary voluntarily surrenders a license, the dispensary shall:

(1) Return the license to the commission;

(2) Submit a report to the commission including:

(A) The reason for surrendering the license;

(B) Contact information following the close of business;

(C) The person or persons responsible for the close of the business; and

(D) Where business records will be retained; and

(3) Tender all marijuana and marijuana products for destruction or for sale to another facility in accordance with the Alcoholic Beverage Control Division.

(c) 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.

20 CAR § 800-315. Change in information.

(a) The dispensary licensee shall notify the Medical Marijuana Commission of any changes in contact information.

(b)(1) 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.

(2) 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 subsection (b) of this section, the licensee shall notify the commission of the following:

(1) 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;

(2) 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;

(3) The filing of bankruptcy by the entity holding the license or by any of the entity's owners;

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

(5) The permanent closure of the business; and

(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.

20 CAR § 800-316. License restrictions.

(a) The dispensary license shall only be applicable for use in the geographic zone for which it is issued.

(b) A dispensary being operated outside of its designated area will result in the dispensary's license being revoked.

20 CAR § 800-317. 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 Medical Marijuana Commission.

(c) A licensee may only sell, transfer, or otherwise dispose of his or 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 subsections (b) and (c) of this section 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)(1) 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.

(2) The notice shall provide an explanation for the denial of the application.

(3) The licensee may request a hearing before the commission pursuant to 20 CAR § 800-320(b).

20 CAR § 800-318. Transfer of location.

(a) A dispensary license shall only be valid at the location for which it was originally issued by the Medical Marijuana Commission.

(b) A licensee shall not relocate 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:

(1) An application for license transferal on a form and in a manner prescribed by the commission;

(2)(A) Proof that the proposed location of the dispensary is at least one thousand five hundred feet (1,500') 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, Ark. Const. amend. 98.

(B) 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:

(i) School;

(ii) Church; or

(iii) Daycare facility; and

(3) Copies of any changes to the criteria set forth in 20 CAR § 800-309(b)(2) if any changes were necessary due to the change of location.

(d)(1) 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.

(2) The notice shall provide an explanation for the denial of the application.

(3) The licensee may request a hearing before the commission pursuant to 20 CAR § 800-320(b).

20 CAR § 800-319. Issuance of temporary license.

(a) The Medical Marijuana 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 20 CAR §§ 800-304 – 800-306.

(e) A temporary license can only be issued at the request of:

(1) The natural person to whom a license was issued;

(2) That person's heir; or

(3) 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 20 CAR § 800-313.

20 CAR § 800-320. Appellate procedure following denial of license renewal, transfer of license or location.

(a) If the Medical Marijuana 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)(1) The commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing.

(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, Arkansas Code § 25-15-201 et seq.

(c)(1) 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.

(2) Appeals shall be governed by the term of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

20 CAR § 800-321. Hiring of consultants.

(a) The Medical Marijuana Commission may retain the services of a contractor or consultant.

(b) The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.

(c) The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

Subpart 4. Processor Application, Licensing, and Renewal

20 CAR § 800-401. License required.

(a) No person or entity shall operate as a processor unless licensed by the Medical Marijuana Commission pursuant to this part.

(b) Each license for a processor shall specify the:

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

(2) Effective dates of the license; and

(3) Address of the licensed processor, if different from that in subdivision (b)(1) of this section.

(c)(1) A processer licensed under this section shall not grow or dispense marijuana.

(2) The processor licensee shall visibly post a copy of its license at the processor facility covered under the license.

(d) A processor license shall expire one (1) year after the date of issuance.

20 CAR § 800-402. Application.

(a) An application for a processor license shall be submitted to the Medical Marijuana 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) A performance bond in the amount of one hundred thousand dollars ($100,000) that names the state as the secured party.

(B) The bond shall be maintained until the processor files its first application for renewal of the license;

(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 evidence 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 processor in compliance with applicable laws and rules and demonstrating planning sufficient to prove the applicant's ability to comply with Alcoholic Beverage Control Division's rules including, without limitation:

(A) Security requirements;

(B) Recordkeeping requirements;

(C) Transporting products;

(D) Secure inventory tracking and control;

(E) Sanitation and hygiene;

(F) Implementation of appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana;

(G) Inspections and investigation by the division;

(H) Manufacturing and processing;

(I) Personnel requirements, including employee training; and

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

(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 processor;

(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 this part or any rules promulgated by the division or the Department of Health shall be prohibited from being an owner, officer, or board member of a processor facility, be prohibited from entering a processor facility, and be prohibited from having any responsibility for operating a processor if the person has been convicted of an excluded felony offense.

(g) A processor may begin operations after being issued a license and following inspection as required by division rules.

20 CAR § 800-403. Renewal.

(a) The Medical Marijuana 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:

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

(2) Proof that the licensee is in good standing with the 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 this part or the rules of the Department of Health or the 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 division requirements.

20 CAR § 800-404. Denial of application for or renewal of a license.

(a) The Medical Marijuana 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 Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98, this part, or the rules of the Department of Health or the 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 this part or the rules of the department or the 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 part.

20 CAR § 800-405. Change in information.

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

(b)(1) 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.

(2) 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:

(1) The arrest or conviction for any felony of any:

(A) Owner;

(B) Board member; or

(C) 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.

20 CAR § 800-406. Surrender of license.

(a) A processor may voluntarily surrender a license to the Medical Marijuana Commission at any time.

(b) If a processor licensee voluntarily surrenders a license, the processor shall:

(1) Return the license to the commission;

(2) Submit a report to the commission including:

(A) The reason for surrendering the license;

(B) Contact information following the close of business;

(C) The person or persons responsible for the close of the business; and

(D) Where business records will be retained; and

(3) Tender all marijuana to another facility in accordance with Alcoholic Beverage Control Division requirements.

(c) 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.

20 CAR § 800-407. Fees.

(a) The processor license fee is five thousand dollars ($5,000).

(b) The processor renewal fee is five thousand dollars ($5,000).

20 CAR § 800-408. Appeals.

(a) If the Medical Marijuana 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.

(b) 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, Arkansas Code § 25-15-201 et seq.

(c)(1) 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.

(2) Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Subpart 5. Rulemaking

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"1. Authority
a. The Arkansas Medical Marijuana Commission ("MMC") has been authorized by §§ 8 and 14 of the Arkansas Medical Marijuana Amendment of 2016 to promulgate rules.
b. In rule-making, the MMC follows the procedural requirements of the Arkansas Administrative Procedure Act, specifically Ark. Code Ann. §§ 25-15-203, 25-15-204, and 25-15-218; Ark. Code Ann. § 10-3-309; and any Executive Order of the Governor applicable at the time that rule-making is initiated. The purpose of this rule is to inform the public how to initiate rule-making and how to comment on a proposed rule. This rule does not provide a comprehensive description of the entire rule-making process."

20 CAR § 800-501. Initiating rulemaking.

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as "rulemaking") may be initiated:

(1) At the request of the governing body;

(2) By agency staff, who may request permission of the governing board to initiate rulemaking; or

(3)(A) By third persons outside the agency who may petition for the issuance, amendment, or repeal of any rule in accordance with Arkansas Code § 25-15-204.

(B) The petition must contain:

(i) The name, address, telephone number, and facsimile number of the petitioner and the petitioner's attorney, if represented by counsel;

(ii) The specific rule or action requested;

(iii) The reasons for the rule or action requested;

(iv) Facts showing that the petitioner is regulated by the agency or has a substantial interest in the rule or action requested; and

(v) The date of the request.

20 CAR § 800-502. Public comment.

(a) If the agency proceeds with the rulemaking process, it will provide the public with a reasonable opportunity to comment on a proposed rule.

(b) The public comment period will last at least thirty (30) days.

(c)(1) The agency will begin the public comment period by publishing notice of the proposed rulemaking.

(2) The notice will include the terms or substance of the proposed rule, or a description of the subjects and issues involved.

(3) The notice will include a description of the time, location, and manner in which interested parties may present their views.

(4) The notice will be published in compliance with Arkansas Code § 25-15-204.

(d) If the agency chooses to or is required to hold a hearing at which the public may appear and comment on the proposed rule, such hearing will comply with the requirements of Arkansas Code § 25-15-213.

(e) The agency shall accept and consider public comments as required by Arkansas Code § 25-15-204.

(f) The agency shall track and respond to public comments as necessary to comply with Arkansas Code § 25-15-204(a)(2) and the rules of the Administrative Rules Subcommittee of the Legislative Council (or the Joint Budget Committee).

20 CAR § 800-503. The decision to adopt a rule.

(a) The agency will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

(b) Prior to adoption, the agency will consider the factors described in Arkansas Code § 25-15-204.

(c) The agency may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

20 CAR § 800-504. Legislative approval, final filings, and effective date.

(a) After the necessary legislative approvals are obtained, the agency will file the final rule with the Secretary of State.

(b) The final rule will be effective ten (10) days after filing with the Secretary of State unless a later date is specified in the rule itself or by law.

20 CAR § 800-505. Public inspection and records.

(a) After the expiration of the thirty-day public comment period and before the effective date of the rule, the agency shall take appropriate measures to make the final rule known to the persons who may be affected by the rule, pursuant to the specifications in Arkansas Code § 25-15-204.

(b) The agency's rules shall be available for public inspection.

(c) The agency shall maintain copies of all filings and documentation associated with rulemaking as necessary to comply with the Arkansas General Records Retention Schedule, 25 CAR pt. 60.

20 CAR § 800-506. Need for emergency rule.

(a)(1) An agency may enact an emergency rule if it finds that an imminent peril to the public health, safety, or welfare, or that compliance with a federal law or regulation requires the adoption of a rule on less than thirty (30) days' notice.

(2) The agency shall state in writing its reasons for that finding.

(b) **Filings and effective date of emergency rule.**

(1) The agency will follow the process required by Arkansas Code § 25-15-204 and any applicable Executive Order of the Governor to enact an emergency rule.

(2) After receiving gubernatorial approval and legislative approval, an emergency rule may become effective immediately upon filing with the Secretary of State or at a stated time less than ten (10) days after filing if the agency finds that such effective date is necessary due to imminent peril to the public health, safety, or welfare.

(3) The agency will take appropriate measures to notify those who may be affected by the emergency rule.

Subpart 6. Declaratory Orders

20 CAR § 800-601. Purpose and use of declaratory orders.

(a) A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.

(b) A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances.

(c) A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.

(d) A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

20 CAR § 800-602. The petition.

The process to obtain a declaratory order is begun by filing with the Medical Marijuana Commission a petition that provides the following information:

(1) The name, address, telephone number, and facsimile number of the petitioner;

(2) The name, address, telephone number, and facsimile number of the attorney of the petitioner;

(3) The statutory provision or provisions, agency rule or rules, or agency order or orders on which the declaratory order is sought;

(4) A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which the petitioner seeks a declaratory order;

(5) The signature of the petitioner or petitioner's attorney;

(6) The date; and

(7) Request for a hearing, if desired.

20 CAR § 800-603. Agency disposition.

(a)(1) The agency may hold a hearing to consider a petition for declaratory order.

(2) If a hearing is held, it shall be conducted in accordance with Arkansas Code §§ 25-15-208 and 25-15-213, and the agency's rules for adjudicatory hearings.

(b)(1) The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.

(2) Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

Subpart 7. Adjudicative Hearings

20 CAR § 800-701. Scope of this subpart.

(a) This subpart applies in all administrative adjudications conducted by the Medical Marijuana Commission.

(b) This subpart describes the process by which the agency formulates orders.

20 CAR § 800-702. Presiding officer.

The Medical Marijuana Commission shall preside at the hearing or may designate one (1) or more members of the commission or one (1) or more examiners, referees, or hearing officers to preside at a hearing.

20 CAR § 800-703. Appearances.

(a)(1) Any party appearing in any agency proceeding has the right, at his or her own expense, to be represented by counsel.

(2) Alternatively, the respondent may appear on his or her own behalf.

(b) Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.

(c) Service on counsel of record is the equivalent of service on the party

represented.

(d) On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

20 CAR § 800-704. Consolidation.

If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

20 CAR § 800-705. Notice to interested parties.

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

20 CAR § 800-706. Service of papers.

Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

20 CAR § 800-707. Initiation and notice of hearing.

(a) An administrative adjudication is initiated when the agency issues a notice of hearing.

(b)(1) The notice of hearing will be sent to the respondent by United States Postal Service, return receipt requested, delivery restricted to the named recipient or his or her agent.

(2) Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the agency.

(c) Notice will be mailed at least twenty (20) days before the scheduled hearing unless otherwise agreed by the parties.

(d) The notice will include a:

(1) Statement of the time, place, and nature of the hearing;

(2) Statement of the legal authority and jurisdiction under which the hearing is to be held; and

(3) Short and plain statement of the matters of fact and law asserted.

20 CAR § 800-708. Motions.

(a)(1) All requests for relief will be by motion.

(2) Motions must be in writing or made on the record during a hearing.

(b) A motion must fully state the action requested and the grounds relied upon.

(c) The original written motion will be filed with the agency.

(d) When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition.

(e)(1) The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(2) However, a presiding officer, other than the Medical Marijuana Commission, will not enter a dispositive order unless expressly authorized in writing to do so.

20 CAR § 800-709. Answer.

A respondent may file an answer to the notice of hearing.

20 CAR § 800-710. Information provided upon request.

(a) Upon written request, the agency will provide the information designated in Arkansas Code § 25-15-208(a)(3).

(b) Such requests should be received by the agency at least ten (10) days before

the scheduled hearing.

20 CAR § 800-711. Continuances.

(a)(1) The hearing officer may grant a continuance of hearing for good cause shown.

(2) Requests for continuances will be made in writing.

(3) The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing.

(b) In determining whether to grant a continuance, the hearing officer may consider:

(1) Prior continuances;

(2) The interests of all parties;

(3) The likelihood of informal settlements;

(4) The existence of an emergency;

(5) Any objection;

(6) Any applicable time requirement;

(7) The existence of a conflict of the schedules of counsel, parties, or witnesses;

(8) The time limits of the request; and

(9) Other relevant factors.

(c) The hearing officer may require documentation of any grounds for continuance.

20 CAR § 800-712. Hearing procedures.

(a) The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings, provided, however, any presiding officer other than the Medical Marijuana Commission shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

(b) All objections must be made in a timely manner and stated on the record.

(c) Parties have the right to participate or to be represented by counsel in all hearings or prehearing conferences related to their case.

(d) Subject to terms and conditions prescribed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the agency, may submit briefs and engage in oral argument.

(e) The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

20 CAR § 800-713. Order of proceedings.

The presiding officer will conduct the hearing in the following manner:

(1) The presiding officer will give an opening statement, briefly describing the nature of the proceedings;

(2) The parties will be given the opportunity to present opening statements;

(3) The parties will be allowed to present their cases in the sequence determined by the presiding officer;

(4)(A) Each witness must be sworn or affirmed by the presiding officer and be subject to examination and cross-examination as well as questioning by the Medical Marijuana Commission.

(B) The presiding officer may limit questioning in a manner consistent with the law; and

(5) When all parties and witnesses have been heard, parties will be given the opportunity to present final arguments.

20 CAR § 800-714. Evidence.

(a) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

(b)(1) Stipulation of facts is encouraged.

(2) The agency may make a decision based on stipulated facts.

(c)(1) Evidence in the proceeding must be confined to the issues set forth in the hearing notice unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues.

(2) If the presiding officer decides to admit evidence outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, may receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

(d)(1) A party seeking admission of an exhibit must provide thirteen (13) copies of each exhibit at the hearing.

(2) The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility.

(3) All exhibits admitted into evidence must be appropriately marked and be made part of the record.

(e)(1) Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination.

(2) A brief statement of the grounds upon which it is based shall accompany such an objection.

(3) The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record.

(4) The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

(f)(1) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record.

(2) The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony.

(3) If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

(g)(1) Irrelevant, immaterial, and unduly repetitive evidence will be excluded.

(2) Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

(h) The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

20 CAR § 800-715. Default.

If a party fails to appear or participate in an administrative adjudication after proper service of notice, the agency may proceed with the hearing and render a decision in the absence of the party.

20 CAR § 800-716. Recording the proceedings.

(a) The agency will record the testimony heard at a hearing.

(b) Upon the filing of a petition for judicial review, the agency will provide a verbatim transcript of testimony taken before the agency.

20 CAR § 800-717. Final order.

(a)(1) The agency will serve on the respondent a written order that reflects the action taken by the agency.

(2) The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case.

(3) It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

(b)(1) The order will be served personally or by mail on the respondent.

(2) If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

20 CAR § 800-801. Management Companies and Management Contracts.

(a) Disclosure of Management Contracts to the Commission

(1) All current and proposed management contracts between licensees and management companies must be disclosed to the commission at the following times:

(A) when the licensee applies for the renewal of their license;

(B) upon any change to the contract;

(C) upon request of the ABC Administration Director;

(D) when the licensee applies for a transfer of location; and

(E) when the licensee applies for a change of ownership.

(2) Prior to the effective date of any management contract, a licensee shall submit to the commission:

(A) A copy of the management contract and any related agreements to the management contract that is between the parties;

(B) Information detailing any remuneration paid or to be paid to the management company by the licensee in exchange for the contracted services; and

(C) All submissions required from a management company pursuant to the commission rules.

(b) Approval of Management Contracts by the Commission

(1) The commission has the responsibility to administer and regulate the licensing of dispensaries and cultivation facilities. The Commission has the responsibility in ensuring that management contracts are in compliance with the licensing regulations and approve or deny them in accordance with Amendment 98 to the Arkansas Constitution, the rules of the commission, and all other relevant Arkansas law.

(c) Approval to Changes to Management Contracts

(1) Prior to any change to a management contract, a licensee shall:

(A) submit to the commission a copy of any proposed changes to the management contract and any related agreements between the parties, any proposed

changes to information detailing any remuneration paid, or to be paid, to the management company by the licensee; and any proposed changes to any previously required submissions; and

(B) the commission shall determine whether the management contract and any changes comply with Amendment 98 to the Arkansas Constitution, the rules of the commission, and all other relevant Arkansas law; and shall notify the licensee of the commission's decision.

(d) Requirements for Management Contracts

(1) Requirement that terms of a management contract be commercially reasonable, under Amendment 98 to the Arkansas Constitution, the rules of the Commission, and all other relevant Arkansas Law.

(A) The terms of a management contract, including terms related to interest rates, returns, and fees, shall be commercially reasonable and consistent with the fair market value for the terms generally applicable to agreements of a comparable nature.

(B) Commission's duty to determine if terms of a management contract are commercially reasonable.

(i) The commission may determine whether a term is commercially reasonable or consistent with the fair market value generally applicable for the services to be provided and may consider:

(a) the current valuation of a similar interest, service, or product in the Arkansas medical marijuana market and in other states with legal medical or adult-use marijuana markets; and

(b) the current valuation of a similar interest, service, or product in an industry with operations similar to the medical marijuana industry, including, but not limited to, horticulture or agriculture, pharmaceutical drug manufacturing, or sale of pharmaceutical drugs and alcohol in Arkansas and in other states with such industries.

(2) Arms-length transaction

(A) A management contract shall be bargained for between the parties in an arms-length transaction and shall include the ability for either party to terminate the contract with reasonable notice.

(3) Prohibition of unfair provisions

(A) A management contract shall not include any provision that provides the management company with an unfair advantage over the licensee including but not limited to:

(i) General prohibition

(a) any term of the contract that is not commercially reasonable or consistent with the fair market value generally applicable to the services to be provided;

(ii) Profit-sharing

(a) where a management company receives a percentage of the net profits that is not commercially reasonable or exceeds the percentage of the net profits received by the owners of the license;

(iii) Fees

(a) where the amount of a fee or price charged by the management company for a service, product, intellectual property, lease, or brand provided is not commercially reasonable;

(iv) Shelf space

(a) where the percentage of the licensee's retail "shelf space" guaranteed for the display of products of the management company or another entity designated by the management company is not commercially reasonable;

(v) Promise to purchase

(a) a promise by the licensee to buy a percentage of its products or materials from the management company or an entity designated by the management company where the percentage is not commercially reasonable; or

(vi) Penalties for contractual noncompliance

(a) Where a penalty upon a licensee for noncompliance with the contract is not commercially reasonable or is excessive relative to the degree of

harm caused by the noncompliance, including the surrender of personal assets of the licensee's owners or principals.

(B) Provisions that may create an unfair interference over a licensee not party to the management contract and are prohibited pursuant to this subsection include, but are not limited to:

(i) a promise by the licensee not to purchase medical marijuana, medical marijuana products, or other products or materials from or sell medical marijuana, medical marijuana products, or other products or materials to specifically identified licensees or other businesses;

(ii) a promise by the licensee of non-competition with other licensees; and

(iii) a promise by the licensee to sell medical marijuana, medical marijuana products, or other products or materials for a specified price either at the wholesale or retail level.

(4) Supervision of management company by owner

(A) A management contract shall provide that the management company and its owners, principals, and staff who are engaged, directly or indirectly, in operating the licensed medical marijuana business, are supervised in such operations by the licensee and its owners and principals.

(B) Licensee prohibited from ceding control to management company

(i) Management contracts shall not contain any provisions that grant the management company control over the licensee's owners and principals over the most fundamental decisions of the licensee, including its strategic plan, or any decision regarding the transfer of an ownership interest.

(ii) "Control" is defined as the following:

(a) the decision-making authority over the management, operations, or policies that guide a business; or

(b) authority over the operation of the technical aspects of a business.

(iii) "Control" includes:

(a) the right to veto significant events or contractual agreements;

(b) the right or authority to make or veto decisions regarding operations and strategic planning, capital allocations, acquisitions, and divestments;

(c) the right or authority to appoint or remove directors, corporate- level officers, or their equivalent; and

(d) the right or authority to make major marketing, production, and financial decisions.

(5) Security and ownership interests

(A) A management contract shall not grant:

(i) a security interest in the licensee or in any of the assets of the licensee; or

(ii) an ownership interest or any right, including a future or contingent right, to obtain an ownership interest in the medical marijuana business being operated.

(6) Term of management contract

(A) The term of a management contract must be commercially reasonable and with an opportunity for the parties to renegotiate the contract at arms-length.