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Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 100—Division of Cannabis Regulation
Chapter 1—Marijuana

SECRETARY OF STATE
ADMINISTRATIVE RULES

EMERGENCY RULE

19 CSR 100-1.060 Facility Applications and Selection

PURPOSE: This rule explains how medical and marijuana facility licensing and certification applications, with the exception of seed-to-sale tracking system entity applications, are submitted and how the Department of Health of Senior Services selects licenses and certificates.

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

(1) Conversion from a Medical Facility License to a Comprehensive Facility License

(A) A medical facility licensee may request its medical facility license convert to a comprehensive facility license.

1. Conversion requests must be submitted in a department-approved online format.

2. Conversion requests shall include a plan that explains how the applicant will serve both the medical and adult-use markets, while maintaining adequate supply at a reasonable cost to qualifying patients.

3. Conversion requests shall include a plan to promote and encourage participation in the regulated marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition.

4. Conversion requests shall be accompanied by a nonrefundable fee of two thousand dollars (\$2000).

5. A conversion request is deemed received when all required documents and fees are received by the department.

6. The department shall approve or deny conversion requests by email to the licensee's designated contact within sixty (60) days after the conversion request is received. Conversion requests not processed within sixty (60) days of department receipt shall be deemed approved.

7. If the comprehensive facility previously received approval to operate as a medical facility, the comprehensive licensee may begin operating without additional approvals or inspections from the department. If the comprehensive facility did not previously receive approval to operate as a medical facility, the comprehensive licensee may not operate until it requests a commencement inspection and receives approval to operate as a comprehensive facility.

8. A conversion request will be granted unless the medical facility licensee is not in good standing with the department. Good standing means the license is not suspended, revoked, or otherwise inactive at the time the request is made.

(B) Converted comprehensive licenses will retain the same expiration date assigned to the medical license.

(2) Facility Application Process.

(A) The department will publish on its website time periods during which it will accept applications and, when applicable, publish the number of licenses to be selected by lottery. The department may extend an existing application time period by posting a new application deadline on its website.

(B) Applications will be considered complete if the application includes all documents required for applications by this rule.

(C) The department will receive applications for all medical and marijuana facility licenses or certifications electronically through a department-provided, web-based application system. In the event of application system unavailability, the department will arrange to accept applications in an alternative, department-provided format and will notify the public of those arrangements through its website.

1. The department shall charge each applicant seeking an available medical or marijuana facility license an application fee to be submitted with the application. The department shall publish the current fees, including any adjustments, on its website at <http://cannabis.mo.gov>.

2. Application fees are nonrefundable, except that a microbusiness facility applicant not chosen by lottery may request a refund of its application fee:

A. Requests for a refund will be accepted beginning thirty-one (31) days after the date of the denial.

B. The application fee will be refunded if the department determines the microbusiness facility applicant met the criteria to apply for a microbusiness facility license and the applicant has no pending or future legal actions related to the denial of the application.

(D) The issuance of a facility license or certification does not authorize the facility licensee to begin activities related to marijuana authorized by the license. A facility licensee will be granted final approval to operate upon passing a commencement inspection.

(E) A facility license or certification shall be valid for three (3) years from its date of issuance.

(3) Application Requirements. Entities must obtain a license or certification to operate a medical or marijuana facility in Missouri. Applications for facility licenses or certifications, except for off-site storage of marijuana product, shall include at least the following information:

(A) Name and address of the designated contact for the applicant entity;

(B) Legal name of the applicant entity, including fictitious business names;

(C) All owners of the applicant entity, with ownership percentage, and a visual representation of the facility's ownership structure;

(D) For a testing facility application, a list of all entities licensed or certified or applying for licensure or certification in Missouri to cultivate, manufacture, or dispense marijuana product that are or will be under substantially common control, ownership, or management as the applicant. For each entity listed, a written explanation of how the entity is under substantially common control, ownership, or management as the applicant entity, with supporting documentation;

(E) For a microbusiness facility license application, an attestation that the applicant does not have an owner who is also an owner of an existing medical, comprehensive, or another microbusiness marijuana facility license;

(F) For medical and comprehensive facility applicants, a list of all owners who are also owners of a microbusiness facility license and the relevant microbusiness license number(s);

(G) Proposed address of the facility and—

1. An attestation that the proposed facility location complies with the facility location requirements of this chapter;

2. An attestation that the proposed facility location complies with any facility location requirements of the local government; and

3. A copy of, or hyperlink to, all local government requirements for facility location, such as zoning requirements, if applicable;

(H) Blueprints or floor plans for the facility with all rooms clearly labeled, including purpose and square footage;

(I) For facilities that will be cultivating marijuana, the cultivation practices(s) (indoor, outdoor, or greenhouse) used by the facility, and, if using a combination of practices, the ratio of cultivation space limits for each cultivation practice, as provided in the cultivation section of this chapter;

(J) An attestation that all individuals subject to analysis for disqualifying felony offenses will submit fingerprints within two (2) weeks after the application submission for a state and federal fingerprint-based criminal background check to be conducted by the Missouri State Highway Patrol;

(K) An attestation that no individual subject to analysis for a disqualifying felony offense has a disqualifying felony offense;

(L) All applicable fees; and

(M) For each comprehensive facility applicant, the application shall include a plan that explains how the applicant would serve both the medical and adult-use markets, while maintaining adequate supply at a reasonable cost to qualifying patients, and a plan to promote and encourage participation in the regulated marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition.

(4) In addition to the application requirements in section (3) above, microbusiness facility applicants must also provide documents demonstrating eligibility for microbusiness facility ownership as follows:

(A) A valid, government-issued photo ID; and

(B) For applicants claiming a net worth of less than twenty-five thousand dollars (\$250,000) and low income:

1. Sworn financial statements for three (3) of the last ten (10) years, each of which must show net worth of less than twenty-five thousand dollars (\$250,000); and

2. A copy of three (3) of the last ten (10) years of tax returns, each of which must show income below two hundred and fifty percent (250%) of the federal poverty level during the applicable year.

(C) For applicants claiming a service-connected disability a copy of the front of the applicant's valid service-connected disability card.

(D) For applicants claiming an arrest, prosecution, or conviction for a non-violent marijuana offense:

1. A copy of the relevant arrest record; or

2. A copy of the relevant FBI background check; or

3. A certified copy of the relevant prosecutor's case file; or

4. A letter from the prosecutor's office indicating the charge filed; or

5. A certified copy of the judgment of conviction; or

6. A certificate of expungement from a court; and

7. If the arrest, prosecution, or conviction was for the applicant's parent, guardian, or spouse:

A. A valid, government-issued photo ID of the parent, guardian, or spouse;
and

B. Proof of relationship:

(I) A certified copy of the applicant's birth certificate; or

(II) A certified copy of the judgment of adoption or guardianship; or

(III) A certified copy of the marriage certificate; and

(E) For applicants claiming residency in a ZIP code or census tract area where either thirty percent (30%) or more of the population lives below the federal poverty level or the rate of unemployment is fifty percent (50%) higher than the state average (for qualifying areas in the state, a list of ZIP codes and census tracts will be published on the department's website):

1. Two (2) separate types of utility bills (i.e. one water bill, one electric bill) dated within the last four (4) months, which must include:

A. The name of the applicant;

B. The dates of service;

C. The service address; and

D. The billing address; or

2. A copy of a current residential lease, which must include the name of the applicant, the full address, the date the lease went in to effect and expires, and an affidavit from the applicant stating the applicant resides at that address; or

3. A copy of a residential mortgage which includes the name of the applicant and the full address, and an affidavit from the applicant stating the applicant resides at that address; or

4. A copy of the applicant's real or personal property taxes, dated within the past twelve (12) months, which must include the applicant's name and the date assessed; or

(F) For applicants claiming residency in a ZIP code or census tract area where the historic rate of incarceration for marijuana-related offenses is fifty percent (50%) higher than the rate for the entire state:

1. A certified letter from the local prosecutor's office verifying compliance with this requirement; and

2. Two (2) separate types of utility bills (i.e. one water bill, one electric bill) dated within the last four (4) months, which must include:

A. The name of the applicant;

B. The dates of service;

C. The service address; and

D. The billing address; or

3. A copy of a current residential lease, which must include the name of the applicant, the full address, the date the lease went in to effect and expires, and an affidavit from the applicant stating the applicant resides at that address; or

4. A copy of a residential mortgage which includes the name of the applicant and the full address, and an affidavit from the applicant stating the applicant resides at that address; or

5. A copy of the applicant's real or personal property taxes, dated within the past twelve (12) months, which must include the applicant's name and the date assessed; or

(G) For applicants claiming graduation from a school district that was unaccredited, or had a similar successor designation, at the time of graduation, a certified letter from the Missouri Department of Elementary and Secondary Education indicating that the applicable school district was unaccredited in the year the applicant claims to have graduated from the school, and:

1. A certified copy of the applicant's high school diploma; or

2. A letter from the applicant's school, on school letter head, stating that the applicant graduated from the school; or

(H) For applicants claiming residency in a ZIP code containing an unaccredited school district, or similar successor designation, for three (3) of the past five (5) years, a certified letter from the Missouri Department of Elementary and Secondary Education indicating that the applicable school district was unaccredited in the year(s) the applicant claims to have lived there, and:

1. A copy of two (2) separate types of utility bills (i.e. one water bill, one electric bill,) for each quarter of the three (3) years that the applicant claims to have lived in said location which must include:

A. The name of the applicant;

B. The dates of service;

C. The service address; and

D. The billing address; or

2. Copies of residential leases for three (3) of the past five (5) years, which must include the name of the applicant, the full address, and the effective date and the expiration date of the lease; or

3. A copy of a residential mortgage which includes the name of the applicant and the address, along with an affidavit that the applicant resided at that address during the applicable years; or

4. A copy of three (3) of the last five (5) years' real or personal property taxes for the applicant, which must include the applicant's name, address, and the date; or

5. An applicant may provide any of the acceptable types documentation for each year they are claiming residency in the ZIP code (i.e., utility bills from one year, lease from a separate year, and property taxes for a third year).

(5) Application Requirements for Off-site Warehouses. Licensees must obtain a separate certification for each warehouse facility used for storing marijuana product at a location other than the approved location of the licensee. Such requests must be submitted after the licensee's facility has passed a commencement inspection and shall include at least the following information:

(A) Blueprints for the offsite storage with all rooms clearly labeled, including purpose and square footage;

(B) An attestation that the proposed location for offsite storage complies with the facility location requirements of this chapter and any facility location requirements of the local government;

(C) If the local government in which the offsite storage will be located has enacted applicable zoning restrictions, the text of the restrictions, including the citation to said restrictions, and a description of how the proposed offsite storage will comply with those restrictions;

(D) An attestation that the offsite storage will comply with all other rules applicable to the facility for which the offsite storage is being established;

(E) An administrative and processing fee of five thousand dollars (\$5000).

(6) Application Approval and Denial Process.

(A) In cases where there are more applicants than available licenses or certificates, the department will select applicants for available licenses or certifications by lottery.

1. All timely applications submitted with an application fee during an application time period will be considered eligible for the lottery. Untimely applications or applications without an application fee will be denied.

2. Eligible applications will be assigned an application identifier by the department. The assigned identifiers will be transmitted to the entity conducting the lottery. The individual(s) conducting the lottery will do so without reference to the identities of the applicants.

3. Identifiers will be randomly drawn and listed in the order drawn. If licenses are issued by congressional district, the identifiers will be randomly drawn and listed in the order drawn within each congressional district.

4. After listing all identifiers in the order drawn, the department will review the application corresponding to the selected identifier, beginning with the first identifier drawn, to determine if the applicant is eligible for licensure prior to issuing the license.

5. If during the review period, the department determines an application meets all of the license eligibility requirements in this chapter and Article XIV, the license will be granted.

6. During the application review period, the department may request the applicant to provide additional information or documents needed to determine eligibility for a license by sending the request to the email address of the designated contact associated with the application. If requested, the applicant will have five (5) days to provide the requested information or documents.

7. An application will be denied if:

A. The application is not complete;

B. The applicant, application, or any proposal in the application, is in violation of any rule in this chapter or Article XIV;

C. Awarding a license would result in an entity being an owner in more than ten percent (10%) of the existing licenses within a facility type, rounded down to the nearest whole number;

D. The applicant provides false or misleading information in an application;

E. The applicant fails to timely provide information or records requested by the department; or

F. The department determines an application fails to meet the license eligibility requirements in this chapter and Article XIV.

8. All applicants that are issued a license or certification will be given forty-eight (48) hours to confirm they accept the license or certification. Failure to accept the license or certification in this time frame is cause to deny the application.

9. If an application is denied, the department will review the next application in the order drawn until the available licenses or certifications are filled.

10. Once all available licenses or certifications are filled, the remaining applications in the lottery will be denied.

(B) In cases where fewer applications are received in an application time period than there are available licenses or certifications, all complete applications meeting the license eligibility requirements in this chapter and Article XIV will be granted unless otherwise subject to denial.

(C) Any denial shall be issued by the department in writing to the applicant and shall include the specific reasons for the denial and the process for requesting review of the department's decision.

(7) Renewals. Renewal requests must be submitted in a department-approved online format at least thirty (30) days, but no sooner than ninety (90) days, prior to expiration.

(A) Renewal requests shall be accompanied by a nonrefundable renewal fee to be submitted with the request. The department shall publish the current fees, including any adjustments, on its website at <http://cannabis.mo.gov>.

(B) A renewal request is deemed received when both the request and renewal fee is received by the department.

(C) Except for good cause, a renewal request will be granted unless the facility licensee is not in good standing with the department. Good standing means the license is not suspended, revoked, or otherwise inactive at the time the request is made.

AUTHORITY: Sections 1.3.(1)(b), 1.3.(2), 2.4(1)(b), and 2.4(4) of Article XIV, Mo. Const. Emergency rule filed January 20, 2023, effective February 3, 2023, expires August 1, 2023. A proposed rule covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions three million, three hundred seventy-four thousand, one hundred sixty-seven dollars (\$3,374,167) in the time the emergency is effective.

PRIVATE COST: This emergency rule will cost private entities eight hundred fifty-six thousand dollars (\$856,000) in the time the emergency is effective.