

Draft Rule: Generally Applicable Provisions

*PURPOSE: The Department of Health and Senior Services has the authority to promulgate rules for the enforcement of Article XIV, Sections 1 and 2 of the **Missouri Constitution**. This rule applies to all individuals and entities regulated under Article XIV and explains what general provisions are necessary for the enforcement of the Article.*

(1) Variances and Waivers.

(A) The department may waive or vary from, at its discretion and for good cause, provisions of this chapter, on its own initiative or by request.

1. “Good cause” does not include that the requirement in rule is incompatible with the licensee’s preferred business model or is a mere inconvenience.

2. The Department cannot waive or vary from any requirement in Article XIV.

(B) Requests for a waiver or variance from the requirements of any provision of this chapter shall be made in writing and will be reviewed on a case-by-case basis . Requests shall include:

1. A list of each requirement and specific rule for which a variance or waiver is requested;

2. A detailed explanation for why the applicant, ID card holder, or licensee believes there is good cause to vary from or waive the requirement; and

3. For a variance, a description of an adequate alternative the entity will implement in lieu of the rule requirement.

(C) No waiver or variance request is approved unless the department issues a written approval.

(2) Facility licenses and certifications will be issued as follows:

(A) The Department will only issue licenses and certifications up to the maximum number allowable in each category of license or certification, as provided below:

1. The number of medical and comprehensive cultivation facility licenses will be limited to sixty-two (62), combined;

2. The number of medical and comprehensive manufacturing facility licenses will be limited to eighty-eight (88), combined;

3. The number of medical and comprehensive dispensary facility licenses, combined, will be limited to twenty-four (24) in each of the eight (8) United States congressional districts in the state of Missouri as drawn and in effect on December 6, 2018.

4. The department will issue six (6) microbusiness licenses in each of the eight (8) United States congressional districts in the state of Missouri as drawn and in effect on December 6, 2018, for the first two hundred and seventy days, four of

which shall be microbusiness wholesale facility licenses and two of which shall be microbusiness dispensary facility licenses;

A. An additional six (6) licenses in each of the eight (8) United States congressional districts in the state of Missouri as drawn and in effect on December 6, 2018, between the first two hundred and seventy days and five hundred and forty-eight days, four of which shall be microbusiness wholesale facility licenses and two of which shall be microbusiness dispensary facility licenses;

B. An additional six (6) licenses in each of the eight (8) United States congressional districts in the state of Missouri as drawn and in effect on December 6, 2018, after the first five hundred and forty-eight days, four of which shall be microbusiness wholesale facility licenses and two of which shall be microbusiness dispensary facility licenses;

C. By the third round of lottery drawings, there shall be twelve (12) microbusiness wholesale facility licenses and six (6) microbusiness dispensary facility licenses in each of the eight (8) United States congressional districts.

5. The number of marijuana testing facilities will be restricted to ten (10) in the state of Missouri;

6. The number of transportation facilities and seed-to-sale tracking system entities will not be restricted.

(B) The department shall lift or ease any limit on the number of licensees in order to meet the demand for marijuana product and to ensure a competitive market while also preventing an over-concentration of marijuana facilities within the boundaries of any particular local government.

(3) In addition to other penalties specifically delineated in this chapter, the department may impose penalties on facility licenses and certifications as follows:

(A) Licenses and certifications found in violation of any rule in this chapter or provision in Article XIV may be subject to sanctions, including, but not limited to, any of the following:

1. Limitation or restriction on a license or certification;
2. Fines up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation;
3. Revocation, suspension, or nonrenewal of a license or certification;
4. Orders to immediately cease or suspend operations.

(B) Fines may be assessed for each day a licensee is not in compliance with each violation. Assessment of a fine does not bar additional penalties or investigation.

(C) The department may impose any other remedies, sanctions, or penalties not inconsistent with these rules or Article XIV.

(D) Prior to revoking or suspending a facility license, the Department shall issue a Notice of Pending Revocation to the primary contact for the licensee by sending

such notice to the email address provided by the primary contact. The notice shall list the basis for a pending revocation or suspension. Except where there is a credible and imminent threat to public safety, the revocation or suspension will not take effect until 30 days from the date the notice is sent. During the 30 day period, the licensee will have the opportunity to cure the deficiencies listed in the notice, request a hearing, and/or respond to the allegations and submit records or information demonstrating why the license should not be revoked or suspended.

(4) Appeals.

(A) An applicant, licensee, or identification card holder may appeal the following department decisions:

1. Denial of a facility license or certification;
2. Any penalties imposed by the department; and
3. Denial or revocation of patient, primary caregiver, patient cultivation, caregiver cultivation, consumer cultivation, or facility agent identification cards.

(B) All appeals of department decisions shall be filed with the administrative hearing commission.

(C) Any person or entity entitled to appeal to the administrative hearing commission under this rule must file a petition with the administrative hearing commission within thirty (30) days after the date the department decision is sent to the person or entity. An untimely appeal will not be considered.

(D) Notwithstanding the limits on licenses and certifications set forth in this rule, the department may grant additional facility licenses or certifications as a remedy to timely appeals when:

1. Ordered to do so by the administrative hearing commission or a court of competent jurisdiction; or
2. The department determines doing so in settlement of such an appeal best serves implementation of Article XIV of the *Missouri Constitution*.

(5) Marijuana Records

(A) Qualifying patient, primary caregiver, and consumer information maintained by the department shall not be released outside the department except for purposes authorized by federal law or Article XIV, including:

1. In response to a request by law enforcement officials seeking verification that a person who presented an identification card is lawfully in possession of such card and is lawfully in possession of a particular amount of marijuana product.

2. In response to a request by law enforcement officials seeking information during the process of requesting a search or arrest warrant relating to cultivation of marijuana plants, the department may release consumer, patient, or caregiver information to verify whether the individual holds a registration card allowing for cultivation of flowering marijuana plants.

3. For the purposes of verifying whether a particular qualifying patient or primary caregiver may purchase an amount of marijuana product, dispensary facilities shall have access to patient and primary caregiver purchase limitations;

4. In response to a valid grand jury or law enforcement subpoena

(6) Unless otherwise stated, any reference to days in Chapter 95 will mean calendar days. In computing any period of time prescribed or allowed by the Department in Chapter 95, the designated period of time begins to run the day after the relevant act or event. If the last day of the designated period falls on a Saturday, Sunday, or a state holiday, the period will run until the end of the next day that is neither a Saturday, Sunday, or state holiday.