

# Emergency Rules

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 30—Division of Regulation and Licensure  
Chapter 95—Medical Marijuana**

**EMERGENCY RULE**

**19 CSR 30-95.028 Additional Licensing Procedures**

*PURPOSE:* The Department of Health and Senior Services has the authority to promulgate rules for the enforcement of Article XIV. This rule explains what provisions are necessary for ensuring an efficient facility licensing/certification process after the initial process of scoring and ranking applications is complete.

*EMERGENCY STATEMENT:* This emergency rule informs the public of what provisions are necessary for the efficient and effective implementation of Article XIV. Section 1 of the Missouri Constitution, which became effective on December 6, 2018, provides that the department must approve or deny all applications for medical marijuana licenses/certificate within one hundred fifty (150) days of submission. It also provides that, when there are more applications than licenses/certificates available, the department shall implement a numerical scoring system for ranking those applications in addition to confirming each application meets minimum requirements. Finally, Article XIV dictates that the department should issue a minimum number of licenses in each facility type. There is no direction in Article XIV for how to fill open licenses/certifications if they become available soon after an initial application/scoring period. This emergency rule fills the need to specify how the department will address such a situation.

The department believes this emergency rule complies with all criteria listed for emergency rules in Section 536.025, RSMo.

*Section 536.025.1(1)—Compelling governmental interest*

The process of application review, particularly when the review must include application scoring, is costly and resource-consuming. Article XIV does not give any guidance on how to fill openings for licenses/certifications that open up within a reasonable amount of time after an initial scoring period. In light of Article XIV's clear interest in providing funding to Missouri veterans' programs through the fees and taxes related to the medical marijuana industry, it is not reasonable to assume an entirely new application period, with the expense of scoring, should ensue if a license opening is available just days after an initial scoring period. Through this emergency rule, the department has designed a procedure for filling license/certificate vacancies that balances filling such openings based on the constitutional process for review and scoring of applications and filling them without duplicating the time and expense of accepting, reviewing, and scoring such applications immediately after having done so already.

*Section 536.025.1(2)—Fairness to all*

In order to establish an emergency rule, a state agency must follow "procedures best calculated to assure fairness to all interested persons and parties under the circumstances." The process the department established for this draft rulemaking was transparent and collaborative.

Cognizant of the lack of opportunity for public input that would result from establishing an emergency rule, before filing the emergency rule, the department issued a draft rule on its website and invited the public to submit comments on that draft rule. Comments were incorporated where possible.

*Section 536.025.1(3)—Constitutional protections*

Emergency rulemaking must follow "procedures which comply with the protections extended by the Missouri and United States Constitutions." This emergency rule does not violate any Constitutional protections. On the contrary, the department's rules are designed to effectuate newly established regulatory value created by Article XIV of the Missouri Constitution, such as fairness and impartiality in granting licenses and certifications for medical marijuana facilities in Missouri along with preserving a new funding source for Missouri veterans' programs and support.

*Section 536.025.1(4)—Limitation of scope*

Emergency rules must be limited in scope to "the circumstances creating an emergency and requiring emergency action." The department has done exactly this in limiting this emergency rule to only what is essential for processing applications and issuing licenses for an industry more competitive by far than any estimate put forward even the day before the application window for such licenses opened.

Article XIV requires that application processing be accomplished within one hundred and fifty (150) days, even if the number of applications submitted are more than twice what was expected. The cost of conducting such a review multiple times per year as licenses/certifications become available would be staggering as it is now reasonable to assume each application window would be inundated with multiple times more applicants than available licenses/certifications, including applicants who had just recently submitted an application along with a non-refundable fee. Since it appears neither the public through Article XIV nor the department could have known the provisions of this emergency rule, it is reasonable that these provisions should be proposed as an emergency between the day applications were first received (August 3, 2019) and the day licenses/certifications must first be issued (December 31, 2019). Emergency rule filed November 26, 2019, effective December 12, 2019, and expires June 8, 2020.

(1) Confirmation and Acceptance of License/Certification. All facilities that are issued a license or certification will be given five (5) days from department notification of issuance to confirm they accept the license or certification. Notification shall be made via the email address and phone number of the applicant's designated primary contact and will include the deadline for accepting. If a facility does not affirmatively accept issuance of a license or certification within the five (5) days following notification, the license or certification will be offered to the next ranked facility, as applicable, until all available licenses and certifications are issued and accepted.

(2) Conditional Denials. All cultivation, dispensary, manufacturing, and testing facility applications that meet minimum standards as described in 19 CSR 30-95.040(4)(A) but are denied due to the results of numerical scoring shall be regarded as "conditionally denied" for a period of three hundred ninety-five (395) days for the purpose of maintaining eligibility for any licenses or certifications that become available within that time period. Conditionally denied applications will be eligible for licenses or certifications as follows:

(A) For each available license or certification of a particular facility type that may become available during a time period when there are applications that have been conditionally denied, the department will issue the license or certification to the highest ranked applicant of that facility type or, in the case of dispensaries, of that facility type and in the applicable congressional district, subject to applicable limits regarding facilities under substantially common control.

(B) Facilities issued a license or certification under this section

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shall be subject to all regulations and laws applicable to any other licensed or certified facilities of the same type.

(C) A conditional denial will be considered a denial for purposes of appeal under 19 CSR 30-95.025.

*AUTHORITY: sections 1.3.(1)(b) and 1.3.(2) of Article XIV, Mo. Const. Emergency rule filed Nov. 26, 2019, effective Dec. 12, 2019, expires June 8, 2020. An emergency rule and proposed rule covering this same material will be published in the January 2, 2019, issue of the **Missouri Register**.*

*PUBLIC COST: This emergency rule will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This emergency rule will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.*