

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Thursday, December 7, 2023, and filed with the agency secretary on Thursday, December 7, 2023.

AGENCY NAME: Alabama Medical Cannabis Commission

INTENDED ACTION: New

RULE NO.: 538-X-3-.20

(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **N/A - New Rule**

RULE TITLE: Special Procedures Relating to Certain Applications

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes. No comments were received. The final rule eliminates of those provisions relating to prior third party scoring, pursuant to the November 23, 2023 order of the Montgomery County Circuit Court, enjoining the Commission from utilizing the previous third-party scoring system.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 1, AAM,
DATED TUESDAY, OCTOBER 31, 2023.

STATUTORY RULEMAKING AUTHORITY: Code of Ala. 1975, §20-2A-22, as amended.

REC'D & FILED
(Date Filed)
(For LRS Use Only)
DEC 11, 2023
LEGISLATIVE SVC AGENCY

John McMillan

John McMillan

Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

538-X-3-.20

Special Procedures Relating to Certain Applications.

The following special procedures shall apply to all license applications that both (1) were subject to an administrative stay issued by the Commission on August 31, 2023, or the Temporary Restraining Order as referenced in orders issued by the Montgomery County Circuit Court dated August 21, 2023, August 30, 2023, and September 11, 2023; and (2) are, or become, subject to an award of license by the Commission on or after the effective date of this Rule.

Notwithstanding any other provision of the Commission's Rules:

1. Applicants whose applications were deemed submitted by the Commission but, because of file size limitations in the application portal, were either (i) unable to submit all or portions of exhibits associated with such application; or (ii) required to submit exhibits that were compressed, truncated or otherwise distorted, shall be permitted to submit, within ten (10) business days after the date on which any such applicant becomes subject to an award of license by the Commission, a full copy (PDF via USB flash drive) of such exhibits to the Commission along with the following sworn statement:

STATE OF
COUNTY OF

CERTIFICATION

I hereby attest and certify that:

1. I am [insert name]. I am [insert position] of [insert applicant name] (hereafter the "Applicant") and am authorized to submit this certification on its behalf. I have knowledge of the facts set forth in this certification.

2. The Applicant attempted in good faith to submit the exhibits listed below on or before the application deadline of December 30, 2022 but, because of file size limitations in the application portal, was either (i) previously not submitted; or (ii) compressed, truncated or otherwise distorted:

[insert description of exhibits]

3. For each exhibit listed above, I have attached a true and correct copy of metadata confirming (a) the date and time of such exhibit's creation and modification, reflecting the existence of such exhibit as of the application deadline; and (b) that such exhibits have not been altered since such date.

SIGNED this the ____ day of _____, 202_.

[insert name]

SWORN TO and subscribed before me on this the ____ day of _____, 202_.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

2. After submission of full copies of any exhibits referenced in Paragraph 1 above, the Commission shall make available to the public copies of all application materials for each applicant. The application materials so disclosed shall be in unredacted form, except for (a) personally identifiable information and (b) trade secrets or competitively sensitive information.

Information bearing on the financial ability of the applicant shall generally not be deemed competitively sensitive information for this purpose, however, nothing in this paragraph shall require disclosure of information obtained by the Commission from third parties and exempt from the Open Records Act under Ala. Code § 20-2A-55 (c) and (d). Applicants which have previously submitted a public copy of their application with redactions not permitted under this paragraph shall submit a new redacted copy (PDF via USB flash drive) to assist the agency staff with publication requirement within ten (10) business days after the date on which any applicant becomes subject to an award of license by the Commission, and the agency staff reserves the right to make further revisions to the redactions as required to meet the requirements of this paragraph. The Commission shall follow the procedure set forth in Ala. Code § 20-2A-56(a) regarding this information and the submission and receipt of public comment and shall permit additional public comments to be filed within thirty (30) days after the date on which any applicant becomes subject to an award of license by the Commission.

3. The Commission will provide notice to all applicants who are preliminarily determined to have failed one or more pass/fail items under Ala. Code § 20-2A-56(b) and Ala. Admin. Code § 538-x-3-.14, and any such applicant shall have ten (10) business days to show cause, through a written submission, as to why their application should not be rejected due to such pass/fail item(s).

4. Each Applicant will be given an opportunity, but not the obligation, to address their application and to answer questions from the Commissioners or the Commission staff, subject to the following time limitations:

License Category	Individual Time Limitation
Integrated Facility	45 Minutes
Cultivator	20 Minutes
Secure Transporter	20 Minutes
State Testing Laboratory	20 Minutes
Processor	20 Minutes
Dispensary	20 Minutes

The presentations will be scheduled by the Commission, to be conducted not earlier than thirty (30) days after the date on which any applicant becomes subject to an award of license by the Commission. The presentations shall be open to the public. Those participating in the presentations on behalf of the applicant must be physically present at the meeting site designated by the Commission, however, members of the Commission may observe and ask questions in person or by virtual means. As part of such presentation, and without extending the time limitation provided herein, Applicants may present video evidence or a written brief, not exceeding 20 pages, regarding the applicant's existing or proposed facilities, ~~other matters identified in their application, or the appropriateness and application of the previous scoring results, which may include, but is not limited to, identification of instances where the applicant asserts that the scoring results were impacted by truncated, compressed, distorted or missing exhibits permitted to be submitted in full as provided in Paragraph 1 above~~ and other matters identified in their application. (Example: An applicant who is allowed 20 minutes for a presentation and who has submitted a 10-minute video will be permitted, at the presentation, to show the video and make a 10-minute live presentation.) Any such video evidence or written brief shall be submitted to the Commission at least five (5) business days in advance of the applicant's scheduled presentation. Applicants presenting a video must submit the video via USB flash drive. Applicants presenting a written brief must submit an original electronic version (PDF via USB flash drive) and twenty (20) hard copies. The presentation sessions shall be managed by the Commission's Chair or his or her designee, who may extend the time limitations as needed to accommodate questions from Commissioners. Each applicant making a presentation shall be responsible for the cost for the court reporter and preparation of a transcript of their presentation and question and answer session. Presentation sessions may be videotaped to be available for later review by Commissioners.

~~5. Regarding third party scoring data and tabulations previously generated for applications:~~

~~a. Within ten (10) business days after the date on which any applicant becomes subject to an award of license by the Commission, the Commission will make available to all applicants:~~

~~(i) General scoring criteria utilized by the third party scorers, along with information in the Commission's possession regarding each scorer's training and qualifications, excluding personal identifying information.~~

~~(ii) Notice of any instance where the same scorer was not used in scoring the same sections of applications within a license category.~~

~~b. In addition to the general disclosures identified in Subparagraph a. above, the Commission will, upon written request received by the Commission within thirty (30) days after the date on which any applicant becomes subject to an award of license by the Commission, provide any such requesting Applicant with the opportunity to inspect scoring sheets and any specific notes of third party evaluators for such Applicant in the Commission's possession, subject to the prior redaction of personal identifying information of the evaluator or third parties other than the applicant. Fees for the compilation, redaction and copying of such material by the Commission shall be subject to the same payment(s) as permitted to be imposed by the Commission for public records requests.~~

~~e. As provided in Ala. Admin. Code § 538-X-3-.12, the Commission remains the primary decisionmaker with regard to licensing and each Commissioner retains full discretion to act independently of the previously generated third-party scoring and evaluations in applying the statutory and regulatory criteria.~~

~~6. As soon as practicable after the presentations are completed for an individual license category, the Commission will conduct a meeting to deliberate and award licenses in such license category. In order to determine the order in which Applicants should be considered, each Commissioner will be given an opportunity to submit, in an open meeting, a written form providing an overall preliminary rank, in descending order, of each of the Applicants in the license category, giving due consideration to all statutory and regulatory criteria. Such forms shall be tabulated and averaged by the Commission staff and used solely to determine the order in which individual Applicants are subsequently considered. In those instances where two or more applicants receive identical average rankings, the order shall be determined by a drawing. The Chair will call for a motion to approve or deny each application in the order established above. Following such motion, duly seconded, the Chair will provide an opportunity for further deliberations and a vote.~~

~~76. The Applicant has the sole responsibility to ensure proper and timely submission of any form, document, video, or other item submitted to the Commission pursuant to the provisions of this rule. Any form, document, video, or other item submitted to the Commission pursuant to the provisions of this rule shall be mailed or hand-delivered to the Commission at the address provided below.~~

Alabama Medical Cannabis Commission
RSA Dexter Avenue Building

445 Dexter Avenue, Suite 8040
Montgomery, AL 36104

[§7](#). If any provision of this Rule, as amended, or the application of such provision or amendment to any person or circumstance is invalidated by a Court, the remainder of this Rule, as amended, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Author: Mark D. Wilkerson

Statutory Authority: Code of Ala. 1975, §§20-2A-22, as amended.

History: New Rule: Adopted October 12, 2023; Filed October 18, 2023; [Effective February 12, 2024](#).