

STATEMENT OF EMERGENCY
915 KAR 1:010E.

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by KRS Chapter 218B, which was created by 2023 Ky. Acts Ch. 146 that Governor Andy Beshear signed into law on March 31, 2023. KRS Chapter 218B legalizes the cultivation, processing, dispensing, and use of medicinal cannabis in the Commonwealth of Kentucky, beginning on January 1, 2025, and directs the Cabinet for Health and Family Services to implement and oversee the medicinal cannabis program. KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing initial application and renewal procedures for cannabis business licenses on or before July 1, 2024. This administrative regulation is being filed on an emergency basis so that proposed cannabis businesses have an opportunity to review and understand the application process and requirements to be eligible for a cannabis business license in advance of the initial license application acceptance period. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed contemporaneously herewith. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(New Emergency Administrative Regulation)

915 KAR 1:010E. Initial and renewal applications for cannabis business licenses.

RELATES TO: KRS Chapter 13B, Chapter 218B, 523.100

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing initial application and renewal procedures for cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. Types of Applications for Cannabis Business Licenses.

(1) The cabinet shall accept the following types of applications for cannabis business licenses:

- (a) Initial application; and
- (b) Renewal application.

(2) By submitting an initial or renewal application to the cabinet, an applicant consents to any investigation of the applicant's ability to meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(3) An application for an initial license or renewal license is not complete and shall be rejected by the cabinet unless:

- (a) The payment of the applicable fee provided in Section 2 or Section 4 is submitted with the application; and
- (b) All required information for each section of the application, including attachments and any supplemental information requested by the cabinet, is submitted to the cabinet within the allowable time period.

(4) An application submitted under this administrative regulation shall contain the following statement acknowledged by the applicant: "A false statement made in this application is punishable under the applicable provisions of KRS 523.100."

Section 2. Initial License Application Fees. An applicant for an initial cannabis business license shall pay the applicable application fee by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. The initial application fee is nonrefundable except as indicated below in Section 3(6) of this administrative regulation. The initial license application fees shall be:

- (1) Tier I cultivator: \$3,000;
- (2) Tier II cultivator: \$10,000;
- (3) Tier III cultivator: \$20,000;
- (4) Tier IV cultivator: \$30,000;
- (5) Processor: \$5,000;
- (6) Producer: \$5,000 plus the applicable cultivator tier application fee;
- (7) Dispensary: \$5,000; and
- (8) Safety Compliance Facility: \$3,000.

Section 3. Initial Applications for Cannabis Business Licenses.

(1) An initial license is valid for one (1) year from the date of issuance shown on the license. The cabinet shall publish notice of initial license application availability on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, including the time frame during which initial license applications shall be accepted. This notice shall also state the category and number of cannabis business licenses available for issuance at the close of the application period.

- (2) An applicant shall only use the initial license application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.
- (3) An applicant shall submit an initial license application to the cabinet in the manner prescribed by the application instructions.
- (4) An applicant shall apply for a separate license for each location where it intends to operate a cannabis business. During an initial license application availability period, an applicant shall only apply for a license in one (1) cannabis business license type (cultivator, processor, producer, dispensary, or safety compliance facility) being offered at that time. An applicant may submit multiple applications for a license within one (1) cannabis business license type so long as the following criteria is met:
- (a) Each application contains a separate and distinct physical address where the applicant proposes to conduct cannabis business activities;
 - (b) Each application contains documentation of sufficient capital in accordance with subsection (5)(q) of this section and the applicant shall not use the same capital for more than one (1) application;
 - (c) For the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier; and
 - (d) For dispensaries, an applicant shall only submit one (1) application per medicinal cannabis region as identified in 915 KAR 1:020, Section 3 and shown on the map published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.
- (5) The applicant shall submit the following in the initial license application:
- (a) The legal name, business type, any trade or doing business as (DBA) name, mailing address, federal tax identification number, Web site (if any), email address, and phone number of the proposed cannabis business and confirmation that the entity is registered with the Kentucky Secretary of State in good standing and authorized to do business in Kentucky;
 - (b) The type of cannabis business license requested;
 - (c) Business entity formation documents such as articles of incorporation, articles of organization, or bylaws;
 - (d) Proposed location of cannabis business activities, including the physical address of the proposed cannabis business and the global positioning system (GPS) coordinates for any proposed cannabis business activities as well as:
 - 1. Documentation such as a contingent agreement for property sale or lease or an existing deed or lease that shows the applicant has the authority to use the proposed location as a cannabis business for, at a minimum, the term of the license; and
 - 2. A site plan for the proposed cannabis business.
 - (e) The name, address, date of birth, and curricula vitae or resume of each principal officer and board member of the proposed cannabis business as well as any additional information required by the cabinet;
 - (f) Disclosure of any individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;
 - (g) Disclosure of any parent company or parent individual that has an ownership interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;
 - (h) A document showing the ownership organizational structure of the proposed cannabis business;
 - (i) The name and address of any individual or entity providing financial support to the proposed cannabis business that are not involved in the day-to-day operations beyond

providing financial resources as well as any additional information required by the cabinet;

(j) The name and address of any physician or advanced practice registered nurse that has an ownership or investment interest in or compensation agreement with the proposed cannabis business as well as any additional information required by the cabinet;

(k) Disclosure of whether any principal officer or board member of the applicant has been convicted of a felony criminal offense, and if so, a description of each felony offense;

(l) Disclosure of any instances in which a business or not-for-profit entity that any of the applicant's board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding;

(m) If applicable, documentation that the applicant is capable of successfully establishing and operating a cannabis business in the Commonwealth, including:

1. Demonstrated experience establishing and operating a for-profit or nonprofit organization or other business within Kentucky or any other jurisdiction, and the nature of the business conducted by the organization;
2. Any history relating to receipt of a similar license or other authorization in other jurisdictions, including provisional licenses, suspensions, revocations, or disciplinary actions to include civil monetary fines or warnings; and
3. Any history of response to suspensions, revocations, disciplinary actions, civil monetary fines, or warnings imposed relating to any similar license or other authorization in another jurisdiction, and the plans of correction or other responses made to those actions.

(n) A description of the duties, responsibilities, and roles of each principal officer, board member, employee, and any other individual or entity with a financial interest in the proposed cannabis business who are not involved in the day-to-day operations of the business;

(o) A timeline showing the steps and estimated amount of time the applicant shall take to begin cannabis business activities in the Commonwealth;

(p) Financial plan for the proposed cannabis business, including budget and cash flow planning and debt management;

(q) Documentation of sufficient capital available to the applicant, either on deposit or through extension of credit from one (1) or more financial institutions, in the following amounts as applicable:

1. Tier I cultivator: \$50,000;
2. Tier II cultivator: \$200,000;
3. Tier III cultivator: \$500,000;
4. Tier IV cultivator: \$1,000,000;
5. Processor: \$150,000;
6. Producer: \$150,000 plus the applicable cultivator tier amount;
7. Dispensary: \$150,000; or
8. Safety compliance facility: \$150,000

(r) A summary of the intended plan of operation that describes, at a minimum, how the applicant's proposed cannabis business operations shall address:

1. Security;
2. Employee qualifications, supervision, and training;
3. Transportation of medicinal cannabis;
4. Storage and labeling of medicinal cannabis;
5. Inventory management;
6. Recordkeeping;

7. Preventing unlawful diversion of medicinal cannabis; and
8. Workforce development and job creation.

(s) The name, mailing address, business title, phone number, and email address of the primary contact for the application as well as the name, address, and email address of any entity or individual who assisted the applicant with preparing the application;

(t) Documentation of any management service agreement in place for the proposed cannabis business;

(u) A notarized signature page signed by the applicant; and

(v) An attestation that:

1. The site of the proposed cannabis business is not within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the applicant's proposed place of business;

2. The applicant can continuously maintain sufficient capital for operations of its proposed cannabis business for, at a minimum, the term of the initial license;

3. The applicant can continuously maintain effective security, surveillance, and accounting control measures to prevent diversion, abuse, and other illegal conduct regarding medicinal cannabis;

4. The applicant shall comply with KRS Chapter 218B and 915 KAR Chapter 1;

5. The applicant consents to the cabinet verifying information provided in the application with any relevant governmental agency or third party;

6. If issued a license, the applicant shall pay the applicable license fee within fifteen (15) calendar days of notification in a manner prescribed by the cabinet.

7. If issued a license, the applicant shall conduct a criminal background check into the criminal history of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age;

8. The applicant consents to reasonable inspections, examinations, searches, and seizures as contemplated by KRS Chapter 218B and 915 KAR Chapter 1;

9. The applicant shall obtain and maintain workers' compensation insurance for all employees in the Commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

10. The applicant shall obtain and maintain commercial general liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

11. The applicant shall complete all trainings required by the cabinet for the proposed cannabis business's principals, agents, employees, and volunteers;

12. The applicant shall establish any standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1 prior to the first date of cannabis business activities in the Commonwealth, including those specific to its cannabis business category. The standard operating procedures that apply to cannabis businesses include:

- a. Security;
- b. Recordkeeping;
- c. Employee qualifications, supervision, and training;
- d. Quality assurance;
- e. Adverse event reporting and recall;
- f. Waste disposal and sanitation;

- g. Transportation of medicinal cannabis;
- h. Inventory management, including storage and labeling of medicinal cannabis;
- i. Cash management and anti-fraud procedures; and
- j. Preventing unlawful diversion of medicinal cannabis.

13. For an applicant seeking a safety compliance facility license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a cultivator, processor, producer, or dispensary applying to operate in the Commonwealth;

14. For an applicant seeking a cultivator, processor, producer, or dispensary license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a safety compliance facility applying to operate in the Commonwealth;

15. The applicant consents to sharing medicinal cannabis sales data with law enforcement;

16. The applicant shall use the Commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140 in the manner prescribed by the cabinet;

17. The applicant has disclosed all individuals and entities with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business as well as any parent companies and parent company individuals with an ownership interest in its proposed cannabis business; and

18. The applicant swears and affirms that all information and documentation provided with the initial license application is true and correct.

(6) An initial license application received after the submission time frame stated in the published notice of initial license application availability shall be rejected by the cabinet without further consideration along with the return of the initial application fee.

(7) The cabinet shall acknowledge receipt of an initial application for a cannabis business license within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. The cabinet shall provide written notice to an applicant when it has determined the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) The cabinet shall provide notification to applicants as to whether an application for a license has been approved or denied within forty-five (45) calendar days of receiving an application and determining its complete. Any application denials shall be done in accordance with KRS 218B.090(2) and (4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 4. License Renewal Fees. An applicant for renewal of a cannabis business license shall pay the applicable annual renewal fee by credit card or ACH transfer at the time of application submission to the cabinet. The annual renewal fee is refundable if the renewal application is denied. The annual renewal fees are:

- (1) Tier I cultivator: \$12,000;
- (2) Tier II cultivator: \$25,000;

- (3) Tier III cultivator: \$50,000;
- (4) Tier IV cultivator: \$100,000;
- (5) Processor: \$15,000;
- (6) Producer: \$15,000 plus the applicable cultivator tier annual renewal fee;
- (7) Dispensary: \$15,000; and
- (8) Safety compliance facility: \$12,000.

Section 5. Renewal Applications for Cannabis Business Licenses.

- (1) A renewal license is valid for one (1) year from the date of issuance shown on the license. The requirements that a licensed cannabis business shall meet to receive an initial license are continuing requirements to maintain the license. A cannabis business shall continuously comply with the licensing requirements of KRS Chapter 218B and 915 KAR Chapter 1 during the initial licensure period and any subsequent renewal period.
- (2) The cabinet shall notify each licensee at least ninety (90) calendar days prior to the date the license expires to allow the licensee to begin the renewal process if the licensee so chooses.
- (3) A licensee shall only use the license renewal application form prescribed by the cabinet and made available through the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.
- (4) A license renewal application shall be submitted to the cabinet at least sixty (60) calendar days prior to the expiration of the license. The cabinet shall reject a license renewal application if it is not submitted at least sixty (60) calendar days prior to the expiration of the license and shall return the annual renewal fee to the licensee along with written notice of the rejection.
- (5) A licensee shall submit a license renewal application to the cabinet in the manner prescribed by the application instructions.
- (6) A licensee shall include the following information with a license renewal application:
 - (a) Information regarding any charge, or any initiated, pending, or concluded investigation or proceeding, during the period of the initial license or prior renewal period, by any governmental or administrative agency, including an investigation or proceeding involving theft, loss, or possible diversion of medicinal cannabis by the licensee or from the licensee's facility;
 - (b) Information regarding the licensee's ability to continue with licensed activities, including any staffing issues, delays, medicinal cannabis shortages, medicinal cannabis product recalls, location issues, and financial issues that occurred since the license was issued;
 - (c) The licensee's history of compliance with KRS Chapter 218B and 915 KAR Chapter 1, including a summary of any noncompliance and corrective action taken during the current and any previous licensing period or a statement indicating that the licensee has not violated KRS Chapter 218B or 915 KAR Chapter 1 as of the date the renewal application is submitted; and
 - (d) Any additional information required by the cabinet.
- (7) The cabinet shall acknowledge receipt of a renewal license application within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) If the cabinet determines that a license renewal application is lacking sufficient information upon which to make a renewal determination, the cabinet shall notify the licensee in writing of the factors that require additional information and documentation. The licensee shall have ten (10) calendar days from the date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the requested information to the cabinet by the deadline shall be grounds for denial of the license renewal application.

(9) The cabinet may conduct an onsite inspection of the licensee's facilities and records to assist with determining continuing compliance with KRS Chapter 218B and 915 KAR Chapter 1.

(10) An existing cannabis business license is immediately invalid upon expiration if the licensee has not filed a license renewal application and paid the required renewal fee in accordance with Section 4 of this administrative regulation. If a licensee properly submits a timely renewal application with applicable renewal fee, the cabinet may extend its existing license from the date the existing license expires until the cabinet can complete its renewal application review and issue a determination.

Section 6. Minimum Performance Standards for License Renewal.

(1) Pursuant to KRS 218B.080(5)(b), the renewal of a cannabis business license shall be contingent upon successful achievement of minimal performance standards established by the cabinet. The minimum performance standards for licensees participating in the Kentucky Medical Cannabis Program are:

(a) The licensee has, and is likely to continue to maintain, effective controls against diversion of medicinal cannabis at its facility;

(b) The licensee has not made false or misleading statements in:

1. A renewal application or any other application submitted to the cabinet;
2. Any document or written communication submitted to the cabinet; or
3. Any verbal communication to the cabinet.

(c) The licensee has a documented history of compliance with the licensee requirements in KRS Chapter 218B and 915 KAR Chapter 1;

(d) The licensee has effectively addressed any identified compliance issues through corrective action;

(e) The licensee has shown it has the ability to continue to comply with all state and local laws and administrative regulations applicable to the activities in which it may engage under the license, if renewed;

(f) The licensee has a documented history of successfully addressing and mitigating any quality or safety issues with its medicinal cannabis or medicinal cannabis products;

(g) The licensee timely completes all reporting required by KRS Chapter 218B and 915 KAR Chapter 1; and

(h) The licensee participates in surveys distributed by the cabinet and provides full, complete, and timely responses.

(2) The cabinet shall deny a renewal application for a cannabis business license if it determines the licensee has failed to:

(a) Meet one (1) or more of the minimum performance standards established in this section; or

(b) Any additional basis provided in KRS 218B.090.

(3) The cabinet shall provide written notification to a licensee as to whether its renewal application has been approved or denied within forty-five (45) calendar days of receiving an application and determining its complete. Any renewal application denials shall be done in accordance with KRS 218B.090(4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any

hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 7. Duty to Report. During the application process, an applicant for an initial cannabis business license or renewal license shall, upon discovery of any change in facts or circumstances reflected in the initial application or renewal application submitted to the cabinet, notify the cabinet in writing of the change or any newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent via electronic mail to kymedcanreporting@ky.gov within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

SAM FLYNN, Executive Director
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 9, 2024

FILED WITH LRC: April 18, 2024

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 24, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by June 17, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until June 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.