



January 24, 2019

Since initial provisional licenses were awarded for processing facilities under Ohio's Medical Marijuana Control Program, we have received a number of inquiries about proposed changes to the facility layouts for licensees. This message's goal is to provide clarification about how the Department of Commerce will consider these requests.

The provisional license period is guided by two key factors. First, the processor license awards, like cultivators before them, were based on a highly-competitive application process. It is critical that the integrity of commitments made during the application process be upheld. Second, Ohio Administrative Code 3796:3-1-06 (A) states in part, "The information and plan submitted by a provisional licensee shall become mandatory conditions that must be met before a certificate of operation can be awarded."

The Department established two fundamental principles when considering requests for changes from cultivator licensees during the provisional license period:

1. The need for the proposed change must be a condition beyond the licensee's control, not simply to improve on its business operations.
2. The proposed change does not undermine a fundamental element of the application.

As the Department receives change requests from processor licensees, these two principles will continue to guide our determinations. However, processing facilities and cultivating facilities are different, so the way in which these principles are applied may vary between the license types.

Specifically, a processor licensee who unsuccessfully applied for a cultivator license may have committed to a facility size that is inappropriate for its needs as a standalone processor. Unlike cultivation facilities, facility size is not a fundamental element of a processor's operation. As such, we will consider requests to reduce facility size based on commitments made in the application related to a separate cultivator application.

In addition, some of the specific operational proposals made by processors were based on the products they anticipated manufacturing. The specific facility layouts were not scored in the applications beyond whether they had appropriate plans (e.g., did they designate areas where extraction and processing activities will occur, and are the areas compartmentalized based on function?). We recognize that the appropriate facility layout may vary based on the specific product mix but, in some cases, the state may not approve all product types proposed. As such, we will consider requests to change a facility layout if 1) the processor needs to change its product mix based on anticipated approvals from the state, and 2) the revised layout continues to meet the evaluation criteria that were scored in the application reviews. Additionally, the Ohio Board of Pharmacy's approval of permitted products will be the basis for adjustments to the product types in the application.

We hope that this provides guidance for the concerns that have been expressed to the program. Change requests outside these examples will need to demonstrate compliance with the two fundamental principles expressed above in order to be considered.