

# CLIENT ALERT

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## **MICHIGAN'S MARIHUANA REGULATORY AGENCY CURRENTLY REVIEWING NEW RULES**

by James P. Boland

For those who operate, manage, service, or contract with state-licensed cannabis operations in Michigan, the Marihuana Regulatory Agency ("MRA")<sup>1</sup> is currently reviewing new rules along with taking in commentary to support, object, or otherwise comment on them. The MRA will hold a public hearing on **Monday, September 27, 2021**, at 9:30 am, at the Williams Building, 1st Floor Auditorium, 525 W. Ottawa Street, Lansing, MI. Alternatively, public comments may be made by mail (to MRA, ATTN: Legal Section, P.O. Box 30205, Lansing, MI 48906) or e-mail until September 27, 2021, at 5:00 pm to [MRA-Legal@michigan.gov](mailto:MRA-Legal@michigan.gov).<sup>2</sup> Our firm's cannabis practice team will submit comments.

Below are some of the proposed rules we have identified as potentially problematic, and we anticipate most operators will raise objections or serious concerns. Feel free to contact one of our attorneys to understand how these rules could adversely impact your business or structure.

### **1. MARIHUANA DISCIPLINARY PROCEEDINGS**

#### Rule 420.801 Definitions

This rule would add definitions for "Management or other agreement" and "Licensing Agreement." The MRA is proposing a broad definition of these agreements to include any contract between a licensee and a services provider, regardless of whether that service is plant-touching or if the vendor has any actual control over the day-to-day operations of the licensed facility. In addition, this rule would include the catchall phrase of "Management or other agreements," which would essentially give the MRA pre-approval authority over any agreement between a licensee and a service provider.

#### Rule 420.802 Notification and reporting.

##### Summary of Changes:

This rule would broaden the definition of a "material change" by defining it as any action that would result in alterations or changes being made to the marihuana business to effectuate the desired outcome of a material change. The MRA is seeking to place an undue burden on licensees by increasing the frequency with which operators need to notify them of any minor action that may or may not lead to a material change.

#### Rule 420.802 Notification and reporting.

##### Summary of Changes:

Under this rule, a licensee would be required to notify the MRA if it becomes aware, or should have become aware, of an alleged violation of the Act or the rules by a party with which the licensee contracts.

#### Rule 420.802 Notification and reporting.

##### Summary of Changes:

The MRA seeks greater oversight of licensing, management, and

other services agreements by requiring operators to notify the MRA any time it terminates a services agreement.

### **2. MARIHUANA-INFUSED PRODUCTS AND EDIBLE MARIHUANA PRODUCT**

#### Rule 420.403 Requirements and restrictions on marihuana-infused products; edible marihuana product.

##### Summary of Changes:

Under this rule, producers of marihuana-infused products would be required to do the following: 1) that licensees be required to include in product names an appropriately descriptive phrase that accurately describes the basic nature of the product; 2) that licensees be required to disclose component ingredients on the labels of infused products; 3) that licensees have to list the date the marihuana product was produced on the label; and 4) the MRA is proposing that not only must infused product producers employ an individual who is certified as a Food Protection Manager, but also that that person is "in charge."

### **3. MARIHUANA LICENSEES**

#### R 420.101 Definitions.

##### Summary of Changes:

This rule would add definitions for Management and Licensing Agreements. First, this rule would establish a broad definition of these agreements to include any contract between a licensee and a services provider, regardless of whether that service is plant-touching or if the vendor has any actual control over the day-to-day operations of the licensed facility. Second, this rule would include the catchall phrase of "Management or other agreements," which would essentially give it pre-approval authority over any agreement between a licensee and a service provider as it sees fit.

#### R 420.203 Marihuana licenses; licensees; operations; general.

##### Summary of Changes:

This rule would clarify the types of financial records that must be maintained, including, but not limited to, cash logs, invoices, canceled checks, and tax records. It is important for Certified Public Accounts working with licensees to have this information as these records must be kept available for review by the MRA upon request. The rules in this section are all operational in nature. As operators, you have a ground-level view of what is reasonable and what is overreach. The rules may not properly account for technology and best practices, so please review them carefully and identify for us any rules that are unreasonable, unworkable,

<sup>1</sup> Marihuana is the standard spelling used by the state of Michigan.

<sup>2</sup> Following the comment period, the MRA will prepare a report and submit the proposed rules to the state's Joint Committee on Administrative Rules ("JCAR") for further consideration. JCAR generally keeps jurisdiction over the proposed rules for at least 15 session days (counted as days the state legislature is in session), during which it may object, stop or delay rules, or take no action and allow the rules to move towards finalization with the Secretary of State. At earliest, we believe the proposed rules could take effect in mid-November 2021.

or otherwise objectionable.

#### R 420.206a Standard operating procedures.

##### Summary of Changes:

Under this rule, licensees would be required to maintain all standard operating procedures on-site at the licensed facility at all times and to make these SOPs available to the MRA upon request. Additionally, this rule would add the requirement that any SOPs found to be deficient or inaccurate be updated immediately.

#### R 420.207a Contactless and limited contact transactions.

##### Summary of Changes:

This rule would formalize the temporary rules developed due to the COVID-19 pandemic to allow licensees to conduct contactless or limited-contact transactions. The proposed rule clarifies that these types of transactions are subject to the same rules as traditional, face-to-face transactions, including the need for SOPs for such transactions that cover security protocols and adherence to all other rules and regulations around marijuana dispensing.

DW does not have any objection to these proposed rules, but if you, as an operator, believe that any of these rules are unreasonable and should be challenged, please identify those rules.

#### R 420.214a Internal analytical testing

##### Summary of Changes:

Under this rule, licensees would be allowed to designate a space to perform internal analytical testing on marijuana or a marijuana product grown or produced by the marijuana business. It is important for licensees to note that a number of proposed requirements accompany this allowance for on-site testing, including security, inventory tracking, and destruction protocols.

#### R 420.214c Product returns.

##### Summary of Changes:

This rule would allow licensees to accept the return of marijuana product that is reported to have caused an adverse reaction or is determined to be defective. Licensees should note that accepting returns would require the development of policies that cover inventory tracking and destruction, among other procedures.

DW does not have any objection to these proposed rules, but if you, as an operator, believe that any of these rules are unreasonable and should be challenged, please identify those rules.

## 4. MARIHUANA LICENSES

#### R 420.4 Application requirements; financial and criminal background.

##### Summary of Changes:

This rule would decrease the threshold for adult-use shareholder disclosure from 5% to 2.5%.

### **Additional Proposed Changes to Note:**

#### R 420.401 Definitions.

##### Summary of Changes:

This rule would define final form of products intended for inhalation as *the marijuana concentrate in the e-cigarette or vaping device*.

#### R 420.403 Requirements and restrictions on marijuana-infused products; edible marijuana product.

##### Summary of Changes:

This rule would change the MRA's standards from the FDA Food Safety Modernization Act to the Current GMP under 21 CFR part 117.

#### R 420.403 Requirements and restrictions on marijuana-infused products; edible marijuana product.

##### Summary of Changes:

1. This rule would amend the current rule that prohibits producers from producing packaging or labels that would appeal to minors to include the shape of the edible product.
2. This rule would expand the prohibition on producing edibles that can be easily confused with commercially sold candy to include all commercially available food products.

#### R 420.20 Financial statements.

##### Summary of Changes:

The MRA seeks to clarify that financial statements must include all requested information for each license held by the licensee. This is important for licensee's Certified Public Accountants to know, as failure to submit a comprehensive financial statement could result in a licensee's renewal application being denied.

### **KEY CONTACTS**



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