

Proposed Changes to the Marihuana Rules

The CRA is proposing to make the following changes to the Marihuana Rules [R 420.1 to R 420.1004] and is soliciting feedback from interested parties. **This document does not bind the agency to the proposed changes listed below.** The draft marijuana rules may include changes not listed in this document and may not include changes that are listed in this document. The draft marijuana rules may also include non-substantive changes to improve organization and clarity in the rule set.

Please submit any comments or suggestions to CRA-AdminRules@michigan.gov

The left column contains summaries of proposed changes. The right column includes brief justifications for the proposed change. The document is roughly organized by subject matter.

Licensing

Allow the CRA to deny a license or license renewal based on civil judgments/court orders resulting from unpaid debt for work, services, products, or equipment provided solely in the cannabis industry. The CRA will add a field to the licensing application to collect this information.	This will help ensure that licensees are paying bills and will address a concern that has been raised by many in the industry.
Require an employee to submit a withdrawal to the Michigan Medical Marijuana Program within 5 days of hire.	This existing requirement needs to be in rule to ensure transparency and enforceability.
Require applicants and licensees to provide any DBAs with an application and report any changes to their legal name, DBA, address, trademarks, service marks, brands, etc. used by the licensee to the CRA.	This will help ensure the CRA has accurate records for licensee names, addresses and products.
Require licensees to notify the CRA prior to making a change to their business structure, for example, changing from an LLC to a C-Corporation.	The requirements for disclosures and background checks are different depending on the entity structure. Changing business structures without notifying the CRA creates an opportunity for a person who would not qualify for a license under one business structure to improperly be involved in the business.
Include in rule the contents of the 8/27/2021 bulletin concerning liability insurance.	This existing requirement needs to be in rule to ensure transparency and enforceability.
Require licensees to provide up to date contact information in a timely manner and require that the licensee, a supplemental applicant, or managerial employee must be a main point of contact.	This would ensure the CRA has the ability to contact a person directly involved in the business. Additionally, this would help with background review in situations where an applicant's ID does not reflect their current address.

Clarify that an applicant with a pattern of regulatory noncompliance or a criminal history that includes distribution of alcohol or tobacco to a minor is ineligible to receive a license.	This will help keep bad actors out of the industry.
Define "reasonable payment" under a licensing agreement or rental agreement to be less than 10% of the profit from the licensee.	Clarifies what constitutes a "reasonable payment" as currently used in rule.
Use the term "director" only as it applies to members of a business and not the Executive Director of the CRA or director of a state department	Ensures clarity in the use of terms.
Clearly establish the circumstances for which the CRA can deny an amendment.	This will provide clarity for both licensees and the agency.
Allow the CRA to reassess and, if necessary, revoke a prequalification status at the time of applying for a step 2 license.	This will allow the CRA to respond to any disqualifying activity that may have occurred after prequalification but prior to licensure.
Require that a named insured must be a licensee and that additional insured can only be supplemental applicants, municipalities, those with licensing agreements, landlords, etc.	If a person is a named insured or additional insured, they may be able to control the policy.
Require a licensee to provide the CRA with the licensee's current organizational structure and any brands produced, if applicable.	This will help ensure licensees remain compliant with statute and rules.
Add to the existing list of proposed material changes reported to the CRA: <ul style="list-style-type: none"> •Change in directors, spouses, managerial employees. •Change in legal entity name, assumed name, or DBA •Any change or modification to the lease, deed, and/or insurance policy; submitted to CRA within 10 days. •A new tax liability or delinquency against an applicant by the state, another state, federal or foreign jurisdiction, including any pending delinquency. •A notice of eviction against a licensee by state, other state, federal or foreign jurisdiction, including pending eviction. 	These changes are substantially similar to the types of changes that are currently considered material.
Require applicants to notify CRA within 10 days of any of the following: <ul style="list-style-type: none"> •The initiation of any new lawsuits, legal proceedings, charges, or govt investigations •The conclusion of any judgments, lawsuits, legal proceedings, charges, or govt investigations. 	Clarifies that notification is required at the beginning and conclusion of legal action

Require licensees to submit proof of insurance 60 days after initial licensure and at renewal.	This requirement needs to be in rule to ensure transparency and enforceability.
Prohibit licensees from being managerial employees of other conflicting license types.	The MRTMA prohibits individuals from having an “ownership interest” in a conflicting license type or in more licenses than allowed, but it doesn’t speak to managerial employees. This loophole potentially allows for individuals to have controlling authority over conflicting license types or more licenses than allowed.
Establish in rule the requirements and process for licensees to submit amendments and reporting forms.	This requirement needs to be in rule to ensure transparency and enforceability.
Establish in rule the requirements for medical licensees to submit requests to the CRA to authorize the licensee to hire someone who has a felony conviction involving controlled substances.	All of the submission requirements are currently in a bulletin. The requirement needs to be in rule to ensure transparency and enforceability.
Change various references from ‘denial’ to ‘nonrenewal’.	This will align terminology between statute and rule.
Prohibit licensee websites from reflecting different ownership and management than has been approved by the CRA.	This will ensure ownership structures are clear.
Change definition of a Temporary Event so that a license is only required if marijuana will be sold. A license will not be required if marijuana is only consumed.	The CRA's authority covers licensees selling marijuana products. Local law enforcement is responsible for enforcing laws on public consumption. A state license should not be required if no sales are taking place.
Eliminate the requirement that an applicant for a temporary event provide an event location number for where retailers will operate during the event.	This information does not provide value.
Require temporary marijuana event license applications to be submitted 120 days before the event instead of the current 90 days.	Applicants for a temporary marijuana event license may invest time and financial resources into the event, but have no guarantee they will be approved. By requiring applications to be submitted 120 days before the event, the applicant will have at least 30 days to cancel or reschedule the event if they are denied.
Revise and clarify requirements for licensing agreements, management agreements, and other types of agreements. Establish retention requirements.	This will clarify and streamline requirements and processes.

Social Equity

Establish the Social Equity Program in rule, including eligibility requirements, application requirements, renewal requirements, and fee reductions.	This program needs to be in rule to ensure transparency and enforceability.
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Financial Compliance

Require licensees to maintain a double-entry accounting system	This is a standard accounting practice.
Exempt marijuana event organizers and designated consumption establishments from the requirement to submit annual financial statements (AFS).	These license types do not have product onsite and do not generate revenue the way other licenses do.
Establish: - Methods for assigning licensees to reporting periods. - Notification, testing cycles, and due dates - Consequences for late filing and a period for sequential filings	This requirement needs to be in rule to ensure transparency and enforceability. It will assist the CRA in performing investigations.
Require growers, processors, and retailers to reconcile revenue monthly and maintain as an internal record.	Public Act 119 of 2021 changed the requirement that annual financial statements be submitted every year to every three years, or more frequently if the CRA chooses. Given that licensees are only going to be reporting once every three years, requiring monthly reconciliation will help to identify statewide monitoring system errors contemporaneously and will help the licensee to remain compliant. When licensees submit the AFS, they will be able to rely on these records.
Require that licensees maintain records in such a way that allows them to reconcile the revenue and expenses for marijuana separately from hemp.	Because the annual financial statement does not apply to non-marijuana sales, licensees need to be able to report only marijuana-related activity.
Require records to be maintained onsite at a licensed business or maintained electronically and available for review onsite during business hours.	If records are not maintained on site, an audit or investigation is handicapped by the delay. Delays provide an opportunity to manipulate or modify records before CRA staff can review them.

<p>Require licensees to maintain records documenting payments made under any type of agreement.</p> <p>Require licensees to submit manufacturing agreements to the CRA for review and approval. The licensee must wait for CRA approval before they act on the agreement.</p> <p>Require marijuana transactions for which cost/payment is undefined at time of the transaction to be covered by an agreement between the parties outlining the terms.</p> <p>Require that the cost of services being shared by licensees to be allocated between licensees.</p> <p>Require licensees to report changes to leases, including changes in payment or waiving of rent, and updates made by the landlord without being reimbursed.</p>	<p>These proposed rules all address potential ways that licensees may attempt to compensate undisclosed supplemental applicants or allow undisclosed supplemental applicants to exercise control over the licensed business. Adding these provisions will allow the CRA to exercise the appropriate level of regulatory oversight and ensure that the spirit of the law is enforced.</p>
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Statewide Monitoring System

<p>Require that all licenses become active in the statewide monitoring system before acquiring or possessing plants or marijuana products.</p>	<p>This will help ensure businesses are prepared to track products in their possession.</p>
<p>Require growers and processors to document in the statewide monitoring system the location of product at each level of location available to the licensee, i.e. which room the product is in within a business.</p>	<p>Currently, product that is part of one batch can be scattered in multiple locations within a business, which makes tracking difficult.</p>
<p>Require licensees to appropriately categorize products in the statewide monitoring system. If there is not an appropriate category for a product, allow the licensee to request that the CRA create a category. The agency may determine if the category is necessary and what required testing panel should be included in each category.</p>	<p>This will ensure products are appropriately categorized and prevent licensees from creating products unfamiliar to the CRA. Failure to categorize products appropriately potentially allows products to bypass important testing panels.</p>
<p>Require licensees to use appropriate transfer categories and record accurate prices and dollar amounts when making a transfer.</p>	<p>This will ensure the CRA has accurate information about transfers that are taking place.</p>

Require that all products be identified with the full product tag number as identified in the statewide monitoring system. Abbreviated package tag numbers are not permitted.	Using only the last digits is often not enough to clearly identify a package. For example, the last 4 digits can be found on multiple tag numbers, making it more difficult to identify product during an investigation or recall.
Require licensees to record expiration dates of product with each production batch.	This will allow a report to be generated based on product expiration dates. The CRA can then remind licensees they are required to destroy expired product in accordance with the rule.
Require processors to document when products change form and not just when a final product is created. Require that each batch created in a new form be documented as a production batch.	This will ensure return rates for extraction and final product are reflected accurately. Some processors currently do this.
Require a new package tag for intermediary products, additions, and form changes.	This will help prevent illicit market products from entering the regulated market. This requirement needs to be in rule to ensure transparency and enforceability.
Require licensees to document and explain any adjustments or errors made in the statewide monitoring system and require that an error is corrected within 3 days of receiving notification of the error.	Requiring explanations for errors in the statewide monitoring system will help ensure that packages can't be manipulated and help ensure the data in the system is accurate. It also provides a clear timeframe for licensees to comply.
Require licensees to report harvest schedules in the statewide monitoring system.	Alerting the CRA to when a licensee is planning to harvest will help prevent illicit market products from entering the regulated market.
Require processors to document in the statewide monitoring system the amount of raw product used in the extraction/distillation process and the amount of product created after the extraction/distillation process is complete.	This will ensure licensees use the capabilities of the statewide monitoring system in the intended way so the CRA can better track product and ensure that outputs are reasonable based on inputs.
Require licensees to record in the statewide monitoring system the following information when creating a new item: name, brand, expiration date, and amount of THC for their infused products.	This would allow the CRA to analyze data and generate reports based on this data.

Sampling and Testing

Require all safety compliance facility sampling to be performed in front of a camera with an unobstructed view for the entirety of the sampling event.	Marijuana businesses are already required to have surveillance. This rule will ensure SCFs are performing sampling in accordance with the rules and that representative samples are being tested.
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Specify the most current approved list of banned chemicals in rule and specify that it includes anything that MDARD adds to the approved list in the future. Unapproved use is a violation.	This list is currently established in a bulletin. This requirement needs to be in rule to ensure transparency and enforceability.
Allow the CRA to audit licensees and request testing of one or multiple testing panels for product located at a marijuana business.	This requirement needs to be in rule to ensure transparency and enforceability. It will assist the CRA in performing investigations.
Allow the CRA to audit and request potency testing of a product if the agency is unable to determine whether the product is hemp or marijuana.	This requirement needs to be in rule to ensure transparency and enforceability. It will assist the CRA in performing investigations.
Allow growers to mix strains, but require homogenization at the grower level and homogeneity testing at a safety compliance facility for each product batch.	This would allow for mixed strains and allow an accurate representation of potency.
Require that growers, processors, Class A microbusinesses, and microbusinesses verify weight/units of the product prior to sampling by a safety compliance facility.	This will ensure the safety compliance facility takes the appropriate amount of sample.
Require licensees who are creating any pre-roll product to have the product tested in final form (after they have been placed into the pre-roll delivery system). This includes both raw pre-rolls and infused pre-rolls. Non-cannabis ingredients are not permitted in pre-rolls.	This will help ensure all products are tested in final form.
Establish the requirements for test panels that are currently found in the Scientific Guide.	This requirement needs to be in rule to ensure transparency and enforceability.
Require that each batch of product pass compliance testing for homogeneity unless the licensee is producing a batch that passed the homogeneity testing within the last 6 months and all of the following conditions are met: -The batch made is the same size. -The batch produces the same amount of product. -The potency of the product is within 10% of the previously tested batch.	Rules currently require products to be homogenous but do not require homogeneity testing or specify the requirements for homogeneity testing. This requirement needs to be in rule to ensure transparency and enforceability.
Require safety compliance facilities to upload COAs for each sample into the statewide monitoring system.	This will improve transparency by enabling marijuana sales locations to provide the COAs to customers.
Require standard terpene profile testing of flower.	This is already happening in most safety compliance facilities and will improve consumer knowledge of products.

General Operations

<p>Require that a grower, class A microbusiness, and microbusiness have at least 1 employee obtain:</p> <ul style="list-style-type: none"> • MDARD pesticide applicator certification within 1 year of licensure. • Master Grower certification within 1 year of licensure. 	<p>This is being proposed because of the frequency of chemical residue failures. It is also consistent with suggestions the CRA has received to require certain licensees have staff who have completed certain educational courses or certifications.</p>
<p>Require compliance with Subparts A & B of CFR 117. Require compliance with all Subparts at some time in the future and expand enforcement.</p>	<p>Compliance with Subparts A & B of CFR 117 will help ensure product safety.</p>
<p>Prohibit the conversion of nonintoxicating cannabinoids to intoxicating cannabinoids (CBD to THC) and the sale or transfer of these items unless the CRA approves conversion subject to specified parameters including submission of peer reviewed studies and studies that include known outcomes of human consumption over time.</p>	<p>This requirement needs to be in rule to ensure transparency and enforceability. Requiring supplemental submissions of studies of conversion processes ensures that other reputable organizations have reviewed any proposed process.</p>
<p>Eliminate the requirement that a marijuana sales location, except for microbusinesses, have a separate room that is dedicated as the point-of-sale area.</p>	<p>Eliminating this requirement, which is unique to marijuana retailers, will reduce costs for businesses.</p>
<p>Allow delivery drivers to work for co-owned sales locations as long as the driver is not working for multiple locations at the same time and/or delivering comingled product.</p>	<p>This will reduce costs for businesses and expand opportunities for drivers.</p>
<p>Require licensees to weigh flower product not more than 48 hours prior to shipping and to make any adjustments that need to be made to account for moisture loss before shipping.</p>	<p>On several occasions there has been a significant discrepancy between the weight of the product when it was shipped and the weight of the product when it was received.</p>
<p>Require licensees to reconcile inventory prior to a license closing, expiring, becoming inactive, or the business location being repossessed. Licensees must review inventory and ensure there is no marijuana product remaining before closing out the license or risk disciplinary action.</p>	<p>Allowing marijuana inventory to remain unaccounted for in a location for which the license has become inactive poses a risk for inversion.</p>
<p>Clarify that license expiration or closure does not terminate the agency's authority to impose sanctions on a licensee whose license has expired or closed.</p>	<p>This will create consistency between the MMFLA and MRTMA</p>

<p>Clearly establish the circumstances in which the CRA may require destruction of product.</p>	<p>The rules currently indicate that product can be ordered destroyed, but they do not address the circumstances in which the destruction may be required. This will provide certainty to both the CRA and licensees.</p>
<p>Prohibit marijuana sales locations from selling any products acquired from registered caregivers in 2018-2019.</p>	<p>This will help prevent illicit market products from entering the regulated market.</p>
<p>Require serving sizes and doses be identified on a product and require edible marijuana products to include one of the following:</p> <ul style="list-style-type: none"> -Single-serving packaging -Scoring of a solid item that assists with breaking a multi-serving product into single-serving portions -A measuring device that is designed, sized, or marked to measure a single serving. 	<p>Requiring packaging to including serving size and dosage information and requiring licensees to provide consumers with the ability to consume by the serving will enable consumers to make decisions more easily about safe consumption.</p>
<p>Specify that labeling requirements apply to inner packaging as well as outer packaging.</p>	<p>Products are often sold in multipacks and once the outside, labeled packaging is discarded, the label is lost. Internal packaging should still reflect information like the universal marijuana symbol and THC level.</p>
<p>Include Class A microbusiness and marijuana microbusiness in the list of license types that can make product development samples and transfer them, with limitations.</p>	<p>Microbusinesses and class A microbusinesses can participate in product development under current rules, this would just provide clarity and specificity.</p>
<p>Require product to be transferred within 3 days of receiving approval for transfers granted special approval. Special approvals are granted for circumstances like expired licenses, purchase agreements, or a relinquished license.</p>	<p>There is currently no timeframe in which licensees must transfer product, which requires the CRA to expend resources checking in on transfers. Additionally, delaying transfers can potentially leave expired licenses with inventory.</p>
<p>Clarify that once a trade sample is provided to an employee, it is considered an internal product sample.</p>	<p>The rules do not currently specify how to provide trade samples to employees. This will provide clarity.</p>

<p>Establish the process for equivalent license transfers included in the 2/8/2023 bulletin in rule.</p> <p>Clarify restrictions for transferring between equivalent licenses.</p> <p>Require transfer manifests to be accurate, particularly the type of transfer being created.</p> <p>Define terms including infusion transfer, wholesale transfer, etc.</p>	<p>This process is currently established in a bulletin. It needs to be in rule to ensure transparency and enforceability.</p> <p>Accurate transfer manifests will help prevent illicit market products from entering the regulated market.</p>
<p>Establish the THC limits published in an August 2022 bulletin.</p>	<p>This requirement needs to be in rule to ensure transparency and enforceability.</p>
<p>Require marijuana businesses to adhere to recognized cannabis standards for general operations, quality systems, cultivation, processing, sampling, testing, and other cannabis standard practices published by an approved independent third party. Require marijuana businesses to keep and provide evidence of compliance for adherence to the published standard.</p>	<p>This will ensure licensees are adhering to established best practices.</p>
<p>Require that licensees comply with the Weight and Measures Act.</p>	<p>All businesses are subject to the requirements of that act; however, licensees have been caught off guard when MDARD shows up to inspect their scales. Specifically identifying some of the laws licensees are required to comply with can help clarify requirements.</p>
<p>Clarify that a harvest batch must be dried and trimmed at the business location where the batch was cultivated</p>	<p>This will help prevent illicit market products from entering the regulated market.</p>
<p>Clarify provisions for operating out of a collapsed licensed.</p>	<p>This will provide clarity for both licensees and the agency.</p>
<p>Require certain license types to perform physical audits of inventory not less than twice per year.</p>	<p>This will help prevent illicit market products from entering the regulated market.</p>
<p>Eliminate the requirement that marijuana waste be rendered unusable before disposal.</p>	<p>This rule was originally promulgated because it was thought that it would prevent the theft of marijuana waste, but that problem has not materialized to the extent that this requirement should remain in effect. Most states are moving away from this because it is unnecessary.</p>

<p>Remove the requirement for strain.</p>	<p>This requirement does not provide valuable information. Removing the requirement would eliminate the unnecessary restrictions and requirement for package labeling and ease burdens on licensees.</p>
<p>Require growers to ensure that all plants have a plant tag physically attached to the plant once the plant reaches a height of 8 inches and that tags remain on the plant during the curing/drying phase after harvest.</p>	<p>The statewide monitoring system currently requires this as a best practice to combat inversion, but it is not currently required in rule. This requirement needs to be in rule to ensure transparency and enforceability. This will help prevent illicit market products from entering the regulated market.</p>
<p>Require processors to maintain certificates of analysis for all non-marijuana cannabis ingredients used in the manufacturing of consumable marijuana products.</p>	<p>Current recordkeeping requirements do not specifically require these records be kept. Processors are subject to MDARD's Food & Dairy requirements but without these records, MDARD has found it difficult to issue a passing inspection grade. This rule will provide clarity to licensees and improve compliance efforts.</p>
<p>Establish the beverage creation process in rule, including requiring processors involved in the production of marijuana-infused beverages to:</p> <ul style="list-style-type: none"> -Adhere to specific requirements regarding hazardous analysis plans and comply with agency approvals related to appropriate food grade items, processes, and packaging. -Use food grade bottles and containers to contain their beverages and require that beverage manufacturing processes comply with all requirements applicable to non-marijuana beverages regulated by MDARD. -Comply with laws related to bottle deposit and recycling, beverage disposal, and water usage. 	<p>This requirement needs to be in rule to ensure transparency and enforceability. It will also provide clarity for licensees and the CRA.</p> <p>Because of the water activity in beverages, a hazard analysis should be required.</p> <p>The CRA has verified with the other agencies that licensees must comply with these laws and rules even though the products they are producing are marijuana products.</p>
<p>Require processors to maintain and adhere to records of formulation (ROF) for all products created with extracted marijuana material and require new homogeneity tests be performed for any changes to the ROF. The ROF must include at a minimum:</p> <ul style="list-style-type: none"> - The recipe - Amount of marijuana product used - Amount of end product created - SOPs that must be followed to manufacture the products. 	<p>Rules currently require that processors have ROFs, but they do not require that processors comply with them. This requirement needs to be in rule to ensure transparency and enforceability.</p>

<p>Establish testing allowances and information on how to obtain approval for allowances for cultivators certified to GACP-GMP by a body accredited under ISO 17065. The standard used for certification for GACP-GMP must be World Health Organization and American Herbal Products Association or equivalent</p>	<p>This will establish testing allowances for cultivators certified to GACP-GMP by a body accredited under ISO 17065.</p>
<p>Require processors to use the function in the statewide monitoring system for production batch each time they create a new batch of product or interim product. This batch must document within the system the amount of marijuana product used and the amount of product produced after production.</p>	<p>This will ensure licensees use the statewide monitoring system as intended so the CRA can better track product.</p>
<p>Require that processors identify as part of their application which of the following types of processing they intend to do and require a processor to notify and receive approval from the CRA prior to expanding their scope of operation.</p> <ul style="list-style-type: none"> - Repackage ready-made product - Extract raw material - Manufacture edibles - Use a kitchen to manufacture edibles - Produce infused – non-edible products - Purchase extracted product from other licensees to manufacture additional concentrate products – inhalable concentrates. 	<p>Providing this information will allow the CRA to focus time and resources on processors performing operations that have the potential to pose a greater risk to public health and safety.</p>
<p>Remove ISO 22000 as an equivalent option to CFR 117. (R420.403)</p>	<p>They are not equivalent.</p>
<p>Allow licensees to add QR codes to package labels and allow certain labeling requirements and testing results to be accessed via the QR code. The specific information that would be allowed under this rule may be determined, in part, by public comment.</p>	<p>This could simplify packaging and labeling while providing consumers access to more information.</p>
<p>Revise existing advertising rules to apply consistently to all types of advertising, including brands and business names, not just to marijuana products.</p>	<p>It is inconsistent to prohibit some types of advertising from appealing to minors but not other types. The CRA regularly hears concerns from the public about marijuana advertisements.</p>
<p>Define the following terms: Pre-Roll Remediation Pretreatment Recall Administrative Hold</p>	<p>These commonly used industry terms should be defined for clarity and consistency.</p>

<p>Require all marijuana or marijuana products received by a licensee to be recorded in the statewide monitoring system within 72 hours of receiving them into inventory.</p>	<p>Rules currently require that inventory be accurate in the statewide monitoring system but they do not specify a timeline in which the product has to be entered. This will provide protections for licensees who do not immediately update the statewide monitoring system, while providing a clear timeline for compliance.</p>
<p>Allow licensees 72 hours after a secure transporter delivers a shipment to verify the shipment received is accurate.</p>	<p>Secure transporters have shared concerns about how long it takes for licensees to verify shipments and licensees have complained that it's difficult to drop everything immediately and verify shipment.</p>

Enforcement

<p>Establish specific provisions concerning product recalls.</p>	<p>This requirement needs to be in rule to ensure transparency and enforceability.</p>
<p>Clarify the "limitations on a marijuana license" that can be imposed on licenses as disciplinary actions resulting from a violation.</p>	<p>This requirement needs to be in rule to ensure transparency and enforceability</p>