

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA DISCIPLINARY PROCEEDINGS

Filed with the secretary of state on June 22, 2020

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the executive director of the marijuana regulatory agency by section 206 of the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27206, sections 7 and 8 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27957 and 333.27958, and Executive Reorganization Order No. 2019-2, MCL 333.27001)

R 420.801, R 420.802, R 420.803, R 420.804, R 420.805, R 420.806, R 420.807, R 420.808, and R 420.809 are added to the Michigan Administrative Code as follows:

R 420.801 Definitions.

Rule 1. (1) As used in these rules:

(a) "Acts" refers to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, and the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967, when applicable.

(b) "Administrative hold" means a status given to marihuana product by the agency during an investigation into alleged violations of the acts and these rules. This status includes no sale or transfer of the marihuana product until the hold is lifted.

(c) "Agency" means the marijuana regulatory agency.

(d) "Marihuana business" means both a marihuana facility under the medical marihuana facilities licensing act, or a marihuana establishment under the Michigan regulation and taxation of marihuana act, or both.

(e) "Marihuana business location plan" means a marihuana facility plan under the medical marihuana facilities licensing act or a marihuana establishment plan under the Michigan regulation and taxation of marihuana act, or both.

(f) "Marihuana license" means a state operating license issued under the medical marihuana facilities licensing act or a state license issued under the Michigan regulation and taxation of marihuana act, or both.

(g) "Marihuana tracking act" means the marihuana tracking act, 2016 PA 282, MCL 333.27901 to 333.27904.

(h) "Medical marihuana facilities licensing act" or "MMFLA" means the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

(i) "Michigan medical marihuana act" means the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430.

(j) “Michigan regulation and taxation of marihuana act” or “MRTMA” means the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967.

(k) “These rules” means the administrative rules promulgated by the agency under the authority of the medical marihuana facilities licensing act, the marihuana tracking act, the Michigan regulation and taxation of marihuana act, and Executive Reorganization Order No. 2019-2, MCL 333.27001.

(2) Terms defined in the acts have the same meanings when used in these rules unless otherwise indicated.

#### R 420.802 Notification and reporting.

Rule 2. (1) Licensees have a continuing duty to provide the agency with up-to-date contact information and shall notify the agency in writing of any changes to the mailing addresses, phone numbers, electronic mail addresses, and other contact information they provide the agency.

(2) Licensees shall report to the agency any changes to the marihuana business operations that are required in the acts and these rules, as applicable.

(3) Licensees shall report to the agency any proposed material changes to the marihuana business before making a material change that may require prior authorization by the agency.

Material changes, include, but are not limited to, the following:

(a) Change in owners, officers, members, or managers.

(b) Change of processing machinery or equipment.

(c) A description of a violation of an ordinance or a zoning regulation adopted pursuant to section 205 of the medical marihuana facilities licensing act, MCL 333.27205, or section 6 of the Michigan regulation and taxation of marihuana act, MCL 333.27956, committed by the licensee, but only if the violation relates to activities licensed under the acts, the Michigan medical marihuana act, or these rules.

(d) The addition or removal of a person named in the application or disclosed.

(e) Change in entity name.

(f) Any attempted transfer, sale, or other conveyance of an interest in a marihuana license.

(g) Any change or modification to the marihuana business before or after licensure that was not preinspected, inspected, or part of the marihuana business location plan or final inspection, including, but not limited to, all of the following:

(i) Operational or method changes requiring inspection under these rules.

(ii) Additions or reductions in equipment or processes at a marihuana business.

(iii) Increase or decrease in the size or capacity of the marihuana business.

(iv) Alterations of ingress or egress.

(v) Changes that impact security, fire safety, and building safety.

(4) A licensee shall notify the agency within 1 business day of becoming aware or within 1 business day of when the licensee should have been aware of any of the following;

(a) Adverse reactions to a marihuana product sold or transferred by any licensee.

(b) Criminal convictions, charges, or civil judgments against a licensee in this state or any other state, federal, or foreign jurisdiction.

(c) Regulatory disciplinary action taken or determined against a licensee by this state or any other state, federal, or foreign jurisdiction, including any pending action.

(5) The licensee shall notify the agency within 10 days of the initiation or conclusion of any new judgments, lawsuits, legal proceedings, charges, or government investigations, whether initiated, pending, or concluded, that involve the licensee.

(6) The licensee shall notify the agency when an employee has been disciplined or removed from his or her position for misconduct related to marihuana sales or transfers.

(7) Failure to timely provide notifications or reports to the agency pursuant to this rule may result in sanctions or fines, or both.

#### R 420.803 Changes to licensed marihuana business.

Rule 3. (1) Any change or modification to the marihuana business after licensure is governed by the standards and procedures set forth in these rules and any regulations adopted pursuant to the acts. Any material change or modification to the marihuana business must be approved by the agency before the change or modification is made.

(2) Any change of a location of a marihuana business after licensure requires notification to the agency prior to the change of location, must be approved by the agency, requires a new marihuana license application under these rules, and may include, but is not limited to, all of the following:

(a) Additional applications fees.

(b) Additional inspections by the agency or BFS.

(c) Initial licensure fees or regulatory assessment, as applicable, or both.

(3) A licensee shall produce written documentation from the municipality approving the proposed new marihuana business location, and confirmation of compliance with any municipal ordinances the municipality adopted under the acts. For purposes of these rules, confirmation of compliance must be on an attestation form prepared by the agency that contains all of the information required in these rules.

#### R 420.804 Notifications of diversion, theft, loss, or criminal activity.

Rule 4. (1) Licensees shall notify the agency and local law enforcement authorities within 24 hours of becoming aware of, or within 24 hours of when the licensee should have been aware of, the theft or loss of any marihuana product or criminal activity at the marihuana business.

(2) Failure to notify as required under subrule (1) of this rule may result in sanctions or fines, or both.

#### R 420.805 Persons subject to penalty; violations.

Rule 5. (1) If the agency during a physical site inspection determines violations of the acts or these rules exist, the agency shall notify the person, applicant, or licensee of the violation during the physical site inspection or thereafter, and the person, applicant, or licensee may be subject to sanctions or fines, or both.

(2) The agency may issue a notice of violation, including, but not limited to, warnings, citations, formal complaints, or penalties, for any violations of the acts and applicable rules.

(3) If the agency determines a violation of the acts or these rules exists, these violations must be documented in a format established by the agency. After a notice of violation or fine, or both, is issued to a person, applicant, or licensee, the agency may hold a compliance conference or a hearing if applicable as prescribed in the acts and these rules.

(4) The agency may forward information regarding violations of the acts or these rules or any other state or federal law to the department of state police, department of attorney general, and the prosecutor for the jurisdiction in which the alleged violation occurred.

(5) The agency may take action for failure to pay any fine within the time written on the notice of violation pursuant to the acts or these rules.

(6) The agency may take action against a licensee for selling or transferring marihuana product that has been placed on an administrative hold, recalled, or ordered to be destroyed.

(7) A marihuana licensee may be subject to penalties if any person required to be disclosed as an applicant violates the acts or these rules.

(8) The agency may take action against a licensee holding a license under the MRTMA, if notified of a violation of a municipal ordinance pursuant to section 6 of the MRTMA, MCL 333.27956.

(9) The agency may take action against a licensee for knowingly making misrepresentations to the agency or its contractors during an investigation into the licensee.

(10) The attempted transfer, sale, or other conveyance of an interest in a marihuana license without prior approval are grounds for suspension or revocation of the marihuana license or for other sanctions as provided in these rules.

#### R 420.806 Penalties.

Rule 6. (1) A person, applicant, or licensee found in violation of the acts or these rules may be subject to sanctions, including, but not limited to, any of the following:

(a) Marihuana license denial.

(b) Limitations on a marihuana license.

(c) Fines.

(d) Revocation, suspension, nonrenewal of a license, or an administrative hold on a marihuana license.

(e) Orders to cease operations.

(2) A violation of the acts, the marihuana tracking act, or these rules may result in 1 or more of the following:

(a) Denial, revocation, or restriction of a marihuana license.

(b) Removal of a licensee or an employee of the licensee from the marihuana business.

(c) Civil fines up to \$10,000.00 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation of the acts, a final order, or these rules.

(d) Civil fines may be assessed for each day the licensee is not in compliance with each violation of the acts or these rules. Assessment of a civil fine is not a bar to the investigation, arrest, charging, or prosecution of an individual for any other violation of the acts or these rules.

(e) Civil fines of up to \$5,000.00 may be imposed against an individual licensed under the MMFLA.

(f) A violation of any ordinance adopted under section 205 of the MMFLA, MCL 333.27205, by a licensee holding a license under the medical marihuana facilities licensing act may result in the possible sanctions listed in subdivisions (a) to (e) of this subrule.

(g) A violation of any ordinance adopted under section 6 of the MRTMA, MCL 333.27956, by a licensee holding a license under the Michigan regulation and taxation of marihuana act may result in the possible sanctions listed in subdivisions (a) to (d) of this subrule.

(3) A marihuana license may be suspended without notice or hearing upon a determination that the safety or health of patrons or employees is jeopardized by continuing a marihuana business' operation.

(4) A person operating without a marihuana license shall cease operation and may be subject to sanctions, including, but not limited to, the sanctions in subrules (1) and (2) of this rule, and may be referred to the department of state police and department of attorney general.

(5) The agency may impose any other remedies, sanctions, or penalties not inconsistent with the acts or these rules.

#### Rule 420.807 Warning.

Rule 7. (1) The agency may issue a warning to a licensee if the agency determines through an investigation that the licensee violated the acts, these rules, or an order.

(2) A warning must remain in the licensee's file for one year from the date of service.

(3) A warning may be considered in future licensing actions. Continued or repeated non-compliance or repeated warnings for the same violation may result in further action, including the imposition of fines or other sanctions against a licensee, or both.

#### Rule 420.808 Formal complaint.

Rule 8. (1) After an investigation has been conducted and violations have been determined, the agency shall serve the formal complaint on the licensee by certified mail, return receipt requested, or in person by a representative of the agency.

(2) The licensee may do either of the following:

(a) Meet with the agency to negotiate a settlement of the matter, or demonstrate compliance prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(b) Proceed to a contested case hearing as set forth in these rules and section 71 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271.

(3) The licensee must request a compliance conference or contested case hearing, or both, within 21 days of receipt of the formal complaint. If the licensee does not respond, the agency shall request a contested case hearing.

(4) If the licensee agrees and accepts the terms negotiated at the compliance conference, the licensee and the agency shall execute a stipulation.

(5) An executed stipulation is subject to review and approval by the executive director of the agency. If the stipulation is approved, the agency shall issue a consent order. If the stipulation is not approved, a compliance conference or a contested case hearing shall be scheduled. The consent order shall be published.

(6) If a licensee does not comply with the terms of a signed and fully executed stipulation and consent order within the time frame listed in the consent order, the licensee's license is suspended until full compliance is demonstrated.

(7) If a compliance conference is not held or does not result in a settlement of a compliance action, a contested case hearing shall be held, pursuant to these rules and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328.

#### R 420. 809 Severability.

Rule 9. If any rule or subrule of these rules, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining portion of these rules.