

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA DISCIPLINARY PROCEEDINGS

Filed with the secretary of state on March 7, 2022

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 420.805, R 420.806, R 420.807, and R 420.808 of the Michigan Administrative Code are amended and R 420.808a is added, 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) “Administrative procedures act” means the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(d) “Agency” means the marijuana regulatory agency.

(e) “Another party” or “other party” means an individual or company with which a licensee contracts to use the individual or company’s intellectual property or to utilize management or other services provided by the individual or company.

(f) “Bureau of fire services” or “BFS” means the bureau of fire services in the department of licensing and regulatory affairs.

(g) “Contested case hearing” means an administrative hearing conducted by an administrative law judge within the Michigan office of administrative hearings and rules on behalf of the agency pursuant to the acts and these rules.

(h) “Employee” means a person performing work or service for compensation. “Employee” does not include a person providing trade or professional services who is not normally engaged in the operation of a marihuana business.

(i) “Licensing agreement” means any understanding or contract concerning the licensing of intellectual property related to marihuana products between a licensee and another party.

(j) “Management agreement” means any understanding or contract between a licensee and another party for the provision of management or other services that would allow the other party to exercise control over or participate in the management of the licensee or to receive more than 10% of the gross or net profit from the licensee during any full or partial calendar or fiscal year. A management agreement does not include an agreement for the reasonable payment of rent on a fixed basis under a bona fide lease or rental obligation unless the person exercises control over or participates in the management of the marihuana business.

(k) “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.

(l) “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.

(m) “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.

(n) “Marihuana tracking act” means the marihuana tracking act, 2016 PA 282, MCL 333.27901 to 333.27904.

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

(p) “Michigan Medical Marihuana Act” means the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430.

(q) “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.

(r) “Parties” means a licensee and another party pursuant to a licensing agreement or management agreement.

(s) “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. A proposed material change is any action that would result in alterations or changes being made to the marihuana business to effectuate the desired outcome of a material change. 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) The addition or removal of a person named in the application or disclosed.
- (d) Change in entity name.
- (e) Any attempted transfer, sale, or other conveyance of an interest in a marihuana license.
- (f) 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.
 - (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 3 business days of becoming aware or within 3 business days of when the licensee should have been aware of any of the following:
 - (a) Criminal convictions, charges, or civil judgments against a licensee in this state or any other state, federal, or foreign jurisdiction.
 - (b) Regulatory disciplinary action taken or determined against a licensee by this state or any other state, federal, or foreign jurisdiction, including any pending action.
 - (c) Action by another party in violation of the acts or these rules.
 - (d) Action by an employee in violation of the acts or these rules.
- (5) The licensee shall notify the agency within 10 business 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 within 10 business days of receiving notification of an alleged violation of an ordinance or a zoning regulation adopted pursuant to section 205 of the MMFLA, MCL 333.27205, or section 6 of the MRTMA, MCL 333.27956, committed by the licensee, but only if the violation relates to activities licensed under the acts, the Michigan Medical Marihuana Act, and these rules.
- (7) The licensee shall notify the agency within 10 business days of amending or terminating a licensing or management agreement that constitutes a material change to the marijuana business.
- (8) The licensee shall notify the agency within 10 business days of the appointment of a court-appointed personal representative, guardian, conservator, receiver, or trustee of the licensee.
- (9) 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.
- (10) The licensee shall notify the agency and the BFS within 1 business day following the occurrence of an unwanted fire.
- (11) 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, 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.

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) 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.

(3) 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.

(4) 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.

(5) 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 or otherwise required to be destroyed.

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

(7) 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.

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

(9) 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.

(10) The agency may take action against a licensee for employing an individual who has been excluded from employment at a marihuana business under R 420.808a.

(11) The agency may take action against a licensee for failing to remove from, or attempting to add to, the ownership of a marihuana business an individual who has been excluded from participation in a marihuana business under R 420.808(a).

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.
- (f) Denial of a marihuana license renewal.
- (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 MMFLA 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 MRTMA 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.

R 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 1 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 issuance of a formal complaint.

R 420.808 Formal complaint.

Rule 8. (1) The agency may issue a formal complaint alleging violations of the acts, these rules, or both against a licensee.

(2) 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.

(3) 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, MCL 24.292.

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

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

(5) If the licensee agrees and accepts the terms negotiated at the compliance conference, the agency shall submit a proposed consent order and stipulation to the executive director of the agency for review and approval.

(6) If the executive director approves the consent order and stipulation ~~is approved~~, the agency shall issue a consent order. If the stipulation is not approved, a compliance conference or a contested case hearing must be scheduled. The consent order must be published.

(7) If a licensee does not timely comply with the terms of a signed and fully executed consent order, the licensee's license is suspended until full compliance is demonstrated.

(8) If a compliance conference is not held or does not result in a settlement of a compliance action, a contested case hearing must be held, pursuant to these rules and the administrative procedures act.

R 420.808a Exclusion.

Rule 8a. (1) A person may be excluded from employment at, or participation in, a marihuana business upon a finding of any of the following:

(a) The person, while employed by a marihuana business, has engaged in conduct that is in violation of the acts or these rules that could negatively impact public health, safety, and welfare.

(b) The person is included on any valid and current exclusion list from another jurisdiction in the United States if the basis for the person's inclusion on the exclusion list would also be grounds for exclusion as set forth in this rule.

(c) The person has been convicted of distribution of a controlled substance to a minor in any jurisdiction.

(2) Upon a determination that a person comes under any of the criteria for exclusion, the person may be deemed a subject for exclusion and the agency shall file a notice of exclusion. The notice must include all of the following information:

(a) The identity of the subject.

(b) A factual statement including the circumstances or reasons that the person should be placed on the exclusion list.

(c) A recommendation as to whether the exclusion or ejection is permanent.

(3) The notice shall also inform the person of the availability of a hearing in compliance with R 420.704a.

(4) The notice shall be served upon the person the agency is seeking to exclude either by personal delivery or by certified mail, postage prepaid.

- (5) If a hearing is not requested, then the agency shall place the person on the exclusion list.
- (6) If the notice of exclusion provides for a temporary exclusion, then the agency shall set the term of the temporary exclusion.
 - (a) A temporary exclusion may not be less than 6 months.
 - (b) A temporary exclusion only applies to a person excluded for criteria related to conduct.
 - (c) All other exclusions are permanent.
- (7) The exclusion list must be a public record made available to licensees by the agency and must include information deemed necessary by the agency to facilitate identification of the person placed on the exclusion list.
- (8) A person who is placed on the exclusion list or served with a notice of exclusion is prohibited from being employed by or participating in a marihuana business until a determination by the agency or a court to the contrary.
- (9) A marihuana business shall exclude a person from the business that it knows or reasonably should know is on the exclusion list.
- (10) Failure by a marihuana business to exclude a person that it knows or reasonably should know is on the exclusion list may subject the marihuana business to disciplinary proceedings.