

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA SALE OR TRANSFER

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 420.501, R 420.502, R 420.503, R 420.504, R 420.505, R 420.506, R 420.507, R 420.508, R 420.509, and R 420.510 of the Michigan Administrative Code are amended, and R 420.503a is added, as follows:

R 420.501 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) “Cultivator” means a grower under the medical marihuana facilities licensing act or a marihuana grower under the Michigan Regulation and Taxation of Marihuana Act, or both.

(e) “Designated consumption establishment” means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

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

(g) “Final form” means the form a marihuana product is in when it is available for sale by a marihuana sales location not including consumer packaging. For marihuana products intended for inhalation, final form means the marihuana concentrate in an e-cigarette or a vaping device.

(h) “Immature plant” means a nonflowering marihuana plant that is no taller than 8 inches from the growing or cultivating medium and no wider than 8 inches produced from a cutting, clipping, tissue culture, or seedling that is in a growing or cultivating medium or in a growing or cultivating container.

(i) “Internal product sample” means a sample of marijuana products that a cultivator, producer, or marihuana sales location transfers directly to an employee for the purpose of ensuring product quality and making determinations about whether to sell or transfer the marihuana product.

(j) “Laboratory” refers to a safety compliance facility under the medical marihuana facilities licensing act or a marihuana safety compliance facility under the Michigan Regulation and Taxation of Marihuana Act, or both.

(k) “Marihuana business” refers to 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 customer” refers to a registered qualifying patient or registered primary caregiver under the medical marihuana facilities licensing act, or an individual 21 years of age or older under the Michigan Regulation and Taxation of Marihuana Act, or both.

(m) “Marihuana equivalent” means usable marihuana equivalent as that term is defined in section 3(o) of the Michigan Medical Marihuana Act, MCL 333.264243.

(n) “Marihuana establishment” means a location at which a licensee is licensed to operate a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, class A marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana related business licensed to operate by the agency under the Michigan Regulation and Taxation of Marihuana Act.

(o) “Marihuana facility” means a location at which a licensee is licensed to operate under the medical marihuana facilities licensing act.

(p) “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.

(q) “Marihuana product” means marihuana or a marihuana-infused product, or both, as those terms are defined in the acts unless otherwise provided for in these rules.

(r) “Marihuana sales location” refers to a provisioning center under the medical marihuana facilities licensing act, or a marihuana retailer, marihuana microbusiness, or class A marihuana microbusiness under the Michigan Regulation and Taxation of Marihuana Act, or both.

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

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

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

(v) “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.

(w) “Package tag” means an RFID tag supplied through the statewide monitoring system for the purpose of identifying a package containing a marihuana product.

(x) “Plant” means that term as defined in section 102 of the MMFLA, MCL 333.27102, unless otherwise defined in these rules.

(y) “Producer” means a processor under the medical marihuana facilities licensing act or a marihuana processor under the Michigan Regulation and Taxation of Marihuana Act, or both.

(z) “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.

(aa) “Tag” or “RFID tag” means the unique identification number or Radio Frequency Identification (RFID) issued to a licensee by the statewide monitoring system for tracking, identifying, and verifying marihuana plants, marihuana products, and packages of marihuana products in the statewide monitoring system.

(bb) “Trade sample” means a sample of marihuana products that a cultivator or producer provides to licensees for the purpose of the licensee determining whether to purchase the marihuana product.

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

R 420.502 Tracking identification; labeling requirements; general.

Rule 2. (1) Each marihuana products sold or transferred must be clearly labeled with the tracking identification numbers assigned by the statewide monitoring system affixed, tagged, or labeled and recorded, and any other information required by the agency, the acts, and these rules.

(2) The agency may place an administrative hold on marihuana products, recall marihuana products, issue safety warnings, and require a marihuana business to provide informational material or notifications to a marihuana customer at the point of sale.

(3) A marihuana business shall not sell or transfer a marihuana product that has been placed on administrative hold, recalled, or ordered or otherwise required to be destroyed.

(4) A marihuana business shall not sell or a transfer marihuana product after the printed expiration date on the package. An expired marihuana product must be destroyed except as provided in R 420.214c(2)(f).

(5) Prior to selling or transferring a marihuana product, a marihuana business must verify in the statewide monitoring system, that the marihuana product has not been placed on an administrative hold, recalled, or ordered to be destroyed.

(6) A marihuana business shall destroy all product required to be destroyed for any reason within 90 calendar days of when the marihuana business became aware of the fact that the product must be destroyed.

R 420.503 Marihuana plant; tracking requirements.

Rule 3. Before a marihuana plant is sold or transferred, a package tag must be affixed to the plant or plant container and enclosed in a tamper proof seal that includes all of the following information:

(a) Business or trade name, licensee number, and the RFID package tag assigned by the statewide monitoring system that is visible.

(b) Name of the strain.

(c) Date of harvest.

(d) Seed strain.

(e) Universal symbol.

R 420.503a Sale or transfer of immature plant batches from a cultivator to a marihuana sales location.

Rule 3a. (1) A cultivator approved by the agency to sell or transfer immature plant batches to a marihuana sales location is not required to transfer the immature plant batches using a marihuana transporter.

(2) Immature plant batches transferred from a cultivator to a marihuana sales location are not required to undergo the testing required by R 420.304 and R 420.305.

R 420.504 Marihuana product sale or transfer; labeling and packaging requirements.

Rule 4. (1) Before a marihuana product is sold or transferred to or by a marihuana sales location, the container, bag, or product holding the marihuana product must be sealed and labeled with all of the following information:

(a) The name and the state license number of the cultivator or producer, including business or trade name, and package tag as assigned by the statewide monitoring system.

(b) The name and the marihuana license number of the licensee that packaged the product, including business or trade name, if different from the producer of the marihuana product.

(c) Date of harvest, if applicable.

(d) Name of strain, if applicable.

(e) Net weight in United States customary or metric units.

(f) Concentration of Tetrahydrocannabinol (THC) and cannabidiol (CBD) as reported by the laboratory after potency testing along with a statement that the actual value may vary from the reported value by 10%.

(g) Activation time expressed in words or through a pictogram.

(h) Name of the laboratory that performed ~~any~~ passing compliance testing on the product in final form and any test analysis date.

(i) The universal symbol for marihuana product published on the agency's website.

(j) A warning that includes all the following statements:

(i) "It is illegal to drive a motor vehicle while under the influence of marihuana."

(ii) "National Poison Control Center 1-800-222-1222."

(iii) For products being sold by a marihuana facility that exceed the maximum THC levels allowed for products sold under MRTMA, "For use by registered qualifying patients only. Keep out of reach of children."

(iv) For all other products, "For use by individuals 21 years of age or older or registered qualifying patients only. Keep out of reach of children."

(v) In clearly legible type and surrounded by a continuous heavy line: "WARNING: USE BY PREGNANT OR BREASTFEEDING WOMEN, OR BY WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL PROBLEMS FOR THE CHILD."

(2) An edible marihuana product sold by a marihuana sales location must comply with R 420.403(7) to (10).

(3) An infused marihuana product sold by a marihuana sales location must comply with R 420.403(7).

(4) A marihuana sales location must make available to every customer at the time of sale a pamphlet measuring at least 3.5 inches by 5 inches, that includes, at minimum, the statement "National Poison Control Center Hotline 1-800-222-1212," and at least two of the following statements:

(a) Marijuana use during adolescence may affect the developing brain negatively by impairing thinking and problem solving.

(b) Marijuana use during adolescence may affect the developing brain negatively by impairing memory and learning.

(c) Marijuana use during adolescence may affect the developing brain negatively by impairing coordination.

(d) Marijuana use during adolescence may affect the developing brain negatively by impairing ability to maintain attention.

(e) Marijuana use during adolescence may impact performance in school.

(f) Marijuana use during adolescence may impact the risk of mental health issues.

(g) Marijuana use during adolescence may impact driving abilities.

(h) Marijuana use during adolescence may impact the potential for addiction.

(i) Any other statement as approved by the agency and published on the agency's website.

R 420.505 Sale or transfer; marihuana sales location.

Rule 5. (1) A marihuana sales location shall verify all of the following prior to selling or transferring marihuana or a marihuana product to a marihuana customer:

(a) The marihuana product has not been placed on administrative hold, recalled, or ordered or otherwise required to be destroyed.

(b) The marihuana product is not past its expiration date.

(c) The marihuana customer presented his or her valid driver's license or government-issued identification card that bears a photographic image of the qualifying patient or primary caregiver, under the MMFLA; or bears a photographic image and proof that the individual is 21 years of age or older, under the MRTMA.

(d) The completed transfer or sale will not exceed the purchasing limit prescribed in R 420.506.

(e) The marihuana product has been tested in accordance with R 420.305.

(f) The marihuana product is labeled and packaged for sale or transfer in accordance with R 420.504.

(g) The registered qualifying patient or registered primary caregiver holds a valid, current, unexpired, and unrevoked registry identification card.

(2) A marihuana sales location shall enter all transactions, current inventory, and other information required by these rules in the statewide monitoring system. The marihuana sales location shall maintain appropriate records of all sales or transfers under the acts and these rules and make them available to the agency upon request.

(3) A provisioning center licensed under the MMFLA shall verify all of the following prior to selling or transferring a marihuana product to a visiting qualifying patient:

(a) The visiting qualifying patient has a valid unexpired medical marihuana registry card, or its equivalent issued in another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana.

(b) The visiting qualifying patient presented his or her valid driver license or government-issued identification card that bears a photographic image of the visiting qualifying patient.

(c) The transfer or sale, if completed, will not exceed the purchasing limit prescribed in R 420.506.

(d) The marihuana product that is sold or transferred under this rule has been tested in accordance with R 420.305.

(e) The marihuana product is labeled and packaged for sale or transfer in accordance with R 420.504.

(f) As used in this subrule, “visiting qualifying patient” means that term as defined in section 3 of the Michigan Medical Marihuana Act, MCL 333.26423.

(4) A marihuana retailer, marihuana microbusiness, or class A marihuana microbusiness licensed under the MRTMA is not required to retain information from customers other than the following:

- (a) Payment method.
- (b) Amount of payment.
- (c) Time of sale.
- (d) Product quantity.
- (e) Other product descriptors.

R 420.506 Purchasing limits; transactions; marihuana sales location.

Rule 6. (1) Before the sale or transfer of marihuana product to a registered qualifying patient or registered primary caregiver, under the MMFLA, the licensee shall verify in the statewide monitoring system that the sale or transfer does not exceed either of the daily purchasing limits as follows:

(a) For a registered qualifying patient, an amount of marihuana product that does not, in total, exceed 2.5 ounces of marihuana or marihuana equivalent per day.

(b) For a registered primary caregiver, an amount of marihuana product that does not, in total, exceed 2.5 ounces of marihuana or marihuana equivalent per day for each registered qualifying patient with whom he or she is connected through the agency’s registration process.

(2) Before the sale or transfer of marihuana product to a registered qualifying patient or registered primary caregiver, under the MMFLA, the licensee shall verify in the statewide monitoring system that the sale or transfer does not exceed the monthly purchasing limit of 10 ounces of marihuana product per month to a qualifying patient, either directly or through the qualifying patient’s registered primary caregiver.

(3) A marihuana retailer, under the MRTMA, is prohibited from making a sale or transferring marihuana to an adult 21 years of age or older in a single transaction that exceeds 2.5 ounces.; Not more than 15 grams of marihuana may be in the form of marihuana concentrate.

(4) A marihuana sales location may sell no more than 3 immature plants to a marihuana customer per transaction.

R 420.507 Marketing and advertising restrictions.

Rule 7. (1) A marihuana product may only be advertised or marketed in compliance with all applicable municipal ordinances, state law, and these rules that regulate signs and advertising.

(2) A licensee may not advertise a marihuana product in a way that is deceptive, false, or misleading, or make any deceptive, false, or misleading assertions or statements on any marihuana product, sign, or document provided.

(3) Marihuana product marketing, advertising, packaging, and labeling must not contain any claim related to health or health benefits, unless a qualified health claim has received and complies with a Letter of Enforcement Discretion issued by the United States Food and Drug

Administration (FDA), or the health claim has been approved under the significant scientific agreement standard by the FDA.

(4) A marihuana product must not be advertised or marketed to members of the public unless the person advertising the product has reliable evidence that no more than 30% of the audience or readership for the television program, radio program, internet website, or print publication, is reasonably expected to be under the age listed in subrules (7) and (8) of this rule. Any marihuana product advertised or marketed must include the warnings listed in R 420.504(1)(k).

(5) A person receiving reasonable payment under a licensing agreement or contract approved by the agency concerning the licensing of intellectual property, including, but not limited to, brands and recipes, is responsible for any marketing or advertising undertaken by either party to the agreement.

(6) A marihuana product marketed or advertised under the MMFLA must be marketed or advertised as “medical marihuana” for use only by registered qualifying patients or registered primary caregivers-

(7) A marihuana product marketed or advertised under the MMFLA must not be marketed or advertised to minors aged 17 years or younger. Sponsorships targeting individuals aged 17 years or younger are prohibited.

(8) A marihuana product marketed or advertised under the MRTMA must be marketed or advertised as “marihuana” for use only by individuals 21 years of age or older.

(9) A marihuana product marketed or advertised under the MRTMA must not be marketed or advertised to individuals under 21 years of age. Sponsorships targeting individuals under 21 years of age are prohibited.

#### R 420.508 Trade samples.

Rule 8. (1) The following licensees may provide trade samples:

(a) A cultivator may transfer trade samples of marihuana products to a producer or a marihuana sales location.

(b) A producer may transfer trade samples of marihuana products to a producer or marihuana sales location.

(2) The transfer of trade samples does not require the use of a secure transporter under the MMFLA or a marihuana secure transporter under the MRTMA if the amount of trade samples does not exceed either of the following:

(a) 15 ounces of marihuana.

(b) 60 grams of marihuana concentrate.

(3) Trade samples must not be sold or transferred by the receiving producer or marihuana sales location to another producer or marihuana sales location or to a consumer.

(4) Any trade sample transferred to a producer or marihuana sales location or received by a producer or a marihuana sales location must be recorded in the statewide monitoring system.

(5) Any trade samples transferred under this rule must be tested in accordance with these rules prior to being transferred to a producer or marihuana sales location.

(6) A cultivator and producer are limited to transferring the following aggregate amounts of trade samples to a producer or a marihuana sales location in a 30-day period:

(a) 2.5 ounces of marihuana.

(b) 15 grams of marihuana concentrate.

(7) In addition to the information required in R 420.403, a trade sample must have a label containing the statement “TRADE SAMPLE NOT FOR RESALE” in bold, capital letters attached to the trade sample.

(8) A producer or marihuana sales location that receives a trade sample may distribute the trade sample to its employees to determine whether to purchase the marihuana product. A producer or marihuana sales location is limited to transferring a total of 1 ounce of marihuana, a total of 6 grams of marihuana concentrate, and marihuana infused products with a total THC content of 2000 mgs of internal product samples to each of its employees in a 30-day period.

#### R 420.509 Internal product samples.

Rule 9. (1) A cultivator, producer, marihuana sales location, ~~or~~ marihuana microbusiness, or class A marihuana microbusiness may transfer internal product samples directly to its employees for the purpose of ensuring product quality and making determinations about whether to sell the marihuana product.

(2) Internal product samples may not be transferred or sold to another licensee or consumer.

(3) A licensee shall record the transfer of an internal product sample in the statewide monitoring system.

(4) A cultivator is limited to transferring a total of 1 ounce of internal product samples to each of its employees in a 30-day period.

(5) A producer is limited to transferring a total of 6 grams of marihuana concentrate and marihuana infused products with a total THC content of 2000 mgs of internal product samples to each of its employees in a 30-day period.

(6) A marihuana sales location, marihuana microbusiness, and class A marihuana microbusiness are limited to transferring a total of 1 ounce of marihuana, a total of 6 grams of marihuana concentrate, and marihuana infused products with a total THC content of 2000 mgs of internal product samples to each of its employees in a 30-day period.

(7) A licensee shall have internal product samples tested pursuant to R 420.304 and R 420.305 before transfer to its employees.

#### R 420.510 Product development.

Rule 10. (1) A cultivator or producer may engage in product development. No other marihuana business may engage in product development.

(2) A cultivator may designate marihuana plants for product development. Any marihuana plants designated for product development count toward the authorized total amount of marihuana plants for a cultivator and must be tracked in the statewide monitoring system.

(3) A producer may designate marihuana concentrate for product development. Any marihuana concentrates designated for product development must be tracked in the statewide monitoring system.

(4) A licensee engaged in product development may submit his or her product development inventory to a laboratory for research and development testing in accordance with these rules.

(5) Disciplinary action may not be taken against a licensee for failed research and development test results on his or her product development inventory.

(6) A cultivator or producer may transfer its product development inventory to its employees for consumption. A licensee shall have product development inventory tested pursuant to R



420.304 and R 420.305 before transferring it to an employee. Any product development inventory that is not properly transferred to an employee must be destroyed pursuant to these rules. All product development inventory transferred to an employee counts toward the limitations in R 420.509(4) and R 420.509(5), as applicable.

(7) A licensee shall record the transfer of product development inventory in the statewide monitoring system.

(8) Product development inventory may not be consumed or used on the premises of the licensee.

(9) A licensee shall not transfer or sell inventory designated for product development to a marihuana sales location, or to a marihuana customer, until after the inventory is tested pursuant to R 420.304 and R 420.305, and the test results in the statewide monitoring system indicate a passed full compliance testing.

(10) Any product development inventory that is transferred to a marihuana sales location must be labeled in accordance with R 420.504.

(11) A cultivator or producer may also engage in a research study with an entity duly authorized by the Drug Enforcement Administration to handle marihuana. A licensee's participation in a research study must be approved by the agency.

(12) A licensee participating in an approved research study shall track all marihuana product involved in the research study in the statewide monitoring system.