

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA DECLARATORY RULINGS

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 5 of the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26425, 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 420.821, R 420.822, and R 420.823 are added to the Michigan Administrative Code, as follows:

R 420.821 Definitions.

Rule 21. (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, the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967, the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430, and the marihuana tracking act, 2016 PA 282, MCL 333.27901 to 333.27904, when applicable.

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

(c) “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 in accordance with the acts and these rules.

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

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

(f) “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.

(g) “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 420.822 Declaratory rulings.

Rule 22. (1) Any interested person may request a declaratory ruling as to the applicability to an actual state of facts of a statute, rule, final order, or decision administered, promulgated, or issued by the agency. A request may not relate to a hypothetical fact situation.

(2) The request must be on a form provided by the agency and contain all of the following information:

- (a) The interested person's name, mailing address, email address, and telephone number.
- (b) The interested person's interest in the matter, including assertions regarding the person's legal standing to request a declaratory ruling.
- (c) The statute, rule, or order to which the request applies.
- (d) A complete, accurate, and concise statement of the facts to which the statute, rule, or order may apply.
- (e) An analysis, legal brief, or memorandum of the issues presented, including reference to any legal authority relied upon, and the interested person's conclusions.

(3) Within 60 calendar days of receipt of the request, the agency shall issue a written notification stating whether or not a declaratory ruling will be issued.

(4) If the agency has determined that it will issue a declaratory ruling, then it shall do so within 90 calendar days of the notification date specified in subrule (3) of this rule, unless the agency notifies the interested person in writing of the need for additional time, and the reasons for the additional time.

(5) Before the issuance of the declaratory ruling, the agency, in its discretion, may choose to do 1 or more of the following:

- (a) Seek consultation, comments, or advice from legal counsel, experts within or outside the agency, local, state, or federal governmental agencies, or any other source.
- (b) Request information or clarification from other interested parties.
- (c) Advise the person requesting the ruling that further clarification of the facts must be provided, or that the agency requires additional time to conduct a review.

(6) If subrule (5)(c) of this rule is invoked, the agency shall either deny or grant the request within 60 calendar days after receiving satisfactory clarification of facts from the requesting person or from the date the agency notifies the requesting person of the need for additional time.

(7) The agency shall issue a declaratory ruling only in matters where all the relevant facts are stipulated to by the requesting party and the agency. If relevant facts necessary to issue a declaratory ruling are contested, then a declaratory ruling shall not be issued.

(8) A denial or adverse decision of a declaratory ruling does not entitle a person to a contested case hearing.

(9) Requests regarding enforcement issues are not a proper subject for a declaratory ruling.

(10) The agency may require that a contested case hearing take place instead of issuing a declaratory ruling.

(11) In the discretion of the agency, a request for declaratory ruling may be denied if the interested person fails to follow the procedure for submission set forth in this rule, if the state of facts is incomplete or inaccurate, if the facts or circumstances relate to a changing situation, if the ruling would not be in the public interest or in furtherance of statutory objectives, or for any other stated reason. The agency shall set forth the reasons for denial of the request in its written notification to the interested person.

(12) If a declaratory ruling is issued by the agency, it must be in writing, and contain all of the following:

- (a) The specific facts upon which it is based.
 - (b) The legal authority upon which it is based.
 - (c) The ruling itself.
 - (d) A statement that the ruling is limited to the specific facts presented and to the statute, rule, final decision, or order identified by the interested person or other statute, rule, final decision, or order identified by the agency.
 - (e) A statement that the ruling is binding on the agency and the interested person unless it is altered or set aside by any court.
 - (f) A statement that the agency may not retroactively change the ruling but may prospectively do so in its discretion.
- (13) Nothing in this rule is intended to limit or restrict the agency's ability to respond to questions or inquiries from licensees or the general public, but any agency response to such questions or inquiries shall not be binding on the agency.

R 420.823 Severability.

Rule 23. 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.