DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA SALE OR TRANSFER

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 marihuana 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, R 420.510, and R 420.511 are added to the Michigan Administrative Code 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) “Batch” means all marihuana product of the same variety that has been processed together and exposed to substantially similar conditions throughout processing.

(e) “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.

(f) “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.

(g) “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.

(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 products possessed by a cultivator, producer, or marihuana sales location that is provided directly to an employee for the purpose of ensuring product quality and making determinations about whether to sell 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 333.26424.

(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, 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 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.

(q) “Marihuana sales location” refers to a provisioning center under the medical marihuana facilities licensing act, or a marihuana retailer or marihuana microbusiness under the Michigan regulation and taxation of marihuana act, or both.

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

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

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

(u) “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.

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

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

(x) “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.

(y) “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.

(z) “Tag” or “RFID tag” means the unique identification number or Radio Frequency Identification (RFID) issued to a licensee by the agency for tracking, identifying, and verifying

marihuana plants, marihuana products, and packages of marihuana products in the statewide monitoring system.

(aa) "Trade sample" means a sample of marihuana products provided to licensees by a cultivator or producer for the purpose of 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) All marihuana products sold or transferred between marihuana businesses must have the tracking identification numbers that are 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) To ensure access to safe sources of marihuana products, the agency, if alerted in the statewide monitoring system, may place an administrative hold on marihuana products, recall marihuana products, issue safety warnings, and require a marihuana business to provide information material or notifications to a marihuana customer at the point of sale.

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

(4) A marihuana business must verify in the statewide monitoring system, prior to any sale or transfer, that the marihuana product has not been placed on an administrative hold, recalled, or ordered to 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 with 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, if applicable.

(d) Seed strain, if applicable.

(e) Universal symbol, if applicable.

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 producer, including business or trade name, and tag and source number 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) The unique identification number for the package or the harvest, if applicable.

(d) Date of harvest, if applicable.

(e) Name of strain, if applicable.

(f) Net weight in United States customary and metric units.

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

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

(i) Name of the laboratory that performed any test, and any test analysis date.

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

(k) A warning that states all the following:

(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 licensee under the medical marihuana facilities licensing act 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 being sold by a licensee "For use by individuals 21 years of age or older or registered qualifying patients only. Keep out of reach of children."

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

R 420.505 Sale or transfer; marihuana sales location.

Rule 5. (1) A marihuana sales location may sell or transfer marihuana or a marihuana product to a marihuana customer if all of the following are met:

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

(b) The licensee confirms that 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 medical marihuana facilities licensing act; or bears a photographic image and proof that the individual is 21 years of age or older, under the Michigan regulation and taxation of marihuana act.

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

(d) Any marihuana product that is sold or transferred under this rule has been tested in accordance with R 420.305 and is labeled and packaged for sale or transfer in accordance with R 420.504.

(e) A licensee selling marihuana product pursuant to the medical marihuana facilities licensing act verifies with the statewide monitoring system that 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 in compliance with the acts and these rules. 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 medical marihuana facilities licensing act may sell or transfer a marihuana product to a visiting qualifying patient if all of the following are met:

(a) The licensee verifies that 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 licensee confirms that 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 licensee determines, if completed, that any transfer or sale will not exceed the purchasing limit prescribed in R 420.506.

(d) Any marihuana product that is sold or transferred under this rule has been tested in accordance with R 420.305 and is labeled and packaged for sale or transfer in accordance with R 420.504.

(e) 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 or microbusiness licensed under the Michigan regulation and taxation of marihuana act 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 medical marihuana facilities licensing act, 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 medical marihuana facilities licensing act, 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 Michigan regulation and taxation of marihuana act, 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, except that 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 a way that complies with all municipal ordinances, state law, and these rules that regulate signs and advertising.

(2) Marihuana product must not be advertised in a way that is deceptive, false, or misleading. A person shall not 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) 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 percent 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 under this rule 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 under the medical marihuana facilities licensing act must be marketed or advertised as "medical marihuana" for use only by registered qualifying patients or registered primary caregivers.

(7) A marihuana product under the medical marihuana facilities licensing act 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 under the Michigan regulation and taxation of marihuana act must be marketed or advertised as "marihuana" for use only by individuals 21 years of age or older.

(9) A marihuana product under the Michigan regulation and taxation of marihuana act 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 provide samples of marihuana products to a producer or a marihuana sales location.

(b) A producer may provide 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:

(a) 15 ounces of marihuana.

(b) 60 grams of marihuana concentrate.

(3) Trade samples must not be sold to another licensee or consumer.

(4) Any sample provided to another licensee or received by a licensee must be recorded in the statewide monitoring system.

(5) Any trade samples provided under this rule must be tested in accordance with these rules prior to being transferred to another licensee.

(6) A licensee is limited to providing the following aggregate amounts of trade samples to another licensee in a 30-day period:

(a) 2.5 ounces of marihuana.

(b) 15 grams of marihuana concentrate.

(7) Any sample given to a licensee must have a label containing the following in a legible font:

(a) A statement that reads: "TRADE SAMPLE NOT FOR RESALE" in bold, capital letters attached to the trade sample.

(b) All other information required in R 420.403.

(8) A licensee who receives a trade sample may distribute the trade sample to its employees to determine whether to purchase the marihuana product.

R 420.509 Internal product samples.

Rule 9. (1) A cultivator, producer, marihuana sales location, or marihuana microbusiness may provide 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) Any internal product sample provided under this rule must be recorded in the statewide monitoring system.

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

(5) A producer is limited to providing a total of 2 grams of marihuana concentrate and marihuana infused products with a total THC content of 2000 mgs of internal product samples to each of their employees in a 30-day period.

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 towards 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 their product development inventory to a laboratory for research and development testing in accordance with these rules.

(5) Disciplinary action shall not be taken against a licensee for failed research and development test results on their product development inventory.

(6) A licensee authorized under this rule to engage in product development 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 transfer to its employees. The licensee shall not transfer or sell product development inventory to a marihuana sales location until after test results in the statewide monitoring system indicate a passed test. Any product development inventory that is not properly transferred to an employee must be destroyed pursuant to these rules.

(7) The inventory designated for product development may not be consumed or used on the premises of the licensee.

(8) A licensee shall not transfer or sell inventory designated for product development to a marihuana sales location, or to a marihuana customer, until after test results in the statewide monitoring system indicate a passed test.

(9) A licensee authorized under this rule to engage in product development may also engage in a research study with a college, university, or hospital approved by the United States Food and Drug Administration and sponsored by a non-profit organization or researcher within an academic institution researching marihuana. A licensee's participation in a research study must be approved by the agency.

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

R 420. 511 Severability.

Rule 11. 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.