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February 17, 2020

Marijuana Regulatory Agency
Legal Section
P.O. Box 30205
Lansing, MI 48909

Re: Comments to Proposed Combined Topic-Based Rule Sets

To Whom it May Concern:

As the chair of the Cannabis Law Practice at Dykema, I am writing to offer comments on the Michigan Marijuana Regulatory Agency's (the "MRA") proposed combined topic-based rule sets: Marijuana Licenses; Marijuana Licensees; Marijuana Operations; Marijuana Sampling and Testing; Marijuana Infused Products and Edible Marijuana Products; Marijuana Sale or Transfer; Marijuana Employees; Marijuana Hearings; Marijuana Disciplinary Proceedings; Industrial Hemp for Marijuana Businesses; and Medical Marijuana Facilities (Rescinded) (collectively referred to as the "Proposed Rules") being promulgated pursuant to the Medical Marihuana Facilities Licensing Act ("MMFLA") and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

As you know, our attorneys and government policy advisors represent clients in all facets of the medical and adult use cannabis industry. Our comments are based on our collective experience and the experience and views of many of our clients. Pursuant to the rulemaking process and the request for public comments, please find below Dykema's comments and recommendations on the proposed rules.

1. General Global Comments

Although most of our comments are targeted to isolated provisions within the Proposed Rules, and are set forth below on a rule by rule basis, two of our comments implicate issues that are reflected by multiple proposed rules.

First, as a general matter, all provisions related to Labor Peace Agreements should be eliminated. A mandate to enter into Labor Peace Agreements as a condition of licensure violates the National Labor Relations Act ("NLRA") and exceeds the statutory authority given to the

Department. Additionally, Labor Peace Agreements effectively place the terms and conditions of employment in the hands of an arbitrator. In an industry that is just beginning to find its way, and where income and expenses already fluctuate wildly, requiring critical economic decisions to be made by a third party does nothing to protect the interests of the industry, patients, consumers, and the state. Therefore, all provisions related to Labor Peace Agreements should be removed in entirety from all rule sets.

Second, we believe that there should be significant rewrites of the testing provisions. We have already seen instances where MRA has imposed new standards and ordered hundreds of thousands of dollars of product to be destroyed, only to then realize that the standards were flawed or should be implemented differently, and reverse course. Producers who were ordered to destroy product that MRA later determined was not harmful have suffered significant economic harm with no recompense. We believe these concerns are best addressed by allowing greater flexibility when it comes to remediation and by broadening the concept of administrative holds beyond simply cases of rules violations, to also encompass product that has initially failed testing. This would provide producers the ability to contest the appropriateness or sufficiency of testing standards without having to destroy viable product.

Third, we believe that the MRA should exercise its authority to establish new license types to establish a license for receiver businesses. As we have learned from other states, we should expect significant business failures in this industry. Yet, cannabis businesses cannot avail themselves of federal bankruptcy protection. Additionally, MRA's rules provide for the suspension and revocation of licenses. In an industry where licensees may have product midstream in growth or production, or significant inventories, suspending operations can lead to significant loss, and jeopardize the interests of creditors. This can also incentivize product diversion. Having licensed receivers able to step in to operate or liquidate facilities serves numerous public interests.

2. Marijuana Licenses 2019-67 LR

<u>R 420.1(1)(c)—Definition of "Applicant"</u>

The term "indirect ownership interest," used in 420.1(1)(c)(i), comes directly from the MMFLA but was not defined by the Legislature, leading to confusion and inconsistent practice and advice from attorneys in the industry. The Proposed Rules should either define the term or state that MRA will provide guidance as to the MRA's interpretation. We often see what may be considered indirect interests arise through the provision of equity in only one license of an entity that possesses multiple licenses, or with respect to one product line. Today, it is not clear if an indirect interest of 10% should be calculated based on total equity, total revenues, or some other metric. MRA guidance would be useful.

Also, we appreciate the express permission for both financing arrangements and licensing agreements. Under 420.1(1)(c)(ii)(A) and (D), however, we recommend defining the terms "reasonable interest rate" and "reasonable payment," respectively. At a minimum, the rules should state that MRA will provide guidance to the industry with respect to these terms.

R 420.1(1)(l)—Definition of "Employee"

Under 420.1(1)(l), the definition of "Employee" excludes "individuals providing trade services who are not normally engaged in the operation of a marihuana business." Dykema suggests that the language read "Employee" does not include "individuals providing trade ***or professional*** services who are not normally engaged in the operation of a marihuana business.

R 420.3—Application procedure; requirements

Under 420.3(2), Dykema suggests allowing prequalification status for grow facilities currently under construction to extend beyond 1 year to avoid having to re-qualify grow facilities whose municipal approval process and construction schedule often extends far beyond that timeframe. This is especially problematic when a municipality requires prequalification status as a condition to local approval, and prequalification status could be temporarily lost. Dykema suggests providing that the MRA may request updated information from an applicant within 90 days prior to the expiration of prequalification status, and allow applicants with their facility under construction to maintain uninterrupted prequalification status so long as circumstances have not changed in a manner that affects suitability.

R 420.4—Application requirements; financial and criminal background

Under 420.4(2)(a)(i)(C), Dykema suggests amending the language "all loans" to read "all loan types specified by the Department," thus providing explicit authority for the MRA to exclude auto loans, credit cards, student loans or other loans that the MRA may find to be unnecessary to examine.

Under 420.4(13), while we understand the need to have adult-use licensees pass a facility inspection on a timely basis, we also believe that this requirement provides municipalities the ability to sidestep important MRTMA protections, at least insofar as MRA requires local certificates of occupancy as a condition for passing inspection. As you know, MRTMA provides municipalities the ability to opt out of allowing adult use businesses in their communities, but MRTMA also explicitly states that ineligibility of an applicant to receive a license on this basis must be tested as of the time the applicant files its application. MRTMA also expressly provides that a municipal ordinance may not prevent an applicant from operating certain types of adult-use establishments where the applicant already has an operating MMFLA facility. Despite the fact that MMFLA and MRTMA operations and impacts are identical in nature (indeed, for many

license types the only observable difference is the color of the Metrc tag), we have seen municipalities refusing to issue certificates of occupancy for adult-use purposes to existing medical facilities. A licensee should have the ability to demonstrate to MRA that a municipality is improperly withholding documentation, without being forced to suffer a license denial and then sue either the MRA or the municipality.

R 420.5—Application requirements; complete application

Under 420.5(4)-(5), Dykema suggests allowing more than 5 days for applicants to supply missing information or proof of corrected deficiencies to the agency, at least in the case of MMFLA applicants for whom there is no 90-day deadline for MRA decision making.

R 420.10—Proof of financial responsibility; insurance

Dykema suggests adding language to sections (1) and (4) that would require licensees to maintain $100,000 in liability insurance ***per location*** as opposed to per license.

R 420.11—Capitalization requirements; medical marihuana facilities licensing act

Dykema suggests amending section (1) to read "On its initial application for licensure under the medical marihuana facilities licensing act, an applicant shall disclose the sources and total amount of capitalization to operate and maintain a proposed marihuana facility." In other words, the capitalization requirements should not be applicable to the expansion of existing facilities.

R 420.12—Denial of a marihuana license; additional reasons

Dykema suggests that 420.12(2)(e) and (n) apply to adult-use applicants only, as they again stem from the MRA's need to more quickly process adult-use applications.

R 420.13—Renewal of state license

Under section (1)(a) and (2) the MRA is requiring spouses on renewal applications to be fingerprinted, and apparently treating a disqualified spouse as a basis to disqualify an entity on renewal. This applies new "applicant" language from 2018 statutory amendments to both initial applicants ***and*** renewals. We believe this is entirely contrary to legislative intent and to the language of the MMFLA.

The original set of amendments proposed by LARA/BMMR in 2018 made the definitional change equally applicable to those in the application process and those who had yet to file. This caused a particular concern by essentially retroactively changing the standard for

those who had already filed applications. More specifically, this caused specific concerns for applicants who worked with Rep. Kesto to ensure the changes would not be retroactively applied; this was the genesis of the language limiting the effectiveness of the change to only applications submitted "on or after January 1, 2019." To now include and enforce these standards on renewal to entities that applied before January 1, 2019, would completely subvert and undermine the Legislature's intent in adding the January 1, 2019, language.

Additionally, to add these requirements on renewal is inconsistent with the statutory language itself. The MMFLA, as amended, makes an express distinction between "Applicant" and "Licensee" under the MMFLA, as amended, along with a possible argument about MRA not properly exercising its deference when carrying out the MMFLA depending on its ultimate position. The MMFLA has specifically defined both "Applicant" and "Licensee" and references the various definitions based on whether the license is being applied for or whether it is being renewed. Thus, an "Applicant" is not a "Licensee" and a "Licensee" is not an "Applicant." Michigan courts have continuously held that "[w]hen interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature. To do so, we begin with the language of the statute, ascertaining the intent that may be reasonably inferred from its language." *Lash v Traverse City*, 479 Mich 180, 187 (2007). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Id*. The Michigan Supreme Court has further held that "ambiguity is a finding of last resort." *Stone v Williamson*, 482 Mich 144, FN 21 (2008).

The MMFLA defines "applicant" as "a person who applies for a state operating license." MCL 333. 27102(c). The statute further clarifies that applicant includes, "with respect to disclosures in an application, for purposes of ineligibility for a license under section 402, or for purposes of prior board approval of a transfer of interest under section 406, and only for applications submitted on or after January 1, 2019, a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant." *Id.* The MMFLA defines "Licensee" as "a person holding a state operating license." MCL 333.27102(j).

MCL 333.27402 provides that "[t]he board shall issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee required under section 401(5) and the regulatory assessment established by the board for the first year of operation, if the board determines that the applicant is qualified to receive a license under this act." MCL 333.27402(1). Section 27402 further provides that "[a] license shall be issued for a 1-year period and is renewable annually. Except as otherwise provided in this act, the board shall renew a license if all of the following requirements are met: (a) The licensee applies to the board on a renewal form provided by the board that requires information prescribed in the rules; (b) The application is received by the board on or before the expiration date of the current license; (c) The licensee pays the regulatory assessment under section 603; and (d) The licensee meets the

requirements of this act and any other renewal requirements set forth in the rules." MCL 333.27402(9).

From the statutory language it is apparent that the Legislature intended to distinguish applicants (persons applying for a state license) and licensees (persons holding a state license). Section 27402 outlines the requirements for applicants to obtain a license, throughout the entire section pre licensure requirements are referred to by "applicant." However, provisions outlining the requirements for licensure renewal specifically reference the "licensee." Thus, the Legislature intended that the definition of applicant apply to only those seeking licensure, while the definition of licensee refer to holders of licenses.

Dykema suggests adding qualifying language to section (1)(a) and (2) carving out an exception for spouses of applicants and licensees whose original application was filed prior to January 1, 2019.

R 420.21—Designated consumption establishment license

Dykema suggests adding "***program or manual***" to section (2)(k) to read: "A documented employee training ***program or manual*** that addresses all components of the responsible operations plan."

R 420.27—Marihuana delivery business

Dykema recommends removing rule 420.27 in its entirety. Licensees who make significant investments in facility construction, inventory, and operating costs have a meaningful financial incentive to fully comply with statutory and regulatory obligations. A licensee who makes no such investment and has a role simply limited to delivering retail product does not have such incentives. This new license type simply presents too much risk.

3. Marijuana Licensees 2019-68 LR

R 420.108—Grower license

Under section (6), Dykema suggests defining "investor."

R 420.109—Processor license; exception for industrial hemp

Under section (1), Dykema suggests re-wording the section to read "A processor license authorizes purchase of marihuana only from a grower or another processor." Currently, the section allows the sale of marihuana from another processor but not the purchase. If the sale is authorized to another processor, it is inherent that the purchase would also be allowed. (We note

also that the title of this rule includes "exception for industrial hemp," yet the rule does not mention hemp.)

4. Marijuana Operations 2019-69 LR

R 420.201—Definitions

Under 420.201(1)(c), Dykema suggests extending the definition of Administrative Hold to include the failure to meet testing standards, and allow facilities having product that fails testing standards to hold the product during an investigation into alleged violations or sufficiency of testing standards.

Under 420.201(1)(e)(ii)(D), the MRA should define what is a "reasonable payment" under a licensing agreement.

R 420.203—Marihuana licenses; licensees; operations; general

420.203(2)(a) provides that "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling." While section (2)(a) provides an exception for operation of separate licenses at the same location and for operation of equivalent licenses at the same location, we believe that the current language does not fully contemplate the processing of industrial hemp. Section 7(1) of the Industrial Hemp Research and Development Act (the "Hemp Act") states that a processor licensed under the MMFLA may process industrial hemp. Therefore, we believe that language should be added at the end of section (2)(a) of proposed rule 420.203 to read "a marihuana business shall be partitioned from any other marihuana business or activity, any other business, or any other dwelling, ***other than activities in which marihuana businesses are entitled to participate, and provided further that growers and processors operated at the same location under R 420.204 shall not be required to partition.***" (This latter provision would eliminate the need for costly "mantraps" in co-located and integrated grower and processor facilities.)

Although the language of 420.203(2)(c) appears in the current rules, we believe that the MRA should remove the requirement that marihuana businesses must be contiguous. To date, MRA has allowed licensed activities to be in out-buildings on the same parcel as primary buildings (e.g., for grinding of waste). At a minimum, the MRA should at least define contiguous to mean structures located on one parcel.

Dykema suggests removing the prohibition against drive through operations in 420.203(2)(g).

R 420.204—Operation at same location

Dykema suggests amending 420.204(2)(d)(iii) to read "Have separate entrances, exits, inventory, record keeping, and point of sale operations ***other than for growers and processors at the same location***."

As noted above, in 420.204(2)(d)(ii) MRA should remove the requirement that marihuana businesses must be contiguous.

Dykema suggests adding a subsection (4)(d) under 420.204 that makes clear that a laboratory co-located with an existing non-marijuana testing laboratory must comply with all building security, design, and other MRA operational rules.

R 420.205—Equivalent licenses; operation at same location

Under 420.205(2)(c) to operate equivalent licenses at the same location, the operation cannot "circumvent a municipal ordinance or zoning regulation that limits the marihuana business under the acts." MCL 333.27956, however, provides that "[a] municipality may not adopt an ordinance that . . . prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act." Dykema suggest that this exact language be added to the end of (2)(c) after a "provided, however," in order to comply with the statutory requirements and prevent municipalities from sidestepping them.

R 420.206—Marihuana business; general requirements

Under 420.206(1)(b)(ii), cultivation may occur outdoors if "all drying, trimming, curing, or packaging of marihuana occurs inside the building meeting all the requirements under these rules." Dykema suggests adding "Provided, however, that marihuana may be transported to a grower or processor without drying, trimming, curing, or packaging of marihuana."

Under 420.206(8)(b), Dykema suggests defining the term "supervisory analyst."

Under 420.206(11), the term 'inactive ingredients' is a pharmaceutical product term. While the term and this requirement is sensible with respect to distillate blended with other products and intended for inhalation through vaping, to the extent that edibles or other supplements have ingredients that may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As non-pharma products or supplements, such products should simply be required to list the ingredients pursuant to FDA labeling regulations (for food products).

420.206(14) requires marihuana businesses to comply with updated standards issued by the agency within 60 days of their adoption. However, for growers, 60 days does not provide enough time for a grow cycle to occur and product to be tested to comply with any changes. Therefore, Dykema suggests adding "Except in cases of public health emergencies, a lab must validate new tests within 60 days of adoption by the agency and growers and processors must meet the standards adopted by the agency within 150 days of adoption."

420.206(16)(a)-(b) quite simply amounts to a regulatory taking and must be removed. The agency has no statutory authority to force a sale of product to a third party "to ensure that all marihuana businesses are properly serviced." Such a regulation amounts to a regulatory taking and forces marihuana businesses to eliminate their competitive business advantage. By ***mandating*** sales in certain circumstances, it also puts the MRA itself in direct violation of the federal Controlled Substances Act, eliminating the defense to pre-emption challenges to the MMFLA (and, by extension, to MRTMA) relied upon by the Michigan Supreme Court in *Ter Beek v City of Wyoming*, 495 Mich 1 (2014). This step would thus threaten to undermine Michigan's entire statutory framework for the industry.

R 420.207—Marihuana delivery; limited circumstances

Under 420.207(3), Dykema suggests changing "shall establish procedures" to "***may*** establish procedures." (Otherwise, this could be read as mandating delivery for businesses that may choose not to engage in this practice.)

Under 420.207(4)(c), Dykema suggests amending the language to read: "All marihuana delivery employees meet the requirements in R 420.602 and are employees, ***as defined in R 420.601(1)(d)***, of the marihuana sales location.

R 420.208—Building and fire safety

Under 420.208(5), we believe that the MRA and Bureau of Fire Services needs to re-assess whether growers should be treated as an industrial use. This unique Michigan treatment has led to numerous requirements that are not present in any other state, including such absurdities as mandating sprinklers and specific paths and distances for marijuana planted outdoors under plastic high tunnels.

R 420.209—Security measures; required plan; video surveillance system

Under 420.209(3) Dykema suggests adding "***or other electronic or keypad access***" after "door locks." (The current mandate for commercial grade locks has been interpreted by some in MRA Enforcement to require low-tech deadbolt style locks, when electronic access controlled doors are more secure.)

5. Marijuana Sampling and Testing 2019-70 LR

R 420.301—Definitions

Under 420.301(1)(h) "Final Package" is defined as "the form a marihuana product is in when it is available for sale by a marihuana sales location." We believe the definition is ambiguous because it references the "form" of the product itself. The definition should reference the packaging, not the form of the product. Therefore, we suggest the definition be amended to read: "Final Package means the outermost container or box the marihuana product is house in when it is available for sale by a marihuana sales location."

R 420.303—Batch; identification and testing.

Dykema suggests that MRA clarify in 420.303(1) that each immature plant counts as one plant toward the grower plant count. As the MRA and others have determined, this is the count methodology required by the wording of the MMFLA. However, this provision for batch tagging in Metrc, while correct, continues to be misinterpreted, especially by new market entrants.

420.303(5) currently allows marihuana product that fails testing and is remediated to be sold or transferred once approved by the agency. We believe that agency approval should not be required for marihuana product that passes (under R 420.306) two subsequent re-tests following remediation.

Under 420.303(9), the MRA should change the language "anytime the marihuana product changes form" to read "anytime the marihuana product changes ***state***."

R 420.304—Sampling; testing

Under 420.304(2)(b)-(c), the MRA should amend section (2)(b) to read "The agency may publish sample sizes for other marihuana products being tested, ***and may provide for a maximum harvest batch size***." Additionally, the MRA should move the language at the end of section (2)(c) to the end of (2)(b) to now read "The laboratory must have access to the entire batch for the purpose of sampling and ***shall ensure that the sample increments are taken from throughout the batch***." (Sampling methodology should remain under the full control of the laboratory, not growers, and growers should not be held responsible for a laboratory's failure to take appropriate samples.)

In 420.304(2)(h), laboratories should be the parties responsible for uploading accurate data from the certificate of analysis into the statewide monitoring system. Certificates of analysis are not standardized, vary from lab to lab, and are commonly misunderstood.

Dykema suggests amending 420.304(2)(i) to read "This provision does not apply to a laboratory who engages another laboratory to perform certain safety tests on a subcontracted basis, ***or to a laboratory under common ownership***."

R 420.305—Testing; laboratory requirements

420.305(3) should be clarified so as to not interpret the section to mean a marihuana product needs to be tested every time it changes form (or state). Testing should be required before sale or transfer, but not when form changes due to processing.

420.305(10) currently sets a zero tolerance for chemical residue (pesticides). However, extremely low levels of pesticide residue is possible. We believe that chemical residue should have an action limit instead of a limit of quantification. Having an LOQ with a fail for even the slightest amount of chemical residue creates excess costs or production because potentially large batches must then be destroyed. At the very minimum we believe that R 420.306(3) should be amended to allow product that tests positive for chemical residue to be remediated to fall below the action limit allowable.

We believe that the accuracy thresholds for all licensed labs should be published by the department. This would allow other licensees to monitor and be aware of labs that are the most accurate.

The MRA should add a 420.305(2) stating that, "A marihuana business may have a failed batch R&D tested by a different laboratory to determine whether or not the laboratory that performed the initial test may have made an error. If an R&D test contradicts the failed result, the department will investigate the failed result and may have the item selected for random sampling by another licensed lab."

Finally, Dykema suggests adding a provision to Rule 420.305 that allows laboratories prelicensure possession of marihuana for the purpose of validating testing equipment. (With the passage of MRTMA, owners and operators of prelicensed laboratories have the legal authority to possess marijuana.)

R 420.306—Testing marihuana product after failed initial safety testing and remediation

Dykema suggests amending 420.306(2) to add a provision that prevents immediate destruction of product if the marihuana business is challenging the validity of testing. In this case, product would be required to be placed under an administrative hold as defined in R 420.501.

As discussed above, 420.306(3) is not ideal in practice. Currently, the rules propose a zero tolerance for chemical residue. However, ultra-low levels of chemical residue can be

attributable to accidental contamination rather than the use of a banned pesticide. Section (3) should be amended to allow processors to remediate the material to remove chemical residue. The implementation of the current section, as written, will result in exponential loses to licensees and a shortage of product for customers and patients. Growers are vulnerable to large losses as a result of accidental environmental contamination, while processors are vulnerable to large losses due to an accumulation of contamination during processing, even where no banned pesticide was utilized.

420.306(4) should be amended to specify that processors will be allowed to remediate any material that can be remediated. Additionally, this rule should allow processors to transfer material to another processor for remediation.

Finally, Dykema suggests amending section (4) to read "The agency ***shall*** publish a remediation protocol."

R 420.307—Research and Development

We believe that R&D testing should be allowed before or after final compliance testing.

6. Marijuana Infused Products and Edible Marijuana Product 2019-71 LR

R 420.403—Requirements and restrictions on marihuana-infused products; edible marihuana product

420.403(6) should be amended in accordance with our comment to R 420.206(11): The term 'inactive ingredients' is a pharmaceutical product term. To the extent non-medical marihuana products have ingredients which may be on the FDA inactive ingredient list, they are not intended to "facilitate the transport of marihuana in the body" and therefore the regulation makes no sense as applied to edible or ingestible marihuana products. As food or supplements, such products would be required to list the ingredients pursuant to FDA labeling regulations.

R 420.404—Maximum THC concentration for marihuana-infused products

420.404 should be amended to read "A marihuana sales location shall not sell or transfer marihuana infused products that exceed, ***by more than 15%***, the maximum THC concentrations established by the agency."

7. Marijuana Sale or Transfer 2019-72 LR

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

Under 420.504(1)(i), listing the name of the laboratory that performed ***any*** test, ***any*** associated batch number, and ***any*** test analysis date is very cumbersome and should be limited to certain laboratories, batch numbers, and analysis dates.

Under 420.504(1)(k)(iii), Dykema suggests amending the language to read: "For products being sold by a licensee under the medical marihuana facilities licensing act ***that exceed maximum THC levels allowed for products sold under MRTMA***, "For use by individuals 21 years of age or older only. Keep out of reach of children."

Additionally, under section (1)(k)(iv), Dykema suggests amending the language to read: "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."

Together, the above changes would enable licensees to use the same labels for products that are allowed for both medical and adult-use customers, thereby reducing the costs incurred by growers and processors.

R 420.505—Sale or transfer; marihuana sales location

Dykema suggests amending section (1)(e) to read "A licensee ***selling marihuana product pursuant to*** the medical marihuana facilities licensing act."

R 420.507—Marketing and advertising restrictions

Under 420.507(6), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (6) would read: "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."

Under 420.507(7), Dykema suggests moving "under the medical marihuana facilities licensing act" to after "marihuana product" so that section (7) would read: "A marihuana product ***under the medical marihuana facilities licensing act*** must not be marketed or advertised to minors aged 17 years or younger."

8. Marijuana Employees 2019-73 LR

R 420.602—Employees; requirements

Dykema suggests amending sections (6) and (7) to insert "***or professional***" after the word "trade".

9. Marijuana Hearings 2019-74 LR

R 420.706—Complaint by licensee

Dykema suggests adding a section that allows licensees to contest the standards set for testing.

10. Marijuana Disciplinary Proceedings 2019-75 LR

R 420.808—Citation

Dykema suggests amending section (7) to allow a licensee to provide "***a written response***" instead of limiting the response to one single page.

11. Industrial Hemp Rule for Marihuana Businesses 2019-88 LR

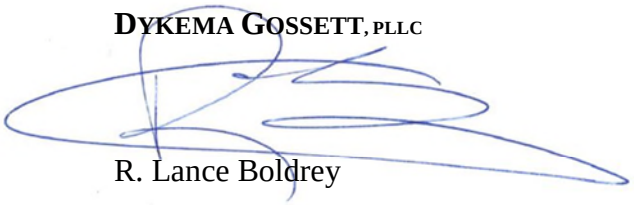
R 420.1003—Processing industrial hemp.

Sections (1), (2) and (5) of 420.1003 expressly require a medical or adult-use marijuana processor to comply with the Hemp Act and associated rules promulgated by the Michigan Department of Agriculture and Rural Development if the processor handles, processes, markets, or brokers industrial hemp. This would pose a serious compliance issue for marijuana processors that choose to process industrial hemp for several reasons. First and foremost, industrial hemp and marijuana are both defined as the plant Cannabis sativa L., with the only distinction between the two being the delta-9-tetrahydrocannabinol (THC) concentration of the plant. Under the Hemp Act, any cannabis in the processor's possession that exceeds .3% THC concentration would be considered non-compliant industrial hemp and would need to be destroyed. Thus, a marijuana processor that processes both industrial hemp and marijuana would not be in compliance with the Hemp Act because it would be processing and in the possession of cannabis with a THC concentration that exceeds the allowable limit under the Hemp Act. Similarly, a marijuana processor would be unable to use any industrial hemp-derived CBD or other ingredients in its finished marijuana products.

Therefore, the rule should be clarified to exempt marijuana processors from complying with the Hemp Act if and when the marijuana processor handles, processes, markets, or brokers cannabis with a delta-9-THC content greater than 0.3% on a dry weight basis.

Regards,

DYKEMA GOSSETT, PLLC



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MICIA COMMENTS ON DRAFT MARIHUANA RULES

(Rule sets # 2019-67 LR, 2019-68 LR, 2019-69 LR, 2019-70 LR, 2019-71 LR, 2019-72 LR, 2019-73 LR, 2019-74 LR, & 2019-75 LR.)

INTRODUCTION

The Michigan Cannabis Industry Association (MICIA) is the leading voice for Michigan's legal cannabis businesses. The association advocates for a responsible and successful medical and adult-use cannabis industry by promoting sensible laws and regulations and industry best practices among members. MICIA seeks to create a thriving industry for cannabis businesses in Michigan by developing opportunities for industry collaboration and partnerships and sharing industry knowledge and best practices among its membership.

MICIA supports many elements of the proposed rules. But MICIA offers the following constructive comments with the hopes of developing policies that promote both the growth of the industry and the establishment of good business practices. Moreover, MICIA seeks to ensure that the Marijuana Regulatory Agency (MRA) receives adequate stakeholder input prior to the adoption of its generally applicable policies, standards, and enforcement procedures consistent with the rule of law and the Michigan Administrative Procedures Act, MCL 24.201 *et seq*. Lastly, MICIA notes that, though it has not exhaustively commented on all of the rules, its silence on some rules should not be understood as either approval or disapproval of those particular provisions.

COMMENTS

1. Licensing Rules (R 420.1 *et seq.* and R 420.101 *et seq.*)

Licensing Prequalification Application Procedures

Proposed Rule 420.3(2) provides, in part, that prequalification status for a pending application is valid for 1 year after the agency issues a notice of prequalification status unless otherwise determined by the MRA. After 1 year has expired, the proposed Rule authorizes the MRA to require the applicant to submit a new application and pay a new nonrefundable application fee. While the permissive language of the proposed Rule provides that MRA with a great deal of flexibility, MICIA suggests that the MRA extend the period under which an incomplete, pending application may be held in prequalification status from a one-year or a two-year period. Oftentimes prequalified applicants who are actively under construction require more than one year to complete the final application due to circumstances beyond their control such as delay or inaction by contractors and/or local or county governments. To require those applicants to redo their

application and pay a new nonrefundable application fee under those circumstances can be unduly burdensome during the startup phase of a new business.

Licensing Application Procedures – Control

Proposed Rule 420.4(2)(*iv*)(B) requires applicants to disclose "any other person who . . . [i]s controlled, directly or indirectly, by the applicant or by a person who controls, directly or indirectly, the applicant." This cumbersome requirement has been difficult to understand and could theoretically require disclosure of a string of persons far removed from the applicant. MICIA suggests that this language be removed, limited, or further clarified.

Application Deficiencies – Opportunity to Cure

Proposed Rule 420.5(4) and (5) provides an applicant 5 days to correct any deficiency in the application. Failure of an applicant to correct a deficiency within 5 days of notification by the agency may result in the denial of the application. MICIA suggests that this timeframe be extended to ten days or, at least, be revised to provide five "business days" excluding holidays to cure application deficiencies.

Mandated Labor Peace Agreements

MICIA is opposed to the rules' mandate that licensees enter into and abide by labor peace agreements. R 420.5(6), R 420.13(1)(e), R 420.14(3)(h), & R 420.21(2)(m), R 420.801(1)(e), & R 420.802(3)(h). A legal mandate forcing a unionized workforce on applicants is both wholly unnecessary and unrelated to an applicants' qualifications to operate a marijuana establishment. The mandate also raises a number of significant legal concerns, including but not limited to whether it conflicts with federal law governing private-sector labor relations and state law preventing forced unionization. MICIA further believes such requirements are beyond the agency's delegated rulemaking authority under MCL 333.27206, MCL 333.27957, & MCL 333.27958. Additionally, the MRA has failed to engage in any cost-benefit analysis related to this requirement and its impact on the industry. See generally MCL 24.245(3).

Civil Lawsuit Reporting Requirement

Proposed Rule 420.14(5) requires applicants to notify the agency within 10 days of the initiation or conclusion of any new civil lawsuits or legal proceedings that involve the applicant. To the extent such actions are unrelated to any criminal or regulatory actions, this requirement is unnecessary and should be removed. The reporting requirement provides an incentive for third parties to target and seek to obtain leverage over licensees by threatening non-meritorious litigation. MICIA, however, continues to support reporting for civil judgments entered against licensees.

Excess Marihuana Grower Licenses

MICIA supports the MRA's inclusion of excess marihuana grower licenses. R 420.20(1)(b); & R 420.22. MICIA views this license as a significant means of addressing a market shortage of available product by permitting larger scale cultivation.

Marihuana Event Organizer Licenses and Temporary Event Licenses

MICIA supports the MRA's inclusion of marihuana event organizer licenses and temporary event licenses. R 420.20(1)(c), (1)(d), & (3); R 420.23; & R 420.24. MICIA sees both as a positive means of facilitating industry development and social consumption.

Marihuana Delivery Business License

MICIA opposes the MRA's development of rules allowing the licensure of standalone delivery businesses permitted to operate without a secured transporter license and without obtaining local approval. See R 420.20(1)(e) & R 420.27. MICIA believes that these services are more effectively regulated and tracked at licensed marihuana retail locations or when directly consummated by licensed marihuana retailers.

Research and Development License

MICIA proposes that the MRA develop and adopt rules to promote the growth of facilities specializing in genetic advancement of marihuana plant strains, seeds, and clones for sale via secured transporters to licensed growers.

Marihuana Plant Count – Female Flowering

MICIA supports the clarification in proposed Rule 420.102 that only female marihuana plants that flower may be included in the plant count referenced in subrule (1) of this rule. This treatment more accurately reflects marihuana growth and harvest cycles and should help alleviate the current supply shortage. MICIA further suggests replacing the phrase "female marihuana plants that flower" with the phrase "flowering marihuana plant" and defining that term as "a marihuana plant that has visible calices, stigma, or preflowers located at the node or a stem or branch."

Marihuana Transfers

MICIA supports the more flexible marihuana transfer provisions for licensed growers, processors, and retails in proposed Rule 420.102, 420.103, and 420.104.

2. Operations Rules (R 420.201 *et seq.*)

Orders Limiting Sales from Cultivators and Producers to Retailers Under Common Ownership

Proposed Rules 420.206(16)(a) & (16)(b) authorize the MRA to set orders limiting the sales from cultivators and producers to producers and marihuana sales locations under common ownership and establish sanctions and fines for violations of those orders. MICIA supports the concept of encouraging supply to licensed retailers who are not part of a vertically integrated operation and thus maintaining the value of separate license types. But MICIA believes that this issue can have a substantial impact on the industry and requires further study. Accordingly,

proposed rules should be withdrawn and a stakeholder workgroup should be established to provide more industry input on this issue before adoption of regulation on this topic.

Further, MICIA believes that, as part of that study, the MRA should identify either quantitative thresholds or qualitative standards for when the agency would exercise this authority. Although MICIA understands the MRA's position that these rules discourage stockpiling and promote adequate supply and distribution, MICIA requests that, to avoid inconsistent or arbitrary application of its authority, the MRA set standards to clarify the quantitative thresholds at which the agency may impose such an order or the limitations the agency intends to place on the amount of product that may be sold to entities under common ownership.

Prohibition on Sale of Fresh Food and Beverages

Proposed Rules 420.203(2)(b)(i) & (2)(b)(ii) prohibit marihuana businesses from allowing the onsite sale, consumption, or serving of food or alcohol unless designated as a consumption establishment and also prohibit the consumption, use, or inhalation of marihuana product without such license. See also R 420.201(1)(k) (defining "designated consumption lounge"). MICIA notes that MRA enforcement has interpreted this as prohibiting the sale or consumption of all kinds of beverages such as coffee, tea, or juice. MICIA recommends changing this rule to permit the sale of fresh food and non-alcoholic beverages at retail locations without additional approvals or licenses.

Access to Licensee Records

Proposed Rule 420.203(f) provides that "[l]icensee records must be maintained and made available to the agency upon request." MRA has taken the position that this language requires "immediate" access upon request. Many vertically integrated marihuana businesses maintain their records at a corporate headquarters and/or have security protocols that prevent immediate access to such records which presumably has a broad definition. MICIA recommends clarifying this language to provide access to records within 24 hours after a request.

Waste Removal Requirements

Proposed Rule 420.211(6) restricts a licensee's options for the disposal of marihuana product waste and marijuana plant waste to landfilling, composting, anaerobic digestion, and incinerator at a permitted, in-state municipal solid waste or hazardous waste incinerator. MICIA views these options for disposal as too restrictive. MICIA instead recommends that the MRA consider other innovative, sustainable, and/or environmentally responsible options for on-site disposal that may be more beneficial to the environment. MRA may thus amend the proposed rule to add the following language "or alternative method not listed with approval from the department." Along these same lines, MICIA further supports proposed Rule 420.211(13) which provides that "[n]othing in these rules prohibits a grower, with agency approval, from disposing of marihuana plant waste as compost feedstock or in another organic waste method at their marihuana business in compliance with part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153."

Generic Adoption of the NREPA and Failure to Promulgate Rules Regarding its Application

Proposed Rule 420.203(3)(a) adopts entirely the application of the NREPA, MCL 324.101 to MCL 324.90106 to marihuana businesses without explaining which provision the MRA views as applying to particular circumstances and stating that "[t]he agency may publish guidance" to that effect at a later date.

MICIA and its members support good stewardship of the environment but oppose the imposition of new marihuana-specific environmental laws without the benefit of industry participation and other stakeholder's feedback through rulemaking. To the extent the MRA intends to set generally applicable policy on the environmental obligations of marihuana businesses that either the MRA or EGLE intends to enforce, such "guidance" must be promulgated. MCL 24.207; MCL 24.226.

Alternatively, MICIA requests that this new requirement not go into effect until one year after promulgation.

Broad Assertion of Agency Authority Unrelated to any Express Statutory Grant

Proposed Rule 420.203(3)(b) subtly assumes expansive authority to the MRA to require broad operational changes to marihuana businesses. The proposed rule states that "[a] marihuana business shall comply with . . . (b) *Any other operational measures requested by the agency that are not inconsistent with the acts and these rules*." (Emphasis added.)

MICIA opposes this assumption of broad and undelegated authority by the MRA. The agency's assertion of such broad power over marihuana businesses as to demand any operational changes "not inconsistent with" the law inverts the axiom that, as creatures of statute, administrative agencies can only assert the power expressly granted to them by law. See *York v City of Detroit*, 438 Mich 744, 767 (1991) ("While an administrative agency may make such rules and regulations as are necessary for the efficient exercise of its powers expressly granted, ''an administrative agency may not, under the guise of its rule making power, abridge or enlarge its authority or exceed the powers given to it by the statute, the source of its power.'")

Equivalent Licenses Operating at Same Location

MICIA supports the common-sense and efficient approach contained in proposed Rule 420.205 allowing equivalent licenses with common ownership to be operated at the same location.

3. Sampling and Testing Rules (R 420.301 *et seq.*)

Homogenizing of Samples

Proposed Rule 420.304(2)(b) requires the collection of samples of "not less than 0.5% of the weight of the harvest batch" and requires samples to be "homogenized for testing." This language seems to allow for unlimited batch sizes and marks a drastic departure from existing standard of 15-lb batches. MICIA suggests that, because contamination can spread out in a heterogeneous manner, it would be more appropriate to split samples up across batches with some

form of weight-based limitation in order to obtain a more representative sample of harvests. For example, under the proposed language, a 1,500 lb. summer "harvest batch" would require 7.5 lbs. to be tested and 50% of that homogenized. But sorting that harvest batch into smaller batches would provide better data on the quality of the product.

Scope of Laboratory Accreditation

Proposed Rule 420.305(1)(a) requires laboratories to be accredited within 1 year of licensing but do not clarify whether specific assays or analytes must be included within its accreditation. MICIA recommends that the MRA modify this rule to allow the MRA to approve and validate a Safety Compliance Facility's new method and to allow at least 6 months for a scope expansion within the Safety Compliance Facility's regular ISO surveillance period.

Good Manufacturing Practices Certification and Adoption

MICIA strongly supports the provision of the rules allowing for good manufacturing practices certification and adoption as applied to marihuana businesses. R 420.301(1)(i); R 420.305(4); R 420.602(2)(h).

Filing of Certificates of Analysis with the MRA for Failed Samples

Proposed Rule 420.305(12) requires laboratories to "enter the results into the statewide system and file with the agency within 3 business days of test completion" each laboratory test result "for any batch that does not pass the required tests." MICIA reads this requirement to unnecessarily mandate a duplicative "fil[ing]" of certificates of analysis with the agency after the results have already been entered into the statewide system. Because the laboratories will enter this information into the statewide system electronically, MRA should modify this requirement to clarify that it will not require a separate filing from laboratories. MICIA further seeks clarification regarding whether the language "test completion" refers to the completion of each individual test or when the full panel of tests per sample are completed.

Encouragement of "Laboratory Shopping"

Proposed Rule 420.306(2) prohibits laboratories that conduct an initial failed test of a sample from performing any retesting. The proposed rule has the perverse effect of encouraging laboratory shopping and discouraging the reporting of failed test results by laboratories. Rather than discourage accurate test reporting for failed samples, MICIA suggests that this language should be removed.

Retesting and Remediation

The MRA's proposed limitations on retesting and remediation, R 420.306(2) & (3), are unduly restrictive. The agency should broaden these provisions to allow for more extensive retesting and remediation. MICIA, however, supports R 420.306(4) which appears to allow quarantined product to be transferred between licensed processors for purposes of remediation as not all processors own applicable remediation equipment.

Failure to Promulgate Action Limits and LOQs

The rules require the agency to establish both action limits setting standards for "the permissible level of a contaminant in marihuana product" such as foreign matter, microbial screening, heavy metals, and residual solvents, R 420.301(1)(1)(a) and R 420.305(3)(b)–(3)(f), (6), & (9), and limits of quantification (LOQs) for chemical residue and target analytes. R 420.301(1)(n) and R 420.305(3)(i) & (10). Those action limits and LOQs are attended by significant consequences. Product failing to meet the standards "must be destroyed as provided in these rules or remediated" as permitted by the agency. R 420.306(2)–(4). The proposed action limits and LOQs thus set "agency regulation[s], . . . standard[s], . . . [and] polic[ies] . . . of general applicability that implement[t] or appl[y] law enforced or administered by the agency." MCL 24.207. As such, the action limits and LOQs are "rules" requiring promulgation in order to be enforceable by the agency. MCL 24.207; see also MCL 24.226; & MCL 24.232(5).

MRA's failure to include the proposed action limits and LOQs in the rules improperly circumvents the APA's rulemaking requirements. *Delta Co v Dep't of Natural Resources*, 118 Mich App 458, 468 (1982). Further, the failure to vet these standards through the rulemaking process and to allow the industry and other groups to have input into their development and their propriety for the purpose of establishing health-based standards will result in less technically accurate action limits and render them legally unenforceable.

Failure to Promulgate Remediation Protocol

Similarly, the rules delay to a later time the publication of a "remediation protocol." R 420.306(4). Like the action limits, this protocol sets "generally applicab[le]" agency policy "that implements or applies the law enforced or administered by the agency." MCL 24.207. Consequently, the remediation protocol is also a rule that needs to be promulgated.

Failure to Promulgate Safety Test Requirements

Additionally, the MRA has elsewhere circumvented the rulemaking process for safety test requirements, indicating that "the agency may publish a guide indicating which of the following tests are required based on product type when marihuana product has changed form." R 420.305(3). As noted above, such a decision sets an agency policy of general applicability concerning the law it enforces. MCL 24.207. Deciding which tests will be required for sampling and analyses must be vetted through rulemaking and included in this set of rules rather than via a later "guide" or bulletin. MCL 24.226; *Detroit Base Coalition*, 431 Mich at 183–84.

Vape Cartridge Testing

MICIA suggests the adoption of a rule to require vape cartridges to be tested for Vitamin E-acetate (ATA). Because of the recent outbreak of injuries associated with vape cartridges containing ATA, such a rule would promote the public health.

4. Sales and Transfers (R 420.501 *et seq.*)

Internal Product Sampling by Employees

Proposed Rule 420.509(5) permits cultivators to provide internal product samples to their employees but limits those samples to 2.5 ounces in a 30-day period. MICIA supports the rules' encouragement of employees' product sampling. Employee product sampling can foster familiarity with and develop their expertise concerning the product, which facilitates better operations and encourages sales. But the MRA's proposed limitation is too stringent and improperly sets a limitation that does not take into account the size of or number of employees at an operation. MICIA instead proposes that the MRA extend this provision to allow cultivators to provide internal product samples of up to 1 ounce per employee per month. MICIA further seeks clarification of what level of documentation will satisfy the requirement that "[t]he results of internal product sampling must be documented . . . ."

5. Non-compliance with APA Procedures (all sets)

MICIA also notes that the MRA has improperly failed to comply with APA procedural requirements for this set of rules in several respects. Per MCL 24.245(3)(*l*), (3)(*m*), & (3)(*n*) the MRA was required to include in its Regulatory Impact Statement and Cost Benefit Analysis (RIS-CBA) "an estimate of the actual statewide compliance costs of the propose rules on individuals" and "an estimate of the actual statewide compliance costs of the proposed rules on business and other groups" as well as "a demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals." The RIS-CBAs in support of the rules do not engage in any significant substantive analysis of the economic impacts of the proposed rules on individuals and businesses nor include any numerical estimates of these impacts.

Additionally, MCL 24.245(3)(*o*)–(3)(*s*) require detailed analysis of and estimates of the financial impacts of the rules on small businesses. The RIS-CBAs do not provide any such estimates nor any substantive analysis and simply state that "[i]t is uncertain how many small businesses may be affected by the proposed rules" but that "the belief is that these proposed rules will make it easier for small businesses to enter the regulated market." The RIS-CBAs make such a statement without analyzing the barriers to entry imposed on small businesses as a result of the licensing and operational costs associated with the rules.

The rules also fail to estimate the impacts to state and local revenues as a result of the rules. MCL 24.245(3)(*z*) & (3)(*dd*). In response to question # 13 posed by the RIS-CBA requiring an "[e]stimate [of] any increase or decrease in revenues to other state or local governmental units . . . as a result of the rule," the agency merely states that "[t]here are no anticipated increases or decreases in revenues or costs to other state or local government units as a result of the proposed rules." This suggestion is not credible. Given the various direct compliance costs and other regulatory burdens imposed by the rules, the agency's failure to estimate the impacts of these burdens on marihuana businesses' sales and the resultant impact on state and local revenues through the State's corporate income tax, MCL 206.601 *et seq*, local income tax paid by both the businesses and their employees, MCL 141.501 *et seq*, sales tax, MCL 205.51 *et seq*, use tax, MCL

205.91 *et seq*, the General Property Tax Act, MCL 211.1 *et seq*, and of course, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq*., is unsupportable.

As one example, the testing and sampling rules' requirement to test "not less than 0.5% of the weight of the harvest batch," R 420.304(2)(b), means that at least 0.5% of such a harvest is not being sold. That cost has not been calculated and weighed against the alleged benefit of the sufficiency of that sample size to conduct required tests, the impact of sample size on sampling accuracy, and whether a smaller sample size would achieve the same goals. Nor has the agency calculated the impact of its proposal limiting the ability to remediate and retest (and ultimately requiring the destruction of) marihuana that does not meet action limits. See generally R 420.306. Recent market values of marihuana have averaged over $500 per ounce through licensed operations. See https://www.mlive.com/public-interest/2020/02/major-marijuana-website-bans-advertisements-from-black-market-companies-in-michigan.html. Consequently, small alterations to the scope of such requirements can impose a substantial cost on large volumes of sales as well as attendant costs state and local revenues of a minimum of 16% in sales and marihuana excise taxes. MCL 205.52(1); MCL 333.27963(1).

These procedural defects deprive stakeholders, the Legislature, and the agency of a more substantive debate regarding the costs and benefits of individual proposed rules. Additionally, the defects can render the rules invalid through an APA procedural challenge. MRA should therefore resubmit the rules with these legislatively required analyses.

CONCLUSION

MICIA appreciates the opportunity to comment on the MRA's proposed rules and the MRA's efforts to develop a sound regulatory structure for the cannabis industry. MICIA believes that, with the changes suggested above and with greater industry feedback and more thorough vetting of the costs and benefits of proposed regulations, Michigan can be a leader both economically and in its promotion of good business practices for the industry.

Respectfully submitted,

Robin Schneider, Executive Director
Michigan Cannabis Industry Association
www.MICannabisIndustryAssociation.org

From:	Ben Joffe
To:	MRA-Legal
Cc:	Brisbo, Andrew (LARA)
Subject:	Comments to proposed rules
Date:	Tuesday, February 11, 2020 4:08:10 PM

MRA Legal and Director Brisbo,

In our review of the rules we noticed that there is no language covering who is an applicant under a trust in the MRTMA. The MMFLA and MRTMA use equivalent definitions of the term "Person"

- MCL § 333.27953(s): "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- MCL § 333.27102(r): "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

However, in MCL § 333.27401(1)(b), the MMFLA provides that a trust applying for a state operating license must disclose the names and addresses of the trust's beneficiaries.

There is no comparable language anywhere in the MRTMA or draft rules addressing who is an applicant/must be disclosed for trusts applying for a state license.

Can MRA provide clarity on the application and disclosure requirements for trusts that are applying as an entity for state licensure under the MRTMA in the proposed rules?

Regards,

Ben

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From: mytcbd@yahoo.com
To: MRA-Legal
Subject: Public hearing comments
Date: Thursday, February 13, 2020 10:54:42 PM

Good evening,
Thank you for listening to the public before adopting new rules to the already instituted framework. I made a public comment in person but wanted to follow up because I missed a few things that I wanted to address and then listening to other peoples testimony, there are things I want to voice my thoughts on as well. I used to own grocery stores in the family business until business got too tough for us, and then I left and got into this industry. I went thru the process of getting my licenses with the state for tobacco, SDM, and liquor. While I understand the intent to build a healthy foundation for businesses to operate in, and I feel like Michigan does a much better job than California, there is still much work left to do to make this right and feasible for everyone - not just big business and big pharma.

First and foremost, everyone (especially the retired 65-80 year olds who are getting cut off their opiates) are chatting and wondering why things are so tough for cannabis to be obtained legally and why all these hoops remain out there for businesses to establish themselves. In 2018, the voters voted to regulate marijuana the same as alcohol and tobacco. Generally speaking, the additional changes proposed do not honor the vote of the citizens and only adds more layer of governmental control. Cannabis should be accessible at farmers markets, it's a plant and should be treated like other plants and food with the extra oversight but not more than the same type of oversight as alcohol and tobacco.

1) Please do not write in specific zoning restrictions to the framework. Please allow the local municipalities to determine what is best in their jurisdiction. I spent a lot of time and money to draft a petition for a ballot initiative for the people to vote on and then I had to wait another 5 months because there was no election in NOV.. Now with you proposing changing that mid stream is a huge hardship on businesses while also taking the power away from the local municipalities or forcing them to rezone and make changes just to accommodate state requirements.

2) GMP standards should only be required for large corporations doing mass production over a threshold of at least 1M or more. GMP is not affordable for the small business and is not required for other food products. Please stop pushing the small guy out by having excessive regulatory compliance. Serv-Safe and food safety classes are available statewide and are affordable, OSHA compliance are all standard in the food marketplace.
Commercial kitchen and cottage industry laws should apply. Nothing more than that makes sense if the voters rights are truly honored. Businesses with less than 1M in food revenue should be required to have lab tested, homogenized proven doses. Keep it simple for the small guys please!

3) Labor peace agreements should also have a threshold of 1M or more in gross profits or more than 10 employees. The reason is that if a business is big enough to profit that much, then they should be forced to adhere to standards above that of which the rest of the state requires. As a small business owner, I know if I pay people well, I will have better employees, and stronger community and so on. But if I were forced to pay a bunch of money to be in a union to follow all this protocol, my chances as a small business owner to operate let alone grow would be staunched. OSHA, FMLA, EEOC, and all the state and federal rules apply to other businesses, why force businesses to join the union. It seems to me like unions have outgrown their need. We have laws in place, and if companies behave in poor taste and treatment of their employees, then due diligence should include having their license revoked and each license holder/owner become ineligible for at least 5 years for any state license for cannabis. That will set a standard far greater than that of a union where big $$$ and people entrusted with power creates another chain of corruption, etc.

4) I absolutely agree with the MCIA that Processors should be allowed to keep product frozen and fresh, not just the cultivators. There is a significant benefit to having the plant remaining in tact.

5) I suggest THC maximum potency levels - vapes not to exceed 85%. I am a huge full spectrum fan and

would like to see distillate completely removed from the marketplace. While I know that will never happen, we all know distillation is a refining process that strips away the benefit of the plant so the only value is for the increased psychoactive potential.

I would suggest any vape over 85% be treated like how we treat Everclear vs Popov vodka. Likewise, potency less than 5% (not .3%) of delta 9 THC (not THCA combined) should not fall under the MG content for industrial hemp oil, flower, THC tinctures, THC edibles etc. This could mitigate the loss as a whole for hemp farmers while giving the marijuana CBD strains a little more legroom to operate in.

6) I'd like to see a protection clause for business owners not being able to be harassed by local government and other cannabis businesses. People have opinions and are entitiled to them, but those direct attacks should not hurt business owners who are working on getting licensed or are licensed. I suggest this due to public comment of an African American lady getting sued because of her existing location. I'd like to see a department within the MRA that handles investigation of bad business practices, lawsuits, and specifically geared at enforcing the protection of the rights of the businesses who have worked hard and spent a lot of time and money to get where they are today.

7) Caregivers should be able to sell any of the products they produce to all licensed access points - retailers, processors and cultivators. Let the caregivers get in the game so they can build up to being a stronger tax payer where they can get licensed. Please don't let the caregivers be put in harms way for bad local politics like what happened to the dispensaries getting shut down prior to the MMFMLA framework and licenses being issued. If any business licensee is found with other drugs, then they need to get on the bad kids list and lose their license for 5 years. Hard drugs are the problem, and anyone benefitting from the legal marketplace that turns around and fuels the illicit marketplace should have tough sanctions put against them for continuing pumping bad drugs into our communities.

8) I agree with the cultivator plant count, it should be flowering plant count not at a certain height.

9) I'd like to see grant money made available to those businesses doing right by their communities. For example, I have started a non profit, Free Relief that helps cancer patients and veterans with PTSD. I am struggling to be funded and I don't have 500k to dish out to go thru the FDA process for complying with those guidelines to qualify as a "research" in order to get grant monies. Either a kickstarter, incubator or a way for someone like me, who is truly wanting to give away free "weed" (but it's THCA so it's non psychoactive!) to people who can't afford it that need it, I'm asking you to please help me help others. If I can prove to you my ethics of how I'm behaving out here, those funds that were partly set aside to help fund efforts such as research for veterans with PTSD could help me help others and increase the awareness that the plant can be used as medicine and you don't have to get high from marijuana to have the benefits.

10) Consuming licenses - I love this concept but it's ridiculous to not allow consumption of food and beverages at the same place as consuming cannabis. We know food is a requirement for safer alcohol consumption, why would we treat THC products any different? If people take too much THC or misuse it (which they will), then they will learn when they learn. Same as the alcoholic. We can't take the drink away from the alcoholic, they have to make that decision for themselves. Please don't try and limit the opportunities of other businesses to support and engage in the cannabis community. Those restrictions continue to inhibit the benefits of the plant by allowing a new "stigma" to be formed.

11) I really really appreciated the efforts of the environmentally sustainable advocates and innovators. That lady from Oakland college has some genius ideas on water and environmental sustainability. I'd love to see monies set aside to support companies to innovate equipment and technology that would help our manufacturing facilities find new opportunities to thrive and develop a stronger state in all areas. I think tax credits for businesses who spend the extra $$$ to go the extra mile for our planet, our energy, our water, our waste - those companies who commit and prove they are helping reduce our carbon footprint should get kickbacks.

12) I agree with licensees getting extensions if they have been approved and yet have to wait on contractors etc to get the next level of inspection done. Maybe another background check to ensure nothing has changed is the remedy for ensuring nobody slips by for being a naughty business person

while waiting to get above board in their operations. If they screw up while they are waiting on their contractors etc, then they shouldn't be able to move forward or at least they should get pushed back. But good standing businesses who are working hard to get the job done and it takes longer than the states timeframes should not have to pay the fees and go thru the whole process over again.

13) Take drug testing off the docket for businesses in Michigan - start with state employees, let them use cannabis. Encourage businesses to become socially responsible for "recovery" from addiction. Whether it's drugs, alcohol, sex, food, shopping, gambling, etc... The biggest thing we can ask from our government is to help us use taxpayer dollars into fueling a healthier more sustainable community that has support for all. Inclusion, diversity, social equiity, and addiction treatement services should all be at the top of the list when it comes to the MRA supporting the endeavors of the aspiring cannaprenuer.

I'd love to the the MRA step up to the plate, help join in the war against the opiates, and help make access truly available and affordable to the public at large. Thank you kindly for your consideration, support and for all of your hard work!

Sincerely,
Kelly Young

Kelly Young
CEO
My TCBD Inc.
http://www.mytcbd.com

"Believe in yourself and others will follow your inner light"