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To the Marijuana Regulatory Agency:

The following documentation encompasses the comments of myself and some of my coworkers in the marijuana industry regarding necessary clarifications and/or suggestions about the ruleset. I have it broken down by each rule.

As the compliance manager at 42 Degrees Processing, LLC, a medical and adult use processing facility in Kalkaska, MI, my first priority is to protect our licenses by making sure that our facility is compliant with all requirements set forth by the MRA. Primarily, that goal is accomplished by a clearly defined set of rules to which can be adhered. What follows are observations based on the challenges I have faced as a compliance officer, as well as comments heard in the public. Any criticism and/or request is my own, but proposed as a means toward the end of clear rules that we can follow without further requirement for clarification. If any further clarification on my comments is required, I would be happy to take a phone call.

My greatest concern is with the areas of potential loopholes. I may also mention cost, though this is frequently due to the cost of operations, which I must also be mindful of.

Thank you very much for the time put into clarifying the ruleset and frequently providing guidance, most especially to me. And thanks to everyone at the MRA for providing and supporting this industry that I thoroughly enjoy, as it presents constant challenges that have given me a rewarding and important job here at 42 Degrees.

MARIHUANA DECLARATORY RULINGS

- Definitions
    - Define what is a “declaratory ruling”
    - When would this be used instead of requesting a clarification on the interpretation of a rule?

EMPLOYEES

- R 420.602 Rule 2 (1) “A licensee shall conduct a criminal history background check…”
    - Does this mean a state background check, federal background check, or both?
    - Do subsequent background checks need to be performed after an employee has been hired? At what interval?

SAMPLING AND TESTING

- Definitions:
    - The definition for a “production batch” needs to be clearer, especially considering edibles. If you would, please include this clear definition everywhere a rule discusses production batches.
        - What defines similar conditions? Same operator, same pot, same tools, same formulation, etc. all should be considered.
        - Is there a batch size limit?
        - The current methodology across the industry as I understand it, from talking to testing laboratories, is that there are multiple pots of gummies being formulated in a linear fashion. First pot, then second pot, then third pot, etc, up until an indefinite number of pots, ie, 30-40 pots, defining a single production batch. However, from the standpoint of recipe and formulation, each pot could vary by a variety of small factors. One pot may get more color than another. One pot may get more THC distillate. Even if it is a small amount, it’s still not exactly the same. Although homogeneity testing is intended to account for this variation, it is only performed every 6 months after initial formulation and will not be able to capture if one pot of 30, 60, 100 (what even is the limit?) is out of sorts. Essentially, this is the same as considering 30-40 (or more) tiny single batches of gummies as one uniform batch. This presents potential safety concerns regarding dosing.
    - The definition for a “production batch” needs to be more clearly defined for concentrates as well. If you would, please include this clear definition everywhere a rule discusses production batches.
        - If two different production runs of extracted concentrate are mixed together, is that acceptable? It seems that it would be unlikely to mix two batches of concentrate together into a homogeneous mixture, which could yield a product of an inconsistent potency. For example, if you produce a concentrate that is 60% potency and mix it with a concentrate that is 80% potency, then the resulting product could be inconsistently mixed with a potency that varies between 60-80%. This would be a more pronounced inconsistency if two different product consistencies were mixed, such as a “sugar” and a “sauce” together.
            - If this is acceptable, are any parameters needed?

    - The definition for “final form” versus “in packaging” needs to be crystal clear.
        - In some bulletins and rules, final form further clarifies that it means “not necessarily in its packaging for sale,” but in the laboratory testing handbook entitled Sampling and Testing Technical Guidance for Marijuana Products, it very clearly states “A sample of marijuana edible product must be in final form for a laboratory to accept this material for compliance testing. *Laboratories are not permitted to sample product in bulk without packaging* [italics mine] for compliance testing. Units should be easily distinguishable.”
            - We ended up changing around our entire standard operating procedure to accommodate having to test gummies in their sale packaging, only to then be corrected by a customer, who had an email from the MRA, stating that it was acceptable to test gummies prior to packaging.
- R 420.306. Guidelines for retesting should be clearer. There were times in the past when the rule was not clear enough, as it stated that when a product failed a retest it *must be destroyed*. However, we found out after we destroyed it that remediation was allowed. The following clarifications are needed:
    - Which failed tests can be retested. Please state these specifically (ie, heavy metals, certain pesticides, etc).
    - How many times a retest can be performed. As written, it is currently allowable to retest as many times as needed until a passing result is achieved, which is an irresponsible practice.
    - If retesting is permitted at a different lab than the one that delivered the failing result, and how that should be submitted if so.
    - Is there a time limit on performing a retest, given that there’s now a 90 day deadline for destruction?
    - Which failed tests can be remediated. Please state these specifically (ie, heavy metals, certain pesticides, etc).
- R 420.305, 9(h): states that potency should be reported in milligrams. It should read milligrams per ____.
- R 420.307, Rule 7, 3: states that R&D testing is prohibited after compliance testing has been completed. This needs further clarification to cover the following:
    - Continued quality studies, such as how a product might degrade or change over time.

    - Reserving a subset of a finished product to perform additional small tests upon it not related to safety, such as terpene composition.
    - It sounds as if the intent of the rule is to not perform R&D testing on the same production batch number, which historically created a problem in METRC by reverting Test Passed product into a Testing in Progress state. But if you pull an amount of and give it its own production batch number so as not to affect test results, would it be acceptable to perform R&D testing on this product?
- Requiring safety compliance tests on small batches of new formulations makes formulating new products prohibitively expensive as the recipe or methodology might be tweaked several times prior to being finalized. We would be grateful if alternative rulings could be explored that allows for more creativity and flexibility as new products are developed.

MARIHUANA SALE OR TRANSFER

- Definitions:
    - Need more clarification on *types* of transfers.
        - Define what type of transfer should be used for which purposes. When to use them, which forms are required, where the forms are located, where to send requests, etc.
            - Specifically, we've had some trouble with untested WIP transfers, fresh frozen transfers, infusion transfers.
            - Some forms are simply not listed on the MRA's website, such as the inventory transfer request form. It would be very helpful if all of the forms were listed in one location. Please investigate, and make compliance easier to do.
- Ensure that METRC and AFS are cohesive for financial audits. The rules for processors make tracking monetary value back and forth unnecessarily cumbersome, as it has forced us to assign monetary value to something for which there was no cost (such as for toll processing, where we charge for services).
- 420.508 (Trade Samples), Rule 8, 4, and 420.509 (Internal Samples), Rule 9, 3: The rules need to clarify what needs to be recorded in METRC during sampling. It was clarified to me personally that I should be recording the ID and employee name for Internal sampling, and I have been recording the License and Vendor name for trade samples.
    - Is any other information required for tracking purposes?
    - It is possible that there needs to be a lot more definition regarding trade samples and employee samples in general. This rule has been the one I've been most aggressively questioned on as to what the MRA's language allows versus what the MRA's intent was when writing the rule.
    - Rules are possibly unclear as to whether or not the Processor license is allowed to internally sample flower to its employees.
    - The rules have an issue with loopholes regarding trade and internal samples, as follows:
        - There is a limit on both internal samples and trade samples. However, when asked, and also provided with intent, the MRA clarified that they do not regulate sale prices. It is therefore possible for a processor to sell product to a retailer for a penny, who can then sell it to the processor's own employees for a penny, and thus makes having a rule pertaining to limits pointless.

            - Which means it is also possible to do exactly the same thing for trade samples, and have either a representative of a retailer or a sales representative to purchase products for a penny and offer them for free to anyone.
            - The same could be said of coupons or rebates, or steep discounts of any kind. If there is the ability to legally obtain products for virtually nothing, then why bother with a limit at all?
            - Nothing currently prevents employees from giving all of their samples to someone else outside of work hours, either, which means that it is also possible for employees to band together and pool their samples for a single person, such as sales personnel.
    - I also have concerns about the custody of products after trade sampling, as follows:
        - It is currently stated that up to a certain limit, anyone may transport trade samples to a retailer. I do not think it is wise to allow anyone other than a secure transporter to transport products. There are a lot of strong relationships between retailer management and sales personnel, and I think it may be possible to abuse the trade sample mechanism to funnel products out of the regulated market in this manner. There is currently no control over ensuring that the trade sample actually makes it to the intended recipient in this manner. What is to stop a sales person from requesting samples for a retailer and simply never delivering them?
        - We've heard that frequently, trade samples go only to retailer management and never make it into the hands of budtenders for the purpose of product sampling. I'm not sure that this would be considered an MRA problem, but wanted to bring it to your attention anyway, as trade samples handled in this matter do not bring much value to the processor value stream.
    - Please clarify how a sample intended for an employee should be treated if the employee refuses the sample.
        - Should it be destroyed? Does it now need two adjustments (one to put it back on its tag, and one to destroy it), or can it just go to destruction, since it has already been removed from METRC?

- R 420.504 (Labeling and packaging requirements): Compliance stickers have been unclear for more than a year now. Clarification was promised but never came. Our customers have been told different things by the MRA which has now forced us to operate under two different SOPs. Please make this clearer as to which tags are required on the compliance label.
    - Define that Package ID means the tag that is delivered to a retailer.
        - We maintain that this should not actually be required. A store that receives the package will have the Source tag ID in their METRC should an issue with the customer's product arise, which makes it easy to search. It is the source that would be the issue anyway if an adverse reaction was reported. Being allowed to label all of our products with only the Package's Source ID and Testing ID would significantly improve operational efficiency and greatly reduce the amount of potential for error. If one batch were to be sent to 100 stores, this is the difference between being forced to create 100 different compliance labels instead of only one.
    - Define that Source ID is the parent tag of the Package ID regardless of testing status.
    - Whether or not a Testing ID is required.
        - Define that Testing ID is the tag that was delivered to the testing facility for the purpose of Safety Compliance Test only.
    - Clarify how to treat a retest for potency when stating potency and testing facility information on the compliance label
    - Remove "any" test analysis date, replace with "safety compliance" test analysis date.
    - Release an example scenario or scenarios with an example label to eliminate all potential confusion.
    - Clarify that the universal symbol must be printed in full color (green).
    - Specify whether or not it is acceptable to say either marijuana or marihuana on the universal symbol.
        - Basically, whether or not ANY modifications to the universal symbol are acceptable whatsoever.
    - Specify that the words must be legible/easily read on the compliance label and universal symbol. Is a size requirement needed? Some of them are so tiny they cannot be read.
- R 420.505 Rule 5. (1) Transferring needs two Rs.

OPERATIONS

- R 420.206, Rule 6, 14: “When combining more than 1 form of marihuana or marihuana product into a single marihuana product, each form of marihuana or marihuana product must have passing safety compliance test results in the statewide monitoring system prior to the creation of the new combined product.
    - What defines a “form” of marihuana product?
    - What if products are combined prior to a safety compliance test? Examples:
        - Mixing a distillate with a high terpene content product, which will fill cartridges and go to safety compliance testing as a cartridge.
        - Mixing together two concentrates, ie batter plus batter.
- R 420.214a (Internal analytical testing):
    - For the internal analytical testing area, what defines a “separate” testing area?
- R 420.214b-c:
    - How does a retailer return defective/undesirable products that are *not* involved in an adverse reaction to a processor if they are not allowed to transfer it back?
        - For example, poor product quality, or if it has been on the shelf too long and they wish to trade it in.

LICENSES

- Definitions:
    - Please include more clarity on separate areas.
        - Food and marijuana areas are supposed to be kept separate.
            - Separation includes walls and a ceiling and a locked door.
            - Define the purpose of hallways, clarify the difference between a hallway and a room.
                - No food or marijuana in hallways?
                - Storage in hallways
                - Carrying marijuana through the hallways to get to the next room
                - Carrying food through the hallways to get to the next room.
    - It was clarified to me that areas of different task types are also supposed to be maintained separately with a locked door between them, such as:
        - Laboratory rooms can be connected, but not to packaging or storage
        - Packaging rooms can be connected, but not to any production or storage
        - Storage has to be kept separate from packaging and production.
        - These are not terribly specific. Items will be stored temporarily in production areas. Does an edibles kitchen need to be separated from its own packaging operation? Where are the lines defined?
        - Is this really necessary?
        - Why is further security needed within the building when entry to the building itself is controlled by secure entry?
    - Provide more specificity regarding the storage of inventory. Access should be restricted, but if it is behind a locked door and all the staff has access to the locked door, is it really restricted? So whom should have access?

LICENSEES

No questions

MARIHUANA-INFUSED PRODUCTS AND EDIBLE MARIHUANA PRODUCTS

- R 420.403, rule 3, 2: The potency variance has been changed to +/- 10%, not 15%. If this is not the case, there are multiple points throughout the rule set and bulletins where this variance is not in agreement.
- 420.403, Rule 3, 10(a): There is currently no control expressed in the guidelines for an expiration date. It's too arbitrary and does not require a product to demonstrate quality up until its expiration date. Documentation is required for shelf stability, but not for an expiration date qualification. This seems like an oversight.
- 420.403, Rule 3, 9(e): Clarification is needed on what is considered a "commercially available food product". This could feasibly eliminate most forms that an edible product might take, such as:
    - Other types of candies:
        - Chocolates
        - Fudge
        - Peanut butter cups
    - Granola bars
    - Rice krispies treats
    - Brownies
    - Cookies
- 420.403, Rule 3, 9(f): Packaging specifications could use more clarity as well. "Not produce an edible marihuana product that is associated with or has cartoons, caricatures, toys, designs, shapes, labels, or packaging that would appeal to minors."
    - We've ruled out animals and fruit already. But there are other ways to appeal to children or teenagers. What about such things as:
        - Vehicles such as sailboats, cars, trains, bicycles
        - Color schemes, such as pastels, tie-dyes, bright colors, glitter
        - Other icons, such as moon and stars, clouds, rainbows, flowers, gem stones.

MARIHUANA HEARINGS

No questions

MARIHUANA DISCIPLINARY PROCEEDINGS

- R 420.805, rule 5, 10-11: The list of excluded individuals is kept by the MRA and we do not currently have access to it. How are we going to be able to know that an individual has been excluded from employment or participation in a marihuana business? Would that come up in the background check?
    - Also, we'd like to be able to see this list to protect ourselves and the integrity of the industry.

OTHER QUESTIONS

- With the limitations on names, shapes, and packaging that appeal to children, will there be further restrictions on the names of strains for concentrates and/or vapes?

In conclusion,

Thank you very much for your time and consideration in hearing comments from the public. I fully support clear rules, and greatly appreciate the time and effort that goes into refining this rule set.

Sincerely,

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September 27, 2021

Marijuana Regulatory Agency
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Re: Proposed Marijuana Regulatory Agency Rules

Dear Marijuana Regulatory Agency Staff:

On behalf of the Michigan Cannabis Manufacturer's Association ("MCMA"), I write to offer public comments on the proposed changes to the Marijuana Regulatory Agency's ("MRA") administrative rule sets (the "Draft Rules"). The MCMA is an association of the largest business stakeholders in Michigan's cannabis industry. MCMA's members represent hundreds of millions of dollars of private investment and employ thousands of Michigan citizens, but the Number One priority of the MCMA is protecting the health and safety of Michigan citizens. The MCMA appreciates the opportunity to provide stakeholder feedback on the issues that directly impact the public and our members, and MRA's willingness to engage its stakeholders.

By way of introduction, MCMA finds much to praise in MRA's Draft Rules. In particular, MCMA believes that the Draft Rules will continue to advance product safety to the benefit of patients and customers. Revisions to facilitate internal testing, address the potential for the manipulation of testing results before we see such problems in Michigan (issues that have arisen in other states), and authorizing testing of homegrown adult-use cannabis are all extremely positive steps. So too are changes to allow drive-though and curbside service, and to simplify the fee structure to allow for greater predictability. The addition of a formal process for declaratory rulings is also welcome.

MCMA does nonetheless find some areas of the Draft Rules that could use some additional review and improvement. As explained in more detail below, the Draft Rules leave important terms and requirements undefined, and would improperly rely upon guidance and administrative bulletins, rendering important rule topics vulnerable to legal challenge. MCMA also strongly objects to the creation of a Class A Microbusiness License, a license that would violate the Michigan Regulation and Taxation of Marihuana Act ("MRTMA") and authorize activity that presently constitutes a felony under the Michigan Medical Marihuana Act ("MMMA"). MCMA also opposes efforts to

limit "non-marijuana" cannabinoid sourcing. And MCMA believes that there are a number of additional areas where the rules should be changed based on lessons learned, most especially with respect to the operation of co-located grower and processor facilities and the excess grow license. MCMA's comments follow.

Utilization of Guidance

As we all well know, the cannabis industry has been evolving at light speed since the first state licenses were issued just over three years ago. MRA has been evolving too, and we understand the need for MRA to be flexible and respond to new developments. That said, one significant over-arching concern for MCMA is MRA's practice of relying on the issuance of ad hoc advisory or technical bulletins in lieu of the formal rulemaking process of the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328 ("APA"). While understandable in the very early days of the industry, we are concerned that in many places the Draft Rules appear intended to extend and expand that practice. By way of example, proposed R 420.304(2)(l) provides that licensees must comply with to-be-published guidance with respect to chain of custody documentation. Proposed R 420.206a(4) mandates that licensees have Standard Operating Procedures that "must comply with any guidance issued by the agency." There are numerous other instances.

While the objectives of the underlying rules may be laudable, MRA's reliance on such guidance—and imposition of that guidance on licensees—violates the APA. The APA defines a "rule" as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency." MCL 24.207. Relying on a long line of precedent, the Michigan Court of Claims reiterated this principle earlier this year, ruling that, "A 'rule' not promulgated in accordance with the APA's procedures is invalid." *Genetski v Benson*, Ct. Claims Docket #20-000261-MM (March 9, 2021) at pp. 7-8, citing MCL 24.243; MCL 24.245; *Pharris v Secretary of State*, 117 Mich App 202, 205; 323 NW2d 652 (1982).

As the *Genetski* decision explains,

> An agency must utilize formal APA rulemaking procedures when establishing policies that "do not merely interpret or explain the statute or rules from which the agency derives its authority," but rather "establish the substantive standards implementing the program." *Faircloth v Family Indep Agency*, 232 Mich App 391, 403-404; 591 NW2d 314 (1998). "[I]n order to reflect the APA's preference for policy determinations pursuant to rules, the definition of 'rule' is to be broadly construed, while the exceptions are to be narrowly construed." *AFSCME v Dep't of Mental Health*, 452 Mich 1, 10; 550 NW2d 190 (1996).

Genetski at 8. Unlike a guideline, which "binds the agency but does not bind any other person", MCL 24.203(6), a rule, whether labeled as such or not, must involve notice, a public hearing, and review by the Legislature's Joint Committee on Administrative Rules. *AFSCME v Dep't of Mental Health*, 452 Mich at 9.

MCMA certainly appreciates and understands MRA's desire to be flexible to respond to new situations as data becomes available or new lessons are learned. MCMA is also thankful that MRA has regularly sought industry and public input, be it through public meetings or MRA workgroups and advisory boards. But however receptive to input today's MRA has been, enshrining the use of guidance in the rules creates the very real risk that future MRA leadership will attempt to regulate by fiat. And even more importantly, if MRA guidance is challenged in the courts, the result could easily be an environment where the regulated industry and market are left without legal standards on important topics, such as requirements for safety testing.

Accordingly, we recommend that MRA resolve these concerns by removing references to guidance in the rulesets and instead codifying any technical guidance and bulletins in the administrative rules themselves. If a new situation arose that required immediate action, the APA gives MRA the power to promulgate emergency rules to address matters that concern the preservation of public health, safety, or welfare. MRA has used emergency rules to great success and effect historically to combat and address matters of urgent public health, such as the Vitamin E Acetate vaping crisis. MRA should conform to the APA's requirements.

With respect the various proposed rulesets, the MCMA offers the following comments:

2020-121 LR – Marihuana Licenses Rule Set

- R 420.1(1)(c) – The definition of "Applicant" contains language covering both a direct "or indirect" ownership interest, yet does not define the terms. In interpreting "indirect ownership interest," MRA has looked primarily to the right of a party to receive any share of revenues or profits. Recently, though, uncertainty has been created by MRA relying on language in its Statement of Money Lender form to conclude that a lender has an interest for purposes of the rule prohibiting holding interests in both a safety compliance facility and other license types. "Indirect ownership interest" should be specifically defined to provide clarity to the industry as to what types of relationships constitute an "indirect ownership interest" for purposes of meeting the definition of "applicant."

- R 420.1(1)(f) – The definition of "common ownership" should be clarified to specify that "common ownership" includes 2 or more state licenses or 2 or more equivalent licenses held directly or indirectly by the same legal person, which among other effects would provide clear authority for transfers between the subsidiaries of a parent company.

- R 420.1(1)(o) and (dd) – MRA should consider clarifying the definitions of "limited access area" and "restricted access area" as there is overlap in these definitions—particularly with respect to marijuana sales locations.

- R 420.1(1)(s) – The definition of "Marihuana establishment" in the Draft Rule (and in the current rules) is inconsistent with the definition in MRTMA, MCL 333.27953(h). MRTMA defines an "establishment" as a "business," not a "location." While MCMA understands the desire to harmonize definitions in MRTMA with those in the Medical Marihuana Facilities Licensing Act ("MMFLA"), the definition of "marihuana establishment" in the rules should be consistent with the statutory definition.

- R 420.3 – The MCMA supports the changes proposed to provide clear guidance as to when applications may be administratively withdrawn or for prequalification approvals to be revoked for subsequent ineligibility.

- R 420.4(2) and (9) – The Draft Rules continue requiring information not requested on MRA's current applications, such as financial account statements. MRA progressed in easing the regulatory burden of the application process and focusing on information that is truly important for determining applicant suitability. The rule should be amended to conform to the MRA's current application disclosure practice, by "required information includes" with "may include" and making similar revisions elsewhere in R 420.4.

- R 420.4(3) – The proposed language as to who meets the disclosure requirement is internally inconsistent. It starts with a statement that every person having an interest of 2.5% or greater must be disclosed. It then specifies by entity type who must be disclosed, varying from the 2.5% threshold. This could be readily clarified by changing the introductory language as follows: "Each applicant shall disclose the identity of all persons having an ownership interest in the applicant with respect to which the license is sought as follows:". Also, it should be noted that the definition of applicant is proposed to be changed with respect to trusts, but the disclosure requirement does not reflect that.

- R 420.5(1) – This rule should be modified to conform to the current application requirements of the MRA. For example, the reference to a business plan in Subsection (1)(ii) should be modified to reflect a marketing plan, technology, plan, and staffing plan.

- R 420.5(1)(e) – The MCMA applauds and supports the proposed rule change with respect to MRTMA municipal attestations, as the proposed change conforms to MCL 333.27959(3)(b).

- R 420.6(2)(d) – This subrule should be either removed or revised. While this prohibition on holding any governmental office or position of employment appears in the MMFLA, this statutory prohibition does not appear in the MRTMA. This prohibition should be either stricken or narrowed to focus on addressing true issues of concern as opposed to importing the broad exclusion from the MMFLA. The public health, safety, and welfare of the State of Michigan is unlikely to be implicated if the spouse of a marijuana licensee happens to be a public elementary schoolteacher or an appointee on the Ski Area Safety Board. If this rule is maintained, then "regulatory body" should be defined and exclude Boards and Commissions that do not issue licenses or promulgate regulations governing the activities of third parties. (Relatedly, MCMA recommends that "regulatory body" also be defined for MMFLA applications, and that the rules expressly incorporate the bases for license denial contained in the MMFLA.)

- R 420.6(2)(h) – This rule prohibiting an ownership interest in more than 5 adult-use Class C Grower licenses is inconsistent with the definition of "marihuana grower" in the MRTMA. A "marihuana grower" is defined as a "person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments." MCL 333.27953(i). In the context of MCL 333.27959(3)'s prohibition on holding an interest in more than 5 "marihuana growers," there is *not* a prohibition on the number of licenses. Instead, the statute prohibits a "person" from holding an ownership interest in more than 5 different businesses that hold Grower licenses, as opposed to 5 or more licenses. Accordingly, the rule should be modified to conform to the statute by prohibiting an applicant from holding an interest in more than 5 different entities that hold Grower licenses as opposed to restricting the number of licenses that any individual entity may hold. This change would not only reflect the actual statutory language, but would also eliminate what has become an impediment to capital investment.

- R 420.6(6) – This added subsection, which imports for MRTMA licenses the language from the MMFLA, MCL 333.27409, stating that a license is a revocable privilege and not a property right should be stricken, as the same statutory language does *not* appear in MRTMA. Whether a MRTMA license is a revocable privilege or a property right is the subject of ongoing litigation. Absent express statutory authority, MRA should not promulgate a rule to opine on an open question of law. Indeed, the determination of whether a license is a property right and the definition of the scope of that right is a legislative determination, not one delegated to the MRA.

- R 420.7 – The MCMA applauds the MRA's decision to reduce prequalification application fees and licensing fees across the board. The MCMA also applauds the MRA's decision to provide uniform fees for renewals, which gives clarity and certainty to the regulated industry for purposes of budgeting the costs of licensure.

- R 420.8 – The MCMA applauds MRA's decision to allow limited contact and contactless options for marijuana sales locations. The COVID-19 pandemic has shown that the industry can safely and securely provide limited contact and contactless options to customers. While we recognize that the Draft Rule strikes the prohibition on drive-thru transactions, MCMA recommends that the MRA be explicit in authorizing drive-through, so that no municipalities are confused and claim that drive-through's are not allowed because they are not specifically authorized.

- R 420.12(2)(s) – The denial of a license for failure to pass a pre-licensure inspection should be clarified to indicate that this means the failure of a MRTMA applicant to pass a pre-licensure inspection within 60 days of the submission of its establishment license application. The current proposed language simply states that a failure to initially pass a pre-licensure inspection could be grounds for denial of the application, which is contrary to MRA's practice. It is typical in a pre-licensure inspection for an applicant to add additional security cameras or make other minor changes to the facility in response to concerns or direction from the MRA field agent. These types of corrections to ensure compliance and to respond to the direction of the field agent—even if initially a failing pre-inspection report is issued—should not be grounds for denial of a license if the applicant cures any noted deficiencies.

- R 420.12(2)(t) – The proposed rule seeks to give MRA authority to deny an applicant's application if they submit an amendment to add an individual or entity that MRA then determines is not eligible for licensure. It is unclear what issue this rule is seeking to fix, as the amendment application would be denied if it was determined that an individual or entity proposed to be added was ineligible or unsuitable. In practical terms, applicants could be expected to cause any and all individuals or entities they wished to add to ownership first be separately prequalified. Only then would applicants be able to add new parties without fear of possibly jeopardizing the original applicant's status by attempting to add an unsuitable partner. This would create inefficiencies in the process and inhibit the ability of applicants to raise capital after they have been prequalified. MCMA proposes striking this proposed addition to the rules.

- R 420.14 – The reporting requirements for licensees should be consistently changed from "calendar days" to "business days" to conform with the proposed changes in R 420.802, which exclusively uses "business days." The timelines for reporting to the MRA should be consistent to avoid inconsistency or misunderstandings.

- R 420.18(2) – The MRA should clarify and make explicit the fees that will be required for a change of location. The current rule uses permissive language by using the word "may" as to whether additional fees will be required, yet our experience has been that MRA charges a full new licensure fee or regulatory assessment even when a licensee is moving

from a facility that has been licensed for a short period of time. MCA recommends that MRA charge a specific transfer fee limited to MRA's actual expense in reviewing a new facility application and inspecting a new location.

- R 420.20 – MCMA wholeheartedly supports MRA reviewing financial records of licensees for critical compliance matters. Nevertheless, in its application of the MMFLA's Annual Financial Statement to MRTMA licensees, MCMA believes that the AFS has metastasized to become something it was never intended to be. There is nothing to suggest that the Legislature intended the AFS to be anything other than what is commonly understood to be financial statements, i.e., a balance sheet, income statement, and a statement of cash flows. Instead, what MRA has turned into a searching audit takes enormous amounts of time and expense. For smaller businesses (e.g., stand-alone provisioning centers or retailers, microbusinesses), the cost is extreme enough that a credible argument can be made that the AFS constitutes an "unreasonably impracticable" mandate in violation of MCL 333.27958(3)(d). The MRA should provide definitive clarity as to the breadth and scope of the AFS mandate, and should strongly reconsider its current practice to focus on requiring applicants to provide only those financial documents that are necessary for the MRA to confirm regulatory compliance. Relatedly, MCMA recommends that a rule be added to define the AFS requirement under the MMFLA.

- R 420.23 – Again, MCMA believes that MRA should conform its definition of "marihuana grower" in R 420.6(2)(h) to the language of the statute. This would obviate the need for excess grower licenses. If MRA keeps the excess grow license, MRA should re-evaluate the ratio of Medical Class C Grower Licenses that are required to secure each excess grower license. Medical product is now only 25% of the marijuana market and likely to become an even smaller share. A ratio of 1 medical Class C license to 4 excess grow licenses would much better reflect the market.

2020-120 LR – Marihuana Licensees Rule Set

- R 420.101(c) – The definition of "another party" becomes unclear in certain contexts, such as the obligation to report misconduct of "another party" being limited to parties to a contract rather than other licensees. "Outside party" or "unlicensed third party" may be preferable.

- R 420.101(1)(m) – The definition of "management or other agreement" should be clarified to provide clear definitions for the terms "gross profit" and "net profit." "Gross profit" should be defined as "Revenue less Cost of Goods Sold." "Net Profit" should be defined as "Gross profit less expenses." These terms would eliminate ambiguity that exists in the context of licensing agreements today. Additionally, the definition for management or other agreement states that such an agreement is one by which an outside party either can

exercise control or receive more than 10% of gross or net profit. Consequently, the other party would be an applicant under both the statutory definitions and the provisions of proposed new rule 420.112a(4). That being the case, the management or other agreement definition should also include the fact that the outside party will be a supplemental applicant and must be reviewed by MRA as such.

- R 420.102(1) – MCMA recommends that the broader term "cultivate" should be used in this rule as opposed to the term "grow." This would mirror the language used in Section 10 of MRTMA, MCL 333.27960(1)(a) and also the language used in R 420.105(1)(a) for microbusinesses with respect to the authorization to cultivate marijuana plants.

- R 420.102(3) and (5) –The rule allows growers to acquire mature plants, seeds, seedlings, tissue cultures, and immature plants from other adult-use growers, but does not authorize acquiring harvested marijuana from another adult-use grower. MRTMA, however, expressly allows a grower to sell marijuana, broadly defined, to other licensed establishments. MCL 333.27960(1)(a). The rule should be modified to track the statute and also allow growers to acquire "marihuana" from other growers.

- R 420.102(9) – By providing that a grower may obtain from another grower "seeds, tissue cultures and clones *that do not meet the definition of marihuana plant*," this subrule conflicts with subrule (3), which explicitly allows an adult-use grower to transfer mature plants to another adult-use grower. It also conflicts with MRTMA. To reflect the language of MRTMA, the subrule should either broadly grant authority to acquire "marihuana" from another grower, or simply be deleted in favor of reliance upon subrule (3). If the intent of this subpart is to address the acquisition of seeds, tissue cultures and clones by an adult-use grower from a *medical* grower, then the subrule should be limited to such acquisitions. Finally, the entirety of R 420.109 fails to recognize that MRTMA authorizes adult-use growers "acquiring marihuana seeds or seedlings from a person who is 21 years of age or older." MCL 333.27960(1)(a). In the interests of clarity, this statutory authorization should be placed into the rule.

- R 420.103 – Subrule (1) allows processors to purchase from or sell to adult-use establishments, which would obviously include other processors. The proposed rule would delete subrule (3), which permits a licensee who holds processor licenses at multiple locations to transfer inventory between locations. This would appear to still be allowed under subrule (1), but it would be helpful for MRA to confirm that. Furthermore, when the present rules were adopted, they were for a brief time misinterpreted as allowing microbusinesses to acquire processed product, which contravenes MRTMA's requirement that microbusinesses sell only "marihuana cultivated or processed on the premises." MCL 333.27960(1)(f). To avoid such a misinterpretation arising again in the future, MCMA

recommends that subrule (1) expressly exclude microbusinesses from the establishments to which a processor may sell or transfer marijuana.

- R 420.104 – MCMA's comments regarding R 420.103 apply to R 420.104 as well.

- R 420.105 – As noted above, R 420.105(7) provides that microbusinesses are subject to all "applicable" rules that govern the activities of growers, processors and retailers. The rule also notes the obvious that microbusinesses are subject to the provisions of MRTMA pertaining to this license type. This includes that activities related to cultivation, processing and sale of marijuana must take place solely on the premises of the microbusiness. MCL 333.27960(1)(f). Because subrule (7) was for a brief time misinterpreted as allowing microbusinesses to participate in the full range of activities permitted for growers, processors, and retailers, MCMA recommends that the rule more clearly incorporate the limits of MRTMA. This could be accomplished by:

    - Inserting "All marijuana must be cultivated solely on the premises" at the end of subrule (1)(a);
    - Inserting the phrase "cultivated on the premises" after the word "marihuana" in subrule 1(b); and
    - Inserting the phrase "cultivated or processed on the premises" after the word "marihuana" in subrule (1)(c)."

  To align the rule with the statutory language, MCMA recommends that proposed subrule (8) read "A marihuana microbusiness may not purchase or accept a ~~mature~~ plant from another establishment, an individual, a registered qualifying patient, or a registered primary caregiver." (Should pending House Bills 5300 and 5301 be enacted, "specialty medical grower" should be added to the above, as well as in other applicable rules.)

- R 420.105a – **This new proposed license should be stricken entirely from the rule set.** The proposed "Class A microbusinesses" would be the farthest thing from any conception of a "microbusiness," and completely disrupt the market and settled expectations of incumbent businesses at every level. Instead, these so-called microbusinesses would be full-fledged retailers able to acquire unlimited just-harvested plants from multiple sources including caregivers and individuals, acquire and sell unlimited amounts of concentrate and infused product, and to still operate as a grower and retailer, all for a lower license fee.

  The suggested authorization to allow mature plants to be acquired from patients, caregivers, and anyone over the age of 21 would without question lead to microbusinesses that would be based on mature plants collectively grown by unlicensed individuals, greatly exacerbating current problems with caregivers and unlicensed individuals functioning as de facto commercial growers in neighborhoods throughout the state. MRA would

effectively be blessing and encouraging the movement of cultivation activities outside of MRA licensed and regulated facilities. Even worse, the conduct that would be authorized by rule is flat-out illegal and would blatantly violate both MRTMA and the MMMA. MRTMA is explicit that adults *cannot sell* marijuana, but can only gift marijuana to individuals (not businesses). MCL 333.27955(1)(d). Our Supreme Court has ruled that the only transfers of medical marijuana authorized by the MMMA and that are lawful are transfers from caregivers to their maximum of five patients connected to them through the medical marihuana registry. *People of the State of Michigan v McQueen*, 493 Mich 135 (2013). Indeed, a caregiver or patient selling their marijuana cultivated under the MMMA is committing a *felony*. MCL 333.26424(l). Patients and caregivers are authorized only to transfer or sell marihuana *seeds or seedlings* to MMFLA growers. MCL 333.26424a(2)(b). Quite simply, this proposed new license type would facilitate and reward the illicit market and unregulated actors.

It is also worth noting that this concept originated with MRA's Racial Equity Workgroup, yet the proposed rule is not in any way tied to social equity. MCMA has in the past supported legislative changes to authorize a higher plant count for social equity applicants (as well as improvements to MRA's determination of what makes up definition of "disproportionately impacted communities.")

- R 420.106 – MCMA recommends that this rule be revised to simply require ongoing reporting to MRA Compliance of any off-site addresses where vehicles may be stored, not require these locations to be identified by address in a secure transporter's staffing plan. This would alleviate any need for a secure transporter to constantly update a plan that would need to be sent through MRA Applications.

- R 420.107 – MCMA strongly supports the proposal to allow MRTMA safety compliance facilities to test marijuana from individuals who are home growing under MRTMA.

- R 420.108 – Unlike MRTMA, the MMFLA does not allow growers to accept returns of product from processors or provisioning centers. As you know, MRA has taken disciplinary action against MMFLA licensees for product returns to growers. To parallel other rules and make the prohibition more clear, MCMA recommends placing that prohibition in the rule.

- R 420.110 – While the MMFLA limits to whom some license types may transfer product, this is not the case for secure transporters, who may "transport marihuana and money … between marihuana *facilities*." MCL 333.27503(1). Although a secure transporter's place of business is a "facility," there has been some confusion over whether secure transporter to secure transporter transfers are permissible. MCMA recommends that the rule expressly state that such transfers are lawful. As with R 420.106, MCMA also recommends that this

rule be revised to require ongoing reporting to MRA Compliance of any off-site addresses where vehicles may be stored, not require these locations to be identified by address in a staffing plan.

- R 420.112 – This rule today states that safety compliance facilities are authorized to "Take marihuana from, test marihuana for, and return marihuana to *only* a marihuana facility." R 420.112(1)(a) (emphasis added). Although the rule tracks the statutory language of the MMFLA, it must also account for the fact that the MMMA allows patients and caregivers to transfer "marihuana for testing to and from a safety compliance facility licensed under the medical marihuana facilities licensing act." MCL 333.26424a(2)(c). This provision of the MMMA was enacted at the same time as the MMFLA, via a tie-barred bill, and was contingent upon the MMFLA being enacted. The two statutes, therefore, should be construed *in pari materia*, and the rule should therefore reflect that safety compliance facilities may also test patient and caregiver medical marihuana.

- R 420.112a – MCMA appreciates MRA placing the standards for licensing agreements in the rules and recognizing the need to address management agreements and other similar agreements. MRA is also pleased that the rule removes the current Advisory Bulletin requirement that licensing royalties be based on the number of units sold or a monthly rate. As the Advisory Bulletin provisions are being enshrined in the rules, though, MCMA believes that there are aspects that should be made more clear.

  First, the definition of "other agreement" and the test for whether another party meets the definition of "applicant" both depend on whether the other party could receive "more than 10% of the gross or net profit from the licensee." As with proposed R 420.101(1)(m), this rule should provide clear definitions for the terms "gross profit" and "net profit." ("Revenue less Cost of Goods Sold" and "Gross profit less expenses" respectively.) Second, "profit from the licensee" should be defined as being based on the licensee's total revenues, not just the revenues attributable to the products that are the subject of the licensing agreement. This would then track the statutory definition of applicant. Third, it should be made clear that the 10% payment cap does not include payments for services, equipment, packaging, etc. so long as they are provided at fair market value and the contract shows how that is calculated. (This is MRA's current practice.)

  In addition to these points of clarification, MCMA recommends striking the provision on how and by whom payments may be made (the second sentence of subrule 3(i)), as payment flow should not be an issue unless the other party is being given the ability to control or participate in the management of the licensee. For the same reason, MCMA recommends striking subrule (3)(iii). Finally, MCMA asks that the rule be applied only prospectively or to agreements that have not previously been approved by MRA. This would avoid what would be the unconstitutional impairment of contracts.

2020-122 LR – Marihuana Operations Rule Set

- R 420.203 – MRTMA prohibits MRA from adopting any rule requiring a "marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction." MCL 333.27958(3)(b). In requiring that licensees maintain sales records and receipts, MRA should make clear, at least for adult-use, that personal information about customers at the retail level need not be provided to MRA.

- R 420.204 – MCMA supports the accommodation that would permit internal analytical testing space to be utilized by co-located licensees. Based on the experience MCMA members have in numerous other jurisdictions, however, MCMA discerns no regulatory purpose that is being achieved with the artificial separation of grower and processor spaces within co-located facilities. In other states, no such separation is required, and licensees are free to design facilities that are far more efficient. MCMA strongly recommends eliminating the separation requirements altogether, at least as pertains to grower and processor activities. METRC tags are sufficient to determine if marijuana or marijuana products that are in progress or finished are associated with the grower license or processor license, just as with adult-use and medical marijuana and products being in the same grower or processor space. For co-located growers and processors, MRA should permit inventory, record keeping, and point of sale operations to be shared, and there is no reason to mandate that licenses be posted in separate spaces. If MRA does, for some reason, believe that the separation of these operations is necessary, MRA should at a minimum allow both licenses to use some areas simultaneously (e.g., shipping and receiving).

- R 420.206(4) – This rule presently provides that MRA is to publish lists of approved and banned chemicals, but the rule is silent about the use of chemicals that are on neither list. MRA's present stance is that if a cultivator wishes to use an unlisted chemical, they must ask MRA, which will first work with MDARD to determine if use should be allowed. This should be spelled out in the rule.

- R 420.206(8)(b) – This rule currently provides that when a lab manager leaves and an interim is designated, that interim must meet the qualifications of a "supervisory analyst." These qualifications should be set out in the rule.

- R 420.206(13) – MCMA believes that the ability of licensees to utilize hemp-derived inputs would be unnecessarily hampered by mandating that all ingredients containing cannabinoids, whether naturally occurring or synthesized, be sourced from an entity that is licensed by a governmental authority and entered into METRC. First, there is not presently any mechanism for MRA licensees to add ingredients to METRC, and there is no METRC access for hemp producers. Second, the function of protecting patient and customer safety would be better served by requiring Certificates of Analysis to be provided by all suppliers

of cannabinoids that do not meet the definition of "marihuana" than by requiring that all come from licensed sources. Testing of the resulting product then will further confirm safety.

If MRA is to retain the proposed requirement, at a minimum it should be modified to clearly provide that the licensing authority is not restricted to MDARD or other Michigan agencies, as interstate commerce in hemp-derived products is now federally legal. Any hemp-based ingredients originating from a producer operating under a USDA approved hemp plan should be acceptable. Additionally, there should be some phase-in of this rule so that it does not take effect until (1) the necessary functionality is added to METRC, and (2) MDARD has provided a clear pathway for Michigan hemp growers and processors to transfer hemp and derivatives to MRA licensees. In the interim, MRA could require that all COAs and licenses of suppliers be kept on file for inspection, and that they be uploaded to MRA once MRA creates a way to do this.

- R 420.206a – While requiring written standard operating procedures is appropriate and welcome, the proposed rule provides no clarity or definition to permit a licensee to identify the specific processes for which SOP's are required. The rule lacks any description about the level of detail that SOP's must contain. The rule leaves all this and more to "any guidance issued" by MRA. Again, the use of binding guidance documents rather than notice and comment rulemaking violates the APA. MRA should also recognize the value of industry operational experience being considered when developing required parameters for SOP's. For both legal and practical reasons, SOP requirements should not be produced without industry input.

- R 420.207 – MCMA recommends eliminating the current restriction that a delivery employee may only be employed for one sales location. At a minimum, MRA should allow drivers to be employed by multiple sales locations if those locations are under common ownership. It serves no regulatory purpose to require companies that have multiple stores to have employees be restricted to working at only one location.

- R 420.207a – MCMA is highly supportive of permitting sales locations to designate an area for contactless or limited contact transactions, unless prohibited at the municipal level. To avoid uncertainty, MCMA recommends that the rule state explicitly that drive-through and curbside sales are acceptable. MCMA also recommends that subrule (7), which would direct that the area for contactless or limited contact transactions meet the security requirements of R 420.209, be modified to exclude R 420.209(3)'s mandate for locks.

- R 420.208 – Michigan is an outlier, perhaps the only state in the nation, in classifying marijuana grow facilities as "industrial uses." The sprinkler systems, minimum aisleway widths, and other requirements for manufacturing facilities simply make no sense for

buildings used for the cultivation of marijuana. MCMA recommends that MRA and the Bureau of Fire Services work with industry to adopt or develop standards that are more appropriate to the actual use of facilities. Also, as MRA and BFS are no doubt aware, the National Fire Protection Association is currently developing new standards for cannabis facilities. MCMA recommends that the rule provide for re-evaluation of fire protection standards once the NFPA process is complete.

- R 420.212 – MCMA recommends that co-located facilities be permitted to store marijuana product in a common area.

- R 420.214 – MCMA suggests that "common ownership" be broadly defined such that transfers among subsidiaries of the same company are more clearly authorized. MCMA also recommends that the requirements and parameters for transfers be set forth in the rule, and not by "guidance," which violates the APA. MCMA also recommends providing clear authority for transfers of all from expiring licenses that are not being renewed.

- R 420.214a – MCMA is strongly supportive of the express authorization of internal analytical testing, and suggests only that licensees be allowed to have product from more than one license in the space the same time.

- R 420.214b – MCMA recommends that the term "adverse reaction" be defined. MCMA also recommends that the reporting requirement be placed into R 420.14, which contains all of the other event reporting mandates.

- R 420.214c – MCMA recommends that the term "defective product" be defined.

2020-124 LR – Marihuana Sampling and Testing Rule Set

- R 420.305 – MCMA strongly supports this proposed rule, which would give consumers and patients (as well as industry) greater confidence in the reliability of safety testing.

- R 420.307 – MCMA recommends striking the mandate that all marijuana businesses must follow guidance that may be published and instead set forth standards in the rules. By law, guidance cannot bind those outside of the agency; this rule should be modified to conform to the requirements of the APA.

2020-119 LR – Marihuana Infused Products and Edible Marihuana Products Rule Set

- R 420.403(6) – "Inactive ingredients" is defined in the rules in a manner that excludes from the definition ingredients "not derived from the plant *Cannabis sativa L*." R 420.102(1)(e). By requiring "All *non-marihuana* inactive ingredients" (emphasis added) to be listed and approved, ambiguity is introduced. "Inactive ingredients" are by definition "non-marihuana," so it is unclear what is accomplished by the addition of "non-marihuana" to the term. Because of the general interpretive rule that words in a rule should be interpreted so that they are not surplusage, licensees will be left to attempt to interpret the meaning. One implication could be that hemp-derived products and compounds (CBD, etc.) fall within the rule's ambit. If this is the case, then virtually all such ingredients would be prohibited, because the FDA has not included them in the FDA Inactive Ingredient database. MCMA recommends that the words "non-marihuana" be deleted.

- R 420.406(7)(a) – MCMA recommends that MRA not adopt its proposed mandate that product names "must be an appropriately descriptive phrase that accurately describes the basic nature of the product." This significant change seems to imply that products must be named "gummies" or "chocolate bars" and would undermine the value of branding.

- R 420.406(8)(d) – MCMA recommends that MRA not adopt the addition of "in charge" as that could be interpreted as requiring the certification of all managerial employees. MCMA recommends a more targeted requirement that "an employee who is certified as a Food Protection Manager must supervise the production of edible marihuana product."

- R 420.406(9)(e) – MCMA recommends that this new proposed provision be deleted, or at the minimum, made more clear. It is not clear from the text of the rule what prohibiting edible marijuana packaging from containing "the characteristics of commercially available food products" means. Would this prohibit packaging like that used for a candy bar? Clarity should be provided.

2020-123 LR – Marihuana Sale or Transfer Rule Set

- R 420.501 – MCMA recommends that "administrative hold" be expanded to also expressly encompass "potential health hazards." Prior to the MRA's emergency rules during the EVALI crisis, it was not a violation of either the acts or the rules to produce vape cartridges containing Vitamin E Acetate (although fortunately, there is no record of such products being manufactured by MRA licensees). MRA therefore arguably lacked legal authority at that time to impose an administrative hold. The rule should explicitly give MRA the authority to do so when public health is in jeopardy.

- R 420.504(1)(f) – MCMA strongly believes that the requirement that product containers or bags include net weight in "United States customary" units should not be removed from the rules. Quantity limitations for products sold to patients and customers are virtually all expressed in ounces. See MCL 333.2424(c). Ounces and pounds have been customarily used in reference to cannabis since before the invention of the metric system and are widely understood by customers and patients.

- R 420.504(4) – By requiring that safety information pamphlets "substantially conform to the design published on the agency's website," MRA is again sidestepping the requirements of the APA. In addition, this approach violates the Acts. In the MMFLA, the Legislature mandated that the MRA "promulgate *rules*" that "must include *rules* to … [e]stablish informational pamphlet standards…" MCL 333.27206(u) (emphasis added). MRTMA also mandates the inclusion of informational pamphlet standards in promulgated rules. MCL 333.27958(1)(l). MCMA recommends that MRA conform to the requirements of the APA, MMFLA, and MRTMA and incorporate the pamphlet standards into the rules themselves. MCMA also recommends that MRA provide lead time for new pamphlet requirements (which would occur naturally under the framework of the APA).

2021-10 LR – Marihuana Employees Rule Set

- R 420.602(2)(e) – MCMA believes that the requirement for "responsible operations plans" should be limited to designated consumption establishments, marijuana events, microbusinesses, and retailers. These are the only license types that deal directly with customers and patients. While MCMA recognizes that responsible operations plans are also to detail how employees will prevent underage access to the establishment, illegal sale of marihuana in the establishment, and potential criminal activity, each of these must be addressed in the establishment's security plan. Having duplicative plans invites confusion.

- R 420.602(2)(j)-(k) – MCMA recommends that MRA include the statutory disqualifier for MMFLA employees, and the ability to obtain a waiver from MRA.

- R 420.602a – MCMA believes that extending to the employment context the prohibition on holding an interest in a secure transporter or safety compliance facility while holding an interest in any other license type is unnecessary and over-reaches. MCMA does not believe that there is an adequate rationale to provide that an employee of a secure transporter or laboratory may not also be an employee of any other licensee. MCMA is also concerned that a licensee could face regulatory discipline for unknowingly employing or continuing to employ someone who also has a job with a prohibited license type.

2020-118 LR – Marihuana Hearings Rule Set

- R 420.703 – MCMA is pleased to see the specific inclusion of authority for ALJ's to subpoena witnesses.

2020-117 LR – Marihuana Disciplinary Proceedings Rule Set

- R 420.801(1)(g) – MCMA recommends that the subrule read that contested case hearings be conducted "pursuant to the APA, the acts and these rules."

- R 420.802 – MCMA asks that subrule (4)(c) be clarified to provide that reporting of violations of "another party" means the defined term "another party." Otherwise, this rule could easily be misinterpreted as requiring notification to MRA when a licensee "should have been aware" of a regulatory violation by any other licensee. (Although MCMA certainly hopes that licensees who become aware of regulatory concerns will bring those to MRA's attention.) MCMA also notes again that this rule would have reporting requirements measured in business days, while R 420.14 has the same reporting requirements measured in calendar days. These should be consistent.

- R 420.808a – While beneficial that MRA is adding a rule to implement the statutory requirement of an exclusion list, portions of the proposed rule should be modified. First, including individuals on the list for theft, fraud or dishonesty even when a conviction has not been obtained takes a step too far. Someone who has been acquitted of criminal activity should not be treated as a criminal. Second, exclusion for "conduct that could negatively impact public health, safety, and welfare" is far too subjective and broad. Third, the cross-reference in subrule (3) to R 420.705 should be corrected to cross-reference R 420.704a. Finally, MCMA is concerned that a hearing under R 420.704a must be requested within 21 days, or else an individual stays on the exclusion list. Those excluded should have other opportunities to contest their exclusion. Subrule 5(c)'s proviso that exclusions are permanent if they are for reasons other than conduct (such as having been found ineligible for licensure at one time) eliminates the opportunity for someone who was denied licensure to reapply in the future, when they may have matured or circumstances otherwise have changed. The prospect of rehabilitation should not be foreclosed.

2021-29 LR – Marihuana Declaratory Rulings Rule Set

- R 420.822(1) – MCMA believes that providing for declaratory rulings is a very positive step forward, and recommends that all declaratory rulings be posted on the MRA website. MCMA, however, believes that language should be added to this rule to clarify that MRA will still respond to questions from licensees concerning the application of rules and provide informal review of product packaging, but MRA's answers to such questions will

be non-binding. A simple sentence should be added to the conclusion of R 420.822(1) that states: "Nothing in this rule is intended to limit or restrict the agency's ability to respond to questions or inquiries from licensees or the general public, but any agency response to such questions or inquiries shall not be binding on the agency."

- R 420.822(2)(c), (d) – The proposed language limits the scope of a declaratory ruling to "statutes, rules, or orders" that may apply to the requested declaratory ruling. The MRA should consider broadening the scope of these rules to also include "constitutional provisions," "judicial opinions," and "ordinances." The implications of the Michigan constitution may factor into a declaratory ruling. Similarly, a judicial opinion, particularly one that constitutes binding legal precedent from the Michigan Court of Appeals or Michigan Supreme Court, may be implicated in a declaratory ruling. Lastly, both the MMFLA, MCL 333.27205(1), and MRTMA, MCL 333.27965(2), prohibit local municipalities from adopting ordinances that conflict with the MMFLA, MRTMA, or rules promulgated by the MRA. There may be instances in which it may be appropriate for the MRA to offer a declaratory ruling with respect to whether a local municipal ordinance conflicts with the MMFLA, MRTMA, or the rules.

- R 420.822(12) – The rule should be slightly modified to make clear that any declaratory ruling issued by the agency also contain the effective date of the ruling.

In conclusion, MCMA again thanks MRA for the effort already put into the Draft Rules and looks forward to the number of positive steps proposed. MCMA also appreciates MRA's consideration of the comments provided in this letter, and values the collaborative approach of the agency. If there are any questions with respect to these comments, please contact me.

Regards,

DYKEMA GOSSETT PLLC

R. Lance Boldrey

cc: MCMA Board