

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

BUREAU OF MEDICAL MARIHUANA REGULATION

MEDICAL MARIHUANA FACILITIES LICENSING ACT

EMERGENCY RULES

Filed with the Secretary of State on December 4, 2017

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the department of licensing and regulatory affairs by section 206 of 2016 PA 281, MCL 333.27206, enacting section 2 of Act 281 of 2016, by section 3 of 2016 PA 282, MCL 333.27903, and by section 6 of MCL 333.26426, 2008, Initiated Law 1.)

FINDING OF EMERGENCY

These rules are promulgated by the department of Licensing and Regulatory Affairs (department) to establish emergency rules for the purpose of implementing the Medical Marihuana Facilities Licensing Act (act), 2016 PA 281, MCL 333.27101 et seq., which took effect December 20, 2016. The act provides for a state regulatory structure to license and regulate medical marihuana growers, processors, provisioning centers, secure transporters, and safety compliance facilities that interacts with the statewide monitoring system for commercial marihuana transactions; establishes a medical marihuana licensing board (Board) created within the department and appointed by the governor; and prescribes civil fines and sanctions and provides remedies.

The act includes an enacting section specifying that the legislature found it necessary for the promulgation of emergency rules to preserve the public health, safety, or welfare for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements. In addition, section 206 of the act requires the department, in consultation with the Board, to promulgate administrative rules and emergency rules as necessary to implement, administer, and enforce the act. Furthermore, section 206 specifies that the rules shall ensure the safety, security, and integrity of the operation of marihuana facilities.

To date, no administrative rules have been promulgated under the authority granted to the department, in consultation with the Board that has been created within the department. Specifically, there are no current administrative rules to ensure the safety, security, and integrity of the operation of marihuana facilities. Pursuant to section 401 of the act, beginning December 15, 2017, persons may apply to the Board created within the department for state operating licenses in the categories of class A, B, or C grower, processor, provisioning center, secure transporter, and safety compliance facility. The Board is required to review all applications for licensure, issue or deny issuance of a license, and inform each applicant of the Board's decision. If issuance is

December 1, 2017

denied, the Board is required, upon request, to provide a public investigative hearing. In addition, any party aggrieved by an action of the Board suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, shall be given a hearing before the Board upon request. There are no administrative rules currently in place that will provide for the implementation of these requirements as specified in the act.

In addition, the act requires the promulgation of administrative rules to prescribe the use of the statewide monitoring system to track all marihuana transfers, as provided in the Marihuana Tracking Act, 2016 PA 282, MCL 333.27901 et seq. To date, these administrative rules have not been promulgated. The statewide monitoring system is used to track and inventory marihuana and is a key component to preserving the integrity of the operation of marihuana facilities, monitoring the industry, investigating, and supporting compliance with the act to promote the public health, safety, or welfare.

The lack of administrative rules to implement the act will have a detrimental effect on the necessity for access to a safe source of marihuana for medical use and the immediate need for growers, processors, secure transporters, provision centers, and safety compliance facilities to operate under clear requirements. Furthermore, the use of the statewide monitoring system to track all marihuana transfers is integral to the safety and compliance requirements of the act. The emergency administrative rules are needed to enable the department, through its Bureau of Medical Marihuana Regulation, to implement the act to provide a safe environment for the state operating licensees and Michigan communities, as well as access to medical marihuana that has been tested for safety for sale to registered qualifying patients and registered primary caregivers.

If the complete process specified in the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 et seq. for the promulgation of rules were followed, the process would not be completed in time for the department to comply with the act's requirements to process applications according to the timelines specified in the act, provide administrative hearing procedures, or implement the tracking requirements. Furthermore, the administrative rules would not be promulgated prior to the issuance of state operating licenses, thus causing uncertainty and financial hardship to individuals or businesses that plan to apply for commercial state operating licenses.

The department, in consultation with the Board, therefore, finds that the preservation of the public health, safety, and welfare requires the promulgation of emergency rules as provided in section 48 without following the notice and participation procedure required by sections 41 and 42 of 1969 PA 306, as amended, being MCL 24.241, and MCL 24.242 of the Michigan Compiled Laws.

Rule 1. Definitions.

- (1) "Act" means the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.
- (2) "Batch" means all the plants of the same variety of medical marihuana that have been grown, harvested, and processed together and exposed to substantially similar conditions throughout cultivation and processing.
- (3) "Building" means a combination of materials forming a structure affording a facility or shelter for use or occupancy by individuals or property. Building includes a part or parts of the building

and all equipment in the building. A building shall not be construed to mean a building incidental to the use for agricultural purposes of the land on which the building is located.

(4) "Bureau" means the department of licensing and regulatory affairs' bureau of medical marihuana regulation.

(5) "Bureau of fire safety" or "BFS" means the department of licensing and regulatory affairs' bureau of fire safety.

(6) "Department" means the department of licensing and regulatory affairs.

(7) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.

(8) "Employee" means a person performing work or service for compensation.

(9) "Harvest batch" means marihuana that has been harvested.

(10) "Immature plant" means a nonflowering marihuana plant that is no taller than 8 inches and no wider than 8 inches produced from a cutting, clipping, tissue culture, or seedling that is in a growing/cultivating medium or in a growing/cultivating container that is no larger than 2 inches wide and no more than 2 inches tall that is sealed on the sides and bottom.

(11) "Limited access area" means a building, room, or other contiguous area of a marihuana facility where marihuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under control of the licensee.

(12) "Marihuana facility" means a location at which a licensee is licensed to operate under the act and these rules.

(13) "Marihuana product" means marihuana or marihuana-infused product, or both, as those terms are defined in the act unless otherwise provided for in these rules.

(14) "Marihuana tracking act" means the marihuana tracking act, 2016 PA 282, MCL 333.27901 to 333.27904.

(15) "Michigan medical marihuana act" means the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430.

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

(17) "Plant tag" means an RFID tag supplied through the statewide monitoring system for the purpose of identifying an individual marihuana plant.

(18) "Proposed marihuana facility" means a location at which an applicant plans to operate under the act and these rules if the applicant is issued a state operating license.

(19) "Restricted access area" means a designated and secure area at a marihuana facility where marihuana products are sold, possessed for sale, and displayed for sale.

(20) "Same location" means separate state operating licenses that are issued to multiple marihuana facilities that are authorized to operate at a single property but with separate business addresses.

(21) "Stacked license" means more than 1 state operating license issued to a single licensee to operate as a grower of class C-1,500 marihuana plants as specified in each license at a marihuana facility.

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

Rule 2. Terms; meanings.

Terms defined in the act have the same meanings when used in these rules unless otherwise indicated.

Rule 3. Adoption by reference.

- (1) National fire protection association (NFPA) standard 1, 2018 edition, entitled “Fire Code” is adopted by reference as part of these rules. Copies of the adopted provisions are available for inspection and distribution from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts, 02169, telephone number 1-800-344-3555, for the price of \$99.50.
- (2) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph published by the American Herbal Pharmacopoeia. A copy of that publication may be obtained from the American Herbal Pharmacopoeia, P.O. Box 66809, Scotts Valley, California 95067, or at the Internet address <http://www.herbal-ahp.org/>, for the price of \$44.95.
- (3) Safe Quality Food (SQF), 7.2 edition available at http://www.sqfi.com/wp-content/uploads/SQF-Code_Ed-7.2-July.pdf.
- (4) The International Organization for Standardization (ISO), ISO 22000 / ISO/TS 22002-1 - food safety bundle, available for purchase at: <https://webstore.ansi.org/RecordDetail.aspx?sku=ISO+22000+%2f+ISO%2fTS+22002-1+-+Food+Safety+Bundle>, for the price of \$275.00.
- (5) International Organization for Standardization (ISO), ISO/IEC 17025:2005, general requirements for the competence of testing and calibration laboratories available at: <https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2fIEC+17025%3a2005>, for the price of \$162.00.

Rule 4. Application procedure; requirements.

- (1) A person may apply for a state operating license on the form created by the department accompanied by the application fee as prescribed in these rules. Each question on the application must be answered in its entirety and all information requested and required by the act and these rules must be submitted in the application. Failure to comply with these rules and the application requirements in the act is grounds for denial of the application.
- (2) A person may submit a partial application under Rule 5 on the condition that it is to prequalify to complete the remaining application requirements. This is a pending status until all application requirements in Rule 6 are completed. The department shall not issue a license at this stage of the application.
- (3) The department may delay an application while additional information is requested including, but not limited to, requests for additional disclosures and documentation to be furnished to the department.
- (4) For purposes of this rule and Rules 5 and 6 the term “applicant” includes the officers, directors, and managerial employees of the applicant and any persons who hold any direct or indirect ownership interest in the applicant.

Rule 5. Application requirements; financial and criminal background.

- (1) The first part of the application is a financial background and full criminal history background check of the applicant. For purposes of this rule an applicant includes the officers, directors, and managerial employees of the applicant and any persons who hold any direct or indirect ownership interest in the applicant.

(2) An applicant shall disclose the identity of every person having any ownership interest in the applicant with respect to which the license is sought including, but not limited to, date of birth, government issued identification, or any other documents required by the act.

(3) An applicant and any persons who have a direct or indirect interest in the applicant, as well as any officers, directors, and managerial employees of the applicant shall disclose all the financial information required in the act and these rules in a format created by the department including, but not limited to, the following:

(a) Financial statements, pecuniary interest, any deposit of value of the applicant or made directly or indirectly to the applicant, or both, and financial account information including but not limited to, funds, savings, checking, or other accounts including any or all financial institutions information, such as names, account type, amounts of the foregoing, and a list of all loans, amounts, securities, or lender information.

(b) Property ownership information, deeds, leases, rent, real estate trusts, purchase agreements or institutional investors.

(c) Tax information, W-2 and 1099 forms, and any other information required by the department.

(d) For in-state and out-state applicants, the applicant's business organizational documents filed with this state, local county, or foreign entity, if applicable, including proof of registration to do business in this state and certificate of good standing from this state or foreign entity, if applicable.

(e) Disclosure by the applicant of the identity of any other person who meets either of the following:

(i) Controls, directly or indirectly, the applicant.

(ii) Is controlled, directly or indirectly, by the applicant or by a person who controls, directly or indirectly, the applicant.

(f) Written consent by the applicant to a financial background investigation as authorized under the act and these rules.

(g) Disclosure by the applicant of any true parties of interest as required in section 404 of the act.

(h) Disclosure by the applicant of the stockholders or other persons having a 1% or greater beneficial interest in the proposed marihuana facility as required in section 303 of the act.

(i) The sources and total amount of the applicant's capitalization to operate and maintain the proposed marihuana facility in compliance with Rule 11.

(j) A CPA-attested financial statement including foreign attested CPA statement, or its equivalent, if applicable, on capitalization pursuant to Rule 11.

(k) Information on the financial ability of the applicant to purchase and maintain adequate liability and casualty insurance in compliance with Rule 10.

(l) Any other documents, disclosures, or attestations created or requested by the department that are not inconsistent with the act or these rules.

(4) An applicant and each person having any ownership interest in the proposed marihuana facility and each person who is an officer, director, or managerial employee of the applicant shall disclose criminal history background information and regulatory compliance as provided under the act and these rules in a format created by the department, including, but not limited to, all the following:

(a) Attestation, in writing, that the person consents to inspections, examinations, searches, and seizures that are permitted under the act and these rules.

(b) Written consent to a criminal history check, submission of a passport quality photograph to the department and 1 set of fingerprints to the department of state police in accordance with section

402 of the act and these rules for the applicant, each person having any ownership interest in the proposed marihuana facility, and each person who is an officer, director, or managerial employee of the applicant.

(c) Submission of a handwriting exemplar, fingerprints, photographs, and information authorized by the act and by these rules.

(d) Attestation affirming a continuing duty to provide information requested by the department and to cooperate in any investigation, inquiry, or hearing.

(e) Attestation acknowledging that sanctions may be imposed for violations on a licensee while licensed or after the license has expired as provided in the act and these rules.

(f) Disclosure of any noncompliance with any regulatory requirements in this state or any other jurisdiction.

(g) Disclosure of an application or issuance of any commercial license or certificate issued in this state or any other jurisdiction and the requirements under section 401(1)(e) of the act.

(h) Any other documents, disclosures, or attestations created or requested by the department that are not inconsistent with the act or these rules.

(5) An applicant shall submit in the application any information requested and required by the act and these rules.

Rule 6. Application requirements; complete application.

(1) A complete application for a state operating license must include all the information in Rule 5 and all the following:

(a) A description of the type of marihuana facility, anticipated or actual number of employees, projected or actual gross receipts, a business plan, proposed marihuana facility location, and security plan as required under the act and these rules.

(b) A copy of the proposed marihuana facility plan under Rule 8.

(c) An applicant shall pass the pre-licensure inspection as provided in Rule 9.

(d) An applicant shall submit confirmation of compliance with the municipal ordinance as required in section 205 of the act and these rules. For purposes of these rules, confirmation of compliance must be on an attestation form prepared by the department that contains all of the following information:

(i) Written affirmation that the municipality has adopted an ordinance under section 205 of the act, including, if applicable, the disclosure of any limitations on the number of each type of marihuana facility.

(ii) Description of any zoning regulations that apply to the proposed marihuana facility within the municipality.

(iii) The signature of the clerk of the municipality or his or her designee attesting that the information stated in the document is correct.

(e) The disclosure of the true party of interest as required in section 404 of the act and these rules.

(f) The disclosure of the beneficial interest as required in section 303(1)(g) of the act.

(g) Additional information and documents requested by the department not inconsistent with the act and these rules.

(h) Any other documents, disclosures, or attestations created or requested by the department that are not inconsistent with the act and these rules.

Rule 7. Application; fees; assessment.

- (1) An application for a state operating license must be accompanied by the nonrefundable application fee of \$6,000.00 upon initial application under Rule 5.
- (2) If the costs of the investigation and processing the application exceed the application fee, the applicant shall pay the additional amount.
- (3) The regulatory assessment must be paid on or before the date a licensee begins operating and annually thereafter pursuant to section 603 of the act and these rules.
- (4) A license will not be issued until a complete application is submitted, the fees required under these rules are paid, and it is determined that the applicant is qualified to receive a license under the act and these rules.

Rule 8. Marihuana facility plan.

- (1) To ensure the safety, security, and integrity of marihuana facility operations, an applicant shall submit a marihuana facility plan for the proposed marihuana facility as required in Rule 6 and thereafter upon request by the department. Upon the request of the department an applicant or licensee may be required to submit a revised marihuana facility plan.
- (2) The marihuana facility plan shall include, but not be limited to, the following:
 - (a) The type of proposed marihuana facility, location, description of the municipality, and any of the following if applicable:
 - (i) Operation at the same location under Rule 24.
 - (ii) Proof of common ownership interest under Rule 24.
 - (iii) Stacked license under Rule 22.
 - (iv) Temporary operation under Rule 19.
 - (b) Diagram of the marihuana facility including, but not limited to, its size and dimensions; specifications; physical address; location of common entryways, doorways, or passageways; means of public entry or exit; limited-access areas within the marihuana facility; and indication of the distinct areas or structures at a same location as provided for in Rule 24.
 - (c) Floor plan and layout, including dimensions, maximum storage capabilities, number of rooms, dividing structures, fire walls, and entrances and exits.
 - (d) Means of egress, including, but not limited to, delivery and transfer points.
 - (e) Construction details for structures and fire-rated construction for required walls.
 - (f) Building structure information, including but not limited to, new, pre-existing, free-standing, or fixed. Building type information, including but not limited to, commercial, warehouse, industrial, retail, converted property, house, building, mercantile building, pole barn, greenhouse, laboratory, or center.
 - (g) Zoning classification and zoning information.
 - (h) If the proposed marihuana facility is in a location that contains multiple tenants and any applicable occupancy restrictions.
 - (i) A proposed security plan that demonstrates the proposed marihuana facility must meet the security requirements under Rule 27.
 - (j) Any other information required by the department as long as it is not inconsistent with the act and these rules.
- (3) Any changes or modifications to the marihuana facility plan under this rule must be reported to the department and may require preapproval by the department.
- (4) The department may provide a copy of the marihuana facility plan to the state fire official, local fire department, and local law enforcement for use in pre-incident review and planning.

(5) The department may reinspect the marihuana facility to verify the plan at any time and may require that the plan is resubmitted upon renewal.

Rule 9. Pre-licensure investigation and proposed marihuana facility inspection.

(1) An applicant for a state operating license shall submit to a pre-licensure physical inspection to ensure the safety, security, and integrity of the operation of a proposed marihuana facility.

(2) The department shall establish an inspection process to confirm that the applicants and proposed marihuana facilities meet the requirements of the act and these rules.

(3) The department shall investigate applicants in accordance with the act and these rules.

(4) The department, through its investigators, agents, auditors, or the state police, shall conduct inspections and examinations of applicants and proposed marihuana facilities in accordance with the act and these rules.

(5) An applicant shall submit proof to the department of the following:

(a) A certificate of use and occupancy as required pursuant to section 13 of 1972 PA 230, MCL 125.1513 and these rules.

(b) A final inspection completed by the department notwithstanding any local ordinance or building permit inspection.

(c) Proof of a fire safety inspection as provided for in Rule 26.

Rule 10. Proof of financial responsibility; insurance.

(1) Before a license is issued or renewed, the licensee or renewal applicant shall file a proof of financial responsibility for liability for bodily injury on the form prescribed in section 408 of the act for an amount not less than \$100,000.00. If the proof under this subrule is a bond, the bond must be in a format acceptable to the department.

(2) A renewal applicant or licensee shall carry premise liability and casualty insurance for an amount not less than \$100,000.00. An applicant shall provide proof of premises liability insurance to the department no later than 60 days after a state operating license is issued or renewed.

(3) A secure transporter shall show proof of auto insurance, vehicle registration, and registration as a commercial motor vehicle as applicable for any transporting vehicles used to transport marihuana product as required by the act and these rules.

Rule 11. Capitalization requirements.

(1) An applicant shall disclose the sources and total amount of capitalization to operate and maintain a proposed marihuana facility.

(2) The total amounts of capitalization based on the type of marihuana facility specified in the application for a state operating license are as follows:

(a) Grower: Class A - \$150,000.00.

(b) Grower: Class B - \$300,000.00.

(c) Grower: Class C - \$500,000.00.

(d) Processor: \$300,000.00.

(e) Provisioning Center: \$300,000.00.

(f) Secure Transporter: \$200,000.00.

(g) Safety Compliance Facility: \$200,000.00.

(3) An applicant shall provide proof to the department of the capitalization amounts in subrule (2) of this rule from sources as follows:

- (a) Not less than 25% is in liquid assets to cover the initial expenses of operating and maintaining the proposed marihuana facility as specified in the application. For purposes of this subdivision liquid assets include assets easily convertible to cash, including, but not limited to, cash, CDs, 401(k), stocks and bonds, and marihuana inventory that meet the all the following conditions:
- (i) The marihuana inventory is possessed by an applicant who is a registered qualifying patient or registered primary caregiver or by an applicant who applies for a state operating license and possesses marihuana inventory in compliance with the Michigan medical marihuana act.
 - (ii) No more than 15 ounces of usable marihuana or 72 marihuana plants may be utilized as marihuana inventory in this subdivision or utilized towards the capitalization requirement under this subrule.
- (b) Proof of the remaining capitalization to cover the initial expenses of operating and maintaining the proposed marihuana facility may include but is not limited to additional liquid assets as described in subdivision (a) of this subrule or equity in real property, supplies, equipment, fixtures or any other nonliquid asset.
- (4) The applicant shall provide proof that there is no lien or encumbrance on the asset provided as a source of capitalization.
- (5) The capitalization amounts and sources must be validated by CPA-attested financial statements. The applicant shall disclose any of the capitalization sources that are foreign and a foreign CPA or its equivalent shall attest to the validation and a domestic CPA shall attest that foreign validation.

Rule 12. Denial of the issuance of a license; additional reasons.

- (1) If an applicant fails to comply with the act or these rules, a license may be denied as provided under the act and these rules.
- (2) In addition to the reasons for denial in the act, a license may be denied as provided in the act and these rules for the following reasons:
 - (a) The applicant's marihuana facility plan does not fully comply with the act or these rules.
 - (b) The applicant's proposed marihuana facility or marihuana facility is substantially different from the marihuana facility plan pursuant to Rule 8 and these rules.
 - (c) The department is unable to access the proposed marihuana facility for pre-licensure physical inspection or the applicant denied the department access to the proposed marihuana facility.
 - (d) The applicant made a material misrepresentation on the application.
 - (e) The applicant failed to correct any deficiencies within the application in accordance with section 403 of the act and these rules.
 - (f) The applicant has failed to satisfy the confirmation of compliance by a municipality in accordance with section 205 of the act and these rules.
 - (g) The applicant is operating a proposed marihuana facility or a marihuana facility without a license after December 15, 2017, except for as provided in Rule 19, that would otherwise require an application for a state operating license as required under the act and these rules.

Rule 13. Renewal of license.

- (1) A license is issued for a 1-year period and is renewable annually. A licensee may apply to renew a license on a form established by the department.
- (2) Failure to comply with any of the provisions in the act and these rules may result in the nonrenewal of a license.

(3) The licensee shall meet the requirements of the act and any other renewal requirements set forth in these rules or laws to be promulgated or enacted.

Rule 14. Notification and reporting.

(1) Applicants and licensees have a continuing duty to provide the department with up-to-date contact information and shall notify the department in writing of any changes to its mailing address, phone numbers, electronic mail address, and other contact information it provides the department.

(2) Applicants and licensees shall report any material and nonmaterial changes to the department.

(3) Applicants and licensees shall report nonmaterial changes to the department within 7 business days.

(4) Applicants and licensees shall report material changes to the department prior to the change, within 1 business day, and may need prior authorization by the department. Material changes, include, but are not limited to, the following:

(a) Change in owners, officers, members, or managers.

(b) Change of location. A change of location of a marihuana facility may trigger a new license and new inspection.

(c) The addition or removal of named people.

(d) Change in entity name.

(e) Any attempted transfer, sale, or other conveyance of an interest in a license.

(5) An applicant or licensee shall notify the department within 1 business day of all the following:

(a) Adverse reactions to marihuana product sold or transferred by any licensee.

(b) Criminal convictions, charges, or civil judgements in this state or any other state.

(c) Regulatory disciplinary action taken or determined against an applicant or licensee by this state or any other states, including any pending action.

(6) Failure to report material changes pursuant to subrule (4) of this rule or notifications under subrule (5) of this rule may result in sanctions or fines, or both.

Rule 15. Notifications of diversion, theft, loss, or criminal activity pertaining to any marihuana product.

(1) Licensees and applicants shall notify the department, state police, and local law enforcement authorities within 24 hours of theft or loss of any marihuana product or criminal activity.

(2) Failure to notify or report under subrule (1) of this rule may result in sanctions or fines, or both.

Rule 16. Inspection; investigation.

(1) The department shall do all of the following with respect to inspections and investigations of applicants, licensees, proposed marihuana facilities, and marihuana facility operations:

(a) Oversee and conduct inspections through its investigators, agents, auditors, or the state police of proposed marihuana facilities and marihuana facilities as provided in section 303 of the act to ensure compliance with the act and these rules.

(b) Investigate individuals employed by marihuana facilities.

(c) Inspect and examine marihuana facilities and proposed marihuana facilities.

(d) Inspect, examine, and audit records of the licensee.

(2) The department may at any time, through its investigators, agents, auditors, or the state police, without a warrant and without notice to the licensee, enter the proposed marihuana facility or

marihuana facility, offices, or other places of business of a licensee, if evidence of compliance or noncompliance is likely to be found in accordance with the act and these rules.

(3) To ensure the safety, security, and integrity of marihuana facility operations, the department, through its investigators, agents, auditors, or the state police may place an administrative hold on marihuana product and order that no sales or transfers occur during an investigation for an alleged violation or violation of the act or these rules.

(4) The department, through its investigators, agents, auditors, or the state police may inspect, examine, and audit relevant records of the licensee. If a licensee fails to cooperate with an investigation, the department through its investigators, agents, auditors, or the state police may impound, seize, assume physical control of, or summarily remove records from a proposed marihuana facility or marihuana facility.

(5) The department through its investigators, agents, auditors or the state police may eject, or exclude or authorize the ejection or exclusion of, an individual from a proposed marihuana facility or marihuana facility if that individual violates the act, a final order, or these rules.

(6) The department through its investigators, agents, auditors, or the state police may take any reasonable or appropriate action to enforce the act and rules.

(7) This rule does not limit the application of any other remedies or sanctions that are available through local, state, and federal laws, the act, and these rules.

(8) For purposes of this rule, the term “record” means books, ledgers, documents, writings, photocopies, correspondence, electronic records, videotapes, surveillance footage, electronic storage mediums, electronically stored records, money receptacles, equipment in which records are stored, including data or information in the statewide monitoring system, or any other document that is used for recording information.

Rule 17. Persons subject to penalty; violations.

(1) If the department through its investigators, agents, auditors, or the state police during the physical site inspection determine violations of the act or these rules exist, the department shall notify the person, applicant, or licensee of the violation during the physical site inspection or thereafter and the person, applicant or licensee may be responsible for sanctions or fines, or both.

(2) The department may issue a notice of a violation or fine, or both, for any violations of the act and applicable rules, including those observed by the department through its investigators, agents, auditors, or the state police while in the performance of their duties.

(3) Where the department through its investigators, agents, auditors, or the state police determine a violation of the act or these rules exists, such violations must be cited in a format established by the department. After a notice of violation or fine or both is issued to a person, applicant, or licensee, the department may hold a compliance conference or a hearing if applicable as prescribed in the act and these rules.

(4) The department may forward information regarding violations of the act or these rules or any other state or federal law to the state police, department of attorney general, and the prosecutor for the jurisdiction in which the alleged violation of the act or rules has occurred.

(5) The department may take action for failure to pay any fine within the time written on the violation notice pursuant to the act or these rules.

Rule 18. Sanctions; fines.

- (1) A person, applicant, or licensee found in violation of these rules or the act may be subject to sanctions, including, but not limited to, license denial, limitation, fines, revocation, suspension, nonrenewal, administrative holds, and orders to cease operations.
- (2) A violation of these rules, the act, the marihuana tracking act, or any ordinance adopted under section 205 of the act may result in 1 or more of the following:
 - (a) A license may be denied, limited, revoked, or restricted.
 - (b) A licensee or an employee of a licensee may be removed.
 - (c) Civil fines of up to \$5,000.00 may be imposed against an individual.
 - (d) Civil fines up to \$10,000.00 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation of the act, these rules, or an order.
 - (e) Civil fines may be assessed for each day the licensee is not in compliance with the act or these rules. Assessment of a civil fine is not a bar to the investigation, arrest, charging, or prosecution of an individual for any other violation of the act or these rules.
- (3) A license may be suspended without notice or hearing upon a determination that the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation as provided in the act or these rules.
- (4) The attempted transfer, sale, or other conveyance of an interest in a license without prior approval is grounds for suspension or revocation of the license or for other sanction as provided in sections 406 and 409 of the act or these rules.
- (5) The department may impose any other remedies, sanctions, or penalties not inconsistent with the act or these rules.

Rule 19. Temporary operation; limited circumstances; conditional.

- (1) An applicant for a state operating license may temporarily operate a proposed marihuana facility that would otherwise require a state operating license if either of the following applies:
 - (a) The applicant's proposed marihuana facility is within a municipality that adopted an ordinance before December 15, 2017 but is pending the adoption of an ordinance pursuant to section 205 of the act. The applicant shall submit an attestation on a form established by the department that includes the signature of the clerk of the municipality or his or her designee attesting to all of the following:
 - (i) The municipality has adopted an ordinance before December 15, 2017.
 - (ii) The municipality authorizes the temporary operation of the applicant.
 - (b) The applicant's proposed marihuana facility is within a municipality that has adopted an ordinance pursuant to section 205 of the act before December 15, 2017. The applicant shall submit an attestation on a form established by the department that includes the signature of the clerk of the municipality or his or her designee attesting to all the following:
 - (i) The municipality has adopted an ordinance pursuant to section 205 of the act, including, if applicable, the disclosure of any limitations on the number or type of marihuana facilities, or both.
 - (ii) The municipality authorizes the temporary operation of the applicant. A resolution may be adopted by a municipality that authorizes the clerk of the municipality or his or her designee to sign the attestation form in subdivision (b) of this subrule.
- (2) A person that does not comply with this rule shall cease and desist operation of a proposed marihuana facility and may be subject to all the penalties, sanctions, and remedies under state and federal law, the act, or these rules.
- (3) An applicant that is temporarily operating under this rule is not guaranteed a state operating license.

(4) For purposes of this rule only, an applicant shall apply for a state operating license as prescribed by the act and these rules no later than February 15, 2018. If the applicant does not apply for a state operating license as prescribed by the act and these rules no later than Feb 15, 2018 then the temporary operation may be used as a reason for denial of a license as prescribed in Rule 12.

(5) The department shall issue or deny a state operating license on or before June 15, 2018. A municipality with an authorizing ordinance under subrule (1)(a) of this rule shall have adopted a new or amended ordinance pursuant to section 205 of the act and these rules no later than June 15, 2018.

(6) An applicant under this rule that has been denied licensure, or has not been issued a license by June 15, 2018, is operating without a license and shall cease any operation. Any temporary operation after June 15, 2018 is considered unlicensed activity. Unlicensed activity may result in a referral to law enforcement for unlicensed activity. The department may notify the state police and department of attorney general of any unlicensed activity.

(7) Notwithstanding the provisions of this rule, if a state operating license is issued, an applicant is no longer operating temporarily and shall comply with all the provisions of the act and these rules.

Rule 20. Transition period.

(1) To ensure the safety, security, and integrity of the operation of marihuana facilities, there is a transition period consisting of 30 calendar days during which marihuana product can be entered into the statewide monitoring system to ensure statewide tracking beginning on the day a state operating license is issued to a licensee for the first time except for additional licenses issued to the same license holder for a stacked license after a first license is issued.

(2) Within the 30-calendar-day period, a licensee shall do all of the following:

(a) Record all marihuana product in the statewide monitoring system during this 30-calendar-day period as prescribed by the act and these rules.

(b) Tag or package all inventory that has been identified in the statewide monitoring system as prescribed by the act and these rules.

(c) Comply with all testing requirements as prescribed by the act and these rules.

(3) After the 30-calendar-day period, any marihuana product that has not been identified in the statewide monitoring system under these rules and the act is prohibited from being onsite at a marihuana facility.

(4) A violation of this rule may result in sanctions or fines, or both.

(5) At any time during this 30-calendar-day period and thereafter, a marihuana facility is subject to an inspection under Rule 16.

Rule 21. State operating licenses; licensees; operations; general.

(1) A state operating license and a stacked license as described in Rule 22 are limited to the scope of the state operating license issued for that type of marihuana facility that is located within the municipal boundaries connected with the license.

(2) In order to ensure the safety, security, and integrity of the operation of marihuana facilities, a licensee shall comply with all of the following:

(a) Marihuana facilities shall be partitioned from any other marihuana facility, activity, business, or dwelling.

- (b) Access to the marihuana facility is restricted to the licensee, employees of the licensee, and registered qualifying patients and registered primary caregivers with valid registry cards, if applicable, and the department, through its investigators, agents, auditors, or the state police. A separate waiting area may be created for visitors not authorized to enter the marihuana facility. The licensee shall maintain a log tracking all visitors to a marihuana facility. The visitor log must be available at all times for inspection by the department, through its investigators, agents, auditors, or the state police to determine compliance with the act and these rules.
- (c) Licensee records must be maintained and made available to the department upon request.
- (d) The marihuana facility must be at a fixed location. Mobile marihuana facilities and drive through operations are prohibited. Any sales or transfers of marihuana product by internet or mail order, consignment, or at wholesale are prohibited.
- (e) A state operating license issued under the act must be framed under a transparent material and prominently displayed in the marihuana facility.
- (f) Any other operational measures requested by the department that are not inconsistent with the act and these rules.

Rule 22. Stacked license.

A grower that has already been issued a state operating license specified as a class C-1,500 marihuana plants may apply to stack a license at a marihuana facility specified in the state operating license subject to payment of a separate regulatory assessment for each state operating license stacked and may be subject to any additional fees under Rule 7 and is subject to all requirements of the act and these rules.

Rule 23. Changes to licensed marihuana facility.

- (1) Any change or modification to the marihuana facility after licensure is governed by the standards and procedures set forth in the act and these rules and any regulations adopted pursuant thereto, and requires the approval of the department before any changes or modification.
- (2) Any change of a location of a marihuana facility after licensure requires a new license application under Rules 5 and 6 and may include, but is not limited to, regulatory assessment or application fees or both. A licensee shall produce written documentation from the municipality approving the proposed new marihuana facility location as indicated on the application provided to the department and be in compliance with section 205 of the act.

Rule 24. Operation at a same location—grower, processor, and provisioning center.

- (1) Any combination of the following types of state operating licenses may operate as separate marihuana facilities at the same location:
 - (a) A grower.
 - (b) A processor.
 - (c) A provisioning center.
- (2) To operate at a same location subject to subrule (1) of this rule all the following apply:
 - (a) The department has authorized the proposed operation at the same location.
 - (b) The operation at a same location shall not be in violation of any local ordinances or regulations.
 - (c) The municipality shall not limit the type or number of marihuana facilities under section 205 of the act or prohibit the operation at the same location by local ordinance or zoning regulations.
 - (d) Each marihuana facility subject to subrule (1) of this rule shall do all the following:

- (i) Apply for and be granted separate state operating licenses and pay a separate regulatory assessment for each state operating license.
- (ii) Have distinct and identifiable areas with designated structures that are contiguous and specific to the state operating license.
- (iii) Have separate entrances and exits, inventory, record keeping, and point of sale operations, if applicable.
- (iv) Post the state operating license on the wall in its distinct area and as provided in these rules.
- (e) Additional inspections and permits may be required for local or state building inspection, fire safety, and public health standards.
- (3) Operation of a state operating license at the same location that includes a licensed provisioning center shall have the entrance and exit to the licensed provisioning center marihuana facility and entire inventory physically separated from any of the other licensed marihuana facility or facilities so that persons can clearly identify the retail entrance and exit.
- (4) For purposes of this rule, a marihuana facility operating at a same location under this rule with multiple state operating licenses may transfer marihuana product or money between marihuana facilities authorized to operate at a same location under the following circumstances:
 - (a) Each state operating license operating at a same location has common ownership.
 - (b) An employee is designated by each licensee of a marihuana facility to monitor the transfer and execute the transfer or a licensed secure transporter executes the transfer in accordance with the act and these rules.
 - (c) A manifest in the statewide monitoring system is created documenting the transfer as provided in the act and these rules.
 - (d) Receipt of the transfer is recorded in the statewide monitoring system as provided in these rules.

Rule 25. Marihuana facilities; requirements.

- (1) To ensure the safety, security, and integrity of the operation of marihuana facilities a grower shall operate at a marihuana facility under either of the following conditions:
 - (a) The marihuana facility operations are within a building that meets the security requirements and passes the inspections in these rules and has a building permit pursuant to Rule 26 and these rules.
 - (b) The marihuana facility operations are within a building except for cultivation may occur in an outdoor area that must meet all the following conditions:
 - (i) The outdoor area containing the cultivation of marihuana plants is contiguous with the building, fully enclosed by fences or barriers that block outside visibility of the marihuana plants from the public view, with no marihuana plants growing above the fence or barrier that is visible to the public eye and the fences are secured and comply with the applicable security measures in these rules, including but not limited to, locked entries only accessible to authorized persons or emergency personnel.
 - (ii) After the marihuana is harvested, all drying, trimming, curing, or packaging of marihuana occur inside the building meeting all the requirements under these rules.
 - (iii) The building meets the security requirements and passes the inspections in these rules and has a building permit pursuant to Rule 26 and these rules.
- (2) To ensure the safety, security, and integrity of the operation of marihuana facilities, a secure transporter shall have a primary place of business as its marihuana facility that is operating in a municipality that has adopted an ordinance that meets the requirements of section 205 of the act

and these rules and its marihuana facility must comply with the requirements prescribed by the act and these rules. A secure transporter may travel through any municipality to transport marihuana product. All the following apply:

(a) The secure transporter may take physical custody of the marihuana or money but legal custody belongs to the transferor or transferee.

(b) A secure transporter is prohibited from selling or purchasing marihuana products.

(c) A secure transporter must transport any marihuana product in a locked, secured, sealed container that is not accessible while in transit. If the licensee transports money associated with the purchase or sale of marihuana product between facilities, the licensee shall lock the money in a sealed container kept separate from the marihuana product and only accessible to the licensee and its employees.

(d) All transactions including, but not limited to, current inventory must be entered in the statewide monitoring system. These records must be maintained and made available to the department upon request.

(e) All handling of money associated with the purchase or sale of marihuana between facilities must be logged and tracked. These records must be maintained and made available to the department upon request.

(f) A secure transporter shall have a route plan and manifest available for inspection by the department, through its investigators, agents, auditors, or the state police to determine compliance with the act and these rules. A copy of the route plan and manifest must be carried with the secure transporter during transport between marihuana facilities. A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana product pursuant to the act or these rules. A copy of a route plan and manifest must be carried in the transporting vehicle and presented to a law enforcement officer upon request.

(g) A secure transporter shall follow the manifest. In cases of emergencies the secure transporter shall notify the transferor and transferee, update the statewide monitoring system and revise the manifest to reflect the unexpected change to the original manifest.

(h) The reasonable timeframe for the secure transporter to maintain custody of the marihuana is not more than 48 hours or by permission of the department on a case-by-case basis.

(i) A secure transporter shall identify and record all vehicles with the department and have the required registration with the secretary of state as required under state law. Secure transporter vehicles may be subject to inspection at any time by the department, through its investigators, agents, auditors, or the state police to determine compliance with act or these rules.

(3) To ensure the safety, security, and integrity of the operation of marihuana facilities, a provisioning center shall have a separate room that is dedicated as the point of sale area for the transfer or sale of marihuana product as provided in the act and these rules. The provisioning center shall keep marihuana products behind a counter or other barrier to ensure a registered qualifying patient or registered primary caregiver does not have direct access to the marihuana products.

Rule 26. Building and fire safety.

(1) An applicant's proposed marihuana facility or a licensee's marihuana facility may be subject to inspection by a state building code official, state fire official, or code enforcement official to confirm that no health or safety concerns are present.

(2) The department or its authorized agents, state building code official, or his or her authorized designee may conduct pre-licensure and post-licensure inspections to ensure that applicants and

licensees comply with the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(3) An applicant or licensee shall not operate a marihuana facility unless a permanent certificate of occupancy has been issued by the appropriate enforcing agency. Prior to a certificate of occupancy being issued work must be completed in accordance with the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. All of the following apply:

(a) An applicant or licensee shall obtain a building permit for any building utilized as a proposed marihuana facility or marihuana facility as provided in the act and these rules. The issuance, enforcement, and inspection of building permits under this act may remain with the governmental entity having jurisdiction under 1972 PA 230, MCL 125.1501 to 125.1531.

(b) An applicant or licensee shall obtain a building permit for a change of occupancy for an existing building to be utilized as a proposed marihuana facility or marihuana facility as provided in the act and these rules.

(4) An applicant or licensee shall not operate a marihuana facility unless the proposed marihuana facility or marihuana facility has passed precensure fire safety inspection by the Bureau of Fire Services (BFS). The department or its authorized agents, or state fire marshal or his or her authorized designee, may conduct pre-licensure and post-licensure inspections of a marihuana facility. An applicant or licensee shall comply with the following:

(a) A BFS inspection may be conducted at any reasonable time to ensure fire safety compliance as provided in this rule and subrule (5) of this rule. A BFS inspection may be annual or biannual and result in the required installation of fire suppression devices or other means necessary for adequate fire safety pursuant to state standards.

(b) BFS may require marihuana facilities to obtain operational permits, including but not limited to, carbon dioxide systems used in beverage dispensing applications, amended for cultivation use and extraction, compressed gases, combustible fibers, flammable and combustible liquids, fumigation and insecticidal fogging, hazardous materials, high piled storage (high rack system cultivation), and liquefied petroleum (LP) gas.

(c) For specific installation or systems, BFS may require facilities to obtain construction permits, including but not limited to, building construction, electrical, mechanical, compressed gases, flammable and combustible liquids, hazardous materials, LP gas, automatic fire extinguishing/suppression systems, fire alarm and detections systems, and related equipment found during fire safety inspections.

(5) The department or its authorized agents, or state fire marshal or his or her authorized designee, may conduct a BFS fire safety inspection of marihuana facility, at any reasonable time to ensure compliance with the national fire protection association (NFPA) standard 1, 2018 edition, entitled "fire code," which is adopted by reference as part of these rules. A licensee shall comply with the NFPA 1, 2018 fire code as adopted and the following additional requirements:

(a) Ductwork must be installed with accordance with the manufacturer and NFPA 90A.

(b) Suppression systems outlined in NFPA 12, NFPA 13, NFPA 17, NFPA 2001 may be required to meet the suppression needs within a marihuana facility.

(c) Processors, growers, and safety compliance facilities shall implement appropriate exhaust ventilation systems to mitigate noxious gasses or other fumes used or created as part of any production process or operations. Exhaust ventilation equipment must be appropriate for the hazard involved and must comply with local fire code and Michigan mechanical codes.

(6) In addition to meeting all the requirements in subrules (1) to (4) of this rule, growers and processors shall also comply with the following:

(a) The department or its authorized agents, or state fire marshal or his or her authorized designee, may enter and inspect a grower and processor marihuana facility at any reasonable time.

(b) In addition to any inspections required under the act and these rules, fire safety inspections are required if any of the following occur:

(i) Modifications to the grow areas, rooms and storage, extraction equipment and process rooms, or marihuana-infused product processing equipment within a marihuana facility.

(ii) Changes in occupancy.

(iii) Material changes to a new or existing grower or processor facility including changes made pre-licensure and post-licensure.

(iv) Changes in extraction methods and processing or grow areas and building structures may trigger a new inspection.

(c) For extractions using compressed gases of varying materials including, but not limited to, butane, propane, and carbon dioxide that are used in multiple processes in cultivation or extraction the following must be met:

(i) Flammable gases of varying materials may be used in multiple processes in cultivation or extraction and must meet the requirements in NFPA 90 A, NFPA 58, Appendix B of NFPA 58, NFPA 70 and the applicable parts of the international fuel gas code.

(ii) Processes that extract oil from marihuana plants and marihuana products using flammable gas or flammable liquid must have leak and/or gas detection measures. All equipment used in the detection of flammable and/or toxic gases must be approved by the BFS and may require construction and mechanical permits.

(iii) Marihuana facilities that have exhaust systems are regulated by NFPA 45, NFPA 91 and the applicable parts of the Michigan mechanical code.

Rule 27. Security measures; required plan; video surveillance system.

(1) An applicant for a license to operate a proposed marihuana facility shall submit a security plan that demonstrates, at a minimum, the ability to meet the requirements of this rule.

(2) Licensees shall ensure that any person at the marihuana facility, except for employees of the licensee, are escorted at all times by the licensee or at least 1 employee of the licensee when in the limited-access areas at the marihuana facility.

(3) A licensee shall securely lock the marihuana facility, including all interior rooms, windows, and points of entry and exits with commercial-grade, nonresidential door locks.

(4) A licensee shall maintain an alarm system at the marihuana facility. Upon request, a licensee shall make available to the department all information related to the alarm system, monitoring, and alarm activity.

(5) A licensee shall have a video surveillance system that, at a minimum, consists of digital or network video recorders, cameras capable of meeting the recording requirements in this rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

(6) The licensee shall ensure the video surveillance system does all the following:

(a) Records at a minimum the following areas:

(i) Any areas where marihuana products are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the marihuana facility.

(ii) Limited-access areas and security rooms. Transfers between rooms must be recorded.

- (iii) Areas storing a surveillance system storage device with at least 1 camera recording the access points to the secured surveillance recording area.
- (iv) The entrances and exists to the building must be recorded from both indoor and outdoor vantage points. The areas of entrance and exit between marihuana facilities at the same location if applicable, including any transfers between marihuana facilities.
- (v) Point of sale areas where marihuana products are sold and displayed for sale.
- (b) Records at all times images effectively and efficiently of the area under surveillance with sufficient resolution.
- (7) A licensee shall install each camera so that it is permanently mounted and in a fixed location. Each camera must be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the marihuana facility, and allows for the clear and certain identification of any person, including facial features, and activities, including sales or transfers, in all areas required to be recorded under these rules.
- (8) A licensee shall have cameras that record continuously 24 hours per day and recorded images must clearly and accurately display the time and date.
- (9) A licensee must secure the physical media or storage device on which surveillance recordings are stored in a manner to protect the recording from tampering or theft.
- (10) A licensee shall keep surveillance recordings for a minimum of 14 days, except for in instances of investigation or inspection by the department, through its investigators, agents, auditors, or the state police, in which case the licensee shall retain the recordings until such time as the department notifies the licensee that the recordings may be destroyed.
- (11) Surveillance recordings of the licensee are subject to inspection by the department, through its investigators, agents, auditors, or the state police, and must be kept in a manner that allows the department to view and obtain copies of the recordings at the marihuana facility immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the department upon request within the time specified by the department.
- (12) A licensee shall maintain a video surveillance system equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the video surveillance system or video surveillance system storage device.
- (13) A licensee shall maintain a log of the recordings, which includes all of the following:
 - (a) The identities of the employee or employees responsible for monitoring the video surveillance system.
 - (b) The identity of the employee who removed the recording from the video surveillance system storage device and the time and date removed.
 - (c) The identity of the employee who destroyed any recording.

Rule 28. Prohibitions.

- (1) Marihuana products not identified and recorded in the statewide monitoring system pursuant to the act, the marihuana tracking act, or these rules are prohibited from being on or at a marihuana facility. A licensee is prohibited from transferring or selling marihuana product that is not identified in the statewide monitoring system pursuant to the act or these rules.
- (2) Any marihuana product without a batch number or identification tag or label pursuant to these rules is prohibited from being on or at a marihuana facility. Marihuana product must be immediately tagged or identified into the statewide monitoring system or recorded as part of a batch as defined in these rules.

(3) A violation of these rules may result in sanctions or fines, or both, in accordance with the act or these rules.

Rule 29. Plant batches, testing procedures.

(1) A grower shall uniquely identify each immature plant batch in the statewide monitoring system. Each immature plant batch must not consist of more than 100 immature plants.

(2) A grower shall tag each plant that is greater than 8 inches in height or more than 8 inches in width with an individual plant tag and record the identification information in the statewide monitoring system.

(3) A grower shall delineate or separate the plants as the plants go through different growth stages and ensure that the plant tag is always identified with the plant throughout the growth span so that all plants can be easily identified and inspected pursuant to the act and these rules. A grower shall ensure that identification information is recorded in the statewide monitoring system in accordance with the act, the marihuana tracking act, and these rules.

(4) After a tagged plant is harvested, it is part of a harvest batch so that a sample of the harvest batch can be tested by a safety compliance facility. A grower shall isolate a harvest batch from other plants or batches that has test results pending. A harvest batch must be easily distinguishable from other harvest batches until the batch is broken down into packages.

(5) Before the marihuana product can leave the grower facility, a sample of the harvest batch must be tested by a licensed safety compliance facility as provided in Rule 32, and test results must indicate a passed test result in the statewide monitoring system before the marihuana can be packaged. Marihuana product from harvest batches must not be transferred or sold until tested, packaged, and tagged as required under subrule (4) of this rule.

(6) After test results show a passed test, the grower shall destroy the individual plant tags and the harvest batch is packaged. Each package must have a package tag attached. A grower shall ensure this information is placed in the statewide monitoring system in accordance with the act, the marihuana tracking act, and these rules.

(7) A grower shall not transfer or sell any marihuana product that has not been packaged with a package tag attached and recorded in the statewide monitoring system in accordance with the act, the marihuana tracking act, and these rules.

(8) After a processor receives or purchases a package in the statewide monitoring system, and the processor proceeds to process the marihuana product in accordance with the scope of a processor license, the act, and these rules, the processor must give the marihuana product a new package tag anytime it changes state or is incorporated into something else.

(9) Once a package is created by a processor of the marihuana product in its final state, the processor shall have the sample tested pursuant to Rule 32. The processor shall not transfer or sell a final package until after test results indicate a passed test.

(10) After a provisioning center receives or purchases marihuana product in the statewide monitoring system, a licensee may sell or transfer marihuana product only to a registered qualifying patient or registered primary caregiver under all of the following conditions:

(a) The marihuana product has received passing test results in the statewide monitoring system. If the information cannot be confirmed, the marihuana product must be tested by a safety compliance facility and receive passing test results prior to sale or transfer.

(b) The marihuana product bears the label required for retail sale under the act and these rules.

Rule 30. Retesting.

- (1) A safety compliance facility may test or retest a sample to validate the results of a failed quality assurance test except as indicated under subrule (2) of this rule. The marihuana facility that provided the sample is responsible for all costs involved in a retest.
- (2) A failed test sample must pass 2 separate retests consecutively in order to be eligible to proceed to sale or transfer. If both retests pass, then the batch is out of quarantine and eligible for sale or transfer. If 1 or both retests fail, then the marihuana product must be destroyed as provided in these rules.
- (3) Marihuana product is prohibited from being retested in all the following:
 - (a) The marihuana product is in a final package.
 - (b) An original test for pesticides failed pursuant to these rules. If the amount of pesticides is not permissible by the department, the marihuana product is ineligible for retesting and the product must be destroyed.
 - (c) An original failed test for microbials on marihuana-infused product is ineligible for retesting and the product must be destroyed.

Rule 31. Testing; safety compliance facility.

- (1) A safety compliance facility shall use analytical testing methodologies for the required quality assurance tests in subrule (2) of this rule that are validated and may be monitored on an ongoing basis by the department or a third party which shall include either of the following:
 - (a) Following the most current version of the Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph published by the American Herbal Pharmacopoeia.
 - (b) Following the alternative testing methodology approved by the department and validated by an independent third party that the methodology followed by the laboratory produces scientifically accurate results as quality assurance for each test it conducts.
- (2) A safety compliance facility shall conduct the required quality assurance tests that include all of the following:
 - (a) Moisture content.
 - (b) Potency analysis.
 - (c) Tetrahydrocannabinol level.
 - (d) Tetrahydrocannabinol acid level.
 - (e) Cannabidiol and cannabidiol acid levels.
 - (f) Foreign matter inspection.
 - (g) Microbial and mycotoxin screening.
 - (h) Pesticides.
 - (i) Chemical residue.
 - (j) Fungicides.
 - (k) Insecticides.
 - (l) Metals screening.
 - (m) Residual solvents levels.
 - (n) Terpene analysis.
 - (o) Water activity content.
- (3) Except as otherwise provided, if a sample collected pursuant to Rule 32 or provided to a safety compliance facility pursuant to these rules does not pass the microbial, mycotoxin, heavy metal, pesticide chemical residue, or residual solvents levels test based on these rules, the marihuana facility that provided the sample shall dispose of the entire batch from which the sample was taken

and document the disposal of the sample using the statewide monitoring system pursuant to the act, marihuana tracking act, and these rules.

(4) For the purposes of the microbial test, a sample provided to a safety compliance facility pursuant to this rule is deemed to have passed if it satisfies the standards set forth in Table 9 of the Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph adopted by reference pursuant to these rules.

(5) For the purposes of the mycotoxin test, a sample provided to a safety compliance facility pursuant to this rule is deemed to have passed if it meets the following standards:

| Test | Specification |
|---|------------------------|
| The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2..... | <20 uG/KG of Substance |
| Ochratoxin A..... | <20 uG/KG of Substance |

(6) For the purposes of the heavy metal test, a sample of marihuana is deemed to have passed if it meets the following standards:

| Metal | Natural Health Products Acceptable Limits uG/KG |
|--------------|--|
| Arsenic..... | <0.14 |
| Cadmium..... | <0.09 |
| Lead..... | <0.29 |
| Mercury..... | <0.29 |

(7) A safety compliance facility shall do the following:

(a) Become fully accredited by the International Organization for Standardization (ISO), ISO/IEC 17025:2005, or by an entity approved by the department within 1 year after the date the license is issued and agree to have the inspections and reports of the International Organization for Standardization made available to the department.

(b) Become provisionally accredited under subdivision (a) of this subrule within 6 months from the issuance of a license. A safety compliance facility may be ordered to cease operations if provisional accreditation is not received within 6 months.

(c) Maintain internal standard operating procedures.

(d) Maintain a quality control and quality assurance program.

(8) The department shall establish a proficiency testing program and designate safety compliance facility participation. A safety compliance facility shall analyze proficiency test samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used for marihuana product testing.

(9) The department shall publish a list of approved pesticides for use in the cultivation and production of marihuana plants and marihuana products to be sold or transferred in accordance with the act or these rules. For the purposes of the pesticide chemical residue test, a sample provided to a safety compliance facility pursuant to this rule is deemed to have passed as to that chemical if the sample satisfies the most stringent acceptable standard for an approved pesticide chemical residue as set forth in Subpart C of 40 C.F.R. Part 180. 40 C.F.R., § 180, et seq. or FIFRA section 25(b), whichever is more stringent.

(10) If a sample provided to a safety compliance facility pursuant to this rule and Rule 32 passes the tests required under subrule (2) of this rule, the safety compliance facility shall enter the information in the statewide monitoring system of passed test results. Passed test results must be in the statewide monitoring system for a batch to be released for immediate processing, packaging, and labeling for transfer or sale in accordance with the act and these rules.

(11) A safety compliance facility shall enter the results into the statewide monitoring system and file with the department an electronic copy of each safety compliance facility test result for any batch that does not pass the required tests while it transmits those results to the facility that provided the sample. In addition, a safety compliance facility shall maintain the test results and make them available to the department upon request.

(12) The department shall take immediate disciplinary action against any safety compliance facility that fails to comply with the provisions of this rule or falsifies records related to this rule, including any sanctions or fine, or both.

(13) A safety compliance facility is prohibited from doing the following:

- (a) Desiccating samples.
- (b) Dry labeling samples.
- (c) Pre-testing samples.

(14) A safety compliance facility shall comply with random quality assurance compliance checks upon the request of the department. The department or its authorized agents may collect a random sample of marijuana product from a safety compliance facility or designate another safety compliance facility to collect a random sample of marijuana product in a secure manner to test that sample for quality assurance compliance pursuant to this rule.

Rule 32. Sampling.

(1) A safety compliance facility shall test samples as provided in the act, the Michigan medical marijuana act, and these rules.

(2) To ensure the safety, security, and integrity of the operation of marijuana facilities, a safety compliance facility shall collect the samples of marijuana product from another marijuana facility as follows:

(a) The safety compliance facility shall physically collect samples of marijuana product from another marijuana facility to be tested at the safety compliance facility. The safety compliance facility shall ensure the samples of marijuana product are placed in secured, sealed containers that bear the labeling information as required under these rules.

(b) The safety compliance facility shall enter in the statewide monitoring system the marijuana product sample that was collected from a grower, processor, or provisioning center, including the date and time the marijuana product is collected, transferred, tested, and returned.

(c) When a testing sample is collected from a marijuana facility for testing in the statewide monitoring system, that marijuana facility must quarantine the marijuana product that is undergoing the testing from any other marijuana product at the marijuana facility. The marijuana facility shall indicate the sample being tested in the statewide monitoring system. The quarantined marijuana product must not be transferred or sold until testing results pass as provided under these rules.

(d) Any marijuana product that a safety compliance facility collects for testing from a licensee under this rule must not be transferred or sold to any other marijuana facility other than the licensee from whom the sample was collected.

(e) A safety compliance facility may request additional sample material from the same licensee where the sample was collected from for the purposes of completing the required quality assurance tests as long as the requirements of this rule are met.

(f) A safety compliance facility or its authorized employee shall be physically present when collecting the samples of marihuana product for testing.

Rule 33. Requirements and restrictions on marihuana-infused products; edible marijuana product.

(1) A processor shall prepackage and properly label marihuana-infused products before sale or transfer.

(2) A processor of marihuana-infused products shall list and record the THC level of marihuana-infused products, as provided in Rule 34, in the statewide monitoring system and indicate the THC level on the label along with the tag identification as required under these rules. Items that are part of a product recall issued in the statewide monitoring system, the department, or other state agency if applicable must be immediately pulled from production and not sold or transferred.

(3) Marihuana-infused products must be stored and secured as prescribed under these rules.

(4) At a minimum, a processor shall label any marihuana-infused product it produces or packages with all the following:

(a) The name and address of the marihuana facility that processes or packages the marihuana-infused product.

(b) The name of the marihuana-infused product.

(c) The ingredients of the marihuana-infused product, in descending order of predominance by weight.

(d) The net weight or net volume of the product.

(e) For an edible marihuana product, the processor shall comply with subdivisions (a) to (d) of this subrule and all of the following:

(i) Allergen labeling as specified by federal labeling requirements.

(ii) If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements and these rules.

(iii) A statement printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background: "Made in a marihuana facility."

(5) A processor of edible marihuana product shall comply with all the following to ensure safe preparation:

(a) 21 CFR part 110, except that refrigerated potentially hazardous marihuana product must be stored at 4.4 degrees Celsius (40 degrees Fahrenheit) or below.

(b) The licensee shall provide employee training on safe food handling by providing any of the following:

(i) Proof of ServSafe certification.

(ii) Documentation of employee training on food handling, including, but not limited to, allergens and proper sanitation and safe food handling techniques.

(c) A licensee, to ensure the safe preparation standards under this subrule, shall comply with 1 or more of the following:

(i) FDA Food Safety Modernization Act (FSMA), 21 U.S.C. section 2201 et seq.

(ii) Safe Quality Food (SQF), 7.2 edition.

(iii) The International Organization for Standardization (ISO), ISO 22000/ISO/TS 22002-1.

(d) The department may request in writing documentation to verify certifications and compliance with these rules.

- (6) A processor edible marihuana product must comply with all the following:
- (a) No edible marihuana product can be in a shape, color, package, or labeled in a manner that it would appeal to minors aged 17 years or younger. No edible marihuana product can be associated with or have cartoons, caricatures, toys, colors, designs, shapes, labels, or package that would appeal to minors.
 - (b) No edible marihuana product can be easily confused with commercially sold candy. The use of the word candy or candies on the packaging or labeling is prohibited.
 - (c) An edible marihuana product must be in child resistant packages or containers.
- (7) A processor is prohibited from producing an edible marihuana product that requires time or temperature control for safety. The end-product must be a stable shelf-life edible marihuana product.
- (8) For purposes of this rule, the term “edible marihuana product” means any marihuana-infused product containing marihuana that is intended for human consumption in a manner other than smoke inhalation.
- (9) This rule does not affect the application of any applicable local, state, or federal laws or regulations.

Rule 34. Maximum THC levels for marihuana-infused products. Marihuana-infused products processed, sold, or transferred through provisioning centers must not exceed the maximum THC levels as shown in table 1 as follows:

TABLE 1
Maximum THC Levels for Marihuana-Infused Products

| MEDICAL MARIHUANA THC CONCENTRATION AND SERVING SIZE LIMITS | | |
|---|---|--|
| Type of Marihuana-Infused Product | Maximum Concentration or Amount of THC Per Serving* | Maximum Concentration or Amount of THC in Container* |
| Topical formulation (examples – lotions, balms, rubs, etc.) | N/A | 6% by volume |
| Tincture | N/A | 1,000mg |
| Beverage | 50mg | 500mg |
| Edible Substance (examples – candy bars, cookies, popcorn, honey, gummies, butter, etc.) | 50mg | 500mg |
| Other similar high-potency infused product (examples – capsules, suppositories, transdermal patches, etc.) | N/A | 1,000mg |

**All limits allow for a variance of + or – 10%.*

Rule 35. Storage of marihuana product.

- (1) All inventory of marihuana products must be stored at a marihuana facility in a secured limited access area or restricted access area, and identified and tracked consistently with the statewide monitoring system under the act, the marihuana tracking act, or these rules.
- (2) All containers used to store marihuana products for transfer or sale between marihuana facilities must be clearly marked, labeled, or tagged, if applicable, and enclosed on all sides in secured containers. The secured containers must be latched or locked in a manner to keep all contents secured within. Each secured container must be identified and tracked in accordance with the act, the marihuana tracking act, and these rules.
- (3) All chemicals or solvents must be stored separately from marihuana products and kept in locked storage areas.
- (4) Marihuana-infused products or materials used in direct contact with such products must have separate storage areas from toxic or flammable materials.
- (5) A provisioning center shall store all marihuana products for transfer or sale behind a counter or other barrier separated from stock rooms.
- (6) A safety compliance facility shall establish an adequate chain of custody and instructions for sample and storage requirements.
- (7) A licensee shall ensure that any stock or storage room meets the security requirements of these rules and any other applicable requirements in the act and these rules.

Rule 36. Marihuana product destruction and waste management.

- (1) Marihuana product that is to be destroyed or is considered waste must be rendered into an unusable and unrecognizable form and recorded in the statewide monitoring system.
- (2) A licensee shall not sell marihuana waste or marihuana products that are to be destroyed, or that the department orders destroyed.
- (3) A licensee shall manage all waste that is hazardous waste pursuant to part 111 of 1994 PA 451, MCL 324.11101 to 324.90106.
- (4) A licensee shall dispose of marihuana product waste in a secured waste receptacle using 1 or more of the following:
 - (a) A manned and permitted solid waste landfill.
 - (b) A manned compostable materials operation or facility.
 - (c) An in-vessel digester.
 - (d) In a manner in compliance with applicable state and local laws and regulations.
- (5) Wastewater generated during the cultivation of marihuana and processing of marihuana products shall be disposed of in compliance with applicable state and local laws and regulations.

Rule 37. Tracking identification; labeling requirements; general.

- (1) All marihuana product sold or transferred between marihuana facilities must have the tracking identification number that is assigned by the statewide monitoring system affixed, tagged, or labeled and recorded, and any other information required by the department, the act, and these rules.
- (2) To ensure access to safe sources of marihuana product the department if alerted in the statewide monitoring system may recall any marihuana products, issue safety warnings, and require a marihuana facility to provide information material or notifications to a registered qualifying patient or registered primary caregiver at the point of sale.

Rule 38. Marihuana plant; tracking requirements.

Prior to a marihuana plant being sold or transferred, a package tag must be affixed to the plant or plant container and enclosed with a tamper proof seal that has the following information:

- (a) Business or trade name, licensee number, and RFID package tag assigned by the statewide monitoring system that is visible.
- (b) Name of the strain.
- (c) Date of harvest if applicable.
- (d) Seed strain if applicable.
- (e) Universal symbol if applicable.

Rule 39. Marihuana product sale or transfer; labeling requirements.

Prior to marihuana product being sold or transferred to or by a provisioning center, the container, bag, or product holding the marihuana product must have a label and be sealed with all the following information:

- (a) The name of the licensee and license number that is the producer, including business or trade name, and tag or source number as assigned by the statewide monitoring system.
- (b) The name of the licensee and license number including business or trade name of licensee that packaged the product, if different from the processor of the marihuana product.
- (c) The unique identification number for the package or the harvest if applicable.
- (d) Date of harvest.
- (e) Name of strain.
- (f) Net weight in United States customary and metric units.
- (g) Concentration of THC or CBD.
- (h) Activation time expressed in words or through a pictogram.
- (i) Name of the safety compliance facility that performed any test, any associated test batch number, and any test analysis date.
- (j) Universal symbol published by the department.
- (k) A warning that states all the following:
 - (i) "For use by registered qualifying patients only. Keep out of reach of children."
 - (ii) "It is illegal to drive a motor vehicle while under the influence of marihuana."

Rule 40. Sale or transfer; provisioning centers.

(1) A provisioning center may sell or transfer marihuana product to a registered qualifying patient or a registered primary caregiver if the following are met:

- (a) The licensee verifies with the statewide monitoring system that the registered qualifying patient or a registered primary caregiver holds a valid, current, unexpired, and unrevoked registry identification card.
- (b) The licensee confirms that the registered qualifying patient or the registered primary caregiver presented his or her valid driver license or government-issued identification card that bears a photographic image of the qualifying patient or primary caregiver.
- (c) The licensee determines, if completed, any transfer or sale will not exceed the daily purchasing limit prescribed in Rule 41.
- (d) Any marihuana product that is sold or transferred under this rule has been tested and bears the label required for sale or transfer in accordance with Rule 39.

(2) A provisioning center may sell or transfer marihuana product to a visiting qualifying patient if all the following are met:

- (a) The licensee verifies that the visiting qualifying patient has a valid unexpired medical marihuana registry card or its equivalent issued in another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana.
 - (b) The licensee confirms that the visiting qualifying patient presented his or her valid driver license or government-issued identification card that bears a photographic image of the visiting qualifying patient.
 - (c) The licensee determines, if completed, any transfer or sale will not exceed the daily purchasing limit prescribed in Rule 41.
 - (d) Any marihuana product that is sold or transferred under this rule has been tested and bears the label required for sale or transfer in accordance with Rule 39.
 - (e) For purposes of this subrule, the term “visiting qualifying patient” means that term as defined in section 3 of the Michigan medical marihuana act.
- (3) The provisioning center shall enter all transactions, current inventory, and other information required by these rules in the statewide monitoring system in compliance with the act, marihuana tracking act, and these rules. The provisioning center shall maintain appropriate records of all sales or transfers under the act and these rules and make them available to the department through its investigators, agents, auditors, or the state police upon request.

Rule 41. Daily purchasing limits; provisioning center.

The licensee shall verify in the statewide monitoring system before a sale or transfer of marihuana product to a registered qualifying patient or registered primary caregiver that the sale or transfer will not exceed the daily purchasing limit as follows:

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

Rule 42. Marketing and advertising restrictions.

- (1) Marihuana facilities shall comply with all municipal ordinances, state law, and these rules regulating signs and advertising.
- (2) A licensee shall not advertise marihuana product where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place.
- (3) Marihuana products must be marketed or advertised as “medical marihuana” for use only by registered qualifying patients or registered primary caregivers.
- (4) Marihuana products must not be marketed or advertised to minors aged 17 years or younger. Sponsorships targeted to members aged 17 years or younger are prohibited.

Rule 43. Employees; requirements.

- (1) A licensee shall conduct a criminal history background check on any prospective employee prior to hiring that individual pursuant to section 405 of the act. The licensee shall keep records of the results of the criminal history background checks. A licensee shall record confirmation of criminal history background checks and make the confirmation of criminal history background checks available for inspection upon request by the department or authorized persons.
- (2) To ensure the safety, security, and integrity of marihuana facility operations, a licensee shall comply with all of the following:

- (a) A licensee shall have a policy in place that requires employees to report any new or pending charges or convictions. If an employee is charged or convicted for a controlled substance-related felony or any other felony, the licensee shall report it immediately to the department.
- (b) A licensee shall enter any employee of the licensee at the time of hire in the statewide monitoring system for an identification number that will be assigned by the department in the statewide monitoring system. The licensee shall immediately update in the statewide monitoring system employee information and status.
- (c) If an employee is no longer employed by a licensee, the licensee shall remove access and permissions to the marijuana facility and the statewide monitoring system.
- (d) A licensee shall train employees and have an employee training manual that includes, but is not limited to, employee safety procedures, employee guidelines, security protocol, and educational training, including, but not limited to, marijuana product information, dosage and daily limits, or educational materials.
- (e) A licensee shall establish point of sale or transfer procedures for employees at provisioning centers performing any transfers or sales to registered qualifying patients and registered primary caregivers. The qualifications and restrictions must include, but are not limited to, training in dosage, marijuana product information, health or educational materials, point of sale training, daily purchasing limits, CBD and THC information, serving size, and consumption information including any warnings.
- (f) A licensee shall screen prospective employees against a list of excluded employees based on a report or investigation maintained by the department in the statewide monitoring system.
- (g) At the time a registered primary caregiver is hired as an employee of a grower, processor, or secure transporter, the licensee or the individual shall withdraw registration as a registered primary caregiver in a manner established by the department.
- (h) If an individual is present at a marijuana facility or in a secure transporter vehicle who is not identified as a licensee or an employee of the licensee in the statewide monitoring system or is in violation of the act or these rules, the department, through its investigators, agents, auditors, or the state police may take any action permitted under the act and these rules.
- (3) Employee records are subject to inspection or examination by the department, through its investigators, agents, auditors, or the state police to determine compliance with the act or these rules.
- (4) For purposes of this rule “employee” includes, but is not limited to, hourly employees, contract employees, trainees, or any other person given any type of employee credentials or authorized access to the marijuana facility.

Rule 44. Definitions.

These rules use terms as defined in Rule 1, sections 101 to 102 of the act, and sections 1 to 3 of the APA. In addition, as used in these rules:

- (a) “Agency” means the department, bureau, board, authority, or officer created by the constitution, statute, or agency action.
- (b) “APA” means the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (c) “Contested case hearing” means an administrative hearing conducted by an administrative law judge within MAHS on behalf of the agency in accordance with MCL 333.27407(4) and 333.27302(i).
- (d) “MAHS” means the Michigan administrative hearing system within the Michigan department of licensing and regulatory affairs.

(e) “MAHS general hearing rules” means the administrative hearing rules promulgated by the Michigan administrative hearing system set forth in R 792.10101 to R 792.10137 of the Michigan administrative code.

(f) “Public investigative hearing” means a proceeding before the medical marihuana licensing agency to provide an applicant an opportunity to present testimony and evidence to establish suitability for a license, in accordance with MCL 333.27407(3).

Rule 45. Hearing procedures; scope and construction of rules.

(1) These rules apply to hearings under the jurisdiction of the agency involving the denial of a license or other licensing action pursuant to section 407 of the act, marihuana tracking act, or involving complaints brought by licensees pursuant to section 302 of the act.

(2) These rules are construed to secure a fair, efficient, and impartial determination of the issues presented in a manner consistent with due process.

(3) If the rules do not address a specific procedure, the MAHS general hearing rules, the currently effective Michigan court rules, and the contested case provisions of sections 71 to 87 of the APA apply.

Rule 46. Hearing on license denial.

(1) An applicant denied a license by the agency may request a public investigative hearing in writing within 21 days of service of notice of the denial.

(2) After the agency receives notice of an applicant’s request for a public investigative hearing, the agency shall provide an opportunity for such hearing at which the applicant may present testimony and evidence to establish suitability for a license.

(3) The agency shall provide the applicant with not less than 2 weeks written notice of the public investigative hearing. The notice must include all of the following information:

(a) A statement of the date, hour, place, and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A short and plain statement of the issues involved, and reference to the pertinent sections of the act and rules involved.

(d) A short description of the order and manner of presentation for the hearing.

(4) Not less than 2 weeks before the hearing, the agency shall post notice of the public investigative hearing at its business office in a prominent place that is open and visible to the public.

(5) The agency, or 1 or more administrative law judges designated and authorized by the agency, may conduct and preside over the public investigative hearing and may do all of the following:

(a) Administer oaths or affirmations to witnesses called to testify at the hearing.

(b) Receive evidence in the form of testimony and exhibits.

(c) Establish and regulate the order of presentation and course of the public investigative hearing; set the time and place for continued hearings; and fix the time for filing written arguments, legal briefs, and other legal documents.

(d) Accept and consider relevant written and oral stipulations of fact and law that are made part of the hearing record.

(6) Upon timely request of the applicant or the agency in accordance with the Michigan court rules currently in effect, the agency or the agency’s designated administrative law judge may issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents and administer oaths and affirmations to witnesses as appropriate to exercise and discharge the powers and duties under the act.

(7) During the public investigative hearing, the applicant and the agency must be given a full opportunity to present witnesses and questions or cross-examine the opposing party's witnesses, and to present all relevant information to the agency regarding the applicant's eligibility and suitability for licensure.

(8) The applicant shall at all times have the burden of establishing, by clear and convincing evidence, its eligibility and suitability for licensure under the act and these rules.

(9) The agency shall record the public investigative hearing at its direction, stenographically or by other means, to adequately ensure preservation of an accurate record of the hearing.

(10) Following the public investigative hearing, the matter must be considered by a quorum of the agency at a regular or emergency meeting properly noticed, at which the agency shall decide whether to affirm, reverse, or modify in whole or in part the denial of license.

(11) The agency's decision to affirm, reverse, or modify in whole or in part the denial of license must be based on the whole record before the agency and not be limited to testimony and evidence submitted at the public investigative hearing, in accordance with section 407(3) of the act.

(12) The agency's decision to affirm, reverse, or modify in whole or in part the denial of license must be reduced to writing and served upon the applicant and agency within a reasonable time.

Rule 47. Review of licensing action.

(1) A licensee notified of a license violation, or of the agency's intent to suspend, revoke, restrict, or refuse to renew a license or impose a fine, may be given an opportunity to show compliance with the requirements before the agency taking action as prescribed by the act or these rules.

(2) A licensee aggrieved by an action of the agency to suspend, revoke, restrict, or refuse to renew a license, or to impose a fine, may request a contested case hearing in writing within 21 days of service of notice of the intended action.

(3) Upon receipt of a timely request, the agency shall provide the licensee an opportunity for a contested case hearing in accordance with sections 71 to 87 of the APA and the MAHS general hearing rules.

(4) The contested case hearing must be conducted by an administrative law judge or judges within the MAHS.

(5) Upon timely request of the licensee or the agency in accordance with the Michigan court rules currently in effect, an assigned administrative law judge may issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents, and administer oaths and affirmations to witnesses as appropriate to exercise and discharge the powers and duties under the act.

(6) A written request for admission may be served upon a designated party in a contested case pursuant to the Michigan court rules. Each of the matters for which an admission has been requested must be deemed admitted, unless the designated party responds to the request in the manner set forth in the currently effective Michigan court rules.

(7) The agency has the burden of proving, by a preponderance of the evidence, that sufficient grounds exist for the intended action to suspend, revoke, restrict, or refuse to renew a license, or to impose a fine, or for the summary suspension of a license.

Rule 48. Summary suspension.

(1) If the agency summarily suspends a license under section 407(2) of the act without notice or hearing upon a determination that the safety or health of patrons or employees is jeopardized by continuing a marijuana facility's operation, a post-suspension hearing must be held promptly to

determine if the suspension should remain in effect, in accordance with section 92 of the APA and the MAHS general hearing rules.

(2) At the post-suspension hearing, the agency has the burden of proving by a preponderance of the evidence that the summary suspension should remain in effect because the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation.

(3) Immediately after the post-suspension hearing, the administrative law judge assigned to hear the matter shall issue a written order granting or denying dissolution of the summary suspension.

(4) If the licensee fails to appear at the post-suspension hearing, the administrative law judge shall find that the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation, and continue the order of summary suspension.

(5) The record created at the post-suspension hearing becomes a part of the record at any subsequent hearing in the contested case.

Rule 49. Complaint by licensee.

(1) A licensee may file a written complaint with the agency regarding any investigative procedures of this state that are believed to be unnecessarily disruptive of marihuana facility operations, as provided in MCL 333.27302(i).

(2) The agency may delegate to a subcommittee of the agency the authority to hear, review, or rule on a licensee complaint.

(3) The agency or its subcommittee may delegate authority to an administrative law judge to hear a licensee complaint as a contested case in accordance with sections 71 to 79 of the APA and the MAHS general hearing rules.

(4) As the complaining party, a licensee has the burden of proving by a preponderance of the evidence that the investigative procedures of this state unreasonably disrupted its marihuana facility operations.

Rule 50. Proposal for decision, exceptions, and replies.

Following an opportunity for contested case hearing and closure of the record after submission of briefs, if any, the administrative law judge shall prepare and serve upon the parties a proposal for decision containing proposed findings of fact and conclusions of law, in accordance with section 81 of the APA.


Rule 51. Final order.

(1) The agency shall consider the entire contested case record and may affirm, reverse, or modify all or part of the proposal for decision.

(2) The agency's decision must be reduced to writing and served upon the licensee within a reasonable time.

(3) The review decision or order of the agency following an opportunity for hearing is deemed to be the final agency decision or order for purposes of judicial review under sections 101 to 106 of the APA.

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS



Shelly Edgerton, Director
Department of Licensing and Regulatory Affairs

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Department of Licensing and Regulatory Affairs that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



Rick Snyder, Governor

12/4/2017
Date