



MEMORANDUM

TO: Marijuana Regulatory Agency
FROM: Pollicella, PLLC d/b/a Cannabis Attorneys of Michigan
DATED: September 27, 2021
RE: Comments to Draft Joint Administrative Rules

In no particular order:

420.3(4) We disagree with the ability of the MRA to revoke a prequalification approval because there are not sufficient due process protections built into this process to protect the prequalified applicants.

420.13(5) Failure to file an AFS should be one factor in license renewal but should not, by itself, be a barrier to renewal. Additionally, there needs to be a defined time for what is considered a “failure to renew”. 30 days late? 90? 120?

420.4(3):

The language needs to be clarified. The initial sentence of the rule says an applicant only has to disclose person's having 2.5% or more ownership interest. But the subdivisions a-f (except for c) say applicants shall disclose the names of ALL members and managers, etc., for an LLC.

420.6(6):

Language that states a license is not a property right should be removed. A license is a property right. This is long-established law in Michigan and this provision is de facto invalid. (It was inserted on the Senate floor in 2015 by a staffer in exchange for a vote and never properly sent through LSB.)

420.801 set:

Not renewing a license due to a violation would be unconstitutional. It is akin to a revocation but would subvert (or try to subvert) the due process protections owed a licensee when the government agency wants to revoke a license.

420.806 - Penalties:

Under the current and proposed rules, one single "violation" of the act can be fined multiple times under (if applicable) multiple sections of the joint rules. It would be preferable to everyone to have some type of limit/cap of the number of fines per violation. This would give

predictability to both the MRA and to persons/applicants/licensees subject to possible fines, and it would provide fairness and consistency in the MRA's deliverance of penalties.

420.808a(1)(c):

One of the reasons for being put on the exclusion list for employees is if the person has been found ineligible for licensure under the acts or rules. This is problematic and needs to be removed. An individual can be ineligible for licensure for a large variety of reasons unrelated to criminal history and those reasons are wholly unrelated to their ability to be employed by a licensed company. This prohibition goes beyond what is contemplated by both acts.

420.8(2)(b)(viii):

This requires that architectural plans include areas designated for contactless and limited contact transactions. This should just be for retail sales locations.

What is missing:

There needs to be a limit on the amount of time that:

- A product can be placed on administrative hold, particularly if the product has already passed testing. Placing products on hold indefinitely is an unconstitutional regulatory taking, and can result in the MRA effectively putting a company out of business. We recommend 90 days total.
- A compliance complaint can be brought after a known violation. Licensees have received compliance complaints many months both after the alleged violation happened and after it was discovered. Bringing a complaint more than 9 or 12 months after an alleged violation leaves the Licensee without the ability to adequately respond to the complaint due to the time lapse. We recommend 6 months after the violation became known or 12 months after it happened, whichever is earlier.

The MRA needs an independent (civilian or non-civilian) emergency review board to deal with summary suspensions and revocations. Because there is no licensing board as in other regulatory agencies, licensee-respondents are left to the slow and bureaucratic MOAHR process, which is also not equipped to deal with complex marijuana licensing or compliance matters, and does not provide hearings in a timely manner that meets the due process requirements of a summary suspension or revocation review. An emergency review board's sole responsibility would be determining whether a summary suspension or revocation by the MRA is supported by enough evidence to permit it to continue during the complaint process. This is the right of every licensee who suffers hundreds of thousands of dollars in product, productivity, staffing and PR losses when a summary suspension or revocation action is taken by the MRA.

The definition of "Managerial Employee" needs to include a manager of a Management Agreement. It needs to be very clear that a Management Agreement is a contract subject to MRA review and prequalification approval and that the manager in a Management Agreement meets the definition of "Applicant".