Michigan Office of Administrative Hearings and Rules
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AGENCY REPORT TO THE JOINT COMMITEE ON ADMNINISTRATIVE RULES (JCAR)

1. Agency Information

Agency name:
Licensing and Regulatory Affairs

Division/Bureau/Office:
Marijuana Regulatory Agency

Name of person completing this form:
JESSICA FOX

Phone number of person completing this form:
517-284-9294

E-mail of person completing this form:
FOXJ12@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:
Elizabeth Arasim

2. Rule Set Information

MOAHR assigned rule set number:
2020-124 LR

Title of proposed rule set:
Marihuana Sampling and Testing

3. Purpose for the proposed rules and background:

To update the existing rules and codify the requirements for testing of marihuana products including the acceptable limits of contaminants in marihuana and marihuana products.

4. Summary of proposed rules:

The rule changes are designed to create greater consistency in the testing of marihuana product and to create cohesion between testing requirements, procedures, etc., in both medical and adult-use marihuana businesses. The rule changes are also meant to create greater consistency in laboratory operations. The rule changes will also require testing for cannabinoids other than delta-9 THC.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

The Flint Journal – September 7, 2021
The Grand Rapids Press – September 7, 2021
The Mining Journal – September 7, 2021

6. Date of publication of rules and notice of public hearing in Michigan Register:

9/1/2021

7. Date, time, and location of public hearing:

9/27/2021 09:30 AM at Williams Building, 1st Floor Auditorium , 525 West Ottawa Street, Lansing, Michigan

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1250

9. List of the name and title of agency representative(s) attending public hearing:

Andrew Brisbo – Executive Director
Jessica S. Fox – Departmental Analyst, Scientific & Legal Section
Kelly Kronner – Departmental Analyst, PR Section

10. Persons submitting comments of support:

Carbidex
Terrapin
MICIA
Michigan Investments 10
MCMA
PSI Labs
PJLA
Neogen

11. Persons submitting comments of opposition:

The Spott
Viridis
Carbidex
PJLA
Pleasantrees
PG Group
Bob Hendricks
Cresco Labs
Terrapin
MICIA
Shryne
Benjamin Joffe
PSI Labs
Cannabis Law Section – Special Committee on Rules
PuEr Lab
Steep Hill Michigan
42 Degrees
MCMA
American Fiber Company
Pleasantrees
North Coast Testing Laboratories of Michigan

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	MICIA		Clarify that an individual tag is destroyed after the drying process. The tags identify the plants as they are drying.	The agency agrees with this comment.	R 420.303(4)
2	Carbidex – These comments were provided by way of a Word copy of the Rule Set with comments from "TC" included.		Delete the reference to live resin, this should be allowed for any reason.	The agency agrees with this comment.	R 420.303(6)

3	Cresco Labs		Fresh frozen OR dry marijuana should be allowed.	The agency agrees with this comment.	R 420.303(6)
4	The Spott		There is a typographical error in this rule.	The agency agrees with this comment to make this correction.	R 420.304(2)(a)
5	Carbidex - These comments were provided by way of a Word copy of the Rule Set with comments from "TC" included.		Are there different rules for products not in a harvest batch?	The agency agrees with this comment. R 420.304(2)(d) was added for products that are not in harvest batches.	R 420.304(2)(d)
6	Carbidex - These comments were provided by way of a Word copy of the Rule Set with comments from "TC" included.		This should not just be harvest batch. What about products other than flower?	The agency agrees with comment. R 420.304(2)(e) was added for products that are not in harvest batches.	R 420.304(2)(e)
7	PSI Labs		Potency manipulation should not be allowed by any means, this should be more general.	The agency agrees with this comment.	R 420.305(3)(a)(i)
8	PSI Labs		Potency reporting should be restricted to available reference material and validated methods.	The agency agrees with this comment.	R 420.305(3)(a)(iii)(A)

9	Viridis		This rule is unclear as written what the requirements are.	The agency agrees with this comment. In the draft that was submitted for public comment this provision was R 420.305(1)(a).	R 420.305(1)
10	PJLA		This rule should be modified with more detail on the provision of these documents.	The agency agrees with this comment. In the draft that was submitted for public comment this provision was R 420.305(1)(a).	R 420.305(1)
11	MICIA		Requirements for analytical methods should be modified.	The agency agrees with this comment.	R 420.305(2)
12	Viridis		If a method is validating using specific amounts, these portions should not be changed.	The agency agrees with this comment.	R 420.305(3)
13	MICIA		Terminology is incorrect.	The agency agrees with this comment.	R 420.305(3)(a)(iii)
14	The Spott		This should be deleted, not tested in flower, tested in other products.	The agency agrees with this comment. Instead of deletion, the language was modified to clarify that this is tested in marihuana products other than flower.	R 420.305(3)(f)

15	Carbidex - These comments were provided by way of a Word copy of the Rule Set with comments from "TC" included.		This language should be removed indicating that the agency would publish a list.	The agency agrees with this comment.	R 420.305(3)(h)
16	PJLA		This should be changed from accreditation body to certification body.	The agency agrees with this comment.	R 420.305(5)
17	PJLA		This should be changed from accreditation body to certification body.	The agency agrees with this comment.	R 420.305(4)
18	PJLA		Change to ISO 17065 accredited certification body.	The agency agrees with this comment.	R 420.305(4)
19	PJLA		Change to ISO 17065 accredited certification body.	The agency agrees with this comment.	R 420.305(5)
20	The Spott		This definition is extremely problematic such that reporting of Total THC results as defined cannot be met at this time.	The agency agrees with this comment.	R 420.305(9)(c)
21	42 Degrees		Potency should be reported in milligrams per something.	The agency agrees with this comment.	R 420.305(9)(h)
22	Viridis		Please define what Good Laboratory Practices means.	The agency agrees with this comment. The citation to the CFR was included.	R 420.305(b)(8)

23	PJLA		A laboratory shall participate in a third-party proficiency testing with an ISO 17043 accredited provider. The proficiency testing provider shall be accredited for all relevant tests required by the agency and by an accreditation body recognized under the international laboratory accreditation cooperation (ILAC).	The agency agrees with this comment.	R 420.305 (14)
24	Viridis		"Cherry pick" is not a scientific term. This is a colloquial term and does not belong in this document. "Testing specific material from a batch" is also meaningless. Any material chosen could be called "specific material".	The agency agrees with this comment.	R 420.305 (16)(c)
25	MICIA		Delete: [t]here are no established safety standards for this analysis.	The agency agrees with this comment.	R 420.305 (18)

26	PSI Labs		Screening criteria is specific to ensure that results are accurate - this would be burdensome to have to report things that they are not testing for.	The agency agrees with this comment. This specific language was deleted.	R 420.305 (21)
27	The Spott		Conflicts with test result reporting within 3 days.	The agency agrees with this comment. This language has been moved into R 420.305(21) and requires reporting when test results are entered.	R 420.305 (22)
28	The Spott		Update this provision to the specific language provided.	The agency agrees with this comment.	R 420.305a (2)
29	The Spott		Quality Control acceptance criteria must be published by the agency and be followed. If method-specific acceptance criteria exist, then the method acceptance criteria are (sic) required."	The agency agrees with this comment.	R 420.305b (6)
30	Viridis		It is over-reach to specify how many samples must be in any analytical batch. No other regulatory agency or accrediting body does this.	The agency agrees with this comment.	R 420.305b (5)

31	Carbidex - These comments were provided by way of a Word copy of the Rule Set with comments from "TC" included.		If it fails for aspergillus, should be tested for Mycotoxin and remediation should be allowed.	The agency agrees with this comment.	R 420.306(3)
32	42 Degrees		Clarify to allow for continued quality studies, reserving a portion of a finished product to run other/non-safety compliance testing on, can you pull a portion of a product and make another tag and submit for R&D after passing testing?	The agency agrees with this comment. Therefore, this subrule was deleted.	R 420.307(7)
33	42 Degrees		Clarify a definition of production batch.	The agency agrees with this comment. Therefore, a definition was added to the rule set.	R 420.301(1) (bb)
34	MCMA		Comment was received on the Marihuana Licenses rule set that the definition of Marihuana Establishment should be modified to match the definition in MRTMA.	Definition updated to match definition in other rule set where feedback was incorporated under R 420.1(1) (s).	R 420.301(1) (p)

35	Cresco Labs		Fresh frozen OR dry marijuana should be allowed.	This was removed as a result of modifications made to previous rule sections.	Proposed R 420.307(6)
36	Viridis		Change extracted to processed.	The agency agrees with this comment.	R 420.303(6)
37	PJLA		Change to ISO 17065 accredited certification body.	Required adoption by reference when modifications were made to R 420.305(5).	R 420.302(1) (e)
38	PJLA		A laboratory shall participate in a third-party proficiency testing with an ISO 17043 accredited provider. The proficiency testing provider shall be accredited for all relevant tests required by the agency and by an accreditation body recognized under the international laboratory accreditation cooperation (ILAC).	Required adoption by reference when modifications were made to R 420.305(14).	R 420.302(1) (f)

13.Date report completed:

12/16/2021