

## COMMENTS ON DRAFT MARIHUANA RULES

### **iHemp Michigan**

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(Mich Admin Code R 420.1 *et seq.*; R 420.101 *et seq.*; R 420.201 *et seq.*; R 420.301 *et seq.*; R 420.401 *et seq.*; R 420.501 *et seq.*; R 420.701 *et seq.*; R 420.801 *et seq.*; R 420.1001 *et seq.*)

iHemp Michigan (iHemp) is a member-based organization representing hemp farmers, seed cultivators, processors, manufacturers and hemp businesses statewide.

Our members are engaged in defining industrial hemp's path to success, from seed to sale and beyond. We are committed to empowering hemp farmers, fueling industry leaders, and educating consumers to ensure hemp flourishes in the Midwest.

We work to promote responsible and fair regulation, provide grower education, and enable full access to the evolving marketplace. iHemp advocates for wellness in people and the planet through hemp

We are here today to request that our collective voices are heard by Cannabis Regulatory Agency (CRA) to advocate for laws to support the Michigan hemp industry and its licensed operators.

iHemp supports many elements of the proposed rules and we offer the following constructive comments regarding **promulgating rules** for hemp businesses and hemp derived products in Michigan. iHemp wishes to ensure that the CRA receives adequate Licensed Hemp Operator input prior to the adoption of its generally applicable policies, standards, and enforcement procedures consistent with the rule of law and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* Lastly, iHemp notes that, although it has not commented on all of the rules, its silence on most rules should not be understood as either approval or disapproval of those particular provisions.

### **COMMENTS**

#### **1) Definitions (R 420.1 *et seq.*)**

- a) "Cultivator" – we ask that this definition is utilized to make clear that Industrial Hemp growers are not included, as we are cultivators, but we are currently included as

cultivators under MDARD. As the new rules **expand** the CRA's definitions and rules related to Industrial Hemp, clarity is requested.

- b) "Edible marihuana product" – new section R 420.1004 and R 420.1005 indicate that industrial hemp products for human and/or animal consumption, or edible industrial hemp products, can now be sold in marihuana sales locations. However, there is no definition for "edible industrial hemp product" and this definition for "edible marihuana product" does not include "edible industrial hemp products". *We respectfully request, that as many hemp operators have requested for more than the last year, the CRA promulgate rules specific to edible industrial hemp products, including an inclusive definition for "edibles".*
- c) "Final Form" – it is unclear if this includes "industrial hemp products" which might be sold at retail sales locations under new section 420.1004 and 420.1005. Final form is utilized throughout the remainder of the rules to discuss times for testing, release, transfer, and consumer sales. *We request clarity on if "Final Form" does or does not apply to Industrial Hemp Operators.*
- d) "Immature Plant" – iHemp is concerned with this definition for immature plants, which under current Federal Law would still be Industrial Hemp plants covered under the Industrial Hemp Research and Development Act (2014 PA 547, MCL 286.841 to 286.859). This definition appears to indicate that Cannabis Sativa L plants that do not contain THC are "marihuana plants" and that is not scientifically accurate. ***Non-flowering plants are Industrial Hemp and should be treated as such until such a time as they are flowering and producing THC.***
- e) "Inactive ingredients" – iHemp is concerned that this definition appears to include a list of conventional food ingredients ("binding materials, dyes, preservatives, flavoring agents...") that would not be considered inactive ingredients when utilized in other food or edible substances by the FDA. We ask for clarity on this on behalf of our Industrial Hemp Product producers.
- f) "Laboratory" – this definition does not appear to include DEA approved facilities for Industrial Hemp testing. Section R 420.1002 discusses the testing of Industrial Hemp products, however, as the existing Industrial Hemp testing labs are not included in the definition of laboratory, we are concerned that we will no longer be able to utilize the DEA approved facilities for our product testing. Can you please clarify?
- g) "Marihuana sales location" – this definition does not appear to include Industrial Hemp Processor/Handler locations for the sale of Industrial Hemp Products. However, there is no definition for "Industrial Hemp Products Sales Locations", this implies that "Industrial Hemp Products" are only available for sale at Marihuana Sales Locations. With the current definition of Industrial Hemp Products in the IHRDA, this would include all Industrial Hemp Products for human or animal consumption. We are concerned that this prevents currently existing activities for Industrial Hemp Materials from being sold in Michigan as agricultural products for laying hens, as well as consumer packaged goods (such as, hemp hearts, hemp oil, Industrial Hemp Products as defined in sec R 420.1005) for humans. *We request that you clarify in the rules when and where Industrial Hemp Products for human and animal consumption can be sold, other than Marihuana Sales Locations.*
- h) "Mature Plant" – iHemp is concerned with this definition for mature plants, which under current Federal Law would still be Industrial Hemp plants covered under the Industrial Hemp Research and Development Act (2014 PA 547, MCL 286.841 to 286.859). This definition appears to indicate that Cannabis Sativa L plants that do not contain THC are "marihuana plants" and that is not scientifically accurate. ***Non-flowering plants are Industrial Hemp and should be treated as such until such a time as they are flowering and producing THC.***

- i) “Producer” – iHemp is concerned that there is no definition that is inclusive of Industrial Hemp Processor/Handlers. We respectfully request that the CRA promulgate rules including definitions for Industrial Hemp processing, distribution, and sale of Industrial Hemp and Hemp Products in Michigan.
- j) “These rules” - iHemp is concerned that “these rules” are exclusive of rules the CRA is authorized to promulgate under the “Executive Reorganization Order ERO No 2022-1” and through the Industrial Hemp Research and Development Act (2014 PA 547, MCL 286.841 to 286.859) while simultaneously promulgating new rules for licensed Industrial Hemp operators in sections 420.1001 to 420.1005. ERO 333.27001 was updated in 2022 under 333.27002 and should be taken into consideration for the promulgation of rules for Industrial Hemp operators.

**2) Marihuana Operations (R 420.201 et seq to R 420.XXX)**

- a) iHemp is concerned that R420.201 (2)(a) includes language around immature plant batches and mature plants. We ask that the definitions are updated and/or that the rules are inclusive of industrial hemp operators and explicitly indicates that industrial hemp operators are not required to utilize the statewide monitoring system.
- b) iHemp is concerned that R420.201 (2)(c) includes language around immature plant batches and mature plants that are grown outdoors and as earlier indicated, as these definitions include Industrial Hemp Plants. Without changing those definitions, one may consider that outdoor Industrial Hemp Plants need to be monitored down to the row where the plants are being grown, which is a much tighter requirement than is currently required under the IHRDA (2014 PA 547, MCL 286.841 to 286.859). We again ask that the definitions are updated and/or that the rules are inclusive of industrial hemp operators and explicitly indicate that industrial hemp operators are not required to utilize the statewide monitoring system.
- c) iHemp is concerned that R420.201a (2) does not include a provision for Industrial Hemp Operators to request a new category from the CRA for inclusion of hemp plants and products in METRC. Please include Industrial Hemp License holders in this section.
- d) iHemp is concerned that R420.201a (3) does not include a provision for Industrial Hemp Cultivators to transfer Immature Plants, Vegetating Plants, or Industrial Hemp biomass to licensed marihuana operators. Please include a provision for Industrial Hemp Cultivators to transfer Industrial Hemp Plants that are non-flowering to licensed marihuana cultivators. Please include a provision for Industrial Hemp Cultivators to transfer Industrial Hemp biomass to cultivators and producers.
- e) iHemp is concerned that R420.201a (3)(e) only includes the provision for transferring in “cannabinoids” but does not indicate how Industrial Hemp Products made to meet requirements of R 420.1005 can be transferred to licensed marihuana operators. Please include a provision for Industrial Hemp Processors/Handlers to transfer Industrial Hemp Products to licensed marihuana operators.
- f) iHemp is concerned that R420.201b et seq does not include mention of industrial hemp products tested by licensed laboratories, this lacks clarity on if Industrial Hemp and Industrial Hemp Products tested by licensed laboratories under R 420.1002 are entered in the statewide monitoring system or not. Please provide clarity on this issue.
- g) iHemp is concerned that R 420.205 (8)(a) does not include mention of industrial hemp immature plants being transferred to licensed cultivators from licensed hemp operators as a method of transferring seeds, tissue cultures, clones, or vegetating plants. As these plants are not yet marihuana we request that this section be amended to include those plants and plant materials coming from licensed hemp operators through external transfers.
- h) iHemp is concerned that R420.208 et seq does not include any references to industrial hemp product producers. Our members have previously requested on multiple occasions

that rules around industrial hemp processors be included in the administrative rules. There is not a second section for industrial hemp processor/handlers and we request for them to be included in the rules.

- i) iHemp is concerned that R 420.216 (1)(a) does not include industrial hemp operators transferring materials to licensed operators. It includes “cultivators” which as currently defined does not include licensed hemp growers. We request that this section be amended to include industrial hemp operators for the transfer of seeds, tissue cultures, clones, seedlings, immature plants and vegetating plants to licensed marijuana cultivators without utilizing a marijuana transporter. We also request that this section be amended to include an exclusion for transferring industrial hemp products to marijuana sales locations under R 420.1004 without the usage of marijuana transporters.
- j) iHemp thanks the CRA for excluding licensed hemp processor/handlers from R 420.218a on cannabinoid conversion so that the research and development work for minor and novel cannabinoids can continue outside the licensed marijuana space.
- k) iHemp is concerned that R 420.221 *et seq* does not include reference to edible industrial hemp products that meet the requirements of R 420.1005. We request that this section be amended to include licensed industrial hemp processors creating human edible industrial hemp products

### **3) Sampling and Testing**

- a) iHemp is generally concerned that the rule on Laboratories does not include any guidance for the testing of industrial hemp products. We believe that the laboratory section should be inclusive of testing industrial hemp products and request that it be amended to be inclusive.
  - i) Please consider that industrial hemp product batches are generally much larger than those currently noted under the section on sampling sizes, for instance a 0.5% sample of a marijuana batch would be around 0.25 lbs. but for an industrial hemp batch that can be thousands of pounds it would be a much higher amount which may be physically difficult to transport and store at a laboratory.
- b) iHemp requests that R 420.304 (1)(c) be amended to allow for chain of custody for industrial hemp materials and products being handled and received by laboratories where there is not requirement for verification against the batch information in the statewide monitoring system, as industrial hemp materials and products are not currently, and should not be required to be included in the statewide monitoring system.
- c) iHemp requests that the CRA consider R 420.305 (2) (a) regarding performing testing on a representative sample of marijuana. This should also include a representative sample of industrial hemp products. Some of our member businesses have had recent experience with MDARD sampling agents collecting nonrepresentative samples of industrial hemp for pre-harvest compliance testing. We ask that more scientific methods for collection of samples be included in this section. Continuing to collect non-representative samples will lead to continued distrust of our shared industries.
- d) iHemp requests that the CRA be inclusive of industrial hemp product beverages and their associated testing requirements under R 420.307 and we continue to request that testing standards for industrial hemp products are included in the administrative rules.

### **4) Marijuana Products**

- a) iHemp is greatly concerned that industrial hemp products are excluded from Part 6 and we request that standards for industrial hemp products are included in the administrative rules.
  - i) iHemp is concerned that R 420.402 *et seq* does not include industrial hemp products that are infused. We request that standards for the production of infused industrial hemp products be included in the administrative rules.

- ii) iHemp is greatly concerned that R 420.402a *et seq* does not include edible industrial hemp products. These products are currently produced out of state and imported into Michigan, and we request that the CRA promulgate rules to define how these products can be produced in Michigan for sale in Michigan and export to other states.
- iii) iHemp is concerned that R 420.406 *et seq* does not include industrial hemp products even though new standards for potency limits in industrial hemp products have been included in R 420.1005. We request the CRA assess the different kinds of industrial hemp products in the market in a similar way that Table 1 does for marihuana products regarding the potential for incidental amounts of THC in industrial hemp products. For example, a 50lb. bag of chicken feed made with industrial hemp may have more than 10mg of THC in the 50lb. bag but there would be no defined serving of THC for this package. For example, an 100mL CBD tincture may have more than 10mg of THC in the package but would have significantly less than 1.75mg per serving.

## 5) Marijuana Sales

- a) iHemp is greatly concerned that R 420.1004 allows for the sale of industrial hemp products but the administrative rules R 420.501 and R420.502 governing sales or deliveries from licensed marihuana operators are not inclusive of requirements for the sales of industrial hemp products. We request that the CRA promulgate rules regarding the sale of industrial hemp products both from licensed marihuana facilities and from licensed hemp processor/handler facilities.
- b) iHemp is greatly concerned that R420.506 is not inclusive of industrial hemp products. iHemp requests the CRA provide clarity on if industrial hemp products being sold from licensed marihuana sales locations impact the purchasing limits for customers. We assume that industrial hemp products do not impact the purchasing limits for customers, however, without clarity we cannot be certain.

## 6) Industrial Hemp

- a) iHemp is **greatly concerned** that Part 11 does not include any reference to licensed industrial hemp processor/handlers' brokering of industrial hemp or industrial hemp products, the sale of industrial hemp or industrial hemp products outside of licensed marihuana sales locations, the testing of industrial hemp and industrial hemp products, or the processing of industrial hemp and industrial hemp products outside of MMFLA licensed marihuana processors.
  - i) iHemp requests that the CRA promulgate rules regarding the processing, distribution, and sale of industrial hemp and industrial hemp products.
  - ii) **iHemp is greatly concerned** that the new administrative rules *imply* that industrial hemp can only be sold to MMFLA licensed processors as cannabinoids and that industrial hemp products can only be sold by licensed marihuana operators. We request that the CRA clarify that this implication is not the case and that industrial hemp can still be sold to other licensed hemp processor/handlers in and out of Michigan. We request that the CRA clarify that industrial hemp products can still be sold from licensed hemp processor/handlers to consumers.
- b) iHemp is **greatly concerned** that R 420.1003 *et seq* appears to exclude licensed hemp processor/handlers from being able to obtain, process, market or broker industrial hemp under the IHRDA. iHemp is also concerned that this section appears to exclude processors licensed under the MRTMA from obtaining or processing industrial hemp. This is inconsistent with section R 420.201a (3)(e) for the acquisition of cannabinoids with a THC concentration of less than 0.3% from businesses that do not hold a marihuana license. We request that the CRA amend the rule so that MRTMA licensed processors be included in those that can obtain and process industrial hemp and

cannabinoids with a THC concentration of less than 0.3%. We request that the CRA clarify the rule to be inclusive of licensed industrial hemp processors/handlers in Michigan.

- c) iHemp is concerned that R 420.1004 lacks clarity around the necessity for a marijuana sales location to obtain an industrial hemp processor/handler license while simultaneously omitting the allowance of industrial hemp processor/handler license holders from being able to handle, market, broker, or sale industrial hemp and industrial hemp products. iHemp requests that the CRA be inclusive of licensed industrial hemp processors/handlers in the administrative rules.
- d) iHemp **is greatly concerned** with R 420.1005 and its limits on industrial hemp products as defined in section 3(f)(v)(A) of the MRTMA, “(f)Industrial hemp means any of the following: (v)A product to which 1 of the following applies: (A) If the product is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements: (I) Has a THC concentration of 0.3% or less on a dry-weight or per volume basis. (II) Contains a total amount of THC that is less than or equal to the limit established by the cannabis regulatory agency under section 8(1)(n).”
- e) It appears that the CRA has not considered existing products on the market with the addition of this new rule.
  - i) For example, laying hen feed which meets the Associate of American Feed Control Officials (AAFCO) final standard allows for 2ppm of THC and 20ppm of CBD in hempseed meal. Which in a standard 50lb. bag of laying hen feed would exceed the limits specified here of not more than (NMT) 10mg per package. In addition, no testing guidelines have been provided for the kind of testing necessary for animal feed for THC regarding NMT 1.75mg per serving. A normal serving of chicken feed is approximately 30 grams with NMT 2ppm of allowable THC, this could be up to 60mg of THC per serving. We request that the CRA exclude animal feed and veterinary products from the administrative rules OR generate a table of limits related to the different types and styles of products already produced and available for sale in Michigan.
  - ii) For example, a full spectrum CBD tincture with 1000mg of CBD in an 30mL bottle with 100 servings that is less than 0.3% THC could potentially have up to 90mg of THC and would meet the requirement for NMT 1.75mg THC per serving but would exceed the per package requirement for NMT than 10mg per package and would have to contain 1,350mg of CBD in order to meet the 15:1 ratio requirement. These products are currently available in Michigan at many corner stores and gas stations.
- f) iHemp supports the CRA efforts to define limits for consumable industrial hemp products and requests that the CRA consider products already in the marketplace and define clear guidelines that continue to allow for existing companies to continue to exist. We respectfully request that the CRA aspire to a non-prohibitionist stance when considering changes to these limits. We request that the CRA recall that prohibition has not worked for the last fifty years and that continuing towards limits which remove already existing products from the market will only push those products out of the licensed space and into traditional market spaces without regulations and the associated consumer protections.

iHemp Michigan thanks the CRA for the opportunity to comment on the new administrative rules and requests that the CRA start an industrial hemp specific work group to address on-going concerns of farmers and handler/processors in the state of Michigan.

Sincerely,  
The members of Ihemp Michigan