POKAGON BAND OF POTAWATOMI INDIANS
CANNABIS REGULATORY COMMISSION
WRITTEN RECORD OF CONSIDERATION OF COMMENTS
REGARDING CANNABIS REGULATIONS

Subsection 3.03 of the Cannabis Regulatory Act ("Act") states the procedure for the promulgation of Cannabis Regulations ("Regulations") by the Cannabis Regulatory Commission ("Commission"). In accordance with subsection 3.03(a) of the Act, on November 14, 2022, the Commission gave the requisite notice of its intent to adopt the Regulations. The Commission timely received a single document with comments on the Regulations.

The Commission appreciates the comments that were received. The Commission did not make all of the recommended changes set forth in the comments. Also, the Commission does not agree with all of the legal conclusions set forth in the comments. Nonetheless, the Commission revised the Regulations based on the comments, and the revisions improved the Regulations.

In accordance with subsection 3.03(c) of the Act, on December 19, 2022, the Commission reviewed comments that were timely received. In accordance with subsection 3.03(d) of the Act, on January 9, 2022, through Commission Resolution No. 23-01-09-01, the Commission approved: (1) this Written Record, which describes the Commission's efforts to fully consider and address comments received during the comment period; and (2) the Regulations.

This Written Record addresses the following threshold issues without repetition, even though the comments raise such issues in multiple instances: (1) whether the Commission may expand the grounds for including a Cannabis Employee on the Excluded Cannabis Employee (See Response to Comments re Subsection 1.07(ii)); (2) whether the Commission may impose additional licensing standards (See Response to Comments re Subsection 3.03(b)); and (3) whether the Commission may directly regulate Cannabis Employees (See Response to Comments re Subsection 5.09(b)).

This Written Record does not: (1) address all technical or grammatical amendments by the Commission to the draft Regulations based on the comments; or (2) detail all amendments by the Commission which were made that were consistent with the comments.

The reference to any Chapter, Section, or Subsection in this Written Record refers to a Chapter, Section, or Subsection of the Regulations unless otherwise specified. The comments are included verbatim unless otherwise specified.

Subsection 1.07(j)

Comment:

"Seeds" usually are not considered cannabis, as they usually are in the same classification as stalks, fibers, etc.

Response:

The definition of "Cannabis", which includes "seeds", is consistent with Subsection 1.07(h) of the Act. It also is consistent with MCL 333.27953.

Subsection 1.07(r)

Comment:

The exclusion of "seeds" from "Cannabis Product" is contradictory because "seeds" are included in the definition of "Cannabis".

Response:

Although the definition of "Cannabis Product" is consistent with Subsection 1.07(p) of the Act, the definition is not correct because there is a conflict with the definition of "Cannabis", which includes "seeds". The Commission has corrected the error in the Regulations and will recommend that Tribal Council correct the error through an amendment to the Act.

Subsection 1.07(ff)

Comment:

Should be "approved". The Commission doesn't license a DCA; on application from an Applicant for Facility License, the Commission may approve a DCA in conjunction with issuing a Facility License. See Sec. 8.01(a) of these regulations.

Response:

Although the definition of "Designated Consumption Area" is consistent with Subsection 1.07(ff) of the Act, the definition is not correct because the Commission approves a Designated Consumption Area in connection with issuing a Facility License and does not separately license a Designated Consumption Area. The Commission has corrected the error in the Regulations and will recommend that Tribal Council correct the error through an amendment to the Act.

Subsection 1.07(ii)

Comment:

The Act is clear in its delegation of regulatory authority to the Commission to ensure compliance by Cannabis Facilities and Cannabis Suppliers with the Act, Commission Regulations, and any Compact. But the Act, in particular Chapter 11, provide no authority for the Commission to expand the specific grounds for including a Cannabis Employee on an exclusions list. However, to the extent of any Cannabis Employee violation of the Act, Commission Regulations, and any Compact, the Commission can ensure compliance by initiating enforcement actions against the Cannabis Facility where such Cannabis Employee is employed.

Response:

The Commission recognizes that the Act primarily focuses on regulating Cannabis Facilities and Cannabis Suppliers. However, the Commission disagrees with the conclusion that the Act provides no authority for the Commission to expand the grounds for including a Cannabis Employee on the Excluded Cannabis Employee List, including for the reasons set forth below.

The Act does not expressly address whether the Commission can expand the grounds for including a Cannabis Employee on the Excluded Cannabis Employee List. Rather, the Act is silent or ambiguous on the issue. In general, in this circumstance, deference will be given to the Commission's interpretation of the Act as long as it is permissible. The Commission's interpretation of the Act on this issue is permissible.

Under Section 2.04 of the Act, the Tribal Council delegated to the Commission "sole authority and responsibility to regulate all Cannabis Related Business Activities within the Reservation." Also, Section 3.02 of the Act broadly empowers the Commission "to develop, propose, and promulgate Regulations relating to Cannabis Related Business Activities as required by applicable law, including this Act, or deemed prudent by the Commission, but such Regulations shall be consistent with the intent of Tribal Council stated in Section 3.01."

The definition of "Cannabis Related Business Activities" focuses on activities, not the actor, in that it means "planting, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, storing, transporting, exchanging, distributing, or selling of any Cannabis, including any Cannabis Product, or any Cannabis Accessories." Accordingly, Regulations that relate to the above-specified activities are within the scope of the Commission's authority, subject to the intent of Tribal Council stated in Section 3.01 of the Act. In this regard, because Cannabis Employees will engage in conduct included within Cannabis Related Business Activities, they are the proper subject of the Regulations.

Importantly, consistent with self-governance, Section 3.01 of the Act does not require the Regulations to be identical to State Law, but rather the Regulations must "protect public health, safety, and welfare in a manner substantively similar to State Law regarding Cannabis Related Business Activities". Therefore, the Commission may deem it prudent to impose reasonable

regulatory requirements that are substantively similar to, but extend beyond, State Law, subject to the intent of Tribal Council stated in Section 3.01 of the Act.

It is of no consequence that Chapter 11 of the Act provides "no authority for the Commission to expand the specific grounds for including a Cannabis Employee on an exclusions list" because that authority exists under Chapter 3 of the Act. Additionally, Chapter 11 of the Act does not expressly address whether the Commission can include a person on the Excluded Employee List for conduct other than a conviction of an offense involving distribution of a controlled substance to a minor. Moreover, the breadth of Section 11.01(b)(1) of the Act supports the Commission's position, as it requires Cannabis Employees "to report any new or pending criminal charges or convictions" to the Cannabis Facility, which must immediately report the charge or conviction to the Commission." The above reporting obligation is not limited to the above distribution offense.

Consistent with its authority under the Act, the Commission has "deemed it prudent" to reasonably expand the Excluded Persons List beyond the above distribution offense, and such expansion is consistent with the purpose under Section 1.04 of the Act.

Subsection 1.07 (ddd)

Comment:

The definition tracks the Act, but the Act contains a grammatically incorrect repetition of words between the introductory sentence and the subordinate clauses.

Response:

This definition of "Reservation" is consistent with Section 1.07(jj) of the Act. The phrase "all lands within the State" is repeated in Subsection 1.07(ddd) and Subsection 1.07(ddd)(1), which is grammatically incorrect. Subsection 1.07(ddd)(1) has been modified to delete "All lands within the State" and Subsection 1.07(ddd)(2) has been modified to delete "All land". The phase "all lands within the State" has been retained in Subsection 1.07(ddd) because such language modifies both Subsection 1.07(ddd)(1) and 1.07(ddd)(2). The Commission will recommend that Tribal Council correct the error through an amendment to the Act.

Subsection 2.01(a)

Comment:

This provision referencing a Cannabis Tracking System "specified by the Commission" and Sec. 2.04 referencing a Cannabis Tracking System "adopted by the Commission" make clear that the intent of the Commission is to, at some point in time, prescribe a Cannabis Tracking System that must be used by all Cannabis Facility Licensees. I recommend that the Commission use this opportunity to specify a tracking system in these regulations. I don't imagine that there are very many Cannabis Tracking Systems that meet the requirements of the Act and these regulations, and I would expect the "Metrc" system used by Michigan is a likely selection.

Response:

The Commission determined that it was not appropriate to specify a vendor in the Regulations. The Commission amended Subsection 2.01(a) to state "using a Cannabis Tracking System that has been approved by the State Regulatory Agency for use by State licensees." Additionally, consistent with such amendment, Section 2.04 was amended to delete "adopted by the Commission and".

Subsection 2.02(i)

Comment:

Consider a language change to "promptly when the individual ceases to be a Cannabis Employee".

Response:

The term "promptly" is open to interpretation. The Commission revised this Subsection to provide that such cancellation must occur "within seven (7) business days after the Cannabis Employee's employment with the Licensee is terminated."

Subsection 2.03

Comment:

This provision appears to deal solely with the business relationship between the vendor and Licensee and it isn't clear what, if any, regulatory purpose is being served. Consequently, this imposition of regulatory requirements may improperly, if not impermissibly, intrude into the Licensee's authority to manage its business affairs.

Response:

This Section is intended to make clear that the Commission is not responsible for a Licensee's costs related to the Cannabis Tracking System. The Commission revised this Section, in part, to state: "The Commission shall have no financial responsibility in connection with the Cannabis Tracking System, including . . ."

Subsection 3.02(b)

Comment:

Consider the addition of language that would confirm that the schedule of fees shall be reasonably consistent with the average cost of employee time and any third-party costs incurred by the Commission in processing an application for a License.

Response:

The Commission determined that the proposed change is not needed because Subsection 3.02(a) states in sufficient detail the purpose of the nonrefundable Application fee.

Subsection 3.03(b)

Comment:

This language is consistent with language in Sec. 1.04(b) and Sec. 3.01(a) in the Act. However, that language, which is broad and subjective, is clearly intended not as a delegation of specific regulatory authority but, rather, to describe overall policy and regulatory purposes. The broad and subjective nature of that language makes it ill-suited to use as a regulatory standard, which is why it is not included in Chapter 8, 9, or 10. The ambiguous and subjective nature of the language in Sec. 1.04(b) and 3.01(a) does not articulate any objective "regulatory standard" by which an Applicant can determine whether a Commission decision to deny a License Application is lawful.

Consequently, the Applicant will have little or no meaningful ability to challenge such decision, which would deprive the Applicant of due process and equal protection rights afforded under Pokagon Band law. Consider revising this provision to articulate clear, objective regulatory standards based on standards set forth in the Act and the regulations. To the extent that this broader subjective policy language is deemed necessary, it should be referenced as an additional, broad standard to be applied by the Commission in its final consideration of a License Application.

Response:

Through the Act, the Tribal Council expressly empowered the Commission to include additional standards for licensure. Under Section 3.02 of the Act, the Commission is empowered to promulgate Regulations relating to Cannabis Related Business Activities. Also, under Subsection 9.03(e) of the Act, the standards for issuance of a Cannabis Facility License, include that the Band Owned Entity must submit documentation sufficient to permit the Commission to determine that "the Cannabis Facility meets all other applicable requirements under Band law, the Regulations, and any Compact." Accordingly, the Commission is empowered to include additional standards for licensure in the Regulations.

The additional standard included within Subsection 3.03(b) is tied directly the intent of Tribal Council under Subsection 1.04(b)(1) of the Act. Although broad, the additional standard is sufficiently clear, including because the determination of whether it is met "shall be based upon the Commission's review of the Application, including all plans required under Section 3.05 of these Regulations."

Importantly, the additional standard does not impermissibly violate the Band's Constitution or Civil Rights Ordinance, whether based on due process (substantive or procedural) or equal protection. First, in regard to due process, the Commission has relatively broad authority to adopt regulations, subject to certain limitations, including the purpose under Section 1.04 of the Act, and the additional standard is based on the purpose of the Act and is sufficiently clear. Also, the adjudication process set forth in the Act and Regulations for the denial of a License is fair and impartial. Second, in regard to equal protection, there is no suspect or quasi-suspect classification

involved, so rational basis applies, and the standard passes the rational basis (ends – means) analysis.

Section 3.05

Comment:

It isn't entirely clear what constitutes a "plan" that would meet regulatory requirements. Consider additional language in this Section to further describe these "plans" and the Commission's expectations regarding such "plans".

Response:

The Commission determined that it is not necessary for the Regulations to specify the elements of each plan. To the extent an Applicant has a question regarding any plan, the Applicant is encouraged to contact the Commission.

Comment:

Sec. 3.05 enumerates requirements for plans involving "Energy Efficiency", "Air Quality", "Light Pollution", for example. The subject matter of such required plans appears to be well outside the regulatory purposes of the Act and any express authority delegated to the Commission under the Act. To the extent that the Commission considers itself to have delegated authority to regulate such purely environmental matters, there doesn't appear to be any language under the Act to limit or constrain the Commission's assertion of environmental regulatory authority.

Response:

The Commission disagrees with the assertion that it lacks the authority to regulate environmental matters relating to Cannabis Facilties. Under Section 3.02 of the Act, the Commission is empowered to "promulgate Regulations relating to Cannabis Related Business Activities as required by applicable law, incuding this Act, or deemed prudent by the Commssion, but such Regulations shall be consistent with the intent of Tribal Council stated in Section 3.01."

Accordingly, the Commission may deem it prudent to require an Applicant for a Cannabis Facility License to develop and provide plans relating to environmental protection, including because such requirement is consistent with the purpose under Section 1.04 of the Act, which includes protection of "the public health, safety, and welfare".

Nonetheless, the Commission decided to delete the following plans from Section 3.03, which relate primarily to cultivation and processing facilities: (1) Energy Efficiency Plan; (2) Waste Disposal Plan; (3) Air Quality Plan; (4) Light Pollution Plan; and (5) Pesticide Control Plan. The Commission will revisit the necesity of these plans upon becoming aware that a Band Owned entity will pursue a cultivation or processing facility within the Reservation.

Subsection 3.06(c)

Comment:

The reference to "Compact" here and in subsec. (d) should be deleted. It is inconceivable that any Tribal-State Compact would include limitations on a Cannabis Facility's physical premises located in Indian country and not otherwise subject to state jurisdiction. Recognize that, unlike compacts under IGRA, tribal-state compacts involving cannabis are not likely to include regulatory requirements applicable to cannabis facilities located in Indian country, which can operate without state approval.

Response:

The Commission determined that the reference to "Compact" should not be deleted. Subsection 9.04(a)(2) of the Act, the corresponding provision, includes the reference to "Compact". Also, if a Compact does not impose limitations on a Cannabis Facility's physical premises, then the inclusion of "Compact" will not impact the Cannabis Facility.

Subsection 4.06(a)

Comment:

The granting or denial of reciprocity should not be a purely discretionary determination by the Commission, which invites inconsistency and arbitrariness. Consider adding language that articulates a regulatory standard to introduce greater objectivity and consistency in approach (e.g., "provided that, in the reasonable determination of the Commission, the licensing determination of the other jurisdiction substantially meets the minimum regulatory standards of the Act").

Response:

Under Subsection 10.08(a) of the Act, the granting of reciprocity is discretionary, as it states: "The Commission may recognize . . ." Also, Subsection 10.08(a) of the Act states the regulatory standard "but only if the Commission determines that such other jurisdiction applies licensing standards that are as stringent and a background investigation process that is a rigorous as this Act requires." The Commission amended Section 4.06 to include this standard.

Subsection 5.02(c)

Comment:

The Commission lacks any clear authority under the Act to expand the "list of excluded Cannabis Employees" based on a "report or investigation" that extends beyond the criminal offense expressly referenced in Sec. 11.01(b)(1) and in accordance with Sec. 11.01(a). The only areas of the Act that address requirements relating to Cannabis Employees are Section 11.01 (Requirements for Cannabis Employees) and Section 11.03 (Food and Beverage Consumption). Notably, all requirements applicable to Cannabis Employees under Sec. 11.01 apply expressly and exclusively

to Licensees, specifically, Cannabis Facility Licensees. This structure and the absence of any language in the Act expressly delegating regulatory authority over Cannabis Employees makes clear that the Tribal Council did not intend, and that the Act does not, extend regulatory authority over Cannabis Employees. If it was the Tribal Council's intent to extend regulatory authority over Cannabis Employees, the obvious and appropriate manner for doing so would have been to include language in the Act that expressly subjects Cannabis Employees to licensing. Instead, the Act provides for a Cannabis Employee registration system, as verified through the issuance of Cannabis Employee Identification Numbers and Cannabis Employee Identification Cards. It would strain any reasonable interpretation of the Act to try to reconcile any assertion by the Commission of regulatory authority over Cannabis Employees with a statutory structure that provides for enforcement solely against Cannabis Facility Licensees and for only the most minimal involvement by the Commission with Cannabis Employees. That minimal involvement, other than the prohibition against the consumption of food and beverage "where Cannabis or Cannabis Products are stored, processed, or packaged or where hazardous materials are used, handled, or stored", is exclusively limited to the maintenance of a registry of Cannabis Employee Identification Numbers and a list of excluded Cannabis Employees.

Based on the foregoing concerns, some of these suitability standards regarding Cannabis Employees in proposed regulation 5.02(c) are beyond those expressly stated in the Act, specifically Sec. 11.01(a)(1) in which the "list of excluded Cannabis Employees is first referenced, but not described. Notably, the Act imposes specific requirements on the Licensee to report certain types of criminal charges or convictions involving a Cannabis Employee to the Commission, specifically, any "new or pending criminal charges or convictions" and any charge or conviction of a "felony, including ay controlled substance-related felony" and any conviction of "an offense involving distribution of a controlled substance to a minor", which latter reference is to Sec. 11.01(b)(11).

Response:

See Response to Comments re Subsection 1.07(ii).

Subsection 5.05(a)

Comment:

What is the source of the Commission's authority to impose a fee on a Cannabis Facility for its submission of a Cannabis Employee Information Form?

Also, the last sentence doesn't involve any regulatory issue. The Cannabis Facility is not dependent on any grant of authority by the Commission in its exercise of business judgment concerning the recovery of a fee from a Cannabis Employee.

Response:

Section 8.05 of the Act authorizes the Commission to establish a schedule of fees for each type of License issued under the Act. The Cannabis Employee Identification Card is not a License. The

Commission amended this Section to specify that the Commission will not charge a separate Cannabis Employee Identification Card fee but will recoup such costs in establishing a schedule of fees for a Cannabis Facility License.

Subsection 5.09(b)

Comment:

Should be "Cannabis Facility". The Commission lacks any direct regulatory authority over Cannabis Employees.

Response:

The Commission revised Subsection 5.09(b) and Sections 5.10 and 6.01 to impose the applicable obligation directly on the Cannabis Facility rather than Cannabis Employees. However, the Commission disagrees with the assertion that the Commission lacks any direct regulatory authority over Cannabis Employees.

The Act does not expressly address whether the Commission can directly impose regulatory requirements on Cannabis Employees through the Regulations. Rather, the Act is silent or ambiguous on the issue. In general, in this circumstance, deference will be given to the Commission's interpretation of the Act as long as it is permissible. The Commission's interpretation of the Act on this issue is permissible.

Under Section 2.04 of the Act, the Tribal Council delegated to the Commission "sole authority and responsibility to regulate all Cannabis Related Business Activities within the Reservation." Also, Section 3.02 of the Act broadly empowers the Commission "to develop, propose, and promulgate Regulations relating to Cannabis Related Business Activities as required by applicable law, including this Act, or deemed prudent by the Commission, but such Regulations shall be consistent with the intent of Tribal Council stated in Section 3.01."

The definition of "Cannabis Related Business Activities" focuses on activities, not the actor, in that it means "planting, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, storing, transporting, exchanging, distributing, or selling of any Cannabis, including any Cannabis Product, or any Cannabis Accessories." Accordingly, Regulations that relate to the above-specified activities are within the scope of the Commission's authority. In this regard, because Cannabis Employees will engage in conduct included within Cannabis Related Business Activities, they are the proper subject of the Regulations.

Importantly, consistent with self-governance, Section 3.01 of the Act does not require the Regulations to be identical to State Law, but rather the Regulations must "protect public health, safety, and welfare in a manner substantively similar to State Law regarding Cannabis Related Business Activities". Therefore, the Commission may deem it prudent to impose reasonable regulatory requirements that are substantively similar to, but extend beyond, State Law, and may impose such requirements directly on Cannabis Employees.

Nonetheless, Commission recognizes that the Act primarily focuses on regulating Cannabis Facilities and Cannabis Suppliers. Accordingly, the Commission will endeavor to impose regulatory requirements directly on Cannabis Facilities and Cannabis Suppliers through the Regulations rather than on Cannabis Employees. However, where the Commission deems it necessary, the Commission will exercise its authority to impose regulatory requirements directly on Cannabis Employees.

Subsection 6.01(a)

Comment:

The Commission's regulatory recourse under the Act for a failure to notify the Commission of the events in Sec. 6.01(a) is over the Cannabis Facility, not the Cannabis Employee who is not directly subject to Commission regulation. The term "Cannabis Employee" should be removed from this provision.

Response:

See Response to Comments re Subsection 5.09(b) above. Also, the Commission amended Subsection 6.01(b) to: (1) require a Cannabis Facility to ensure that its Facility Operations Plan required under Subsection 3.05(a)(3) above requires each Cannabis Employee to immediately notify the Licensee of upon becoming aware of any suspected violation of Subsection 6.01(a) above; and (2) provide that Cannabis Employees may directly report to the Commission any such suspected violation. The Commission made additional corresponding amendments to Section 6.01.

Subsection 6.02(f)

Comment:

Whenever reasonably possible

Response:

The Commission revised Subsection 6.02(f) to relace "whenever possible" with "to the extent practicable".

Subsection 6.03(b)

Comment:

Does this apply to products stored in the vault? Having products within the vault that are in another locked container is atypical and overburdensome. Consider rewording.

Response:

The Commission deleted the second sentence of Subsection 6.03(b) to clarify this Subsection.

Subsection 6.05(c)(3)

Comment:

This provision seems to be impractical but, more importantly, beyond any delegation of authority to the Commission under the Act. A Cannabis Facility lacks any ability to grant the Commission access to "any other place within the Reservation". A Cannabis [Facility] can only provide the Commission with access to property in its possession and under its control. Moreover, the Band or other parties not subject to Commission authority would have rights to determine who may access such other property, regardless of whether or not Cannabis or Cannabis Product is located there. This appears to be a matter that should be left to the Tribal Police.

Response:

The Commission revised this Subsection based on Section 2.16(d)(4) of the Act.

Subsection 6.05(f)

Comment:

See comment to Sec. 6.05(c)(3) with regard to limitations on the Commission's authority to access "any location within the Reservation", which is beyond the grant of regulatory authority to the Commission under the Act. And, this issue may involve the property rights of the Band and third parties, and should be treated as a Tribal Police matter.

Response:

The Commission revised this Subsection based on Section 2.16(d)(4) of the Act.

Section 6.06(d)

Comments:

This should only reference the building and safety code requirements in the Band's Health and Safety Act, which apply to Cannabis Facilities as a matter of Pokagon Band law. To the extent that the Commission can disregard Pokagon Band law and consideration regarding tribal sovereignty, what regulatory or policy purpose would be served by incorporating these state and local requirements?

Response:

The Commission revised this Subsection to reference the Band's Health and Safety Act.

Section 6.07

Comment:

Consider adding language to this Section that would limit it to certain larger quantities of Cannabis or Cannabis Product. At a minimum, it should not apply to the transportation of quantities that would be lawful for any person to possess and transport under Michigan law. Note also Michigan law that permits transportation by a Cannabis retailer to its customers. Mich. Admin. Code R. 420.207 - Marihuana delivery; limited circumstances.

Response:

The Commission determined that imposing the requirements of this Section on any amount of Cannabis or Cannabis Product that is transported is consistent with the purpose under Section 1.04 of the Act.

Subsection 6.07(c)

Comment:

How would a supplier that is licensed via reciprocity generate a manifest if they aren't required to use the tracking system?

Response:

Cannabis Suppliers that are licensed through reciprocity must comply with all conditions of the License, including using the required Cannabis Tracking System.

Subsection 6.07(t)

Comment:

What regulatory purpose is served by this requirement? It creates an unnecessary burden on the operator, and it appears to exceed any Michigan regulatory requirements concerning transportation throughout a much larger geographic area -- the entire State of Michigan.

Response:

GPS supports greater driver accountability and safety and deters theft, etc. The Commission has determined that these purposes outweigh any burden imposed on Licensees. At the Commission meeting at which the comments were reviewed, representatives of a potential Licensee indicated that this requirement does not create an unnecessary burden.

Section 7.03

Comment:

Conflicts with definition of "active ingredient" above.

Response:

The Commission deleted Section 7.03.

Section 7.06 (renumbered as 7.05)

Comment:

What is the criteria and threshold given the significant differences between intoxication from alcohol and intoxication from cannabis? "Visible signs of intoxication" should be defined in some manner to facilitate employee training and compliance by the Licensee.

Response:

The Commission added the definition of "Visibly Intoxicated" to Section 1.07 based on State law and revised this Section accordingly. The Facility Operation Plan, or another plan, should include provisions related to identifying persons who are Visibly Intoxicated.

Subsection 8.02(a)(3)(i)

Comment:

Why and how will this be controlled?

Response:

The Commission has determined that the prohibition on not allowing customers to bring into a Designated Consumption Area outside Cannabis, which may be adulterated with PCP or other illegal drugs, helps to protect both the Cannabis Facility and the public.

Subsection 8.02(3)(iv)

Comment:

To the extent that the Commission can assert regulatory authority under the Act to ban the use of tobacco in a DCA, what regulatory purpose is being served? This prohibition against the use of tobacco in a DCA, which is already restricted to persons of legal age to use tobacco, appears to be unnecessary and intrusive into the Cannabis Facility's right to conduct business.

Response:

The Commission is empowered to ban the use of tobacco within a Designated Consumption Areas. See Response to Comments re Subsection 1.07(ii), Response to Comments re Subsection 3.03(b)), and Response to Comments re Subsection 5.09(b). The Commission has determined that the prohibition on not allowing customers to consume tobacco within a Designated Consumption Area helps to protect both the Cannabis Facility and the public.

Subsection 8.02(b)

Comment:

Along with "visible signs of intoxication", "over-intoxication", and "intoxication", "impaired customer" is yet another undefined term that adds further regulatory uncertainty. A single term should be used throughout the regulations and the term should be defined. In the absence of a defined regulatory standard, a Cannabis Facility cannot determine and manage compliance.

Response:

See Response to Comments re Section 7.06 (renumbered as 7.05)