

Public Comment on Rule Set 2023-25 LR – Physical Inventory Audit Requirement

I am writing in follow-up to my previous public comment on the proposed requirement under Rule Set 2023-25 LR that would mandate all licensed marijuana businesses in Michigan to conduct physical inventory audits twice per year. While this may appear to be a reasonable compliance measure on its face, it reflects something far more concerning: a growing pattern of possible regulatory neglect masked as oversight. I believe that recent evidence suggests that the CRA may very well be asking licensees to clean up a mess it may no longer be managing at all.

As a CPA serving Michigan's cannabis industry, I have spent considerable time reviewing not only the proposed rule but also considered the broader, highly complex matters it appears designed to patch. A recently filed federal whistleblower complaint, *Estes v. Metrc, Inc. et al*, No. 3:25-cv-00556-IM (D. Or. filed Apr. 4, 2025), alleges that Metrc's seed-to-sale tracking system is not being used by regulators to flag diversion and inversion in real time. Instead, the system simply stores data until problems surface through inspections, anonymous complaints, or operator self-reporting. If even a fraction of this is true, then Michigan's audit rule is not about improving enforcement—it's about outsourcing it with costly procedures and an unspecified disciplinary structure.

Michigan licensees are already required to log every gram of inventory, every transfer, and every sale into Metrc. Yet the CRA has offered no public reporting on how it uses this data. Are there anomaly reports? Flag triggers? Pattern recognition tools? No one knows, because the agency does not say. To date, there is no publicly available information on how the CRA utilizes Metrc. Based on my review of the CRA's own published Disciplinary Action Reports, and from firsthand experience working with cannabis clients across the state, it appears that Metrc is almost exclusively used as a post-incident verification tool. Enforcement actions are typically initiated only after third-party complaints, inspections, or licensee self-disclosures. The result is a compliance system that demands near-perfect reporting from licensees - as proven by the Revenue Reconciliation Procedures of the Annual Financial Statement reports, and the monthly Revenue Reconciliation requirement in the current proposed Rule Set - while offering no evidence that the state is doing anything with that data.

In that vacuum, the audit rule starts to make sense—but not in a good way. It appears to be the state's attempt to patch its own inaction by handing the job back to the licensees. Instead of optimizing Metrc's capabilities, the CRA is doubling down on manual, labor-intensive processes that place the burden on businesses already stretched thin. The RIS estimate of \$200,000 per year for Michigan's largest licensees only lays the cornerstone for a costly endeavor for all licensees.

Recent Examples of Shifting Enforcement Away from METRC:

- **Unannounced Semiannual Inspections (CRA Policy – Effective October 1, 2024):** Rather than leveraging system data to identify risk-based targets, the CRA is now resorting to blanket, unannounced inspections of all licensees—twice a year. **This signals a stunning lack of confidence in its own monitoring tools.**
 - **CRA Compliance Best Practice Guides (Feb. 2023 & June 2022):** These documents go to great lengths to make one thing clear: if there's a problem in your Metrc data, it's your fault. Licensees are expected to catch and correct errors, reconcile discrepancies, track batches, and build internal SOPs—all while receiving **no indication that the CRA is using this data for any proactive enforcement purpose.**
 - **Metrc Bulletin 91 – Expired Product Tracking (Nov. 2024):** Metrc rolled out a feature for expiration dates—and then left it optional. Instead of building a compliance function with alerts, thresholds, or enforcement logic, the system now depends on manual input from licensees who are already overwhelmed. **This half-measure does little to ensure product integrity but serves as another example of shifting operational responsibility onto the regulated community without providing enforcement value.**
 - **Metrc Location Assignment Mandate (July 2023):** Metrc now requires all licensees to assign physical location tags to every package—a burdensome, manual process that adds no system intelligence or oversight capability. **This feature does not help the CRA detect suspicious activity; it simply adds another layer of compliance friction for operators already struggling with workforce and reporting fatigue.**
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Wider National Pattern: Three Lawsuits, One Theme

This is not unique to Michigan. A trio of lawsuits across three states reveals a troubling national pattern: state cannabis regulatory agencies are underutilizing the technology their state cannabis laws mandate, while placing the burden of enforcement on licensees.

- **California – *Catalyst Cannabis Co. v. Department of Cannabis Control*:** Filed in 2021 and set for trial in October 2025, this lawsuit alleges that state regulators turned a “blind eye” to diversion via “burner distros”—licensed distributors allegedly funneling product into illicit markets. Catalyst claims California's regulators ignored data anomalies that should have been flagged through Metrc.
- **Oregon – *Estes v. Metrc, Inc. et al*, No. 3:25-cv-00556-IM (D. Or. 2025):** This federal whistleblower suit, filed by former Metrc executive Marcus Estes, alleges retaliation after he raised concerns internally about Metrc's failure to detect diversion and its alleged vulnerability to misuse by illicit operators. Estes supports the claims raised in the *Catalyst* case and alleges the system was “set up” in ways that enabled burner distro activity.

- **Colorado – Mammoth Farms v. Colorado Marijuana Enforcement Division: Filed in March 2025**, this case claims Colorado's regulators failed to act on known discrepancies in Metrc data, allowing bad actors to move untracked product in and out of the legal supply chain. Plaintiffs have requested a preliminary injunction to force the state to establish “basic tracking and testing measures” and to transform Metrc from a passive ledger into an active oversight tool.

Together, these lawsuits expose a new story: some state regulators are not doing their jobs. Michigan's proposed audit rule fits this pattern precisely. It doesn't fix the problem—it shifts the liability. Under the CRA's New Disciplinary Guidelines, that liability could be incredibly costly.

The Audit Rule as a Regressive Fix

This proposed audit rule is not a thoughtful regulatory enhancement; it smacks as an admission of failure. Instead of demanding accountability from the systems and vendors designed to track and flag suspicious activity, the CRA is handing licensees a clipboard and telling them to figure it out themselves.

Even worse, the term "audit" is left undefined. There are no standards for methodology (e.g., full count, sampling, reconciliation), no clarity on who may conduct the audit (internal staff? third-party firms?), and no guidance on what documentation must be retained or submitted. This was stated in my original public comment and remains a significant concern for me today.

Demand for Agency and legislator Action

Before finalizing or enforcing this rule, the CRA and legislative oversight committees must first address the following urgent gaps in transparency, definition, and accountability:

1. **Publicly Disclose how Metrc data is currently used** to detect diversion, irregularities, or noncompliance. What analytics, if any, are in place? What system alerts are used?
 2. **Publicly state whether this audit rule is intended to supplement or substitute for real-time regulatory oversight.**
 3. **Define within the Rule Set "physical inventory audit"** with specificity, including methods, authorized personnel, frequency, and documentation requirements.
 4. **Pilot the rule with a limited license group** before forcing a full-scale rollout.
 5. **Commission an independent assessment of Michigan's Metrc utilization**, with public results and clear recommendations for system-level improvements.
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I feel that the audit rule, as proposed, punishes the very businesses that have played by the rules while asking nothing of the systems or agencies that are supposed to enforce them.

This comment is offered in good faith as part of the public process, with the intent to support a regulatory system that works as intended for both licensees and the public.