Circuit Court for Queen Anne's County
Case No. C-17-CV-21-000100

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2039

September Term, 2021

IN RE GREEN THUMB INDUSTRIES, INC., *ET AL.*

Nazarian,
Shaw,
Albright,

JJ.

Opinion by Nazarian, J.

Filed: January 20, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Before a licensed cannabis processor may produce and distribute edible cannabis products in Maryland, it must obtain approval for its product from the Maryland Medical Cannabis Commission. In January 2021, Green Thumb Industries, Inc. and Chesapeake Alternatives, LLC (collectively "GTI") submitted and obtained approval from the Commission to produce cannabis-infused chocolate bars (the "Bar"). In April 2021, the Commission promulgated regulations governing edible cannabis products (the "Edible Regulations") and learned shortly after that the Bars, which were out in stores, might not comply. Commission staff confirmed that the Bars violated the Edibles Regulations and instructed GTI to cease production of the Bars, although it allowed GTI to exhaust its then-existing inventory.

GTI responded by writing to the Commission in June 2021 to ask that the Commission rescind the directive and allow GTI to continue production based on the Commission's prior approval in January. GTI also filed a petition for a writ of administrative mandamus in the Circuit Court for Queen Anne's County, asking the court to reverse the Commission staff's directive. The Commission replied by letter in August 2021, upholding the directive to cease production of the Bars and, because of the risk of accidental consumption by minors, instructing GTI to recall the remaining inventory of the Bars and place that inventory on administrative hold. GTI amended its petition to reflect the Commission's August 2021 letter, and the court held a hearing on January 25, 2022.

The circuit court denied GTI's petition for a writ of administrative mandamus. GTI appeals and we affirm.

I. BACKGROUND

A. The Parties.

Green Thumb Industries, Inc. is the parent company of Chesapeake Alternatives, LLC, a Maryland-licensed cannabis processor[1] located in Centreville. We'll refer to them collectively as GTI.

The Commission is an agency within the Maryland Department of Health that "develop[s] policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner." Md. Code (1982, 2019 Repl. Vol.), § 13-3302(c) of the Health - General Article ("HG"). The Commission is authorized by statute to regulate the "packaging, labeling, marketing, and appearance of edible cannabis products, to ensure the safety of minors . . . ." HG § 13-3309(j)(1).

B. Regulatory Background And GTI's Initial Submission For Approval.

Before April 2021, the Commission had yet to promulgate regulations governing edible cannabis products. Even so, all cannabis products were already subject to COMAR

[1] *See* Maryland Medical Cannabis Comm'n, Licensed Dispensaries, https://mmcc.maryland.gov/Documents/2022_PDF_Files/Industry%20Directory/dispensary_list_09_2022.pdf (last visited Jan. 18, 2023), *archived at*: https://perma.cc/4C9T-4MZK.

10.62.24 and 10.62.29, which set forth packaging and labeling requirements for licensed processors that distribute cannabis products.

On April 19, 2021, the Commission adopted the Edibles Regulations. These regulations govern the form, production, packaging, and distribution of edible cannabis products. The Commission published contemporaneously a guidance document designed to guide the cannabis industry's compliance with Maryland and federal regulations.

On January 7, 2021—before the Commission adopted the Edibles Regulations, but after they were released in proposed and identical form—GTI submitted applications seeking approval for eight flavors of its "Incredibles" brand chocolate bars. GTI submitted this information through Metrc, an electronic database that tracks all medical cannabis inventory in Maryland. Each Bar, pictured below, is a solid chocolate bar demarcated or scored into ten servings that each contain 10 milligrams of THC:

The same day it received GTI's submission seeking approval of the Bars, Commission staff rejected the submission on the ground that the packaging didn't comply with the packaging regulations. GTI revised and resubmitted its proposal on January 26, 2021. On January 27, 2021, the Commission approved the Bars as "'edible' cannabis products," and in reliance on that approval, GTI started producing and selling the Bars.

On May 26, 2021, after the Commission formally adopted the Edibles Regulations, the Commission was notified that GTI's Bars appeared to be noncompliant with the portion of the Edibles Regulations requiring that "[e]ach single serving contained in a package of a multiple-serving solid edible cannabis product shall be physically separated in a way that enables a patient to determine how much of the edible cannabis product constitutes a single serving." COMAR 10.62.37.12(B)(3). On June 7, 2021, the Commission's Director of Compliance, Anthony Grover, informed GTI that although the labeling had been approved properly, the form of the product was noncompliant because "solid edible cannabis products must be physically separated into single servings." Mr. Grover instructed GTI to cease production of the Bars in their current form but advised GTI that it could sell all completed Bars that were produced before June 7, 2021.

C. June And August Correspondence Between GTI And The Commission.

GTI responded to the Commission by letter dated June 16, 2021. GTI asked the Commission to rescind Mr. Grover's directive to cease production of the Bars. GTI argued that when the Commission approved the Bars in January, the Commission had applied the Edibles Regulations and found that GTI's Bars were compliant, and its new interpretation of the regulation conflicted with its earlier interpretation. In other words, GTI contended that because the Commission had applied the proposed Edibles Regulations when it approved the chocolate bar demarcated into ten servings, it could not rely later on a narrower interpretation of the regulation to prohibit GTI from selling the Bars in that form. GTI also argued that the Commission's May interpretation "restrict[ed] the plain language

of the regulations," and that it was "legally unsupportable" for the Commission to reverse its January approval of the Bars.

The Commission responded to GTI's letter on August 2, 2021. The letter advised GTI that the Commission affirmed the June 8 directive to cease production of the Bars and, upon further consideration, that the product posed an unacceptable risk to minors and that GTI was not permitted to sell its existing inventory. The Commission explained that the packaging and labeling for edible products, and the products themselves, must be approved before the products may be distributed, and that although the Bars were reviewed for packaging and labeling in January, they had not been reviewed for form and compliance with COMAR 10.62.37.12(B) because that regulation was not yet in effect. The Commission maintained that "any representation in Metrc that the [Bars] had been approved by the [Commission] was incorrect." The Commission found that the Bars, in their current form, did not comply with the Edibles Regulations because the servings are not completely separated, and that "continued distribution of [the Bars] in their current form presents a . . . risk of accidental over-ingestion by a minor." Accordingly, the Commission instructed GTI to recall any remaining inventory of the Bars and place them on administrative hold. The Commission also denied GTI's request for an administrative hearing.

D. GTI's Petition For Writ Of Administrative Mandamus.

On July 7, 2021, GTI filed petition for a writ of administrative mandamus. The petition asked the court to reverse the Commission's order and allow GTI to produce the

Bars in their current form. GTI amended its petition to include the Commission's August 2 directive to cease production and recall the remaining inventory of the Bars. The circuit court held a hearing on January 25, 2022, and both parties presented argument. GTI maintained its position that in January 2021, the Commission "necessarily determined that the [B]ars['] shape and structure complied with the COMAR provision . . . ." They also argued that because the Bars were scored physically into ten servings, the servings were separated in a way that allowed consumers to determine how much of the product constituted a single serving, which complied with COMAR 10.62.37.12(B). In addition to these arguments, GTI reiterated the points it made in the letter sent to the Commission in June 2021.

In response, the Commission explained that the Bars were reviewed and approved erroneously, and that Commission staff shouldn't have reviewed the Bars themselves for approval in January 2021 because the Edibles Regulations had not yet taken effect. The Commission highlighted that GTI is not foreclosed from bringing the Bars into compliant form by, for instance, wrapping each serving individually. Two days after the hearing, the court entered an order denying GTI's amended petition, and GTI timely appealed.

II. DISCUSSION

Administrative mandamus allows "judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." Md. Rule

7-401. Because GTI challenges quasi-judicial acts of the Commission[2] and there is no statutory basis for judicial review of the Commission's order, GTI's petition was appropriate. GTI now contends that the court should have granted its petition for a writ of

[2] The Commission makes the argument, wholly unpreserved, that GTI only challenged quasi-legislative actions taken by the Commission, and thus that administrative mandamus is unavailable. GTI disagrees and alleges that it challenges quasi-judicial actions taken by the Commission, specifically that the Commission "unlawfully applied a new interpretation of that regulation—which contradicted the regulation's plain meaning—in reversing its January 2021 decision to approve the Bars for all purposes." Since the Commission's theory bears on our jurisdiction to consider this appeal, we address it here and find that GTI is challenging quasi-judicial acts of the Commission, namely the order requiring GTI to cease production of the Bars and to recall the remaining inventory of the Bars, and that administrative mandamus is an appropriate vehicle for reviewing them.

Quasi-judicial acts usually are characterized by two criteria: (1) the agency decision is made on individual grounds rather than general grounds and, (2) "there is a deliberative fact-finding process with testimony and the weighing of evidence." *Maryland Overpak Corp. v. Mayor & City Council of Balt.*, 395 Md. 16, 33 (2006). Here, the Commission indisputably made its findings on individual grounds—the Commission directive at issue related to GTI's products only. And although the Commission's regulations don't permit a hearing (and none was held), the Edibles Regulations, the application of which GTI is now challenging, underwent scientific scrutiny by food safety experts and medical professionals specialized in pediatric emergency medicine. The "assumptions and conclusions" underlying the Edibles Regulations themselves were challenged through the notice-and-comment period when the regulations were proposed and were therefore "contested via the submission of opposing public comments." *See Kor-ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 410 (2017) (finding that an agency took a quasi-judicial action despite the absence of a contested hearing because there was "fact-intensive consideration of scientific information, . . . the assumptions and conclusions of which could be, and were, contested via the submission of opposing public comments"). So even in the absence of a contested hearing, we can and do find that the Commission's order was quasi-judicial in nature.

administrative mandamus because the Commission erred in interpreting and applying the Edibles Regulations to prohibit GTI from producing and selling the Bars.[3]

We apply the same standard of review to administrative mandamus actions as the circuit court applied, *Perry v. Dep't of Health & Mental Hygiene*, 201 Md. App. 633, 639–40 (2011), but we review the agency's decision rather than the circuit court's ruling.

[3] GTI phrased the Questions Presented in its brief as follows:

> I. Is the [Commission]'s April 2021 "Guidance Document," which contradicts or is inconsistent with COMAR 10.62.37.12, an illegal rule?
>
> II. Is the [Commission]'s June and August 2021 reversal of its January 2021 approval of the Bars for manufacture and sale an impermissible change in policy that constitutes an unfair surprise to GTI?
>
> III. Are the [Commission]'s decisions unsupported by substantial evidence, arbitrary and capricious, or an abuse of discretion?

The Commission phrased the Questions Presented in its brief as follows:

> 1. Did the circuit court correctly deny GTI's petition for a writ of administrative mandamus because GTI challenges quasi-legislative Commission functions regarding the promulgation of its edibles regulations, and because GTI does not possess a substantial right to sell a particular dosage of an edible medical cannabis product in an intact form, which is in direct violation of the Commission's regulations?
>
> 2. Did [the] circuit court correctly apply the law in holding that administrative mandamus is not an available remedy in circumstances where the Commission consistently interpreted and applied its own regulations according to each regulation's effective date, and the Commission properly exercised its authority to correct inadvertent errors made by staff in order to protect the health of medical cannabis patients and ensure the safety of minors?

McClure v. Montgomery Cnty. Plan. Bd. of Md.-Nat. Cap. Park & Plan. Comm'n, 220 Md. App. 369, 379 (2014). The standard is set forth in Maryland Rule 7-403, and it's highly deferential:

> The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:
>
> (A) is unconstitutional,
>
> (B) exceeds the statutory authority or jurisdiction of the agency,
>
> (C) results from an unlawful procedure,
>
> (D) is affected by any error of law,
>
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
>
> (F) is arbitrary or capricious, or
>
> (G) is an abuse of its discretion.

When we review an agency's interpretation of the law, we apply a *de novo* standard. *Barson v. Md. Bd. of Physicians*, 211 Md. App. 602, 611–12 (2013). Otherwise, we determine whether "there is substantial evidence in the record as a whole to support the agency's findings and conclusions . . . ." *United Parcel Serv., Inc v. People's Couns. for Balt. Cnty.*, 336 Md. 569, 577 (1994). We will not overturn an agency's decision if "'a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Balfour Beatty Constr. v. Md. Dep't of Gen. Servs.*, 220 Md. App. 334, 363 (2014) (*quoting Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel Cnty.*, 273 Md. 245, 253 (1974)). Agency decisions are reviewed in the light most favorable

to the agency because its decisions "'carry with them the presumption of validity,'" *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 513 (1978) (*quoting Dickinson-Tidewater*, 273 Md. at 256), and we don't substitute our judgment for the expertise of the Commission. *United Parcel Serv.*, 336 Md. at 576–77.

A. The Bars Were Not Reviewed And Approved Under The Edibles Regulations When Approved In January 2021.

GTI argues that the Commission applied the Edibles Regulations to the Bars when they approved the Bars in January 2021, and thus the later decision to disapprove them represented a change in position by the Commission, not a review against a new set of regulations. To support this allegation, GTI contends that the Metrc system showed, without qualification, that the Bars were approved for both its packaging and form. The Commission responds that GTI's submissions were not evaluated for compliance with COMAR 10.62.37.12(B)(3) because the Edibles Regulations didn't go into effect until three months later; the regulations weren't in effect in January, and the Commission staff could only have reviewed the product against the regulations in effect at the time of submission. The Commission maintains that the approval of the Bars in January 2021 for form as well as packaging and labeling was a mistake, and the timing of the regulations supports that view. In January, the regulations were proposed but not adopted, and there would have been no basis for the Commission to issue approvals—a decision conveying compliance—under regulations that were still subject to revision or rejection. As it happens, the Edibles Regulations were adopted without changes from January, but that was neither known nor guaranteed at the time. To be sure, the Commission communicated to

GTI that the Bars had been approved, but the record supports the view that the approval was an administrative mistake, not a conscious decision to anticipate the Edibles Regulations and review the Bars for compliance with them.

B. The Commission's Interpretation Of COMAR 10.62.37.12(B)(3) Is Valid.

Since the Commission's initial approval was an error, we turn next to the Commission's interpretation and application of COMAR 10.62.37.12(B)(3) to the Bars after the Edibles Regulations took effect. COMAR 10.62.37.12(B) limits products to servings of no more than 10 milligrams of THC each and requires physical separation of servings:

> B. Dosage Requirements.
>
> (1) Unless expressly authorized by the Commission, an edible cannabis product may not contain more than:
>
> (a) 10 milligrams of THC per serving; and
>
> (b) 100 milligrams of THC per package.
>
> (2) A permittee is encouraged to manufacture varying levels of potency for each edible cannabis product the permittee distributes, including products containing:
>
> (a) 2.5 milligrams of THC per serving; and
>
> (b) 5 milligrams of THC per serving.
>
> (3) Each single serving contained in a package of a multiple-serving solid edible cannabis product shall be physically separated in a way that enables a patient to determine how much of the edible cannabis product constitutes a single serving.

The Commission argues that the phrase "'physically separated' means that a single serving [of cannabis] is contained in a single piece and not merely demarcated or delineated within a piece containing multiple servings." The Commission contends that complete detachment

or disconnection is the only reasonable interpretation of the phrase "physically separated" and that an edible with connected servings is noncompliant with COMAR 10.62.37.12(B)(3). This is consistent with the guidance document that the Commission issued contemporaneously with its adoption of the Edibles Regulations.

GTI counters that the plain meaning of the regulation does not require physical separation because the language providing that servings "shall be physically separated *in a way* that enables a patient to determine how much of the edible cannabis product constitutes a single serving," COMAR 10.62.37.12(B)(3) (emphasis added), allows for alternative ways to separate the individual servings. According to GTI, "[t]he only reasonable construction of this regulation is that there are multiple ways to enable patients to determine what constitutes a single serving, such as a bar format where individual servings are deeply scored and individually labeled with their THC content for easy dosing by a patient." Based on this interpretation, GTI argues that the guidance document, which states that individual servings must be physically separated into single servings impermissibly contradicts the only reasonable interpretation of COMAR 10.62.37.12(B)(3). The Commission responds that the purpose of the phrase "in a way that enables a patient to determine how much of the edible cannabis product constitutes a single serving" was to "ensure[] that each piece contains a single dose . . . ." So, according to the Commission, the guidance document clarified this portion of the regulation and aids participants in Maryland's cannabis industry who seek to comply with the Edibles Regulations.

Although agencies' interpretations of their own regulations are entitled to deference, "we review [the agency's] conclusions of law for error by applying our well-settled principles of statutory interpretation." *Board of Liquor License Comm'rs v. Kougl*, 451 Md. 507, 515 (2017) (citation omitted). In this case, then, we start with the plain language of COMAR 10.62.37.12(B), which is "'the best evidence of its own meaning.'" *Id.* (*quoting Total Audio-Visual Sys., Inc. v. Dep't of Labor, Licensing & Regul.*, 360 Md. 387 (2000)). We look at "each provision in the context of the regulatory scheme to ensure that 'no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory.'" *Id.* at 521 (*quoting In re Kaela C.*, 394 Md. 432, 467 (2006)). If the plain meaning of the regulation is unambiguous, our analysis ends there, and we give effect to the plain language. *Christopher v. Montgomery Cnty. Dep't of Health & Hum. Servs.*, 381 Md. 188, 209 (2004). However, if the language of the regulation is ambiguous, "we look to the agency's interpretation of its own regulation." *Kougl*, 451 Md. at 517 (citation omitted).

Here, the "physically separated" language, on its own, indicates on its face that the individual servings cannot be attached in the form of a bar. Black's Law Dictionary defines "physical" as "[o]f, relating to, or involving material things; pertaining to real, tangible objects." Physically, Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary doesn't contain a definition of "separate" relevant to the context of the Edibles Regulations,[4] but the Oxford English Dictionary defines "separate" as "disjoined,

[4] The definition of "separate" in Black's Law Dictionary was only available in the context of "liability, cause of action, etc." Separate, Black's Law Dictionary (11th ed. 2019).

disconnected, detached, set or kept apart." Separate, Oxford English Dictionary (3rd ed. 1997). The plain meaning of "physically separated," therefore, requires the individual servings to be disconnected from one another.

At the same time, we recognize the ambiguity in the phrase "physically separated" when viewed in the context of a "a package of a multiple-serving solid edible cannabis product . . . ." COMAR 10.62.37.12(B)(3). This wording could lead reasonably to the conclusion that multiple servings in *a* solid edible product are permitted, suggesting that a solid chocolate bar with scored servings, showing physical separation, might meet the definition. Moreover, our principles of statutory interpretation don't resolve this ambiguity. *See Uninsured Empls.' Fund v. Danner*, 388 Md. 649, 659 (2005) ("If, after considering the plain language in its ordinary and common-sense meaning, two or more equally plausible interpretations arise, however, then the general purpose, legislative history, and language of the act as a whole is examined in an effort to clarify the ambiguity." (citation omitted)). Although some regulatory history of the Edibles Regulations, included in the Commission's August 2021 letter to GTI, was part of the administrative record and explains that the primary consideration in drafting these regulations was to protect minors from accidental consumption of cannabis, this doesn't help us discern which construction of COMAR 10.62.37.12(B)(3) was intended. The general purpose of the regulations also doesn't shed light on the proper construction of this language.

This leaves us to consider the Commission's interpretation of COMAR 10.62.37.12(B)(3). Courts should "accord an agency considerable deference in interpreting

its own regulations . . . .” *Kougl*, 451 Md. at 515. The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[5] explained that agencies are owed significant deference in the interpretation of their own regulations:

> “[A]gency rules are designed to serve the specific needs of the agency, are promulgated by the agency, and are utilized on a day-to-day basis by the agency. A question concerning the interpretation of an agency’s rule is as central to its operation as an interpretation of the agency’s governing statute. Because an agency is best able to discern its intent in promulgating a regulation, the agency’s expertise is more pertinent to the interpretation of an agency’s rule than to the interpretation of its governing statute.”

Maryland Transp. Auth. v. King, 369 Md. 274, 289 (2002) (*quoting Maryland Comm’n on Hum. Rels. v. Bethlehem Steel*, 295 Md. 586, 592–93 (1983)). Unless the agency’s interpretation of its regulation is “plainly erroneous or inconsistent with the regulation,” we give deference to the agency’s interpretation. *Id.* (cleaned up).

And the Commission’s interpretation of COMAR 10.62.37.12(B) is reasonable and consistent with the language of the regulation. The Commission explained that it intended for the servings to be physically detached from one another (*i.e.*, “physically separated”) “in a way” such that exactly one serving of cannabis would be in one piece of the edible,

[5] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .”).

rather than two or three pieces comprising a single serving. The language of COMAR 10.62.37.12(B) supports this altogether rational interpretation of the regulation, and the Commission's interpretation is entitled to deference. This is bolstered further by the guidance document the Commission released with the Edibles Regulations, a contemporaneous expression of the Commission's interpretation of COMAR 10.62.37.12(B) that clarifies the form requirements for edible cannabis products. The guidance document explains that "solid edible cannabis products **must** be physically separated into single servings" and that multiple servings can't remain intact; the bolding and underlining are in the original document. To the extent the language of the regulation permits alternative readings, the guidance document reveals that the Commission's interpretation, which is objectively reasonable, is the interpretation the Commission offered and intended from the inception of these regulations. Put another way, the Commission never changed its position on what the Edibles Regulations mean—it erred in conveying administrative approval of these Bars before the Edibles Regulations took effect, but the Commission has always meant and understood those regulations to preclude scored or demarcated bars containing multiple attached (even if detachable) servings.

C. The Commission Was Authorized To Rescind Its Approval Of The Bars To Correct Its Error.

GTI argues *next* that the Commission correctly interpreted and applied the proposed Edibles Regulations when it approved the Bars in response to GTI's January 2021 submission, then found the Bars noncompliant with the Edibles Regulations four months later, based on a different interpretation. Based on its later interpretation of the Edibles

Regulations, GTI argues, the Commission instructed GTI to cease production of the Bars and caused "unfair surprise" to GTI. GTI asserts as well that the Commission's intent in January is irrelevant—although GTI stops short of claiming that the Commission was estopped to act in May, it contends that the Bars were approved through the Metrc system without qualification and the matter should have ended there. The Commission responds that it didn't, in fact, consider whether the Bars complied with the Edibles Regulations until May 2021—the January approval was an administrative error, and when the Commission actually considered the Bars against the Edibles Regulations, it found potential areas of noncompliance. The Commission maintains that it never intended to consider or approve the Bars for form in January and that it was permitted to correct the error when it learned of it.

GTI claims that it is inconsequential whether the Commission approved the Bars mistakenly, but the law says otherwise. An agency "may reconsider an action previously taken and come to a different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different factual situation exists that justifies the different conclusion." *Calvert Cnty. Plan. Comm'n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301, 325 (2001); *see also United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223, 229 (1965) ("An agency, like a court, can undo what is wrongfully done by virtue of its order."). This "inherent power of reconsideration" is available only if there's no rule or statute that provides for reconsideration. *Cinque v. Montgomery Cnty. Plan. Bd.*, 173 Md. App. 349, 361 (2007). Reconsideration of a previous

action is not permitted where the agency simply changed its mind. *Howlin Realty Mgmt.*, 364 Md. at 325.

The Commission has maintained throughout its correspondence with GTI and in its brief that the approval of the Bars it communicated in January 2021 was a mistake. Although only the packaging for the Bars was supposed to be approved, the Metrc system reflected that the product's form was approved as well, and "any representation in Metrc that the [Bars] had been approved by the [Commission] was incorrect." There is nothing in the administrative record that indicates that the Commission changed its mind after approving the Bars intentionally—beyond the approval communication itself, there is nothing in the record at all. The record supports the Commission's position that it made a mistake in January that it corrected in May, and we agree that the Commission was authorized to correct the mistake as it did.

D. The Commission's Decision To Recall GTI's Existing Inventory And Direct GTI To Cease Production Of The Bars Is Supported By Substantial Evidence.

Finally, we reach the Commission's ultimate decision—the directive ordering GTI to cease production of the Bars and recall GTI's existing inventory—and we agree with the Commission that that decision was supported by substantial evidence.[6] The Commission determined, and communicated to GTI in its August 2 letter, that the Bars could no longer remain on the market for consumption because the Bars violated COMAR 10.62.37.12(B),

[6] Because the affidavit of Anthony Grover was not properly part of the administrative record, we decline to consider it.

which was drafted with the objective of protecting the health and safety of minors. The Commission explained the heightened risk from over-ingestion of cannabis, particularly by minors who "may only see a chocolate bar." The original directive ordering GTI to cease production of the Bars was conveyed by Anthony Grover, a member of the Commission staff. When GTI wrote to the Commission asking for the decision to be reconsidered, the Commission members, including specialists in pediatric emergency medicine and toxicology, considered and determined that not only could the Bars not be produced anymore, but they couldn't be on the market at all in their then-current form in light of the risk of consumption by minors.

GTI argues that studies describing the potential risks of cannabis exposure to children were not included in the administrative record of this decision, and in the absence of this information, the Commission's decision isn't supported by substantial evidence. But the Commission explained in its August letter to GTI, which *was* included in the administrative record, that the General Assembly was concerned about the risk of accidental ingestion of edible cannabis products by children and, accordingly, it intended that the Commission would promulgate regulations with the specific purpose of protecting minors from accidental consumption of cannabis. The Edibles Regulations carried out that directive, and the Commission adopted those regulations against a full administrative record that it developed during the course of that rulemaking. GTI takes no issue with the rulemaking itself (nor could it here—that sort of challenge wouldn't be appropriate via administrative mandamus anyway), and the Commission is not required to reproduce the

full regulatory history of the Edibles Regulations in the administrative record of this individual, product-specific decision. And given that the Bars did not comply with regulations designed to protect patients and minors, they posed a threat to the health and safety of children. Because there is substantial evidence supporting the Commission's directive to GTI to cease production of the Bars and to recall its existing inventory, we uphold the Commission's decision.

We recognize that GTI relied to its financial detriment on the apparent approval the Commission communicated in January 2021, and its sense of administrative grievance and aggravation here is understandable (and not at all unwarranted). Nevertheless, agencies can and, when appropriate, should reconsider their decisions for good cause, especially when the decision at issue is mistaken and conflicts with the agency's mission and purpose. The Commission's purpose here includes an imperative to protect the health and safety not only of the general public and people who use cannabis, but also minors who might ingest cannabis inadvertently and risk serious health complications. So although the Commission erred in approving the Bars in January 2021, the Commission ultimately was required to uphold its duty to protect the community and, in so doing, was authorized to require GTI to cease production of the Bars and to recall the existing inventory.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.