

CANNABIS LAW ALERT

Massachusetts Cannabis Control Commission Proposes Revisions to Cannabis Regulations

August 7 2019

In early July 2019, the Massachusetts Cannabis Control Commission (CCC) released proposed revisions to its recreational-use regulations, with public hearing statements or written comments due by Thursday, August 15, 2019. Changes to medical-use rules were also released but are not addressed in this update. Public attention has almost entirely focused on the proposal's new social consumption, also known as cannabis cafes, and delivery-only license categories, but the proposal includes extensive revisions to virtually all of the existing rules that, if adopted, would broadly affect nearly all CCC-licensed providers and employees.

New License Category for Social Consumption/Cannabis Cafes

The proposed changes would allow CCC-licensed entities to engage in sales for onsite consumption of marijuana-infused products and vaping, subject to strict limitations to protect other retail customers, employees and the general public from over-intoxication. Proposed restrictions and limitations include, but are not limited to:

- maximum daily serving limits of 20 mg of THC;
- prohibiting sales after 9 p.m., unless extended by the municipality;
- prohibiting product discounts or promotions;
- prohibiting sales of perishable items;
- strict serving labeling requirements;
- mandatory distribution of an information card regarding impairment effects of cannabis; and
- requiring ventilation if vaping is permitted.

The CCC proposed that the license category be launched as a limited two-year pilot program in up to 12 municipalities, starting from the CCC's public release of a social consumption application (unless extended by CCC vote). Licenses for the social consumption pilot are proposed to be limited to microbusinesses, craft marijuana cooperatives, applicants with priority status through the CCC's economic empowerment system and participants in the CCC's social equity program. License applicants will need to file both a Pre-Certification Application and a Provisional License Application. In its press release announcing the new proposed rules, the CCC advised that the recommended pilot program "would not be able to begin" without a new state law allowing more municipalities to authorize social consumption in their communities. The prospects for such authorizing legislation are, as yet, unclear.

New License Category for Delivery-Only

This new license category would be limited to providers that purchase goods from a licensed retail seller for delivery to a consumer, pursuant to a Delivery Agreement between the delivery-only licensee and retailer. Delivery-only licensees may not deliver to cities or towns that prohibit marijuana retail sales. In addition, there are delivery restrictions applicable to universities and federally or state-subsidized housing. The proposed regulation requires customers to verify their identity in advance, in person at the counterparty retail store, and again upon receipt of the cannabis delivery. The proposed regulation provides that deliveries must be made to an individual consumer but does not specify whether the consumers must receive deliveries at their home addresses or whether they can receive deliveries at other locations (such as at a friend's address). Finally, similar to the social consumption license category, licensed applicants are exclusively limited during the first two-year period to applicants qualified by the CCC as economic empowerment and social equity program participants.

Other Proposed Changes

- CCC Enforcement and Administrative Authority. The proposed rules add new sections and associated definitions proposing to codify and define the CCC's broad authority to review complaints, conduct compliance examinations, apply administrative holds, order removal or prohibition of a licensee's products, impose cease and desist orders, show cause and summary orders, and conduct hearings and appeals.

- Expansion of Cultivation-Related Policies. New sections in the proposed rules add definitions confirming detailed Cultivation licensee requirements in areas such as lighting and pesticides, add a requirement that a Licensed Engineer or Licensed Architect submit an “energy compliance letter” with supporting documentation as part of the initial Application, and add detailed reporting requirements to be part of renewal applications.
- Increasing and Additional Fees. The proposed rules substantially increase fees for license applications, annual fees and one-time requests for CCC action (such as increasing a name change fee from \$100 to \$1,000) and add new fees (such as a \$5,000 per entity fee and \$500 per individual Board member fee to review a change in ownership or control).
- Expanding on Nature of Required Vendor Training. The proposed rules define minimum training time (three hours) and add specific topics for the training sessions covered more generically in the existing regulations.
- Defining Scope of Confidential CCC Materials. A new Section 500.002 definition for “Confidential Application Materials” clarifies that the CCC will protect all documents protected by law, including but not limited to personally identifiable information, background check or Criminal Offended Record Information (CORI) materials, and information implicating security concerns. Similarly, a new definition for “Confidential Records” includes the above-specified application materials plus “Confidential Social Equity Application Materials” and “Confidential Investigatory Materials,” both also defined in the proposed rules. The proposal separately expressly provides that non-confidential materials may be released pursuant to Public Records law requirements.
- Defining “Licensee” Expressly to Eliminate Lenders. The CCC proposes to expressly exclude from regulation as a Cannabis licensee one who provided initial capital and then only receives repayment of the investment without an equity stake or direct or indirect control rights.
- Clarifying Regulatory Treatment of Edibles Not to Include Food or Drug Regulation. Marijuana-Infused Products are not considered a food or drug otherwise subject to Massachusetts regulation in G.L. c. 94, § 1. Of course, this does not affect federal law, which still prohibits cannabis.

The CCC expects to undertake active deliberations on the final regulations in September 2019, after a public comment period.

Contact

If you have any questions regarding information contained in this alert or the cannabis laws in Massachusetts, please contact a member of our [Cannabis Law Practice](#).

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