

CANNABIS LAW ALERT

Recent Changes to Massachusetts Cannabis Regulations

October 2019

The Massachusetts Cannabis Control Commission (CCC) recently released final revised recreational-use regulations, following a lengthy public hearing and comment review process. The revised regulations (Revised Rules) will take effect after they are filed with the Secretary of State. Key elements of the Revised Rules include:

Social Consumption/Cannabis Cafes License Category Pilot

A social consumption pilot program will create a new license category for on-site sales and consumption of edibles and vaping products by adults 21 years or older. Allowance of on-site vaping would be subject to expiration or termination of the Massachusetts temporary ban on vaping products ordered by Governor Baker on September 24, 2019.

The Revised Rules will limit the pilot program to 12 cities and towns chosen by the CCC. Also, for at least the initial two-year period, social consumption applicants must qualify for the CCC's economic empowerment or social equity programs, or the microbusiness or craft marijuana cooperative license categories. Applicants must complete a license application process and comply with new regulations to ensure safe consumption, which include:

- limiting vaping to outdoor spaces or separate rooms with air filtration systems, and an outright ban on indoor smoking;
- restricting edibles to pre-packaged, shelf-stable items capable of being stored at room temperature in a sealed container (products that are perishable or time- and temperature-controlled to prevent deterioration cannot be sold);
- banning tobacco and alcohol sales; and

- limiting sales to the hours between 8:00 a.m. and 9:00 p.m., unless otherwise permitted by municipal bylaws or ordinances.

The CCC states that the social consumption pilot program and any permanent licensing process for the new category will require legislation to empower cities and towns to authorize social consumption in their communities.

Delivery-Only License Category

The Revised Rules create a delivery-only category for licensees that would obtain cannabis or cannabis products from licensed marijuana retail stores and deliver them in cities or towns where retail sales are permitted, or where the delivery business is located. Delivery-only licensees can only obtain cannabis or cannabis products from marijuana retailers with which they have a delivery agreement. Products may also be delivered by microbusinesses that grow or process cannabis and obtain a separate delivery endorsement from the CCC.

Delivery Rules:

- Before a consumer can purchase for delivery, he or she must have a government-issued identification, pre-verified either in-person at the physical location of the marijuana retailer or marijuana establishment with a delivery endorsement, or through a CCC-approved electronic means (yet to be established).
- The consumer's age and identity are again verified when the cannabis products are delivered.
- Delivery is only permitted to the residence address provided by the consumer upon pre-verification.
- Service is prohibited from college or university housing, hospitality operations (from hotels to bed-and-breakfasts), and federally subsidized housing.
- The regulations also provide methods to track deliveries, delivery vehicle safety measures, and require the use of body cameras to record transactions, which are only provided under CCC investigation, court order or warrant.
- Similar to the social consumption pilot, delivery licensees will be available for an initial two-year period only to applicants qualifying for the CCC's economic empowerment or social equity programs or the microbusiness or craft marijuana cooperative license categories.

Fee Increases and Changes

The recreational-use regulations substantially increase application, license and miscellaneous fees for retailers, product manufacturers, independent testing laboratories and large cultivators (20,001 square feet of canopy and up), including:

- 10x increase in the Change in Name fee (from \$100 to \$1,000);
- 200% increase in annual fees for Tier 4 through Tier 11 cultivators, with certain tiers seeing a greater increase; and
- 500% increase in application fees for transporters, retail establishments, and others (from \$300 to \$1,500).

Other fees are either maintained (such as those for small cultivators, microbusinesses, third party transporters and research facilities) or reduced (for small outdoor cultivators and both economic empowerment and social equity program participants).

Expansion of Management Oversight and Enforcement Tools

The Revised Rules include new measures for supervising licensees and addressing potential violations, including clarifying what constitutes control over an applicant, requiring license applicants to submit management contracts as part of a license application and adding a host of provisions governing enforcement mechanisms (such as licensure denial, licensure revocation, denial of renewal, removal of products from licensee shelves and sales prohibitions following an informal hearing process and Commission consideration).

New Cultivation Lighting and Sustainability Requirements

The Revised Rules clarify and expand key requirements applicable to cultivator licensees in the areas of lighting, energy efficiency and sustainability. These changes include creating revised and more precise horticultural maximum lighting standards, requiring a licensee to obtain a certification of compliance by specified professionals with CCC lighting standards before final licensure, requiring certification from a licensed professional engineer of a licensee's HVAC and dehumidification systems as part of a license renewal filing, and reducing the threshold for optional exemption from lighting restrictions through the use of on-site renewable facilities from 100% to 80% of a facility's overall load.

Additional Security Requirements

The Revised Rules provide additional security requirements at licensee operations, notably requiring armed transport for cash that is either registered with the state police or meets minimum requirements (such as having real-time GPS and two-way communications capabilities, prohibiting simultaneous transport of cash and marijuana and requiring express approval of financial arrangements from recipient financial institutions).

Conclusion

The Revised Rules reflect several elements of CCC policy priorities, including its willingness to launch new license types, support social equity applicants in cannabis markets, rebalance burdens associated with regulatory fees towards larger cannabis businesses, and emphasize the focus on energy efficiency and sustainability in cultivation operations. The Revised Rules also flesh out and clean up details of regulatory requirements in place since the initial rules were promulgated in Spring 2018. With the lengthy process to update the rules now completed, we expect the CCC to turn its attention to processing the backlog of license applications and investigating compliance issues associated with existing licensees.

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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