

Summary of the Cannabis Regulatory Commission's Initial Rules for the Personal-Use of Cannabis

On Thursday, August 19, 2021, the Cannabis Regulatory Commission (CRC) is scheduled to consider approving the first set of rules and regulations to establish the personal-use, or recreational, cannabis industry in New Jersey. The rules, which, under statute, are effective upon filing with the Office of Administrative Law, will be in effect for up to one year and will empower the CRC to begin licensing cannabis businesses like cultivators, manufacturers, and retailers. Critically, the rules address the CRC's two core values of equity and safety, facilitate access to the market by small business entrepreneurs, and uphold that municipalities have authority to shape how cannabis legalization looks on the ground, based on what their community members want.

Equity

The initial rules address social equity by increasing opportunities in the cannabis industry for people from statutorily designated target communities.

The rules establish three types of cannabis businesses that will receive priority review and approval in the application process:

- Social Equity Businesses, which are owned by people who have lived in economically disadvantaged areas of the state or who have past convictions for cannabis offenses;
- Diversely Owned Businesses, which are minority-owned, woman-owned, or disabled veteran-owned and certified as such by the New Jersey Department of the Treasury in one or more of the listed categories; and
- Impact Zone Businesses, which are located in an Impact Zone, owned by people from Impact Zones, or employ residents of Impact Zones. Note: Under the statute, Impact Zones are municipalities with a large population, high unemployment rate, or high numbers of crime or arrests for marijuana.

Social Equity Businesses, Diversely Owned Businesses, and Impact Zone businesses will be prioritized in the licensure process so that their applications are reviewed before other applicants – regardless of when they apply.

The regulations establish guardrails to combat exploitative business contracts and prevent deceptive license ownership transfers.

The rules also provide for the Commission to establish a Social Equity Excise Fee, which is a fee on cultivation that has the potential to increase as consumer prices decrease and will raise money that can be appropriated to initiatives like educational support, economic development, and social support services within municipalities designated as Impact Zones.

Safety

In addition to laying the foundation for a diverse and inclusive cannabis industry, the rules ensure that New Jersey has a safe cannabis industry that is well-regulated and does not market products to young people under the legal age.

The rules restrict access to cannabis businesses by those under the age of 21 and restrict advertising so that cannabis is primarily marketed to those of legal age. Cannabis businesses are required to contain odors and engage with neighbors who may have concerns about their presence, as well as create and implement environmental sustainability plans. To facilitate quick resolution to issues or concerns from the surrounding community, cannabis businesses will be required to have a staff member who neighbors can call to report any nuisances. Community residents will also be able to report issues directly to the CRC.

Inside a cannabis retail business, personnel will be required to have consumer education materials available for customers, including information on potential side effects of cannabis use, safe techniques for using cannabis, and indicators of substance abuse. Products sold in stores will be required to come with warning statements about potential health risks as well as the hotline for accessing poison control centers. The use of cartoons, trademarked images, candy, food, or anything that may be attractive to children is strictly prohibited. The rules require that packages be childproof – both before being opened and when resealed. The only edible cannabis products permitted are syrups, pills, tablets, capsules, and chewable forms; cookies, brownies, or other edible products resembling food are prohibited.

Learning from the vaping crisis in 2019, the manufacturing standards included in the CRC's initial rules prohibit the use of any additive that has been determined to be harmful to consumers, and limit what can be added to vape cartridges and other products so that consumers can have confidence in their safety.

Easing Access to the Market for Entrepreneurs

In an effort to ensure that New Jersey has a competitive, well-regulated market that delivers value and provides a prioritization structure to consumers, the CRC's initial rules establish a licensure process in which applications are reviewed as they are received on a continuous rolling-basis, with Social Equity, Impact Zone, and Diversely Owned Businesses always getting priority over others. This new process will ensure that business owners and staff in communities historically underrepresented in regulated cannabis industries can get timely access to the market, and that it is competition in the active marketplace, not competition in an RFA, that determines the success of awarded applicants. The CRC's licensing process empowers businesses to put their plans to the test and empowers consumers to choose which local entrepreneurs to support and what they want the market to be.

Importantly, the rules establish and prioritize small businesses, referred to as "microbusinesses," and the conditional licensure process, which creates a pathway for entrepreneurs into the industry. Conditional applicants will only need to submit background disclosure information to the CRC, along with a business plan and a regulatory compliance plan. If approved, they will then be given 120 days to find an appropriate site, secure municipal approval, and apply for conversion to an annual license. Conditional license-holders that convert to an annual license will not have to submit the sections of the application that, under statute, require applicants to demonstrate past experience in a regulated cannabis industry. This flexible application process offers a strong opportunity for New Jersey grown businesses to get into this new industry.

Microbusinesses, which are limited to 10 employees and premises no larger than 2,500 square feet, will also be prioritized and, if successful, allowed to apply to expand their business in accordance with consumer demand.

Initial application fees are structured to be affordable, starting as low as \$100 just to submit an application. Annual license fees range from \$1,000 for a microbusiness to \$50,000 for a cultivator with up to 150,000 square feet of cultivation capacity.

Municipal Partners

The CRC's initial rules recognize that municipalities play a critical role in regulating the new cannabis industry and recognize their rights to enact restrictions on businesses that make sense for their communities. While the Commission's rules provide the framework for operating a cannabis industry in New Jersey, municipalities have the power to define how that unfolds in communities. Cannabis businesses will only be licensed by the Commission if they have demonstrated support from the municipality, zoning approval, and have been verified to operate in compliance with any municipal restrictions. Municipalities can determine hours of operation, the number and kinds of licensed businesses operating within their borders, and whether to enact a 2% transfer tax on any sales between cannabis businesses. They can also enact any requirement or restrictions on cannabis businesses that would apply for other business types, such as requiring compliance with all relevant codes and ordinances.

Municipalities will also have the opportunity to weigh in on which applicants seeking to operate within their town should be issued a license from the Commission.

What comes next

The initial regulations provide a comprehensive rulebook for operating a cannabis establishment in the cannabis industry, but more rules are still needed. With the most critical regulations in place, the CRC will begin examining the needs of distribution and delivery service businesses and preparing for the acceptance of applications. The Commission plans to continue leveraging insights from the field and the best data available to develop sensible regulations for other cannabis-related issues, such as detecting intoxication and access to appropriate consumption spaces.

Personal Use of Cannabis Rules: New Jersey Administrative Code, Title 17, Chapter 30

Key provisions

Subchapter 1: General Provisions including Definitions

The definitions, which include all the definitions from P.L. 2021, c.16 by reference, define different types of businesses, product categories and types, and establish key criteria for achieving equity in the cannabis industry.

- Social Equity Businesses are a newly created type of business that is based on either economic need or having a criminal record from past marijuana-related offenses. It includes businesses that are either:

1. Owned by individuals who have lived in an Economically Disadvantaged Area, as defined by a zip code that has 80% or less of the average median household income in the state; has a health uninsured rate that is at least 150% of the health uninsured rate in the State; and has a poverty rate that is at least 150% of the statewide poverty rate, as determined annually by the U.S. Census Bureau; or
 2. Owned by individuals with previous marijuana-related convictions.
- Diversely Owned Businesses is an umbrella term to describe businesses that are certified by the New Jersey Department of the Treasury as a minority-owned business, a woman-owned business, a disabled veteran-owned business, or any combination of the three.
 - Impact Zone Businesses are businesses that are owned by individuals who have lived in an Impact Zone, are located within an Impact Zone, or plan to offer employment opportunities to residents of Impact Zones.
 - The definitions establish the term “Cannabis Business” for all six classes of license holders: cultivators, manufactures, wholesalers, retailers, distributors, and delivery services.

Subchapter 2: Consumer and License-holder Protections; Consumer Prohibitions

Consistent with the statute, this section outlines the protections and prohibitions for individuals regarding personal use cannabis.

- Consumers over the age of 21 can legally purchase and possess up to one ounce of cannabis, or an equivalent amount of cannabis products.
- People and entities engaged in activities authorized by the statute and rules are protected from criminal prosecution.
- Driving under the influence is strictly prohibited.
- It is not legal for anyone under the age of 21 to purchase, possess, or use cannabis or cannabis products.

Subchapter 3: Operation of the Commission

This section establishes the Social Equity Excise Fee, which is a fee on cultivation that increases as the retail price drops, and delineates the account in which revenues will be deposited. This section also includes the authority for the Commission to designate a statewide inventory tracking system for all cannabis businesses.

Subchapter 4: Independent Study; Commission Reporting

This section outlines reports that need to be completed by the Commission.

Subchapter 5: Municipal Authority

Subchapter 5 codifies the powers of municipalities under P.L. 2021, c.16. Specifically, they can enact ordinances that:

- Authorize certain types of cannabis businesses;
- Set numerical limits on the numbers of certain types of businesses operating within the jurisdiction;
- Restrict the hours of operation of cannabis businesses and their location, including banning cannabis businesses in school zones, and setting restrictions regarding playgrounds and places of worship;
- Create local licensing requirements and set civil penalties;

- Restrict the types of cultivation that occur within the municipality, for example, requiring all cultivation to be indoor;
- Establish a 2% transfer tax on cannabis or cannabis products being transferred by businesses within the jurisdiction; and
- Communicate the municipality's preference for licensure to the Commission.

Municipalities cannot restrict delivery of cannabis items to consumers within their jurisdiction and cannot restrict transports of cannabis that are routed through their jurisdiction.

Municipalities that enact an ordinance regulating or banning cannabis businesses by August 21, 2021, can update their ordinances at any time, and notify the Commission whether a cannabis business is compliant with those ordinances.

Subchapter 6: Cannabis Business Licensing General Terms

Subchapter 6 outlines the Commission's authority and process for making new licenses available and accepting new applications from license applicants. This subchapter also outlines the requirements for Social Equity Businesses, Diversely Owned Businesses, and Impact Zone Businesses, provides for limitations for license applicants and license holders, and establishes the regulation of management and financial agreements for cannabis businesses.

The Commission's licensing process will be market-based, tethered to the actual market demands of the state, and will prioritize access to the market for Social Equity Business applicants, Diversely Owned Business applicants, and Impact Zone Business applicants. Conditional licenses and microbusinesses will also be prioritized.

The Commission can set which license applications it is accepting at any given time by publishing a notice in the New Jersey Register. When applications are being accepted, they will be reviewed, scored, and approved on a rolling basis but with priority review, scoring, and approval for Social Equity Businesses, Diversely Owned Businesses, and Impact Zone Businesses.

Social Equity Businesses are businesses that are owned by people who have prior marijuana convictions or can demonstrate economic need by living in an economically disadvantaged area for five of the last ten years and making less than 80% of the statewide median household income.

So as to let the market develop without artificial restrictions, the only statewide cap on licenses included in the rule is the cap on 37 cultivators for two years after February 22, 2021, when the law was signed. However, municipalities can set local restrictions on the numbers of businesses in their jurisdiction.

In order to prevent social equity businesses and others from being targeted by predatory lenders and predatory management companies, the rule establishes a regulatory framework for management services companies and financial sources that will inoculate license-holders from unfair and unreasonable contract terms, while also ensuring that there are opportunities for new businesses to borrow money and seek out contractors to help them run their businesses.

Subchapter 7: Cannabis Business Conditional and Annual Licensing Process

Subchapter 7 sets out the application and licensing process for conditional licenses, annual licenses, expanded alternative treatment centers, and the process by which conditional licenses can convert to annual licenses and microbusiness can expand. The applications emphasize transparency and disclosure, and all

applicants will need to get a criminal history background check. Certain past marijuana offenses, and those not directly related to operating a cannabis business, will not be disqualifying factors in the application process. Individuals with prior convictions are not prohibited from applying for a cannabis business license.

Conditional Licenses

Conditional applicants will be required to submit organizational and personal information that ensure they are compliant with the law, get a criminal background check, and provide a business plan and regulatory compliance plan. At the time of application, all owners with decision-making authority of the conditional license applicant will need to prove that they made less than \$200,000 in the preceding tax year, or \$400,000 if filing jointly.

If approved and issued a conditional license, a conditional license holder will then be required to solidify the permanent site for their business, gain control of the property through lease or purchase, and gain municipal approval. Conditional license-holders can add new owners in the conditional license phase, provided that the majority of the equity in the business remains with the persons or entities that can qualify for the conditional license. Once ready, the license-holders can then submit a conversion application, which includes submitting standard operating procedures for the business, an environmental impact plan, a workforce development plan, and a security plan.

Annual Licenses

Applicants for annual licenses will be required to submit a more detailed application that includes details for the proposed site for the business, which must be owned or leased, municipal approval, zoning approval, and Applicants must also submit an operating summary plan in which applicants detail their experience, history, and knowledge of critical pieces of operating a cannabis business.

Expanded Alternative Treatment Centers

Alternative Treatment Centers with permits issued under P.L. 2019, c.153, will be able to expand their operations to include personal use cannabis by submitting municipal approval and a certification that they have adequate supply for their patients, and that engaging in personal use cannabis sales will not impact access for those patients. In determining whether to accept the certification, the Commission will look at not only the supply of the specific ATC, but also statewide supply to ensure that the issuance of licenses does not have an adverse impact on the medical cannabis market.

Microbusinesses

Microbusinesses that wish to expand operations can apply to the Commission to convert to a standard annual license but will have to operate as a microbusiness for at least one year before applying to expand.

Fees

To reduce barriers to entry, initial application fees are low – and the only applicants that will pay a full application fee are those whose application is approved. Consistent with the statute, applicants only need to pay 20% of the application fee at the time of application, and the remaining 80% will only be collected at the time the license is approved. The costs to submit an application will start as low as \$100. Those who are successful in getting application approval would pay an additional cost. In total, the application costs will range from \$500 - \$2,000.

Annual licensure fees are connected to size, with microbusinesses paying as little as \$1,000 per year and cultivators with a canopy of 150,000 sq feet paying \$50,000 per year. Current Alternative Treatment Centers will be required to pay a conversion fee of \$300,000 - \$1,000,000, depending on the size of the Alternative Treatment Center.

The fee structure is designed to account for the size of the business operations, the value or size of a business's anticipated market share, and the costs to manage applications and enforce industry compliance. Revenue will be deposited into a fund that can be used to cover the costs of setting up application assistance programs, trainings, and potentially invested into programs in communities.

Subchapter 8: Cannabis Business ID Cards

Every individual who works in or works with cannabis on behalf of a licensed cannabis business will need to register with the Commission and will be issued a Cannabis Business ID Card. The fee for the ID card will be \$25 every year, and prospective employees will need to complete a brief training course in order to be approved by the Commission.

Subchapter 9: Cannabis Business License-Holder Material Conditions and Requirements

This subchapter outlines requirements and ongoing conditions applicable to all cannabis businesses. Notably, for the first two years of operation, the majority ownership in a cannabis business will be required to remain the same as on the application, but new owners and passive investors can be brought in, allowing them to raise capital if necessary. This subchapter also includes general security provisions, inventory management, reporting requirements, and provisions on product recalls. A section on secure transport covers the transportation of cannabis and cannabis products between cannabis businesses, and provides that such transport can be done by cannabis distributors.

Subchapter 10: Cannabis Cultivator Authorized Conduct

This subchapter establishes the authorized conduct for cultivators, and establishes the production tiers for cultivators as follows:

1. Microbusiness Cultivator: premises up to 2,500 square feet;
2. Tier I Cultivator: premises up to 10,000 square feet;
3. Tier II Cultivator: premises 10,000 square feet to 25,000 square feet;
4. Tier III Cultivator: premises 25,000 square feet to 50,000 square feet;
5. Tier IV Cultivator: premises 50,000 square feet to 75,000 square feet;
6. Tier V Cultivator: premises 75,000 square feet to 100,000 square feet;
7. Tier VI Cultivator: premises 100,000 square feet to 150,000 square feet; and
8. Expanded ATC Cultivator: premises up to 150,000 square feet.

Cultivators will be required to cultivate in a secure facility or property and can grow indoors or outdoors, but outdoor cultivation will only be allowed when explicitly approved by a municipality.

Subchapter 11: Cannabis Manufacturer Authorized Conduct

All cannabis manufacturing will take place in enclosed, secure facilities, overseen by a qualified manufacturing supervisor. Learning from the vape crisis in 2019, these regulations provide strict requirements for what can and can't be used in cannabis products. The rules proactively ban additives that have been determined to be potentially harmful and restrict the percentages of other additives for which

safety data is insufficient. Terpenes are allowed to be added in to vape formulations, but only in concentrations that are consistent with how they occur naturally.

This subchapter also outlines the types of products initially authorized by the Commission:

- Cannabis concentrates including extracts and resins;
- Vaporized formulations;
- Drops, tinctures, and other sublabial and sublingual forms;
- Oral lozenges and other buccal forms;
- Edibles that can only be in the form of syrups, pills, tablets, capsules, and chewables; and
- Topical formulations and transdermal forms.

Subchapter 12: Cannabis Retailer Authorized Conduct

Cannabis retailers will be required to have strict age verification protocols in place to ensure no one under the age of 21 is able to purchase cannabis, and consistent with the law, can only sell up to one ounce at a time to any individual consumer. Retailers will also be required to have protocols in place to help educate consumers about safe consumption and the risks associated with cannabis and make efforts to ensure consumers aren't able to purchase more than the legal limit.

Home delivery is allowed under these rules and, pursuant to the law, can be done by cannabis delivery services or delivery personnel hired by the retailer. Delivery vehicles will need to have GPS tracking and secure lockboxes and not be easily recognizable as cannabis delivery vehicles.

Subchapter 13: Packaging and Labeling

All cannabis items will be packaged in fully enclosed child-resistant packaging and will be labeled with information and any warnings required by law, a summary of the product testing results, any ingredients used in cultivation or production of the cannabis item, and the serving size. For cannabis flower, in addition to the potency from the test results, labels will note whether the flower is high-, moderate-, or low-THC, and whether it is high-, moderate-, or low-CBD, consistent with its chemotype.

Labels will contain health warnings for consumers urging them to avoid driving or operating heavy machinery while using cannabis, potentially avoid use altogether when pregnant or breastfeeding, and will note that high potency products may present risks to mental health.

Packaging and labeling will be prohibited from containing any false or misleading statements, or any imagery that could be attractive to kids, and once established, will contain a universal warning symbol designated by the Commission.

Subchapter 14: Advertising; Prohibitions

Cannabis businesses will be allowed to advertise, but with significant restrictions. Advertising will be restricted to mediums where the audience is determined to be primarily over the age of 21. TV and radio ads will only be allowed between 10:00 PM and 6:00 AM, and advertisers will be restricted from promoting overconsumption or making any claims not supported by credible research.

Subchapter 15: Licensing of Testing Laboratories

Subchapter 15 establishes the licensure process for testing laboratories. Cannabis testing labs will need to be ISO 17025 certified and will need to apply to the Commission to be able to test personal-use cannabis and cannabis products.

Subchapter 16: Personal Use Cannabis and Cannabis Product Testing Procedures

This subchapter provides the rules for laboratories to test cannabis and issue test results to cannabis businesses. Every batch and lot will be required to be tested prior to packaging, labeling and distribution, or sale to consumers. Labs will need to have strict chain of custody protocols for samples and will be required to retain a portion for quality control testing.

Subchapter 17: Monitoring, Enforcement Actions and Appeal Rights

The Commission is authorized to inspect cannabis businesses and testing laboratories, issue notices of violations for regulatory infractions, and issue fines where deemed appropriate. Standard fines can be no higher than \$50,000, while fines for infractions implicating issues of public safety or welfare, or a betrayal of public trust, can be as high as \$500,000. This subchapter also outlines how licenses are suspended or revoked and how a cannabis business can appeal a suspension or revocation.