

Guidance for Business

The following is not legal advice. Please consult an attorney if you have any questions regarding the laws that apply to adult-use marijuana.

What are the legal limits on ownership and control?

Under state law, a “controlling person” is defined as an officer, board member, or other individual who has a financial or voting interest of 10% or greater in a Marijuana Establishment. Further, an individual, corporation or entity shall be determined to be in a position to control the decision-making of a Marijuana Establishment if the individual or entity possesses:

- actual control of more than 50% of the voting equity or has the power to appoint more than 50% of the directors;
- contract rights to control; or
- right to veto significant events.

No individual or entity may be a controlling person over more than three licenses for a particular class of license. An individual or entity cannot control the decision-making of more than three licenses in a particular class of license. For example, an applicant cannot apply for more than three cultivator licenses or control the decision making of more than three licenses.

How does an applicant provide adequate certification that funds were legally obtained as required by 935 CMR 500.101?

Applicants are required to provide certification that funds used to invest in or finance the Marijuana Establishment were lawfully earned or obtained. Applicants can provide an affidavit or notarized document attesting to this requirement. As part of a review of the establishment’s application, or an inspection of the establishment’s operations, the Commission may require additional information or documentation that demonstrates the source of the funds.

How does an applicant satisfy the disclosure requirement for past or present business interests in other states under 935 CMR 500.101?

Applicants are required to disclose whether the Marijuana Establishments and its owners have past or present business interests in other states and to provide documentation in support of their disclosures.

Applicants should disclose cannabis- or licensing-related business interests, specifically, any business in which there is an investment or ownership interest. Applicants should also disclose any ownership interest in a business that transacts with any cannabis-related businesses. They should exercise their judgment in identifying other business interests relevant to their application.

An applicant has an obligation to provide information that is not misleading, incorrect, false, or fraudulent. The omission of a relevant past or present business interest, revealed through a background check, may be grounds to deny a licensing application.

To the extent that the regulations require a disclosure of controlling interests under 935 CMR 500.101, what should applicants consider?

Applicants are not restricted to a specific organizational structure so long as the regulations do not include any specific requirements, e.g., Craft Marijuana Cooperatives. Applicants should fully disclose the individuals and entities with an ownership interest or an ability to exercise control over the Marijuana Establishment, regardless of their organizational structure.

To the extent that the regulations require a disclosure of close associates, what should applicants consider?

Applicants are required to disclose close associates and members of the applicant, if any. This includes any individual or entity who holds a relevant managerial, operational, or financial interest in the business of an applicant or licensee and, by virtue of that interest or power, is able to exercise a significant influence over the management, operations, or finances of the establishment. To address this requirement, applicants should fully disclose individuals and entities with an ownership interest or an ability to directly or indirectly exercise control over the establishment.

During a review of the establishment's application materials, or an inspection of the establishment's operations, the Commission's inspection staff may seek additional information about the proposed organizational structure and associated individuals and entities. For example, the licensing or inspection staff may seek to understand the extent to which a close associate of a licensee, whether disclosed or undisclosed, is involved in the financing, operation, or management of a Marijuana Establishment and to inspect the papers, books, and records of that close associate.

The omission of relevant information, which may be revealed through a background check, may result in an application being denied.

What is a controlling interest, for example, does a contribution of services count?

Applicants are encouraged to include individuals that contribute services and exert control when disclosing the individuals or entities who exert a controlling interest over the Marijuana Establishment. For example, an individual may exert control by making decisions about the establishment management or operations.

The applicant does not need to disclose individuals who provide services and do not exert control. For example, applicants do not need to disclose consultants who consult with the Marijuana Establishment, but do not make decisions for the establishment.

Under 935 CMR 500.101, an applicant is required to disclose the interest of each individual named in the application in any Marijuana Establishment application for licensure or licensee. What should that include?

Disclosure should include each individual listed on the application and notification of how they are connected to the Marijuana Establishment seeking licensure in accordance with 935 CMR 500.101 (1)(a) 1 and 500.101 (2)(b) 1. They shall also disclose whether they have any direct or indirect ownership

interest in the Marijuana Establishment seeking licensure, any other licensed Marijuana Establishment, or any other applicant for licensure as a Marijuana Establishment.

What does it mean to be in “a position to control the decision-making of more than three licenses in a particular class of license” under 935 CMR 500.050?

Chapter 55 of the Acts of 2017 strictly limits the number of licenses that one licensee may have an ownership stake in, in the categories of cultivation, product manufacturing, and retail, to three licenses. The Commission’s regulations place additional limitations on other license types. Microbusiness licensees are limited to an ownership stake in solely their license and members of craft marijuana cooperatives are limited to holding a controlling interest in only that single co-op.

To ensure that the strict statutory limitations are adhered to, any individual or entity that possesses:

- actual control of more than 50% of the voting equity or has the power to appoint more than 50% of directors;
- (ii) contract rights to control; or
- (iii) the right to veto significant events,

must be identified by the applicant/licensee even if they are not required to be listed on the application pursuant to 935 CMR 500.101.

The Commission interprets “contract rights to control” as meaning the terms of a contract executed by the applicant and another individual or entity allow that individual or entity to exercise control over the business, even if they are not an executive, manager, or controlling person otherwise listed on the application. For example, an individual may exert control by making decisions about the establishment management or operations. This may be different than a consultant that provides services and advice, but does not exert control over the establishment’s management or operations.

A person or entity that has a contractual right to control decisions about an establishment’s management or operations shall be disclosed to the Commission. The failure to disclose any such relationship may result in disciplinary action taken against an eventual licensee.

Examples of an individual entity having “contract rights to control” may include:

- The applicant is controlled by another entity for key elements of its day-to-day or long-term affairs, including contracts, sales, operations, technical affairs, equipment, facilities, supplies, employees, workforce, consultants, subcontracts, leases, financing, income, payroll, bookkeeping, goodwill, policies, or management.
- The applicant relies on or regularly utilizes an employee who, while performing work for the applicant, is employed by or under the direct control of another entity (with the exception of temporary office personnel working in the normal course).

As part of a review of the establishment’s application or an inspection of the establishment’s operations, the Commission retains the right to review any contract between the applicant and any provider of equipment, goods, or services, and any information provided to banks or investors.

To the extent that applicants are required to establish an account to cover the costs associated with dismantling and winding down a Marijuana Establishment, what are some options?

Under 935 CMR 500.101(1)(a)(5) and 500.105(16(b), Marijuana Establishment applicants are required set aside either through a bond or an escrow account, an amount of money sufficient to cover the dismantling and winding down of the Marijuana Establishment.

If the applicant acquires a bond, the applicant is required to set aside the total amount of their licensing fees as set forth in 935 CMR 500.005, even if the fees have been waived. 935 CMR 100.105(a). If the applicant establishes an escrow account, the applicant must set aside at least \$5,000, and is encouraged to set aside the total amount of their licensing fees, even if the fees have been waived.

The amount set aside must be enough to cover the cost of satisfying any outstanding state or municipal sales tax obligations, costs incurred securing the Marijuana Establishment, and cost incurred destroying the marijuana and marijuana products in its inventory.

If the applicant acquires a bond, the bond should reflect the following:

- The applicant is the Principal;
- The Commonwealth of Massachusetts Cannabis Control Commission, 101 Federal Street, 13th Floor, Boston, MA 02110, is the obligee;
- The purpose of the bond is to cover any costs incurred by the Commission to satisfy any outstanding state and local sales tax obligations, costs incurred to secure the Marijuana Establishment, costs incurred to destroy the marijuana and marijuana products in its inventory, and to cover other costs incurred by the Commission in dismantling or winding down of the Marijuana Establishment in accordance with its policies and governing laws.

If the applicant establishes a trust account, the account should reflect the following;

- The Commonwealth of Massachusetts Cannabis Control Commission, 101 Federal Street, 13th Floor, Boston, MA 02110, is the sole beneficiary; and
- The funds are to cover any costs incurred by the Commission to satisfy any outstanding state and local sales tax obligations, costs incurred to secure the Marijuana Establishment, costs incurred to destroy the marijuana and marijuana products in its inventory, and to cover other costs incurred by the Commission in dismantling or winding down of the Marijuana Establishment in accordance with its policies and governing laws.

If the applicant's attorney holds the funds in its trust account in the client's name, a memorandum of understanding (MOU) with the attorney is an acceptable way to meet this requirement as long as the MOU reflects the following:

- The attorney is holding the funds for the sole purpose of covering any costs incurred by the Commission to satisfy all outstanding state and local sales tax obligations, costs incurred to secure the Marijuana Establishment, costs incurred to destroy the marijuana and marijuana products in its inventory, and to cover other costs incurred by the Commission in dismantling or winding down of the Marijuana Establishment in accordance with its policies and governing laws;

- The amount of funds; and
- The attorney will release the funds to the Commission on a demonstration that it has incurred these costs.

In the application submitted to the Commission, the applicant should make a good faith effort to demonstrate that it has identified an appropriate structure for these funds and set aside an appropriate amount. An appropriate structure would allow the Commission to access these funds if the establishment is dismantling or winding down its business.

During staff's review of the application materials or an inspection of the establishment's operations, the Commission may require applicants to restructure these funds or to set aside additional funds.

Questions?

If you have additional questions regarding types of Marijuana Establishments, please contact the Commission at CannabisCommission@State.MA.US or (617) 701-8400.