

Guidance for Farmers

Revised by the Commission: January 16, 2020

This guidance was created to provide farmers with answers to frequently asked questions about the marijuana cultivation regulations.

What licenses are available for someone who would like to cultivate Marijuana?

A **Marijuana Cultivator** means an entity licensed to cultivate, process and package Marijuana and to transfer Marijuana to other Marijuana Establishments, but not to Consumers. A **Craft Marijuana Cooperative** is a type of Marijuana Cultivator that is subject to certain limitations on licensure but enjoys certain benefits too. These benefits are discussed on page 2 of this guidance.

- **Marijuana Cultivators** are limited to three licenses, each of which is tied to a single location. A licensee may have no more than 100,000 square feet of **Canopy** across no more than three cultivation licenses.

Canopy means an area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total Canopy calculations shall be separated by an identifiable boundary which includes, but is not limited to interior walls, shelves, Greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total Canopy calculation.

- **Marijuana Cultivators** must select a cultivation tier. The tier level determines the square footage of Canopy that can be cultivated and the application and licensee fees that must be paid:
 - Tier 1: up to 5,000;
 - Tier 2: 5,001 to 10,000;
 - Tier 3: 10,001 to 20,000;
 - Tier 4: 20,001 to 30,000;
 - Tier 5: 30,001 to 40,000;
 - Tier 6: 40,001 to 50,000;



Tier 7: 50,001 to 60,000;
Tier 8: 60,001 to 70,000;
Tier 9: 70,001 to 80,000;
Tier 10: 80,001 to 90,000; and
Tier 11: 90,001 to 100,000.

Craft Marijuana Cooperative means a Marijuana Cultivator comprised of residents of the Commonwealth and formally organized under State law. A cooperative is licensed to cultivate, obtain, Manufacture, Process, package, brand and Transfer Marijuana or Marijuana Products to Marijuana Establishments, but not to Consumers.

- A Craft Marijuana Cooperative may be organized as a:
 - Limited liability company (“LLC”);
 - Limited liability partnership (“LLP”); or
 - A cooperative corporation under the laws of the Commonwealth.
- The members or shareholders of the cooperative must be residents of the Commonwealth for the 12 months immediately preceding the filing of an application for a license.
- One member of the Craft Marijuana Cooperative shall have filed a F (Form 1040), Profit or Loss from Farming within the 5 years prior to application for licensure. See the link for more details on tax forms: <https://www.irs.gov/forms-pubs/about-schedule-f-form-1040>
- The Craft Marijuana Cooperative must operate consistently with the Seven Cooperative Principles established by the International Cooperative Alliance (ICA) in 1995 (the following language is quoted from the ICA):
 - ***Voluntary and Open Membership***
Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
 - ***Democratic Member Control***
Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.



- ***Member Economic Participation***
Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership.

Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

- ***Autonomy and Independence***
Co-operatives are autonomous, self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.
- ***Education, Training, and Information***
Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of cooperation.
- ***Cooperation among Co-operatives***
Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional, and international structures.
- ***Concern for Community***
Co-operatives work for the sustainable development of their communities through policies approved by their members.

Benefits of a Craft Marijuana Cooperative license:

- The Craft Marijuana Cooperative is limited to one license; however, it is not limited in the number of locations it may cultivate.



- Each location combined may cultivate up to 100,000 square feet of canopy provided that for each location over 6 locations, additional application and licensing fees apply to cover the Cannabis Control Commission's (Commission) costs in processing the applications and inspecting the locations. A cooperative must negotiate and execute a Host Community Agreement with the municipality for each location that it operates.
- The cooperative may also conduct Marijuana Product Manufacturer operations at up to three locations.
- Seed-to-sale monthly program fees are waived for cooperatives, but this waiver does not include other costs associated with the Seed-to-sale licensing system, specifically the fees for plant and package tags.
- Members of a cooperative shall not be considered a Person or Entity Having Direct or Indirect Control in any other Marijuana Establishment. Restrictions on Direct or Indirect Control do not prohibit Craft Marijuana Cooperatives for applying for Marijuana Retailer, Marijuana Existing Licensee Transporter, Marijuana Research, or Marijuana Social Consumption Establishment Licenses.

Microbusiness means a Colocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator (5,000 square feet of canopy or less) or Product Manufacturer, or both, and if in receipt of a Delivery Endorsement issued by the Commission, may deliver Marijuana or Marijuana Products produced at the licensed location directly to Consumers in compliance with the operating procedures for each license.

- Most of its executives or members must have been residents of Massachusetts for no less than 12 months prior to application.
- A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of Marijuana per year from other Marijuana Establishments.
- A Microbusiness licensee cannot have an ownership stake in any other Marijuana Establishment except a Social Consumption Establishment.

Benefits of a Microbusiness license:

- Access to applying for a Social Consumption Establishment license.
- Access to receiving a Delivery Endorsement.
- Combined sum of application fees and license fees reduced by 50%.
- Seed-to-sale SOR monthly program fees are waived for Microbusinesses, but this waiver does not include other costs associated with the Seed-to-sale licensing system, specifically the fees for plant and package tags.

What are the fees associated with applying for and maintaining a license?



Application & License Fees. The application and license fees are provided in 935 CMR 500.005(d). There are reduced fees for outdoor cultivation, which is defined as “the cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants.”

| License Types | Application Fees (Indoor/Outdoor) | Annual License Fee (Indoor/Outdoor) |
|------------------------------------|---|--|
| Indoor or Outdoor Cultivator | | |
| Tier 1: up to 5,000 square feet | \$200 (I)/\$100 (O) | \$1,250 (I)/\$625 (O) |
| Tier 2: 5,001 to 10,000 sq. ft. | \$400 (I)/\$200 (O) | \$2,500 (I)/\$1,250 (O) |
| Tier 3: 10,001 to 20,000 sq. ft. | \$600 (I)/\$300 (O) | \$5,000 (I)/\$2,500 (O) |
| Tier 4: 20,001 to 30,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$20,000 (I)/\$10,000 (O) |
| Tier 5: 30,001 to 40,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$22,500 (I)/\$11,250 (O) |
| Tier 6: 40,001 to 50,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$25,000 (I)/\$12,500 (O) |
| Tier 7: 50,001 to 60,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$30,000 (I)/\$15,000 (O) |
| Tier 8: 60,001 to 70,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$35,000 (I)/\$17,500 (O) |
| Tier 9: 70,001 to 80,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$40,000 (I)/\$20,000 (O) |
| Tier 10: 80,001 to 90,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$45,000 (I)/\$22,500 (O) |
| Tier 11: 90,001 to 100,000 sq. ft. | \$2,000 (I)/\$1,500 (O) | \$50,000 (I)/\$25,000 (O) |
| Craft Marijuana Cooperative | Total fees for its canopy. If more than six locations, add \$200 (I)/\$100(O) per additional location. | Total fees for its canopy. If more than six locations, add \$1,250(I)/\$625(O) per additional location. |
| Microbusiness | \$1,000 | 50% of all applicable fees |
| Manufacturing | \$1,500 | \$10,000 |



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|--------------------------------|---------|----------|
| Independent Testing Laboratory | \$1,500 | \$10,000 |
| Retail (brick and mortar) | \$1,500 | \$10,000 |
| Third-party Transporter | \$1,500 | \$5,000 |
| Existing Licensee Transporter | \$1,000 | \$5,000 |
| Research Facility | \$300 | \$1,000 |

Application for Registration Cards for Employees

A Marijuana Establishment agent must register with the Commission. This includes board members, directors, employees, executives, managers, or volunteers of a Marijuana Establishment. A Marijuana Establishment agent also includes a consultant or contractor who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of Marijuana. A Marijuana Establishment agent must be 21 years of age or older. The application and renewal fee for a registration card is \$100.

Once a Marijuana Establishment is operational, additional fees may apply:

| | |
|---|-------------------------------|
| Name Change Fee | \$1,000 |
| Location Change Fee | 50% of applicable License Fee |
| Change in Building Structure Fee | \$1,000 |
| Change in Ownership or Control Fee (involving individuals, e.g. change of Board Member) | \$500 per person |

Background Checks

Please note that the fees described above do not include fees for background checks. The background check fee is set by the Massachusetts Secretary of Administration and Finance, in consultation with the Massachusetts Secretary of Public Safety and Security and the Commission, to offset the costs of operating and administering a Fingerprint-based criminal background-check system. The Commission may pay the fee or reimburse applicants the fee on a



basis of financial hardship. Guidance on background authorization forms may be found here: <https://mass-cannabis-control.com/wp-content/uploads/2018/06/Guidance-on-Background-Authorization-Form2-.pdf>

Plant Tagging. All Marijuana Establishments must track Marijuana from seed-to-sale using an interoperable database, as well as plant and package RFID tags. There is also a monthly program fee for the software of \$40 per month for each Marijuana Establishment. That fee is waived for Economic Empowerment Applicants, Craft Marijuana Cooperatives, and Microbusinesses. The plant tags are \$00.45 each and the package tags are \$00.25 each.

Tier Expansion & Tier Relegation

Expansion

A Marijuana Cultivator (including a Craft Marijuana Cooperative) may apply to change its cultivation tier at the time of license renewal or 6 months after the issuance of its initial license issuance or license renewal. The tier can either be reduced or expanded.

- If the licensee decides to reduce its tier, the fees already paid for its application or licensee will not be refunded.
- If the licensee decides to expand its tier, it must demonstrate that while cultivating at the top of its production tier, it sold 85% of its product consistently over the 6 months preceding the application for expanded production. The Commission may evaluate sales history, including pricing, to determine whether expansion is appropriate.
- If permitted to expand, the licensee will pay the license fee for the new tier.

Relegation

At renewal, the Commission may relegate a cultivator's tier based on the Marijuana Cultivator's production during the 6 months prior to its application for renewal.

- The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced.
- When determining whether to relegate, the Commission may evaluate the following factors:
 - cultivation and production history, including whether the plants/inventory suffered a catastrophic event during the licensing period;
 - transfer, sales, and excise tax payment history;
 - existing inventory and inventory history; sales contracts;
 - and any other factors relevant to ensuring responsible cultivation, production, and inventory management.
- If relegated to a lower tier, the licensee will pay the license fee for the reduced tier.



Application Process

The Commission's online application process requires the completion of 4 packets: Application of Intent, Background Check, Management and Operations Profile, and Application Fee Payment. To aid applicants in the completion of these documents, there are tutorials on the Commission website (<https://mass-cannabis-control.com/masscip-tutorials/>), as well as guidance documents (<https://mass-cannabis-control.com/wp-content/uploads/2018/04/Guidance-for-Marijuana-Establishment-Licensure-Applicants.pdf>). There is also guidance for municipalities about local controls, such as zoning, in http://mass-cannabis-control.com/wp-content/uploads/2019/03/Final-Draft-Municipal-Guidance-Update-02.25.19_1.pdf, which may also be helpful for applicants to review.

Regarding the Application of Intent, please note that for each location, the applicant will need to file evidence of a properly conducted Community Outreach meeting and certification of a Host Community Agreement, among other requirements. Please refer to the Guidance on Host Community Agreements for more information, found on our website at <https://mass-cannabis-control.com/wp-content/uploads/2018/08/Guidance-on-Host-Community-Guidance.pdf>

***Example:** Craft Cooperative has a large cultivation and processing location in a town. Its members also have smaller cultivation locations in 9 other different communities. For each of the 10 communities, the Craft Cooperative will need to submit Community Outreach documentation and certification of a Host Community Agreement.*

There is no deadline to file an application and there is no cap on the number of licenses that may be issued in the Commonwealth as of the date of publication of this guidance.

Frequently Asked Questions (FAQs)

Does the agricultural exemption in the Zoning Act apply to the cultivation of Cannabis or Marijuana? No. The agricultural exemption in the Zoning Act, G.L. c.40A § 3 ¶1, expressly excludes the cultivation of Marijuana from protection:

For the purposes of this section, the term “agriculture” shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided, however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts



of 2012, marihuana as defined in section 1 of chapter 94C or marijuana or marihuana as defined in section 1 of chapter 94G. (emphasis added).

Farmers may wish to check the definition of “agriculture” in their local zoning bylaw or ordinance regarding whether it excludes marijuana cultivation or contact their local building inspector or zoning enforcement officer.

In a Right-to-Farm town, is marijuana cultivation exempted from local restrictions?

A Right-to-Farm bylaw does not typically confer any additional protections from local zoning and licensing restrictions. Instead, it notifies purchasers of property in the town that it is the policy of the town to protect agriculture and provides a means of dispute resolution, while reiterating the protections existing in state law for agriculture. As stated above, the cultivation of Marijuana is not protected under the exemption for agriculture in the Zoning Act, but may be otherwise allowed in your community. Farmers may wish to check their local zoning bylaw or ordinance or contact their local building inspector or zoning enforcement officer.

How do I find out whether my property is zoned to allow marijuana cultivation?

You may review your local zoning bylaws or ordinances, which are often available online, or can ask your local building inspector or zoning enforcement officer.

If my property is Chapter 61A land, may I use it to cultivate adult-use Marijuana for sale?

Farmers should confer with their local Board of Assessors as to whether the cultivation of Marijuana is authorized as an agricultural or horticultural use on their Chapter 61A land.

If my property is subject to an agricultural preservation restriction (APR), may I use it to cultivate Marijuana, if licensed?

Farmers should determine the type of APR they have. If it is an APR regulated by 330 CMR 22.00 and administered by Massachusetts Division of Agricultural Resources (MDAR), the farmer may need to get approval from MDAR and/or the municipality, if it is a co-holder of the deed restriction, prior to engaging in the cultivation of Marijuana. Similarly, if the APR is held by a conservation organization or municipality, the farmer may need to determine whether the cultivation of Marijuana and related activity, such as the construction of structures, is considered permissible under the deed restriction. Farmers are encouraged to seek legal advice. More information on APRs may be found here: <https://www.mass.gov/service-details/agricultural-preservation-restriction-apr-program-details>.

May I use pesticides in the cultivation of Marijuana?



No. Currently, the Environmental Protection Agency (EPA) does not allow the use of a registered pesticide on Marijuana or Hemp. Use of pesticides on Marijuana or Hemp is therefore prohibited in the Commonwealth.

MDAR has jurisdiction over pesticides, including the authority to register products not registered by the EPA, but it does not authorize any pesticides for marijuana cultivation at this time. For more information, please consult MDAR's pesticide policy for the cultivation of Marijuana and Hemp within the Commonwealth, at https://www.mass.gov/files/documents/2018/09/28/MA_Cannabis_Pesticide_Policy.pdf.

There are products that the EPA exempts from registration requirements, as the products or the ingredients within them are considered minimum risk by EPA. Please refer to EPA's website to find more information about products and ingredients that may be exempt from registration requirements: <https://www.epa.gov/minimum-risk-pesticides>.

While the exempt products may be an alternative for pest control, it is important to understand that the use of any product is done at the risk of the cultivator without the benefit of review and testing by the EPA to determine health and safety or other impacts. Marijuana Establishments will be inspected, and Marijuana and Marijuana Products will be tested by the Commission and MDAR for the presence of pesticides. If a pesticide is used in violation of Massachusetts laws on cannabis or pesticides, the Commission and MDAR may take enforcement action.

Can I operate as a CSA (Community Supported Agriculture) operation?

A CSA would need to comply with all applicable regulations regarding seed-to-sale tracking, security, and background checks. Even volunteers need to be registered as Marijuana Establishment agents, particularly if they have access to Marijuana and Marijuana Products. Please review the regulations carefully to determine whether a CSA could be operated in a way that is compliant with the law and regulations. Farmers are encouraged to seek legal advice.

If I receive federal services, such as loans, grants, or nutrient planning services, may I cultivate Marijuana on my property?

Farmers are strongly advised to check with representatives of the federal government before cultivating Marijuana. Farmers may find that federal services will be withheld, even for non-marijuana crops, if a farmer engages in marijuana cultivation on their property.

I hire seasonal help on my farm and the workers are usually under 21 years of age. Can they work with Marijuana or Marijuana products?



No. Only persons 21 years of age or older may work on the premises of a Marijuana Establishment. That means that not only are they restricted from working on your Marijuana or Marijuana Products, they cannot work on other crops on the same premises. If you are working with Marijuana, all workers will need to be 21 years of age or older.

If I have a Craft Marijuana Cooperative with cultivation sites in multiple towns, do I need a Host Community Agreement and community outreach meeting for each town with a cultivation site?

Yes. As discussed above, these regulatory requirements apply to all locations associated with the cultivation license.

Once I have been issued a Craft Marijuana Cooperative license for certain locations, may I add more locations?

Yes, but you will have to apply for approval from the Commission for the change. Among other things, you will be required to show that you have done a community outreach meeting and have a Host Community Agreement. Please note that the amount of canopy square footage is calculated based on the total of all locations, and a Craft Marijuana Cooperative may not exceed the 100,000 square foot limit on canopy.

Questions?

If you have additional questions regarding marijuana cultivation regulations, please contact the Commission at Commission@CCCMass.com or (774) 415-0200.

