

Proposed federal licenses for commercial exploitation of cannabis

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Health Canada recently published a consultation paper entitled [Proposed Approach to the Regulation of Cannabis](#), with the purpose to solicit public input and views on the approach to the regulations (the "**Regulations**") which the federal government will adopt for the application of the [future Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts](#) (the "**Cannabis Act**"). Most of the proposed regulatory requirements are similar to those long ago established and in place for the current producers of cannabis for medical purposes or industrial hemp. Those interested in expressing their point of view and comments are invited to use this [link](#), before January 20, 2018.

Further to our analysis of the proposed approach, we have summarized below the six types of licenses (with their respective sub-types, when applicable) proposed by the federal government in order to regulate and control the production and commercialization of cannabis:

1. CULTIVATION

a) Standard Cultivation

Authorized Activities:

- large-scale growing of any variety of cannabis plants
- production and harvesting of material from those plants, such as cannabis seeds, cannabis plants, fresh cannabis and dried cannabis
- associated or supplemental activities related to these core activities, including (i) possession, transportation, research and development, storage, and destruction, (ii) intra-industry sale of seeds, plants, and harvested materials (e.g., fresh and dried cannabis in bulk or unfinished form) to other cultivators, processors, and holders of a research authorization, and (iii) cultivation of industrial hemp plants

Limited Quantity:

- the Regulations would not prescribe a limit on the amount of cannabis that could be cultivated under a standard cultivation licence
- a production limit may however, be imposed as a condition of a licence if there were reasonable grounds to believe that a licensee was producing more cannabis than this licensee was able to sell, and that the excess inventory was at risk of being diverted to an illegal market or activity (for example, a licensed cultivator producing significantly more cannabis than this cultivator has supply arrangements to provide). The licence holder's compliance history, financial status, and planned future sales, would also be taken into account when determining if there was a risk of diversion.

b) Microculture

Authorized Activities:

- the same activities as a licence for standard cultivation (except the cultivation of industrial hemp plants, which is not expressly mentioned as allowed under this license), but at a smaller scale, such as to enable the participation of small-scale growers in the legal cannabis industry

Micro-cultivator:

- the quantity threshold would be determined by factors such as (i) plant count, (ii) size of growing area, (iii) total production, or (iv) gross revenue

c) Industrial Hemp

Authorized Activities:

- growing of industrial hemp plants (those containing 0.3% tetrahydrocannabinol (THC) or less)
- production and sale of seeds and grains (and their derivatives)
- cultivation of approved industrial hemp varieties from pedigreed seeds (as is currently the case under the [Industrial Hemp Regulations](#)). Since the THC content of plants produced from these seeds is consistently 0.3% or less, it is proposed that the current THC testing requirements with respect to these varieties grown for grain and fiber would be eliminated except for production of seeds. Requirements for THC testing would be maintained for the designation of new varieties of low THC cannabis (0.3% or less) as an approved cultivar of industrial hemp to be included in the list of approved cultivators.
- related activities, including (i) possession, transportation, research and development, consistent with other classes of licenses, and (ii) intra-industry sale of leaves, flowers and branches (or the whole plant)

Proposed Definition:

- industrial hemp = cannabis plants whose leaves and flowering heads do not contain more than 0.3% THC

Non-Required License:

- activities (processing or sale) related to any part of the plant identified in Schedule 2 of the proposed Cannabis Act, such as a non-viable seed or mature stalk without any leaf, flower, seed or branch
- sale of derivatives of seed and grain that contain 10 micrograms per gram of THC or less (as is currently the case under the [Industrial Hemp Regulations](#))

d) Nursery

Authorized Activities:

- cultivation of any variety of cannabis plants (including industrial hemp)
- produce legal source of starting materials, such as seeds and seedlings (including clones), both for commercial and personal cultivation
- development of new varieties of high quality cannabis
- related activities, including (i) possession, transportation, research and development, storage, and destruction, and (ii) sale of live plants and seeds to other licensed cultivators, licensed processors, and holders of a research authorization

2. PROCESSING

a) Standard Processing

Authorized Activities:

- manufacturing cannabis oil (and intermediary products such as cannabis resin)
- synthesizing phytocannabinoids
- manufacturing of other authorized products (for example, pre-filled cannabis oil capsules or oral sprays)
- packaging and labelling of products for sale to the public and for the intra-industry sale of these products, including to provincially/territorially authorized distributors
- related activities, including (i) possession, transportation, research and development, storage, destruction, and (ii) the intra-industry sale of cannabis to other federal license holders or provincially- or territorially-authorized sellers

b) Micro-processing

Authorized Activities:

- the same activities as a licence for standard processing, but at a smaller scale in order to to enable the participation of small-scale processors in the legal cannabis industry

Micro-processor:

- the threshold would be determined by factors such as le seuil serait déterminé par des facteurs tels que (i) limiting allowed activities to processing harvested product from a maximum number of micro-cultivators and nurseries, (ii) total production, (iii) on-site inventory, or (iv) gross revenue

3. SALE

a) Sale for Medical Purposes

Authorized Activities:

- the sale of cannabis products obtained from a federally-licensed processor to registered clients (or to an individual who is responsible for a registered client) in a manner consistent with the current system established under the [Access to Cannabis for Medical Purposes Regulations](#) (ordered over

the phone, online or via written order, with secure delivery through the mail or by courier)

- related activities, such as possession, transportation, research and development, storage, destruction, and the intra-industry sale of cannabis to other federal license holders

b) Sale for Non-Medical Purposes

- it is up to the provinces and territories to deliver the licenses and oversee the distribution and sale to adult consumers of cannabis for non-medical purposes
- this federal license (potentially on a temporary basis) would therefore, authorize (i) the sale of cannabis products for non-medical purposes obtained from a licensed processor to adult consumers (ordered over the phone, online or via written order, with secure delivery through the mail or by courier) in the provinces or territories which have not yet established a retail environment with appropriate safeguards to enable the purchase of legal, regulated cannabis, as well as (ii) related activities, such as possession, transportation, research and development, storage, destruction, and the intra-industry sale of cannabis to other federal license holders
- the Regulations would set strict controls to prevent illegal sales to youth and to prevent online sales by federally-licensed sellers in provinces and territories that have established their own distribution and sales systems (which may include online sales authorized at the provincial or territorial level)

4. ANALITICAL TESTING

- this license authorizes the possession of cannabis by independent third-party laboratories for the purposes of conducting analytical testing of cannabis, including testing of microbial and chemical contaminants, residues of solvents, content of tetrahydrocannabinol (THC) and cannabidiol (CBD), disintegration of capsules, and testing for the presence of unauthorized pesticides, by using validated testing methodologies
- this type of license would also authorize related activities, such as (i) possession, transportation, storage and destruction, as well as (ii) research and development related to the analytical testing of cannabis (in particular the development and validation of testing methodologies), including industrial hemp (licensed analytical testing laboratories would be required to destroy any cannabis or industrial hemp sent for analytical testing within 90 days of being tested)

5. IMPORT AND EXPORT

- the import or export of cannabis would require a permit from the Minister of Health, which would only be available for medical or scientific purposes, or in respect of industrial hemp

6. RESEARCH

Authorized Activities:

- cannabis related activities for the purpose of research by persons who do not hold any other type of license issued under the Cannabis Act and whose activities would otherwise be prohibited under the Cannabis Act
- such activities would include possessing, cultivating, processing, storing, administering, and transporting cannabis
- persons holding a federal license to conduct activities with cannabis, such as cultivation or processing, would be authorized to conduct research and development under their existing license, provided that the research is related to the core activities authorized under the license (for example, an industrial hemp license would authorize research with industrial hemp, but the holder of an industrial hemp license would be required to seek a separate authorization to conduct research with other varieties of cannabis)

GENERALITIES

In general, license holders would be authorized to:

- conduct core activities (for example, cultivation) as well as related, supplemental activities (for example, research and development related to the cultivation of cannabis);
- conduct multiple activities per site (for example, cultivation, processing and sale to the public).

The federal government also proposes that specific licensing requirements and clarifications be provided by guidance and governmental policy documents as to allow for flexibility and change over time based on lessons learned as the market evolves, specific risks are better understood, and the performance of the regulated industry is established.

Moreover, Health Canada intends to publish a summary of comments and opinions expressed by the public on the proposed Regulations approach, as well as a detailed outline of any changes to the regulatory proposal.

For any questions or additional information, please contact directly the [ROBIC Cannabis Team](#).