

Cannabis Reform - Federal Licensing Requirements

By: Jim McCoy, Loy A. (Tony) Haynes, and Harry Bernstein

In the first issue of [Verde's "State of the Plant"](#), we discussed the proposals being considered by Congress to end federal cannabis prohibition, implement a comprehensive system of regulation, and grant primary regulatory authority to the U.S. Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB). We also noted that ***these proposals would require most cannabis businesses to obtain a federal license to continue to operate legally.***

This issue of the "State of the Plant" will review the various proposed federal cannabis licensing requirements. Relying on our knowledge of, and experience working with TTB and Treasury, the federal cannabis regulation experts at Verde Compliance will also provide some tips on how to prepare your business to succeed under the proposed laws.

High Level Summary

- Momentum towards the end of federal cannabis prohibition is accelerating
- Cannabis regulation will be implemented and overseen by the U.S Treasury Department through its agency, the Alcohol and Tobacco Tax and Trade Bureau (TTB)
- Federal cannabis regulation will look similar to alcohol regulation
- Almost all cannabis businesses will be required to obtain a federal license to continue to operate
- Businesses that fail to comply will face civil and criminal penalties, and could have their business shut down
- Given the complexities of obtaining a federal permit, and with your business on the line, it's never too early to prepare for these changes

Proposed Legislation

To review, the following proposals have been introduced in the U.S. House, or will soon be introduced in the U.S. Senate. Each would end federal cannabis prohibition, and grant regulatory authority to Treasury and TTB.

- Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act - H.R.3105 (Rep. Joyce R-OH 14, introduced 5/11/2021)
- Marijuana Opportunity Reinvestment and Expungement Act of 2021 - MORE Act of 2021 H.R.3617 (Rep. Nadler D-NY 14, introduced 5/28/2021)

- Cannabis Administration and Opportunity Act - CAO (discussion draft resolution released around 8/1/2021 by Sen. Maj Leader Schumer D-NY, Sen. Booker D-NJ, Sen. Wyden D-OR)
- States Reform Act - SRA H.R. 5977 (Rep. Mace R-SC 1 introduced 11/15/2021)

All four provisions would require cannabis businesses to obtain a federal license to continue to operate.

Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act

Rep. Joyce's bill is the most streamlined proposal, and there is something to be said for that. Although there is no specific licensing language, the bill requires that TTB develop rules, "similar to Federal rules regulating alcohol." Effectively, the bill would require TTB to regulate cannabis in the same manner that they regulate the alcohol industry.

Current federal alcohol regulations require licenses for manufacturing, producing, wholesaling, transporting, importing, and exporting alcohol products. The proposal implies that cultivators would be required to obtain a license as a "producer", and cannabis entities commonly referred to as producers, would be licensed as "manufacturers". Although current federal alcohol policy does not require alcohol retailers, (think Wal-Mart, Chili's, your local liquor store), to obtain a federal license, the language is unclear as to whether dispensaries would have to obtain a federal license to continue to operate. Additionally, federal alcohol regulations provide for civil and criminal penalties for businesses that fail to comply, including allowing TTB to shut down a business for the most serious violations.

MORE Act of 2021

Although the MORE Act differs widely from Rep. Joyce's bill with regard to subjects such as oversight of cannabis food products, taxation, and social equity provisions, it also grants regulatory authority to Treasury and TTB, and codifies much of what Rep. Joyce's bill implies. The Act would:

- Require federal licenses for the following categories of cannabis businesses
 - Importers
 - Exporters
 - Producers, defined as "any person who plants, cultivates, harvests, grows, manufactures, produces, compounds, converts, processes, prepares, or packages any cannabis product"
- Each location would have to obtain a separate license (we'll dig into this in a later issue)
- The bill noticeably does not mention dispensaries / retail businesses, presumably excluding them from licensing requirements
- The bill specifically allows cultivation for home use without a license
- As with current alcohol regulations, the bill includes civil and criminal penalties for noncompliance

CAOA

The regulatory provisions of the CAO are very similar to the MORE Act, requiring licenses for producers (including cultivators), wholesalers, importers, and exporters. The CAO would exclude

dispensaries / retailers from licensing requirements, and allow home grow for personal use. As with the MORE Act, the proposal calls for civil and criminal penalties for entities that do not comply with the regulations

States Reform Act (SRA)

As with every other bill proposing an end to federal prohibition, Treasury and TTB would take the lead on regulating the cannabis industry, specifically directing TTB to administer cannabis regulations “like alcohol”. That being said, there are some key differences that set the SRA apart from the other proposals.

- Cultivators that solely grow cannabis would be regulated by the United States Department of Agriculture (USDA), and be excluded from TTB licensing requirements.
- The bill would require “every person before commencing in commerce cannabis” to apply for a permit. This seems to be the only proposal that **would require dispensaries / retailers, in addition to producers, importers, and exporters to obtain a federal cannabis permit.**
- Require permits for each physical location.
- Provide a safe harbor for legal state licensees to operate as the application process moves forward
- Civil and criminal penalties for noncompliance

Preparing for licensing requirements

With 20,000+ state legal businesses needing to obtain a federal permit, it’s never too soon to prepare your business for the coming changes. The current proposals to end cannabis prohibition have enough in common to provide a framework for what federal cannabis regulation will look like. Here are some recommendations that Verde Compliance Partners is sharing with clients to help them prepare to succeed as these changes unfold.

- Read the full text of the proposed legislation and familiarize yourself with the specific licensing and regulatory requirements.
- Review current Treasury, TTB policies and procedures regarding regulation of alcohol and tobacco.
 - U.S Treasury Department: <https://home.treasury.gov/>
 - TTB: <https://www.ttb.gov/>
 - TTB online permit application process: <https://www.ttb.gov/ponl/ponl-tutorial-part-1-mtp-page-1>
 - TTB required application documents: <https://www.ttb.gov/ponl/permits-online-required-documents>

How confident are you that your business is ready for federal regulation? Let one of the Verde Compliance Partner experts answer your questions. Connect with us at info@verdecompliance.com / www.verdecompliance.com.

About Verde Compliance Partners

Verde Compliance Partners is a national consulting firm focused on guiding clients through federal cannabis permitting, taxation, and regulatory compliance. Our firm prepares and navigates cannabis businesses through the regulatory, legal, and administrative requirements necessary to comply with current and future federal regulations. With decades of experience in high level positions at the U.S. Treasury Department Alcohol & Tobacco Tax and Trade Bureau (TTB), and its predecessor, the Bureau of Alcohol, Tobacco, and Firearms (ATF), the Verde team is uniquely qualified to prepare cannabis industry stakeholders for the implementation of federal regulation.

Jim McCoy - Director of Operations

Jim spent 32 years with the Bureau of Alcohol, Tobacco, and Firearms (ATF) and Alcohol and Tobacco Tax & Trade Bureau (TTB) where he served in various positions. For the past ten years he has assisted numerous alcohol and tobacco industry members with federal permit, product, tax, and operational compliance issues. His input has been sought after by cannabis processors, CBD processors, and alcohol and tobacco producers for guidance with regulatory matters.

LOY A. HAYNES (Tony), Federal Compliance Manager

Tony chaired the ATF Task Force to centralize the licensing and taxation functions of the ATF/TTB, U.S. Treasury, in Cincinnati, OH, overseeing this function as the Director of the National Revenue Center. At the operational level, he held many high level regional and field positions including Chief of Field Operations, in New York City, responsible for compliance, audit, and trade practices for the Northeast Region and the Caribbean.

Harry Bernstein - Executive Director

As general counsel of a beer and wine wholesale distributor for nearly two decades, Harry handled all legal matters including, contracts, franchise agreements, labor negotiations, as well as state and federal licensing and compliance. For the past 21 years, as an attorney, he has assisted individuals with health care matters and special needs planning, including representing clients at federal administrative hearings at the Social Security Administration.

For more information, visit www.verdecompliance.com