

GUIDANCE DOCUMENT -

NEW REQUIREMENTS FOR CANNABIS TINCTURES AND BEVERAGES

The Department of Cannabis Control (DCC) adopted new regulations that clarify the differences between tinctures and beverages. These regulations became effective on November 7, 2022.

This guidance is a tool to assist licensees with understanding the new regulations, but it does not impose additional requirements or change the regulations. This guidance explains:

- Cannabis tinctures
 - What changed in regulation
 - Answers to common questions about tinctures
 - Expectations for Compliance
- Cannabis beverages
 - What changed in regulation
 - Answers to common questions about beverages
 - Expectations for compliance

The complete text of DCC's regulations can be found in California Code of Regulations, Title 4, Division 19, and on the <https://cannabis.ca.gov/cannabis-laws/dcc-regulations/>.

Cannabis Tinctures

What Changed in Regulation

Definitions

"Tincture" is defined in section 15000(rrr) to mean a solution of cannabis extract, derived either directly from the cannabis plant or from a manufactured cannabis extract, dissolved in alcohol, glycerin, or vegetable oils. "Vegetable" here includes botanically classified fruits and vegetables, and their seeds.

Additional Requirements for Tinctures

New section 17302.1 imposes limitations on the size and ingredients that may be included in tinctures. A tincture shall be no more than 2 fluid ounces and shall include a calibrated dropper or similar device for measuring a single serving.

The regulation also provides that a tincture may include ingredients other than cannabis extract and alcohol, vegetable oil, or glycerin, as long as the primary ingredient by weight is alcohol, vegetable oil, or glycerin.

What is the purpose of the new tincture regulations?

The new regulations specify the size, packaging and ingredient limitations for tinctures. DCC has defined tincture narrowly to ensure that tinctures remain distinct from cannabis beverages, which are regulated as edible cannabis products. Tinctures, as cannabis concentrates, may have significantly more THC (up to 1,000 mg) than edible cannabis products (up to 100 mg) and are designed to generally be consumed sublingually in small amounts, whereas edible cannabis products are consumed like a food or beverage. To maintain the integrity of tinctures and ensure consumer safety, it is necessary to limit the ingredients permitted in tinctures to those that are consistent with sublingual or similar consumption, as distinct from the consumption of edible products.

For consistency, DCC has clarified that all tinctures are subject to the same volume limits and calibrated dropper or measuring device requirement in section 17303 applicable to orally consumed products containing alcohol, which may also be tinctures.

Answers to Common Questions About Tinctures

Are there limits on the ingredients that can be used in tinctures?

Yes. Section 15000(rrr) defines “tincture” as a solution of cannabis extract, derived either directly from the cannabis plant or from a manufactured cannabis extract, dissolved in alcohol, glycerin, or vegetable oils. “Vegetable here includes botanically classified fruits and vegetables, and their seeds. Further clarification is provided in section 17302.1(b) which allows a tincture to include ingredients other than cannabis extract and alcohol, vegetable oil, or glycerin provided that the primary ingredient by weight is alcohol, vegetable oil, or glycerin.

Tinctures are considered a cannabis concentrate and are subject to different regulatory requirements than beverages, which are considered edibles. Permitted ingredients in tinctures are limited to those that are consistent with sublingual or similarly fashioned consumption as opposed to edible products.

Are there limits on the size and packaging for tinctures?

Yes. The new regulation imposes a size limitation for tinctures of no more than 2 fluid ounces and requires a calibrated dropper or similar device for measuring a single serving. This is consistent with the volume limit and packaging requirement for orally consumed products containing alcohol in section 17303.

Expectations for Compliance

What must licensees do to comply with the new regulations regarding tinctures?

All licensees in possession of tinctures that do not meet the requirements of the new regulation should move the existing product through and out of the supply chain as quickly as possible. DCC recognizes that licensees may experience compliance issues as they transition their operations. DCC plans to initially prioritize education over discipline and assist licensees with coming into compliance.

Licensees that manufacture tinctures should immediately stop producing tinctures that are not compliant with the new regulations. All tinctures manufactured on and after November 7, 2022, are subject to the new regulatory requirements. Tinctures that do not meet the new requirements may be considered misbranded pursuant to Business and Professions Code section 26039.5(a)(4).

What is the timeframe for complying with the new regulations regarding the additional requirements for tinctures?

The new regulations became effective on November 7, 2022. This means that products manufactured on and after November 7, 2022 are subject to the new regulatory requirements. Licensees that manufacture tinctures should immediately stop producing tinctures that are not compliant with the new regulations. All licensees with existing cannabis tincture products that do not meet the requirements of the new regulation should move the existing product through and out of the supply chain as quickly as possible.

DCC recognizes that licensees may need to their business operations to come into compliance. DCC plans to initially prioritize education over discipline and assist licensees with coming into compliance.

Packaging and Marketing Regulations for Beverages

What Changed in Regulation

What are the new regulations for cannabis beverage packaging?

DCC changed section 17411 to allow cannabis beverages to be packaged in glass containers that are clear or any color.

What are the new regulations relating to marketing of cannabis beverages?

DCC amended the regulation prohibiting the marketing of cannabis goods as alcoholic products. The regulation was previously applicable to distributor and retailer licensees but has been expanded to apply to all licensees. Specifically, section 15040.1 prohibits the marketing, advertising, sale and transport cannabis goods that are labeled as beer, wine, liquor, spirits, or any other term used to describe a type of alcohol or alcoholic beverage that may create a misleading impression that the product is an alcoholic beverage.

Answers to Common Questions About Beverages

Are terms that described flavors that also may be associated with alcoholic beverages be used?

Licensees should exercise particular caution when labeling, advertising, or marketing cannabis products with flavor-related terms commonly used to describe alcoholic beverages (for example, “strawberry daiquiri,” “piña colada,” or “margarita”). To ensure

that such terms cannot create a misleading impression that the product is an alcoholic beverage, licensees may wish to consider clearly and prominently describing such flavors as “non-alcoholic.”

What if the company or brand name is also associated with alcoholic beverages?

A company or brand name associated with alcoholic beverages is not prohibited from appearing on cannabis goods or in marketing and advertisements for cannabis goods provided it does not create a misleading impression that the product is an alcoholic beverage.

Expectations for Compliance

What must licensees do to comply with the new regulations regarding cannabis beverages?

The new regulation regarding packaging of cannabis beverages does not require any change by licensees in their current operations. The amendment to section 17411 aligns with the change in Business and Professions Code section 26120, subsection (e) which permits licensees that manufacture cannabis beverages to package beverages in glass containers that are clear or any color.

To comply with the regulations regarding the sale, marketing and advertising of cannabis goods as alcoholic products, licensees that manufacture such products should immediately stop producing products that are not compliant with the new regulation. Because these products are already prohibited from the supply chain by Business and Professions Code section 26070.2 and section 15040.1, DCC anticipates that manufacturing licensees are not currently producing such products.