

What's Next for the Cannabis Industry?

New Draft Regulations Offer Hints of Where Things Are Headed

By Isaac C. Fleisher, Esq.

The cannabis industry is off to a fast and quite intriguing start in the Bay State, and two new categories of license have particular potential to move this sector in new directions: one for home delivery of cannabis products, and another for social-consumption establishments, or cannabis cafés.



We are nearly three years into the Commonwealth's experiment with recreational cannabis, and the industry is finally moving beyond an amusing novelty.

The Cannabis Control Commission (CCC) reports that retail sales in 2019 alone have already exceeded \$190 million, and this is just the tip of the iceberg. To date, the CCC has issued only 72 final licenses for marijuana establishments, but there are cur-

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rently another 400 license applications that are pending or have received provisional approval. have been disproportionately harmed by prohibition and for local entrepreneurs. Lawmakers attempted to pursue these goals (with mixed success) through the design of the original regulations, with provisions for local control by cities and towns, special categories for equity applicants, and caps on the number of licenses that a single business could control.

The CCC has recently been grappling with these issues once again as it revises its

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Social Consumption

A social-consumption license would authorize businesses to sell cannabis products to customers for on-site consumption. Just think of your neighborhood bar, but it serves cannabis instead of alcohol. Under the proposed regulations, cannabis could be consumed at a social-consumption establishment in almost any form, except for combustible (i.e. smoking it the old-fashioned way), but even that possibility is left open by a provision for an outdoor smoking waiver.

Cannabis edibles would have to be pre-packaged and shelf-stable, but there is no prohibition on serving prepared food on site, so long as the food isn't directly infused with marijuana. That means we could soon be seeing cannabis restaurants that offer gourmet food alongside gourmet pot.

The CCC is taking an incremental approach to this new class of license by including provisions for a social-consumption pilot program that would be limited to only 12 municipalities. Towns that participated in a working group on social consumption — including North Adams, Amherst, Springfield, Provincetown, and Somerville — would be among those able to opt into the pilot



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This all means that, over the next few years, the Massachusetts cannabis industry is set to grow at an unprecedented rate. What we don't know is how this growth will change and shape the industry.

Much of the excitement and rhetoric around legalization has focused on the potential to create new business and employment opportunities for communities that

regulations.

On July 2, after months of policy discussions and hearings, the CCC released new draft regulations for both medical and recreational marijuana, which will be open for public comment until Aug. 16. While most casual observers will not find the draft regulations to be scintillating reading material, there are a number of interesting new provisions that can tell us a lot about what the future of Massachusetts' cannabis industry could look like.

program. Licenses would initially be available only to applicants that were already licensed as a 'microbusiness' or a 'craft marijuana cooperative,' or applicants certified by the CCC as an 'economic empowerment' applicant or 'social equity' applicant. The pilot program is an interesting attempt to address the demand for new cannabis markets, while still preserving access for small, local, and minority-owned businesses.

Home Delivery

A licensed 'delivery-only retailer' could deliver marijuana products directly to a customer's residence. Advocates for home delivery have long touted its potential to level the playing field between large, well-funded businesses and the small, local entrepreneurs the CCC seeks to attract.

In theory, a delivery-only licensee wouldn't need much more than a vehicle in order to begin operating. However, the draft regulations include a number of provisions that could create substantial barriers to entry for small-time operators. Home-delivery orders would still need to go through a traditional brick-and-mortar retailer, who would presumably not be particularly interested in providing their product to competitors at wholesale prices.

Additionally, the draft regulations prohibit deliveries to any residence in a town that has banned brick-and-mortar retailers.

Numerous security provisions included in the draft regulations create further costly

(and controversial) requirements for delivery-only retailers. Each delivery vehicle would need multiple surveillance cameras, and delivery agents would need to wear body cameras to record the entire delivery, including the customer. This has predictably resulted in a number of concerns about privacy and regulatory overreach.

At a recent CCC meeting, Commissioner Shaleen Title pointed out that, "to the extent that home delivery to [medical-marijuana] patients has been ongoing, there may already be security in place that goes above and beyond our regulations, and to my knowledge there haven't been incidents ... That seems to be an argument that you should not be putting in additional burdens and regulations."

While body cameras got the most attention at the CCC's meetings, one provision in the proposed home delivery regulations with the potential to be far more consequential is the option to use a "third-party technology platform provider" to facilitate the ordering process. In simpler terms, we could soon be saying "there's an app for that."

While there is still a thorny tangle of federal and state laws preventing a true e-commerce for cannabis, it's not hard to imagine startups racing to be the first 'Uber for weed.' This would certainly make the consumer experience even more convenient, but it would mean yet another blow to the delivery-only retailer's profit margin, and does not seem consistent with the goal of lowering the barrier to entry for small businesses.

Of course, excitement about new markets comes with the important caveat that the rules still need to be finalized and, in some cases, there would need to be a corresponding change in state law. Nevertheless, it is encouraging to see that regulators are willing to consider new ideas for Massachusetts' cannabis industry. The lines around the block at the first retailers have everybody seeing dollar signs, but with no statutory limits on the number of licenses that the CCC can issue, it is only a matter of time before supply exceeds demand.

In states that are further along in this process there is already evidence of a boom-bust cycle, as oversupply causes wholesale prices to plummet and smaller operators are forced out of the market. In Massachusetts, where the cannabis industry is still relatively nascent, there is still opportunity for regulators, consumers, activists, and entrepreneurs to play important roles in shaping the future of the industry. ♦

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