



LEGISLATIVE REPORT: UPDATE ON FARMERS AND BUSINESSES OF ALL SIZES

Report to the Joint Committee on Marijuana Policy

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Massachusetts Cannabis Control Commission

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Legislative Report on Farmers and Businesses of All Sizes

I. INTRODUCTION

This report is submitted in accordance with Section 57 of Chapter 55 of the Acts of 2017, which requires that the Cannabis Control Commission (Commission), in consultation with the Department of Agricultural Resources (MDAR) “shall report” to the Joint Committee on Marijuana Policy and the House and Senate Committees on Ways And Means “on participation in the regulated marijuana industry by farmers and businesses of all sizes.” The Commission submitted an initial report in July with “recommendations to ensure farmers’ access to marijuana licenses and to allow for the growth, cultivation, production and harvest of marijuana on farm or agricultural lands, including, to the extent permitted by state and federal law, lands protected under an agricultural preservation restriction and the possibility of including marijuana and industrial hemp as land in horticultural use for the purposes of assessment and taxation pursuant to chapter 61A.” This is the second report required by Section 57 to describe the progress made to promote and encourage full participation in the regulated marijuana industry by farmers and businesses of all sizes.

II. BACKGROUND & HISTORY

As detailed in the July, 2018 Legislative Report, since being appointed on September 1, 2017, the Commission promulgated regulations implementing Chapter 334 of the Acts of 2016, The Regulation and Taxation of Marijuana Act, as it was amended by Chapter 55 of the Acts of 2017, An Act to Ensure Safe Access to Marijuana, after listening sessions and public hearings around the Commonwealth, including Downtown Boston, Roxbury, Holyoke, Greenfield, Pittsfield, Barnstable, Dartmouth, Danvers, Martha’s Vineyard and Worcester. The Commission also received extensive written comments throughout its regulatory process and recommendations from the Cannabis Advisory Board, which includes subcommittees on public health; public safety and community mitigation; cannabis industry; and market participation and has as members Commissioner John Lebeaux of the Massachusetts Department of Agricultural Resources and Lydia Sisson, appointed by the Governor as an expert in farming or representing the interests of farmers. The final regulations were approved on March 6, 2018 and published on March 23, 2018.

Following the publication of the regulations, Commissioners engaged in an extended municipal outreach effort throughout the Commonwealth to discuss the regulations to regional planning commissions and municipal officials, including regulations addressing the needs of farmers and small business and the process for seeking municipal approvals. Commissioners visited numerous communities across the Commonwealth, including Dukes County, Pittsfield, Greenfield, Cambridge, Amesbury, Springfield, Taunton, Newburyport, Lowell, Lenox, Fitchburg, and others. Throughout its process, the Commission has actively sought the input of farmers and businesses of all sizes and will continue to do so.

The regulations set forth an application process that requires the completion of 3 packets of information, including a comprehensive background check and a payment packet. Following the review of the application by the Commission staff to confirm the completeness of an

application, the host community is issued a municipal notice to confirm that the proposed establishment complies with its bylaws or ordinances. Upon receipt of the return notice by the municipality and evaluation of the remaining packets, the application is referred to the Commission for a vote.

The application process was started on April 1, 2018 with the certification of applicants for priority status as required under Chapter 55. The process was opened to general applicants on June 1, 2018. The first provisional license was issued on June 21, 2018. After a provisional license is issued, applicants secure any local permits necessary and go through an inspections process. Upon acquiring all local permits and completing the Commission inspections process, an applicant is issued a final license. After receiving a final license, the applicant uploads its inventory into the seed-to-sale tracking system and completes additional inspections before it is issued a notice to commence operations by the Commission. The notice to commence operations is issued at least 3 days before the marijuana establishment may operate, to provide adequate notice to the local community, and, in the case of a retailer co-located with a registered marijuana dispensary, to give medical patients an opportunity to visit and acquire medicine before adult use consumers are able to do so. The first notices to commence operations were issued on November 7, 2018 to MCR Labs, LLC and CDX Analytics, which commenced operations on November 13 and November 16, 2018, respectively. The first notices to commence operations at retail locations were sent on November 16, 2018 to New England Treatment Access, LLC and Cultivate Holdings, LLC with both entities opening on November 20, 2018.

III. OPPORTUNITIES FOR FARMERS AND BUSINESSES OF ALL SIZES IN ADULT USE REGULATIONS

License Opportunities

As described in the July 2018 report, the Commission created license types designed to allow opportunities for Massachusetts farmers, such as Marijuana Cultivator, Craft Marijuana Cooperative, Microbusiness and Third-Party Transporter. It provided discounts of up to fifty percent for application and license for outdoor cultivation and incentives for cultivation with reduced energy impacts, which were in response to a strong preference expressed for outdoor cultivation in the listening sessions and public hearings.

Since that time the Commission has received 72 applications for cultivator licenses, 2 of which are operating, 4 have received final licenses but are not yet operating, 22 have received provisional licenses but not yet final licenses, and 44 applications are under review. 36 are general applicants, 35 are priority RMD priority applicants, and 1 is an economic empowerment priority applicant. Similarly, the Commission has received 5 applications for a microbusiness license, 1 of which obtained a provisional license and 4 of which are under review. All of the microbusinesses are new, general applicants. The information is broken down by production tier below. The overwhelming majority of licenses and applications for cultivators, 57 out of 72, are on the smaller end of the tier range: 30,000 square feet or below.

Cultivation-related Licenses as of December 17, 2018						
Tier		Under Review	Provisional License	Final License	Operating	Total
Microbusiness (Tier 1)		4	1	0	0	5
Cultivators	Tier 1: up to 5,000 sq. ft.	7 Indoor 1 Outdoor	4 Indoor	1 Indoor	0	13
	Tier 2: 5,001 to 10,000 sq. ft.	9 Indoor	7 Indoor	0	1 Indoor	17
	Tier 3: 10,001 to 20,000 sq. ft.	8 Indoor 1 Outdoor	2 Indoor	1 Indoor	0	12
	Tier 4: 20,001 to 30,000 sq. ft.	7 Indoor	3 Indoor	0	0	10
	Tier 5: 30,001 to 40,000 sq. ft.	4 Indoor	2 Indoor	1 Indoor	0	7
	Tier 6: 40,001 to 50,000 sq. ft.	2 Indoor	1 Indoor	1 Indoor	0	4
	Tier 7: 50,001 to 60,000 sq. ft.	0	0	0	1 Indoor	1
	Tier 8: 60,001 to 70,000 sq. ft.	1 Indoor	1 Indoor	0	0	2
	Tier 9: 70,001 to 80,000 sq. ft.	0	0	0	0	0
	Tier 10: 80,001 to 90,000 sq. ft.	0	0	0	0	0
	Tier 11: 90,001 to 100,000 sq. ft.	3 Indoor 1 Outdoor	2 Indoor	0	0	6
Total					77	

The Commission has provided a range of licenses aside from cultivation-related licenses. As of the date of this report, 2 independent testing laboratories are operating and 1 has a provisional license but is not yet operating. 2 marijuana product manufacturers are operating, 4 have final licenses but have not yet started operating, 20 have provisional licenses but not final licenses, and 33 applications are under review. 5 marijuana retailers are operating, 4 have a final license but are not yet operating, 22 have a provisional license but not a final license, and 46 applications are under review. Marijuana research facilities and a third-party transporter have applications under review. There is one existing licensee marijuana transporter that has received a final license but has not yet commenced operations, one that has a provisional license but not a final license, and one application under review. This information is also depicted on the chart below.

Other Marijuana Establishments as of December 17, 2018					
Tier	Under Review	Provisional License	Final License	Operating	Total
Independent Testing Laboratory	1	0	0	2	3
Marijuana Product Manufacturer	33	20	4	2	59
Marijuana Research Facility	4	0	0	0	4
Marijuana Retailer	46	22	4	5	77
Marijuana Transporter with Existing ME License	1	1	1	0	3
Third Party Transporter	1	0	0	0	1

Opportunities through the Commission’s Responsible Vendor Training Program & Social Equity Program

The Commission has created the Social Equity Program to provide a way for those who have been disproportionately impacted by past drug enforcement policies to gain equity through ownership and meaningful long-term employment in the lawful, highly regulated industry in Massachusetts. To qualify, applicants must demonstrate that they have resided in an area of disproportionate impact and have an income that does not exceed 400% of the federal poverty line and/or that they are a resident of Massachusetts and them, or their family member, was convicted under G.L. c. 94C or of an equivalent crime. The program plans to pair selected, qualified vendors with accepted applicants and provide training, technical assistance and mentoring in a variety of areas pertaining to the adult-use cannabis industry, including but not limited to management, recruitment and employees; accounting and sales forecasting; tax prediction and compliance; legal compliance; business plan creation and operational development; marijuana industry best practices; and assistance with identifying or raising funds or capital. The program will also offer other benefits including license application fee waivers, access to pro bono services as available, exclusive access to certain license types; and access to the Commission’s dedicated portal for employment opportunities. The overall mission of the Social Equity Program is to decrease the disparities in life outcomes for these individuals and improve the quality of life in areas of disproportionate impact. The funding for this program comes directly from the Commission’s operating budget.

To implement the training required under the Social Equity Program, the Commission issued Request For Qualifications (“RFQ”) to request responses from individuals and entities interested in developing face-to-face and on-demand curricula and offering professional training, technical assistance, and mentoring to eligible recipients in the Social Equity Program. Resources and materials were provided to assist applicants in responding to the RFQ on the Commission’s website and on COMMBUYS. The application for the RFQ opened on June 27, 2018 and closed on September 7, 2018. Selected qualified providers were announced on October 18, 2018.

The application for those seeking training, technical assistance and mentoring through the Social Equity Program opened on December 19, 2018. The application is digitally accessible through the Massachusetts Cannabis Industry Portal (MassCIP) on the Commission’s website and is open until further notice. The Commission also provides a PDF preview of the application in its entirety, so applicants can prepare, if necessary, to complete the application. The application is a nine-step process and designed to verify eligibility for the program but also to allow applicants to identify their interests in the industry, current skills, and the outcomes they are seeking. This enables the Commission to best suit their needs in a personalized way. Applications will not be scored or evaluated based on a point system and approval or denial of an application is solely determined by an applicant’s ability to qualify for at least one of the three eligibility criteria with required proof.

The Commission will use information provided on the application to track and determine if the Commission is upholding not only its commitment to equity but the mandate set by the Legislature that the Commission must include, promote and encourage full participation in the marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities.

In addition to the Social Equity Program, the regulations require Marijuana Establishments to conduct eight hours of training per year, two of which must be from a Responsible Vendor Training (“RVT”) Program, as described in detail in the July 2018 Report. The RVT Program is another opportunity for businesses of all sizes who may not want to engage in licensed activities but are interested in providing services to that industry. The Commission will be launching the RVT program in Spring, 2019.

IV. CHALLENGES TO OPPORTUNITIES FOR FARMERS AND SMALL BUSINESSES

As discussed in the July 2018 report, there are multiple challenges for farmers and small businesses interested in engaging in the cultivation of marijuana or any other marijuana-related business on both the federal and local level.

Lack of Access to Capital

The status of cannabis as a Schedule I drug under the Controlled Substances Act means that small business loans or loans from mainstream financial institutions are largely unavailable. Without access to capital, farmers and small businesses struggle to develop a viable business plan and find it difficult to compete with larger, more well-financed competitors when attempting to secure an opportunity in a host community. Concerns have also been raised regarding host community agreements. The Commission is engaged in a study of host community agreements and is in the process of developing a report and recommendations on that issue.

Zoning Restrictions

A number of municipalities are limiting marijuana-related uses to industrial or commercial districts, areas that are not conducive to outdoor farming. While ordinarily farmers may seek to avail themselves of protection under the agricultural exemption in the Zoning Act, G.L. c.40A §3 ¶1 to find opportunities in other districts, the exemption is not available to farmers who wish to cultivate cannabis. In Section 1 of the Chapter 351 of the Acts of 2016, the “cultivation, distribution or dispensation of marijuana” was exempted from the agricultural zoning protection provided under G.L. c.40A §3 ¶1, which prohibits municipalities from prohibiting, unreasonably regulating or requiring a special permit for the use of land for the primary purpose of commercial agriculture. The combination of restrictive zoning and lack of protection under the agricultural exemption of the Zoning Act is reducing the availability of agricultural land for cannabis cultivation to Massachusetts farmers. The Commission is gathering information on zoning bylaws and ordinances enacted throughout the Commonwealth during the course of 2018 to evaluate whether the elimination of the agricultural exemption protection for cannabis cultivation under G.L. c. 40A §3 ¶1 combined with restrictive municipal zoning is serving to prevent farmers from participating in the adult use marijuana industry.

Update on Agricultural Preservation Restrictions

Pursuant to G.L. c. 20, Section 23, the Department’s Agricultural Preservation Restriction (“APR”) Program was established to protect land that is actively devoted to agricultural or horticultural uses as enumerated in G.L. c. 61A, Sections 1 and 2. It is a voluntary program that helps to preserve and protect agricultural land by offering a non-development alternative to landowners in exchange for a deed restriction that ensures the protected land continues to be used only for agricultural or horticultural purposes. In order to define an “agricultural” or “horticultural” use, the MDAR relies upon the above quoted statutory authority and must look to determine whether a proposed activity falls under the definitions of agricultural or horticulture set forth in G.L. c. 61A, Sections 1 and 2. The cultivation of hemp and marijuana would need to fall under the definition of horticulture to be allowed on land subject to an APR.

Pursuant to G.L. c. 61A, Section 2, land in horticultural use is defined as follows:

Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when

primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

MDAR had not initially faced the issues involving the interpretation of G.L. c. 61A, §2 specifically related to hemp and marijuana and had determined requests would be reviewed on a case-by-case basis, depending on federal limitations imposed by either the funding source, the terms of the APR, or both. However, pursuant to Section 57 of Chapter 55 of the Acts of 2017 the Commission provided recommendations to the legislature by July 28, 2018, regarding “farmers’ access to marijuana licenses and to allow for the growth, cultivation, production and harvest of marijuana on farm or agricultural lands, including, to the extent permitted by state and federal law, lands protected under an agricultural preservation restriction and the possibility of including marijuana and industrial hemp as land in horticultural use for the purposes of assessment and taxation pursuant to chapter 61A.” Because G.L. c. 61A involves the assessment of taxes and the MDAR does not have jurisdiction in this area, the Commission requested an interpretation from the Massachusetts Department of Revenue (“DOR”) as to whether such activities were included in the current statutory definition. As a result of this request, DOR advised both the MDAR and the Commission that the eligibility of land used to grow commercial hemp and marijuana for classification under G.L. c. 61A, Section 2 requires clarification by the Legislature.

As a result, until such time as the MDAR receives legislative clarification regarding whether hemp and marijuana related activities fall within the definition of land in horticultural use under G.L. c. 61A, Section 2, the MDAR cannot allow such activities to take place on any land under the APR Program. In the event of a statutory clarification to G.L. c. 61A, the MDAR would then review the terms of the APR in question to determine whether approval for such activities could be granted under the terms of that APR or if there were any federal limitations prohibiting such activities. The passage of the 2018 Farm Bill, which removes hemp from the Controlled Substances Act and defines it as an agricultural commodity, could resolve issues with any federal law limitations, though this change will not be fully implemented until regulations are promulgated by the United States Department of Agriculture.

V. CONCLUSION

The Commission is pleased to provide this report, in consultation with the MDAR, on participation in the regulated marijuana industry by farmers and businesses of all sizes. The regulations put in place to date attempts to balance providing opportunities for farmers and small businesses, with the need to protect the public health, safety and welfare of citizens of the Commonwealth.

The Commission continues to engage with farmers and small businesses to promote their participation in the adult use marijuana marketplace. In 2019, the launch of the RVT Program and ongoing work on the Social Equity Program is anticipated to improve opportunities for farmers and small-businesses, in keeping with the intent of the Legislature in Chapter 55 of the

Acts of 2017. The Commission looks forward to working with the Legislature to address federal and local challenges facing farmers and small business owners to realize the legislative mandate of supporting these constituencies in this emerging industry.