

By Bart Schaneman

Proposed rules governing California's free-wheeling medical marijuana market could entice entrepreneurs large and small to set up shop in the state and encourage cannabis investors to open their checkbooks wide for local businesses.

Industry officials said the draft regulations, issued [last week](#), provide a framework for a range of entrepreneurs to enter the market as growers, retailers, testing labs and more. A tiered licensing system would set fees based on size.



The regulatory blueprint also should encourage reluctant investors who have waited for regulatory clarity before pumping money into what will be the world's largest legal marijuana market.

Industry officials did say the proposed MMJ rules aren't perfect – in particular, a requirement that third-party companies transport medical cannabis between cultivation facilities and dispensaries has raised alarm bells.

But they agreed the draft regulations are a welcome start in a state long plagued by a patchwork of local rules and regulatory uncertainty. They come as California rolls out a new voter-approved, adult-use cannabis program.

"They provide well-needed clarity in terms of state regulations for companies and investors," Lance Rogers, a San Diego-based cannabis attorney with Greenspoon Marder, said of the proposed regulations.

"I'm hopeful that we can go from being the Wild West of cannabis to being the gold standard for the industry. Pioneers came to California for gold; hopefully we can be, if not the 'gold,' then the 'green' standard for the industry."

Rulemaking process

The proposed rules cover the cultivation, testing, transport and retailing of medical cannabis.

Among other things, the [56-page document](#) spells out fees for 14 cultivation licenses, starting at \$560 for smaller nurseries to \$38,350 for medium indoor grows.

Under the plan, dispensaries also would be required to use a track-and-trace system. And edibles could contain no more than 10 milligrams of THC per serving and up to 100 milligrams per package.

A 45-day comment period is currently underway and will feature four public hearings.

Depending on the number of changes after the 45 days, the drafting phase will be extended by another 15 or 45 days.

The California State Assembly, meanwhile, is discussing a “trailer” bill that would combine the Medical Cannabis Regulation and Safety Act with Proposition 64, which legalized recreational marijuana during the November election. The Bureau of Marijuana Control would oversee both recreational and medical, but there would still be two separate licensing tracts.

Rules for both the MMJ and adult-use markets are slated to kick in Jan. 1, 2018.

Business opportunities

Avis Bulbulyan, CEO of Siva Enterprises, a Los Angeles cannabis consultancy, called the proposed MMJ regulations encouraging.

“For the industry as a whole, it’s going to translate into an explosion,” he said, predicting many opportunities for entrepreneurs given the California market.

Compared with other states launching medical marijuana markets for the first time, California already has a substantial base of registered patients, willing doctors and other infrastructure to hit the ground running.

“We’ve got the patients ready to go. We’ve got the industry that’s already there,” Bulbulyan said. “The only thing missing for that explosion to occur was the formal licenses. Come 2018, once these state licenses start being issued, it’s going to be a monster of a market.”

Licensing structure

Bulbulyan also sees the proposed licensing fees as good for the little guy.

“It gives a lot of opportunity to the smaller operators to be able to secure their state licenses,” he said.

In particular, he pointed to the tiered licensing structure under which smaller growers, dispensaries and other businesses would pay less for licenses than larger operators.

“I really don’t think you could ask for more,” he said. “It takes care of the big guy, but it also takes care of the small guy.”

For the moment, however, the application and licensing fees are a work in progress. The proposed rules spell out fees for 14 sets of cultivators, ranging from small to large. By contrast, those for dispensaries and laboratories are not listed.

Below is a sampling of the nonrefundable application fees for growers, with the annual licensing fee listed in parentheses:

- Nursery- \$60 (\$560)
- Processor – \$310 (\$2,790)
- Specialty Cottage Outdoor – \$65 (\$595)
- Specialty Indoor – \$1,070 (\$9,620)

- Small Outdoor – \$265 (\$2,370)
- Small Mixed-Light – \$1,105 (\$9,960)
- Medium Outdoor – \$765 (\$6,890)
- Medium Indoor – \$4,260 (\$38,350)

“The process and the fees are reasonable for the size that these companies can become,” Rogers said.

Infused product manufacturing licenses are also tiered, based on income. There are five tiers, ranging from gross receipts of a \$100,000 a year up to \$5 million.

Potential challenges

Under the proposed rules, license holders who transport cannabis between cultivation facilities and dispensaries would be barred from owning cannabis inventory.

“The distribution issue may be the single most important aspect of this entire regulatory framework,” Rogers said.

Bulbulyan thinks the mandatory requirement for third-party transport could potentially create a bottleneck by giving a handful of companies control over the industry.

For example, if a major transporter has no cannabis experience and no vested interest in that product, that company may be inclined to push only those goods – such as edibles – that generate the highest returns.

Bulbulyan also anticipates small cultivators would be disadvantaged.

“It takes advantage of the small guy because of their inability to get that shelf space on their own,” he said.

“Without the mandatory distribution, everyone has options. If you’re an operator that has trouble getting shelf space, you always have that option of going to a distributor,” Bulbulyan added. “If you’re in a position to represent your own product, distribute your own product and create your own brand identity, you’re not forced to go through a third party.”

Compliance with the new rules

Now that regulators are rolling out a statewide regulatory system, MMJ businesses will be given a grace period to comply with the new regulations. Up to now, businesses owners have been confronted with a patchwork of regulations that vary by municipality.

The deadline for compliance is the end of next year, Dec. 31, 2018. Any existing cannabis company that doesn’t get with the program will be considered an illegal operator in 2019.

Rogers advised business owners to read the new regulations carefully and get on board ASAP.

“It would be bad business and bad judgment to ignore state law,” Rogers said.

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