



California Department of Food and Agriculture CalCannabis Cultivation Licensing

Preface:

Earlier this spring, the Department of Food and Agriculture's CalCannabis Cultivation Licensing program, the Department of Consumer Affairs' Bureau of Cannabis Control, and the Department of Public Health released draft regulations for the Medical Cannabis Regulation and Safety Act of 2015. These licensing authorities held several public hearings to accept verbal and written comments regarding the draft regulations. The licensing authorities had planned to move forward with a separate draft regulatory package for implementation of Proposition 64: The Adult Use of Cannabis Act of 2016. However, in late June, the Legislature passed and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA, also known as Senate Bill 94), which creates one regulatory system for both medicinal and adult-use cannabis. As a result, the licensing authorities will withdraw the proposed medical cannabis regulations noticed for public comment on April 28, 2017.

The three cannabis licensing authorities are in the process of drafting emergency regulations based on the new law for the commercial medicinal and adult-use cannabis industries. The licensing authorities will consider the public comments received on the draft medicinal cannabis regulations and use the feedback to inform the draft emergency regulations. The emergency regulations are expected to be published in fall 2017.

The soon-to-be-withdrawn draft medicinal cannabis cultivation regulations are available to read here. To subscribe to CalCannabis email alerts for updates, please sign up here. For information on the other state licensing agencies, visit the California Cannabis Portal.

Draft Medical Cannabis Cultivation Regulations Public Comment Summary:

*This document is intended to provide stakeholders with a high level summary of the comments received on the proposed medical cannabis regulations published in April of 2017 and an **initial** response to the comments by the Department. The Department appreciates the thoughtful and timely responses made by stakeholders. Please note this is not a comprehensive list of regulation topics. The Department will consider every comment received in a continued effort to create effective and reasonable regulations for medicinal and adult-use cannabis cultivation.*

Definitions (Article 1):

Canopy:

The Department received a number of comments on the proposed definition of 'canopy.' Comments generally expressed concern regarding the inclusion of walkways or space between



plants and provided some potential alternatives. There was also concern that the definition did not align with the definition of canopy developed by local agencies and that this may result in regulatory conflicts. The Department is taking into consideration all comments provided and may refine the canopy definition; however, consistency with the different local agency definitions of canopy is not achievable.

Indoor, Outdoor and Mixed-light cultivation:

The Department received significant input on the proposed definition of ‘mixed-light,’ as well as the proposed definitions for ‘outdoor’ and ‘indoor’ cultivation. Stakeholders suggested that light deprivation practices should be permitted in the outdoor category. Recommendations were also made to reduce the watts per square foot threshold and clearly differentiate the use of supplemental light preventing plants from flowering from the use of high intensity lighting supporting flower production. Stakeholders suggested a separate tier license for light deprivation. It is clear to the Department that the cultivation category definitions will require further refinement.

Owner:

The Department received substantial feedback on the proposed definition of ‘owner.’ Stakeholders responded predominately to the inclusion of management, supervisors, and any other employee with decision making authority in the definition. The Department, in collaboration with the Department of Consumer Affairs and Department of Public Health, will review all of the comments on the definition of ‘owner’ and take into consideration the impact MAUCRSA will have on the definition.

Applications (Article 2):

Water Source Requirements:

In 2016, SB 837 amended the MCRSA to include the July 1, 2017 deadline for filing with the State Water Resources Control Board. The Department received input that the July 1, 2017 deadline to file paperwork with the State Water Resources Control Board was unreasonable and arbitrary. Recently, AB 133 amended the deadline for filing with the State Water Resources Control Board to October 31, 2017. Several comments also expressed appreciation for clarification on water source requirements.

Waiver of Sovereign Immunity:

The Department received a number of comments on the waiver of sovereign immunity for federally-recognized tribes to participate in the licensed marketplace. Commenters questioned whether the Department has the authority to require an immunity waiver from sovereign nations and that the proposed regulation potentially infringes on tribal sovereignty. Recommendations included a removal of the proposed regulation in the interim. The Department, in collaboration with the Department of Consumer Affairs and Department of Public Health, will continue to work with stakeholders on this issue.



CEQA Compliance:

The Department received input regarding the proposed requirement for applicant's to show evidence of compliance with CEQA. Stakeholders requested clarification about what would be required by the Department if a local agency did not prepare an environmental document. There was also concern that an applicant's responsibility to produce an environmental document will be overly burdensome and unfair. The Department concurs that more specificity about what environmental documentation will be accepted is needed.

License Requirements (Article 3):

Fees:

The Department has made every effort to tier the application and license fees to the scale of the license (as required by law), however, per statute, the costs of the program must be covered by these fees. The Department received a range of comments regarding the application and licensing fee schedule. Some stakeholders indicated the fees were too high, while others expressed they were fair. Requests for payment plans were also suggested. As the true costs of running the program become known to the Department, it is anticipated these fees will fluctuate. It is also anticipated that fees published in the draft medical regulations will be revised to reflect the current known costs of the Department.

Processor License:

The Department received positive feedback regarding the new processor license type. The comments reiterated that a license allowing off-site processing was needed by the industry. Clarification regarding some of the processor license components and allowable activities was also requested. The Department looks forward to continued collaboration with stakeholders to ensure existing and new business models have an opportunity to enter the regulated market without overly burdensome regulation.

Commingling:

The Department received comments from a number of concerned stakeholders regarding the proposed prohibition on commingling. Comments ranged from requesting clarification to asserting the regulation is prohibitive of small business practices. Many requested that commingling be allowed because the robust track-and-trace system should be able to link commingled flowers to the associated cultivation sites. The Department will continue to work with stakeholders on this issue.

Cultivation Requirements (Article 4):

Cannabis Waste Disposal:

The Department received substantial feedback that the proposed cannabis waste disposal requirements were overly burdensome, would lead to excess waste being contributed to



landfills, and that the five day holding period was too long and could lead to pest infestations. Commenters requested clarification on the allowance of composting on-site. There were also suggestions to introduce a new license type that could process cannabis waste off-site. Note, MAUCRSA exempts mature plant stalks from the definition of cannabis. This will be taken into consideration as the composting and waste disposal requirements are improved.

Generator Prohibition:

The Department received input that the proposed prohibition of generators would be problematic for rural and off-grid cultivators. Commenters made recommendations to allow generators approved or permitted by other agencies and to include a phase-in approach for the regulation. Clarification about the definition of generator was also requested. The Department will continue to work with stakeholders to develop regulations that protect the environment while allowing existing operators to enter the regulated market.

42% Renewable Energy Source:

The Department received significant feedback on the proposed requirement to use 42% renewable energy sources for indoor license types. Commenters favored both reducing and increasing the percentage. It was recommended that this requirement be phased-in and also apply to mixed-light license types. Clarification about how this section would be implemented was requested. The Department is considering changes in renewable energy requirements to better align with current State energy goals using a phased-in approach and will revisit the renewable energy source requirement and provide further specificity regarding implementation for this requirement.

Records and Reporting (Article 5):

Record Retention:

A number of commenters indicated that the seven year record retention period was too long. A range of one to five years was suggested. The Department would like to note that the seven year retention period is a statutory requirement and beyond the Department's authority to alter.

Track-and-Trace:

The Department received considerable input that the 24 hour requirement to update track-and-trace may be difficult for growers in remote areas. Data security was also a major concern. Stakeholders expressed support for the robustness of the proposed requirements. There were also requests for training on the system and requirements. The Department will continue to collaborate with stakeholders to create workable rules that protect public safety.



Unique Identifiers:

The Department received many comments about the potential burden of individual plant tagging. Commenters indicated the labor and materials needed to create an individual ID for every plant will be expensive and wasteful. Stakeholders expressed support for the Department's proposed tracking of immature plants by lot, prior to individual tagging. To note, individual tagging is a statutory requirement and beyond the Department's authority to alter.

Enforcement (Article 7):

The Department received input that the proposed fines were both too high and too low. Clarification was also requested on the Notice of Violation section. The Department will consider all comments on the enforcement regulations as the proposed regulations are updated.

Other Topics:

Industrial Hemp:

The Department received several comments requesting a status update on the rules and regulations for industrial hemp. While the Department is responsible for industrial hemp, the Division within the Department that licenses commercial cannabis is separate from the Division that handles industrial hemp. For industrial hemp inquiries, please contact the California Industrial Hemp Program at industrialhemp@cdfa.ca.gov.