

FINDING OF EMERGENCY

Readoption of Emergency Regulations

(Gov. Code § 11346.1, subd. (b); Cal. Code Regs., tit. 1, § 50)

Pursuant to Section 26013(b)(3) of California’s Business and Professions Code, the readoption of emergency regulations necessary to implement, administer and enforce the duties of the California Department of Food and Agriculture (Department) is deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial emergency regulations and the readopted emergency regulations authorized by this section shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

The Department submitted an emergency rulemaking that was filed by the Office of Administrative Law (OAL) on November 27, 2017 in order to implement the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and begin licensing commercial cannabis farmers January 1, 2018.

Specific Facts Demonstrating the Need for Immediate Action

Readoption on an emergency basis is necessary to ensure that the licensing and enforcement of cannabis cultivators continues until permanent regulations can be adopted later this year. All of the circumstances justifying the initial adoption of the emergency regulations remain unchanged. Therefore, the Finding of Emergency that was submitted and approved by OAL with the adoption of the Cannabis Cultivation Licensing emergency regulations (OAL File No. 2017-1127-02E), effective December 7, 2017, is incorporated by reference herein.

Diligent Adoption of Permanent Regulations

As required for readoption of emergency regulations, the Department has made substantial progress and is proceeding with diligence to comply with Government Code section 11346.1, subdivision (e). (Cal. Code Regs., title 1, section 52(b)(1).) The following actions demonstrate the Department’s progress toward the adoption of permanent regulations:

Since the emergency regulations were originally approved in December 2017, the Department has engaged in the following:

- Department staff has continually met with the other licensing agencies and stakeholders to discuss the effectiveness of the emergency regulations since temporary licenses went into effect January 1, 2018 and businesses began operating in California’s newly-legal commercial cannabis market.
- The Department reviewed and evaluated the 155 public comments received during the public comment period for the emergency regulations.

- The Department has engaged with the state’s Cannabis Advisory Committee, whose purpose is to advise the state’s cannabis licensing authorities on the development of regulations that help protect public health and safety and reduce the illegal market for cannabis. The Department is working on implementing some of the Cannabis Advisory Committee’s recommendations into its permanent regulations.

Authority and Reference

The Department is proposing to adopt sections 8000 – 8608 of Title 3 of the California Code of Regulations.

Business and Professions Code (BPC) sections 26000, 26001, 26012, 26013, 26050.1, 26053, 26055, 26060.1 and Health and Safety Code (HSC) 11362.768 authorize the Department to prescribe, adopt, and enforce the emergency regulations governing the licensing of commercial cannabis cultivation. The emergency regulations will implement, interpret, make specific, or reference sections 12027, 12210, 12212, 12700, 26001, 26010, 26012, 26013, 26015, 26031, 26038, 26050, 26050.1, 26051, 26051.5, 26053, 26054, 26054.2, 26055, 26057, 26058, 26060, 26060.1, 26061, 26063, 26066, 26067, 26069, 26070, 26110, 26120, 26121, 26160, 26180, and 26201 of the Business and Professions Code (BPC), sections 1602 and 1617 of the Fish and Game Code, section 12754.5 of the Food and Agricultural Code, section 1140 of the Labor Code, sections 40141 and 42649.8 of the Public Resources Code, and sections 5101, 13149, 13575, and 13751 of the Water Code.

Informative Digest

Existing Law:

Proposition 215 (1996), passed by California voters, also known as the Compassionate Use Act of 1996 prohibited prosecution for growing or using cannabis of Californians who have an oral or written recommendation from their doctors (patients), and these patients' caregivers.

Senate Bill 420 (2003), the Medical Marijuana Program Act enacted by the Legislature, required the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use cannabis for medical purposes, and required the establishment of guidelines, including limits, for the lawful cultivation of cannabis grown for medical use.

Assembly Bill 243 (Chapter 688, 2015), Assembly Bill 266 (Chapter 689, 2015), and Senate Bill 643 (Chapter 719, 2015), established a regulatory program for the cultivation of medical cannabis as part of the Medical Cannabis Regulation and Safety Act (MCRSA). The MCRSA mandated the Department to establish the Medical Cannabis Cultivation Program (MCCP) to regulate, implement, and enforce the MCRSA as it pertains to the cultivation of commercial medical cannabis. The legislation mandated regulation to encourage environmental protection measures by the cultivator to prevent further pollution of water, degradation of the natural environment, wildlife endangerment, and to protect public peace, health, and safety. The Department is required to develop and enforce regulations for statewide commercial medical cannabis cultivation activities occurring at nurseries; and indoor, outdoor, and mixed-light

cultivation sites. The MCRSA also obligated the Department to create and implement a track-and-trace system to monitor commercial medical cannabis from cultivation through the distribution chain, to be the lead agency in implementing California Environmental Quality Act (CEQA) requirements for the statewide cultivation program, and ensure that weighing or measuring devices used for the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with section 12001). Fees associated with cultivation are required to be scaled and must cover the Department's costs of implementing and enforcing the commercial cultivation licensing program and subsequent regulations. The MCRSA has since been repealed, but all of the Department's obligations listed above have been incorporated into the MAUCRSA.

AUMA (2016) legalized the consumption and cultivation of cannabis for adult use and specifies conditions under which cannabis may be cultivated, processed, and sold for commercial purposes in California.

MAUCRSA, also known as Senate Bill 94 (2017), repeals the MCRSA, which was established by AB 266, AB 243, Senate Bill (SB) 643, and SB 837, and incorporates the Department's obligations under the MCRSA into the AUMA. MAUCRSA combines the MCRSA and AUMA into one single system that prioritizes consumer and public safety, environmental protection, and tax compliance for commercial cannabis cultivation. This law creates agricultural cooperatives for small cannabis cultivators, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

Assembly Bill (AB) 133 (2017) trailed MAUCRSA making technical changes on cannabis related issues necessary to implement the 2017 Budget Act. This new law further clarifies the intent of the legislature regarding MAUCRSA.

Inconsistency with Federal Regulation Statute

The United States Drug Enforcement Administration under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. Meaning, this is a drug with a high potential for abuse, has no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision.

Controlled Substances Act, Title 21 - Food and Drugs, Chapter 13 - Drug Abuse and Prevention Control, Subchapter 1 - Control and Enforcement:

<https://www.fda.gov/regulatoryinformation/lawsenforcedbyfda/ucm148726.htm>

Consistency with Existing State Regulations

As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these emergency regulations and has determined that they are not inconsistent or incompatible with existing regulations.

Policy Statement

Regulation Objectives

The Department has developed these emergency regulations to further clarify or make specific sections of MAUCRSA pertaining to the licensing of commercial cannabis cultivators. The regulations will:

- Address the obligation of the Department to regulate the cultivation of commercial cannabis;
- Establish regulatory licensing and enforcement programs to ensure that cannabis cultivation will be performed in a manner that protects the environment, cannabis cultivation workers, and the general public from the individual and cumulative effects of cultivation operations;
- Develop a track-and-trace system to monitor the movement of cannabis from the cultivation stage through the production chain; and
- Establish uniform standards for licensure for consistency in implementation efforts.

Benefits to Cultivators

Under the proposed regulations, commercial cannabis cultivators may be eligible to convert their existing cultivation sites or establish new cultivation sites as licensed California businesses. This is the first opportunity this industry has had to sell product openly and to be recognized as a legitimate California business. The emergency regulations promote a fair and equitable marketplace for licensed commercial cannabis cultivators in California and have been crafted to encourage entry into the regulated industry. The proposed regulations will also provide new protections to commercial California cannabis cultivators from state prosecution.

Benefits to the Public

- Safeguarding of the environment through implementation of environmental protection measures and enforcement of existing environmental protection laws;
- Creation of legitimate businesses and tax revenue sources;
- Increased worker safety through enforcement of existing employee protection laws; and
- Reduction in crime.

Another essential component of these regulations is the implementation of what is known as the track-and-trace system. This system will provide safeguards for public health by giving the state the ability to trace cannabis and cannabis products to the source; thereby, preventing any untested and unlicensed cannabis and/or cannabis product from being inserted into the regulated cannabis market. It will also ensure that all cannabis produced at a licensed cultivation site can be accounted for; thus, preventing diversion of regulated product to the unregulated market.

Environmental Information and California Environmental Quality Act Compliance

One of the largest effects of unregulated cannabis cultivation has been serious adverse impacts to the environment. The State Water Resources Control Board (SWRCB), the North Coast Regional Water Quality Control Board (RWQCB), and the California Department of Fish and Wildlife (CDFW), have documented an increase in the number of unregulated cannabis cultivation sites and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste.

The Department has prepared and certified the Programmatic Environmental Impact Report (PEIR), in accordance with the provisions of the California Environmental Quality Act. The PEIR provides stakeholders, which includes the public, responsible agencies, and cannabis farmers with information about the potential significant environmental impacts associated with the adoption and implementation of these emergency regulations and mitigations to address significant environmental impacts at cannabis cultivation sites in California.

To access the PEIR, visit the following website: <http://calcannabis.cdfa.ca.gov/>.

Plain English Requirement

The Department staff prepared these emergency regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The emergency regulations are written to be easily understood by the persons that will use them.

Mandate on Local Agencies and/or School Districts

LOCAL MANDATE: There will be no local mandate.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT PURSUANT TO GOVERNMENT CODE SECTION 17500 et seq:

None

ANY OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None

Cost or Savings Estimate to State Agencies (Fiscal Impact)

The Economic Impact Statement (STD. 399) that was submitted and approved by OAL with the adoption of the Cannabis Cultivation Licensing emergency regulations, effective December 7, 2017, is incorporated by reference herein.

ANY COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

The Department is tasked with issuing cannabis cultivation licenses and administering all aspects of the cannabis cultivation regulations. The total ongoing annual agency budget of approximately \$32 million includes administration of both medicinal cannabis and adult-use cannabis program activities.

The budget detail is broken-down by Department staff costs, other Department costs, and external consulting and technical services costs (including the track-and-trace program). The total estimated operating costs of the Department for this program is \$47.7 million once regulations are in place and licenses are being issued. This analysis assumes the Department budget represents the market in equilibrium post-Department regulations. These costs will be recovered through application and licensing fees charged to cultivators.

The Department is tasked with enforcing Department regulations for licensed cannabis cultivation operations. This includes site inspections and ensuring cultivator compliance with the track-and-trace system. The Department's enforcement staff will also be responsible for referring complaints about unlicensed operations to appropriate state and local law enforcement.

It is likely that more illegal grow sites will be reported and local and state agencies, including the CDFW, as well as the SWRCB, will need to allocate more resources to eradication. However, because legal cultivators will be licensed by the Department and local authorities, it will be easier for enforcing agencies to identify illegal grow sites and the cost per eradication will likely decrease over time.

Purpose and Necessity

The Department is establishing a commercial cultivation licensing program (program), in accordance with California Business and Professions Code (BPC) sections 26012 and 26013. Within this program, a track-and-trace system will be established to monitor the movement of cannabis and cannabis products from the cultivation stage throughout the distribution chain, in accordance with BPC section 26067.

The proposed emergency regulations required consultation with other state agencies pursuant to the authorities found in the BPC. The California State Water Resources Control Board and the California Department of Fish and Wildlife were consulted pursuant to BPC sections 26051.5(b)(7), 26060.1(c), and 26069(c)(1). The Bureau of Cannabis Control was consulted pursuant to BPC sections 26060, 26060.1, 26067(a), 26068(b), and 26069(c)(1). The California Department of Tax and Fee Administration (formerly known as the California State Board of Equalization) was consulted pursuant to BPC sections 26067(b)(1) and 26068(a). The Department met the statutory consultation requirements through a series of meetings, conference calls, and consistent communication with the required agencies throughout the development of these proposed emergency regulations.

“A” and “M” License Designations

In this readoption of emergency regulations, the Department, along with the Bureau of Cannabis Control and the Department of Public Health, propose to modify the restriction on adult-use (“A”) and medicinal (“M”) licenses. Except during a brief transition period in which licensees could conduct A or M business with either license type, current emergency regulations require the A and M markets to be kept separate. As a result, once the transition period ended, licensees had to obtain both an A and an M license and pay twice the license and application fees for the

same premises if they wanted to transact both lines of business. These proposed emergency regulations would streamline commerce and reduce paperwork by requiring applicants to obtain a single license and pay one license fee in order to conduct A or M business in one location.

Since the release of the emergency regulations, the licensing agencies have received significant feedback from the public and the Cannabis Advisory Committee to remove the requirement to get both an A and M license on the same premises and allow A and M licensees to conduct business with any other license designation. Particularly in the context of cultivation, there is no difference in plants grown for the medicinal or adult use markets.

Based on feedback from stakeholders and the Cannabis Advisory Committee, the licensing authorities have further reviewed the MAUCRSA and have determined that it should be implemented in a manner that allows licensees to buy or sell cannabis or cannabis products to each other irrespective of their A or M designation. Business and Professions Code section 26053 states that all commercial cannabis activity shall be conducted between licensees. However, nothing in the MAUCRSA expressly states that A designated licensees may only do business with other A designated licensees or that M designated licensees may only do business with other M designated licensees. Further, Business and Professions Code section 26013 which provides direction to licensing authorities and states that regulations shall not “make compliance so onerous that the operation under a cannabis license is not worthy of being carried out in practice by a reasonably prudent businessperson.” The licensing authorities have determined that there is a high likelihood that requiring the A and M supply chains to remain separate will perpetuate, rather than reduce and eliminate, the illicit market for cannabis.

This is also consistent with the current regulatory structure which allows an A and M license for the same premises, and the readoption of the emergency regulations includes amendments to simplify the current practice of allowing an A and M license for the same premises. By eliminating any regulatory restriction on commercial activities between any other license designation, an applicant no longer needs to apply for both an A and M license for the same premises but only needs to apply for one. The designation remains to be consistent with the MAUCRSA and respectful of local jurisdictions that only allow medicinal cannabis. The Department hopes to increase participation in the legal cannabis market through these changes.

The Department proposes the adoption of Division 8, Chapter 1, sections 8000 to 8608, within Title 3 of the California Code of Regulations, to implement the Act. The Chapter will have seven Articles, each containing rules for different aspects of the licensing program.

The necessity regarding key sections is explained below.

Article 1

Definitions

The Department is adding section 8000 and subsections (a) through (af) to ensure language is used consistently throughout the regulations, to provide stakeholders clear understanding of the intent of specific words, and to provide uniform implementation of the statewide program. Many

of the definitions incorporated by the Department are the same as those listed in BPC Section. These are included in the proposed emergency regulations for ease of reference. The unique definitions were drafted based on outreach to and feedback from cultivators and others in the cannabis cultivation industry.

The definition of “canopy” in subsection (f) is restructured in proposed readoption text to provide additional clarity regarding identifiable boundaries, which may differ significantly between indoor and outdoor cultivation sites. Similarly, a definition for “light deprivation” is now included in subsection (q). Light deprivation is a commonly used industry technique to force plants to flower. The inclusion of a definition will provide for uniform implementation of the program throughout the state.

Article 2

Applications

Additional requirements have been added to the temporary license applications (section 8100(b)(7)-(9)). The Department determined that the additional items will assist compliance and enforcement staff prepare for inspections.

Annual License Application Requirements

The Department made changes to section 8102(j) as requested by the California Secretary of State’s Office. The new language now aligns with their process and ensures the Department captures the documentation needed to determine a business entity’s structure. In section 8102(n), the required bond form is now incorporated by reference. The form was not approved at the time of the emergency rulemaking in December 2017, but has since been adopted and approved by OAL.

Sovereign Immunity

The Department included in the proposed emergency regulations a waiver of sovereign immunity for federally recognized tribes or other sovereign entities (section 8102(aa)(1)). This is necessary to ensure that tribes or other qualifying sovereign entities can participate in the regulated cannabis cultivation market in the same way as the general public.

Property and Cultivation Plan Requirements

The proposed emergency regulations require two distinct diagrams be submitted to the Department; a property diagram (section 8105) and a cultivation plan which includes a detailed premises diagram (section 8106).

The property diagram requirements and detailed premises diagram are established to specify the statutory provisions of BPC section 26051.5(c) and 26060, which requires an applicant to provide a complete detailed diagram of the proposed premises with sufficient particularity to

enable ready determination of specific details, including boundaries, roads, water crossings, and points of water diversion.

The property diagram is necessary to have a scaled broad overview of the boundary of the property the premises is located on, the boundary of the premises within the property, roads and access points. The detailed premises diagram within the cultivation plan is more specific to get an accurate scaled diagram of identified areas on the premises such as canopy area(s), propagation area(s), etc.

While developing its previous medical regulations, the Department received input from stakeholders and the industry that one diagram was insufficient, resulting in the two diagrams found in the proposed emergency regulations. These sections are necessary to ensure that the Department has enough detail about the property and premises to review and verify that they are acceptable for licensing and to provide detailed information for compliance inspections. The diagrams will allow the Department to ensure compliance with the licensing requirements, which are being implemented to ensure public safety and environmental protection.

Applicant Track-and-Trace Training Requirement

The proposed emergency regulations require documentation of the completion of state mandated track-and-trace training within ten (10) days of completion (section 8109(b)). Proof of completion is a prerequisite for licensed applicants to be granted access to the track-and-trace system. The system vendor, on behalf of the Department, will be providing the training to applicants, so it is imperative the applicant provide the Department with proof of completion to prevent unauthorized access to the track-and-trace system. These are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use and the Department's administration of the track-and-trace system.

Timing of License Issuance

Section 8110 of the proposed emergency regulations provides local jurisdictions ten (10) calendar days to respond to notification by the Department that an applicant has provided a license, permit, or other authorization from the local jurisdiction where the licensed premises is or will be located. The ten day timeframe was established based on consultation with local agencies and the other licensing authorities and consistent with other regulatory programs.

Applicants Convicted of a Criminal Offense

Section 8113(c)(4) of the proposed emergency regulations includes language that the Department may consider as evidence of an applicant's rehabilitation evidence of any act committed subsequent to the act of offense under consideration that could be considered grounds for denial, suspension, or revocation of a commercial cannabis activity license. These proposed regulations are added to clarify the statutory provisions in BPC sections 26057 and 26059. Including this information in the regulations will provide consistency and standardize the Department's approach to evaluating such offenses and provide a transparent process to the applicant.

Article 2 & Article 3

Fees

The proposed emergency regulations cover application fees for each type of license (section 8101) as well as annual license fees due to the Department prior to the issuance or renewal of a license (section 8200).

The application fees and licensing fees are established in the proposed emergency regulations to specify the statutory provisions of BPC section 26180, which requires the Department to scale its fees. The Department used cannabis market assumptions from its pending Standardized Regulatory Impact Assessment (SRIA) to determine the application fee and license fee for each type of license necessary to cover the costs of the program. Because the Department's SRIA is still being finalized in advance of the regular rulemaking process, these fees are subject to change. The Department anticipates reevaluating its fees regularly as the number of licensees changes and the program's budget needs adjusting.

General License Requirements

The Department is removing section 8102(f) due to feedback from the public and the Cannabis Advisory Committee that licensees should not have to get two licenses to participate in the adult-use and medicinal cannabis markets. Along with other amendments, licensees may do business with one another regardless of A or M designation and it will no longer be necessary for a licensee to hold both licenses.

Article 3

License Types

References to the specific cultivation license types the Department is responsible for issuing are listed and referenced in proposed sections 8100, 8200, and 8201. Specifically, section 8201, subsections (a) through (d), define specialty cottage, specialty, small, and medium license types by canopy size and cultivation method (indoor, outdoor, mixed-light) and subsection (e) defines the nursery license type. Subsections (a) through (e) are consistent with BPC section 26050(a).

Section 8201 describes all license types, including mixed-light types, which are tiered (Tier 1 and Tier 2) based on the definitions found in section 8000 (Definitions) of the proposed emergency regulations. This is necessary to ensure license types accurately encompass current industry practices and provide an equitable structure for tiering the license fees.

Section 8201, subsection (f) defines the processor license, which was created by the Department pursuant to the Department's authority in BPC section 26012(b). This addition was based on industry feedback that some cultivators send untrimmed, uncured, or unpackaged cannabis to locations off-site for processing (i.e., not where the product is grown). Some local ordinances may require processing activities to occur away from cultivation areas. The creation of the processor license is meant to allow a business to be licensed solely for processing cannabis and

provides the industry with an additional type of license that is consistent with current industry practices. Also, processing does not meet the definition of manufacturing and so would not fall under a manufacturer's license.

Sample Collection

Section 8210 of the proposed emergency regulations provides the Bureau of Cannabis Control (bureau), the agency responsible for licensing testing laboratories, the authority to collect samples for testing of product in the hands of a distributor that may still be owned by a cultivator. The bureau determined this is necessary to enforce the provisions of the testing-laboratory regulations and ensure licensed testing laboratories are reporting accurate results. If a cultivator still holds title to the harvest batch when possession is transferred to a distributor, the cultivator, by sending the cannabis to the distributor, will be deemed by the Department as assenting to the seizure of samples for use by the bureau.

Requirements for Weighing Devices and Weighmasters

The Department needed to allow a way for weighing devices to be registered, tested, and sealed in cities that are located in counties that do not engage in cannabis activity. The proposed language gives licensees the option to have the Department perform the duties of the county sealer in those circumstances for a set fee.

Commercial Cannabis Activity Between Licensees

The transition period that would have allowed licensees to conduct commercial cannabis activities with any other licensee, regardless of the A or M designation of the license until July 1, 2018 is removed in the proposed readoption language. Section 8214 would now state that licensees can conduct business with other licensees regardless of A or M designation and have no expiration on this allowance. This will benefit cultivators as there is no difference in methods or techniques used to cultivate between the A or M designation and simplify the application process so that only one license is issued to a single premises.

Article 4

Environmental Protection Measures

Sections 8304 through 8307 of the proposed emergency regulations requires all licensees to comply with environmental protection measures determined by the Department to diminish potential risks identified in the Department's Literature Review on the Impacts of Cannabis Cultivation. These measures include shielding of outdoor security lighting, halting all activity if human remains are discovered, setting restrictions on the use of generators, requiring licensees to follow all existing laws and regulations related to pesticides, and follow all pesticide application and storage protocols for legal products not required to be registered with the Department of Pesticide Regulation. These sections are necessary to clarify BPC section 26060 and provide specific requirements to licensees that the Department determined was necessary to fulfill its obligation to protect the environment from potential risks of activities conducted by the licensee.

Article 5

Track-and-Trace System

Sections 8402 and 8403 outline licensees' requirements for using the track-and-trace system and the requirements for the use and application of the Department-issued track-and-trace system unique identifier (UID) for each lot of immature cannabis plants and for each individual mature cannabis plant. The track-and-trace system is designed to record the movement of cannabis plants on the licensed premises and monitor commercial cannabis activity. These proposed regulations are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use of the track-and-trace system and unique identifiers.

User Requirements for the Track-and-Trace System

Section 8404 of the proposed emergency regulations provides specific track-and-trace system user requirements. These proposed regulations are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use of the track-and-trace system. The system will provide notifications to users and the users must adhere to the timeframes in those notifications. Notifications include, but are not limited to, administrative holds of cannabis and cannabis products and rejected shipping manifests or transfers. Traceability of unique track-and-trace users and adherence to the system requirements are critically important to ensuring the integrity of data and reliability of the mandated system.

Article 6

Inspections, Investigations, and Audits

Sections 8500 and 8501 of the proposed emergency regulations provide the Department with the authority and discretion to inspect, investigate, or audit the books, records, accounts, inventory, and on-site operations specific to an applicant or licensee during standard business hours (i.e., 8:00am – 5:00pm (Pacific Standard time) or as mutually agreed upon by the Department and licensee. It prohibits a licensee, licensee's agent, or employees from interfering, obstructing, or impeding an inspection, investigation, or audit. Upon completion of an inspection, investigation, or audit, applicants and licensees will be notified of any violations and/or action the Department is taking. These proposed emergency regulations are added to clarify the statutory authority provided in BPC section 26015 and 26160. Permitted access to licensed premises and the ability to conduct field activities freely, without obstruction or impediment, is fundamental to the Department's ability to effectively monitor licensed cultivators.

Article 7

Enforcement

Section 8601 of the proposed emergency regulations outlines the categories—minor, moderate, and serious—and related fine amounts for specific violations of the statute and regulations. These regulations were developed based on fine or penalty assessment models currently in use by the Department and are intended to communicate to the licensee the specific statutory and regulatory sections subject to violation, the violation category, and fine or penalty assessment.

The fines the Department proposes have established ranges with minimum and maximum amounts based upon the violation category (i.e., minor, moderate or serious). Fine amounts were set to be commensurate with the potential impact of the violation on the environment, the public, and the Department's ability to effectively administer the program. It is the Department's intent to be consistent and transparent in its application of administrative remedies associated with violations of the statute and regulations.

Sections 8602 through 8608 provide authority for the Department to issue violations and outline hearing and appeal processes. The proposed regulations relating to the licensee's right to appeal and the process for filing an appeal; the Department's procedure and timeframe for scheduling and notifying a licensee of an informal administrative hearing in response to his or her appeal; and the conduct of an informal administrative hearing were added because they were not specified in the statutory provisions in BPC section 26031. Therefore, the proposed emergency regulations are needed to establish a process and procedures for timely and effective adjudication of licensee's appeal of a Notice of Violation and/or an order of administrative hold. It is the Department's intent to be consistent and transparent in its application of administrative remedies associated with violations of the statutes and regulations.