

Department Of Cannabis Control
California Code of Regulations Title 4, Division 19
Initial Statement of Reasons

Subject Matter of Proposed Regulations: Conversion to Large and Medium Cultivation Licenses; Type 5, 5A and 5B Large Cultivation License Fees and Requirements.

Section Affected: California Code of Regulations (CCR), title 4, sections 15014.2, 15027.1, 16201.1, and 16300.1.

Background

The Department of Cannabis Control (Department) regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events.

Pursuant to Business and Professions Code section 26061, subsection (c), the Department may begin issuing Type 5, 5A and 5B Large Cultivation Licenses (collectively referred to herein as Large Cultivation License) on January 1, 2023. The proposed regulations implement the introduction of this newly available license type into the existing commercial cannabis licensing framework by establishing fees and requirements for the Large Cultivation License.

Additionally, CCR, title 4, section 16209 prohibits a person or owner from holding more than one Medium Cultivation License until January 1, 2023. As a result, licensees will have more opportunity to hold licenses with more expansive cultivation areas on one premises, rather than several smaller cultivation licenses on different premises to equal the same size cultivation area. The proposed regulations contain the process for cultivation licensees to convert licenses with smaller cultivation limits into a Large or Medium Cultivation License.

Statement of Purpose, Problem, Rationale, and Benefits

The proposed regulations will allow the Department to issue Large Cultivation Licenses in accordance with Business and Professions Code section 26061, subsection (c). The proposed regulations provide specific guidance to applicants and licensees who are seeking to obtain a Large Cultivation License. The proposed regulations provide the specific requirements for submitting an application for a Large Cultivation License, the requirements for converting smaller sized cultivation licenses into a Large Cultivation License or a Medium Cultivation License, the fees applicable to a Large Cultivation License, and the regulatory requirements that apply to any cultivation activity occurring under a Large Cultivation License.

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Under the proposed regulations, the Department would allow cultivators with multiple contiguous cultivation licenses to request to convert the existing licenses to a Large Cultivation License, provided the licenses have the same ownership. Cultivators may only convert existing licenses into an annual Large Cultivation License. Cultivators may also obtain a new Large Cultivation License by preparing and submitting an application and one-time application fee. Large Cultivation Licenses would be subject to all existing Department cultivation regulations, as well as those applicable to all licensees. The proposed regulations additionally allow cultivators to convert multiple stacked licenses to a Medium Cultivation License. In contrast to Large Cultivation Licenses, the proposed regulations would allow conversion of provisional stacked licenses to a provisional or annual Medium Cultivation License.

Adoption of the proposed regulations will provide clear guidance to applicants and licensees seeking a Large Cultivation license. Additionally, the proposed regulations will allow the Department to issue and regulate Large Cultivation Licenses in a manner that is consistent with all other license types. The regulations will also allow cultivators to convert smaller cultivation licenses into one license with a cultivation area that is the equivalent of the combined smaller licenses, which will result in efficiencies for the licensee and the Department.

Specific Purpose, Necessity, and Rationale for Adoption

The Department proposes adopting sections 15014.2, 15027.1, 16201.1, and 16300.1 of Division 19, of title 4, of the California Code of Regulations, as follows.

Section 15014.2. Fees – Large Cultivation License.

The Department proposes adopting section 15014.2, which provides the application and licensing fees applicable to Large Cultivation Licenses. The fees proposed by the Department are based on an analysis conducted by ERA Economics.

Proposed subsection (a) provides the application fees that must be paid by an applicant when applying for a Large Cultivation License. The application fees provided in the proposed section are consistent with the application fees applied to the other license types regulated by the Department. The proposed application fees for Large Cultivation Licenses are identical to the application fees currently applied to applications for Medium Cultivation Licenses for each cultivation method. The Department has determined that the costs for processing a Large Cultivation License application are likely to be substantially like the Department's costs for processing a Medium Cultivation License application. This proposed subsection is necessary to provide applicants and licensees who are seeking a Large Cultivation License with information regarding the application fees they will have to pay. Additionally, the proposed subsection allows the Department to collect the correct amount of application fees which fund the

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Department's licensing and regulatory activities. Moreover, scaling of the licensing fees is necessary to meet the requirements of Business and Profession Code section 26180.

Proposed subsection (b) contains the annual licensing fee schedule for Large Cultivation Licenses. The annual licensing fees for Large Cultivation Licenses are arranged by cultivation method. The base cost for the annual fee for each cultivation method is the same as the annual license fee for a Medium Cultivation License for the same cultivation method. A Large Cultivation Licensee will then be required to pay an additional fee for each 2,000 square feet over the size of the maximum size allowed for a medium cultivation license of the same cultivation method. The additional fee is calculated based on the fee per square foot of canopy for a Medium Cultivation License of the same cultivation method. By basing the Large Cultivation Licensing fee on the per square foot cost of a Medium Cultivation License of the same cultivation method, the proposed regulation is consistent with the annual licensing fees applicable to all other cultivation license types regulated by the Department. Using 2,000 square feet to establish the levels of license fees strikes a reasonable balance between creating an excessive number of licensing fee tiers, while still allowing for sufficient tiers to accommodate the lack of a canopy size limit for Large Cultivation Licenses. Moreover, scaling of the licensing fees is necessary to meet the requirements of Business and Profession Code section 26180.

The Department has determined that the regulatory costs associated with Large Cultivation Licenses are likely to be consistent with other cultivation license types in that the regulatory costs are likely to increase as the size of the cultivation operation increases. The proposed subsection is necessary to provide applicants and licensees who are seeking a Large Cultivation License with information regarding the annual license fees they will have to pay to maintain the license. Additionally, the proposed subsection allows the Department to collect annual license fees to cover the Department's operating costs for its licensing and regulatory activities.

Section 15027.1. Conversion to Large and Medium Cultivation Licenses.

The Department proposes adopting section 15027.1, which provides the requirements for converting existing cultivation licenses to a Large Cultivation License or a Medium Cultivation License. Due to statutory requirements licenses may only be converted to annual Large Cultivation Licenses, and annual or provisional Medium Cultivation Licenses.

Proposed subsection (a) specifies that licensees may convert existing cultivation licenses into a Large or Medium Cultivation License if the requirements provided in the proposed section are met. This proposed subsection is necessary to inform licensees that conversion of cultivation licenses is allowed once the prohibition on Large Cultivation Licenses and the limit of one Medium Cultivation License per licensee are no

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longer in effect. This provides existing licensees with an option for obtaining a Large or Medium Cultivation License in a streamlined manner.

Proposed subsection (a)(1) specifies the premises of the converted large or medium cultivation license must consist of licensed or previously licensed cultivation sites. The proposed subsection also requires that there be at least one active cultivation license within the boundaries of the converted Large or Medium Cultivation License. The proposed subsection allows cultivation sites that were previously licensed to be included in the conversion to provide cultivation licensees with additional flexibility when it comes to converting cultivation licenses that may expire at different times. The Department has determined that limiting conversion only to areas that are currently licensed may be excessively restrictive. This proposed subsection is required to clarify the requirements for the conversion process. Additionally, the proposed subsection ensures that any licensee requesting a conversion is engaging in a legitimate conversion of existing licenses into a Large or Medium Cultivation License. A conversion cannot occur if there is not an existing active license to be converted.

Proposed subsection (a)(2) requires that the licensees that will be converted and the converted Medium or Large Cultivation License be held by the same persons. This proposed subsection is necessary to ensure that converted licenses are only being obtained by the same persons who currently hold the licenses being converted and that the conversion process is not abused to create Medium or Large Cultivation Licenses in a manner that is not consistent with the intent of the proposed regulations. The Department has determined that this is an appropriate requirement as only licensees who currently hold licenses are eligible for a license conversion.

Proposed subsection (b) contains a list of information that must be submitted by a licensee to obtain a license conversion. Since all cultivators seeking a conversion of their cultivation licenses are active licensees, much of the information required for a licensed application has already been provided to the Department. However, there are specific pieces of information that may differ for the converted Large or Medium Cultivation License. This proposed subsection identifies these pieces of information that are necessary for the Department to conduct its review and provides licensees with specific guidance. Additionally, the information requested by the Department in the proposed subsection is information that must be obtained by the Department due to statutory requirements or the Department's operational needs.

Proposed subsection (b)(1) requires that licensees requesting conversion provide the name of the designated responsible party requesting the conversion. This proposed subsection is necessary to ensure that the person requesting the conversion has authority to request the conversion. Additionally, the proposed subsection allows the Department to ensure that the licensee currently holding the license and the licensee who will hold the converted Medium or Large Cultivation License are the same.

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Proposed subsection (b)(2) requires that the licensee requesting the conversion provide the license numbers of all current or previously held cultivation licenses that will be converted. This proposed subsection is necessary to ensure that the Department and the licensee have properly identified all the licenses that are to be converted into the Medium or Large Cultivation License.

Proposed subsection (b)(3) requires that the licensee requesting the conversion provide the physical addresses for all licenses that are to be included in the converted Medium or Large Cultivation License. This proposed subsection is necessary to allow the Department to properly identify the premises to be licensed and ensure that the converted licenses are within the boundaries of the converted Medium or Large Cultivation License.

Proposed subsection (b)(4) requires that the licensee requesting the conversion provide a premises diagram that meets the requirements of section 15006. The premises diagram is a requirement for all license applications under section 15002. Although the Department may have already received premise diagram for each individual license that is to be converted, the Department has determined that it is appropriate to request a diagram for the converted license to clearly define the converted premises and its layout. This proposed subsection is necessary to ensure that the Department receives an accurate premises diagram which is not only required under statute, but also essential to the Department's ability to provide a license and regulate effectively.

Proposed subsection (b)(5) requires that licensees requesting a conversion provide a cultivation plan that meets the requirements in section 26309. Under existing regulations, all cultivation licensees must provide a cultivation plan as part of the application under section 15002 and 15011. As the converted Medium or Large Cultivation License may require a different cultivation plan from the existing licenses that are being converted, a licensee seeking conversion must be required to provide a new cultivation plan that applies to the converted license. This proposed subsection is necessary to ensure that the Department receives a valid cultivation plan that applies to the converted Medium or Large Cultivation License, which is essential to the Department's ability to provide a license and regulate effectively.

Proposed subsection (b)(6) requires that licensees seeking a conversion provide evidence of compliance with the California Environmental Quality Act (CEQA) if the conversion necessitates additional review pursuant to CEQA. Compliance with CEQA is a requirement for licensure under California law. As the converted Medium or Large Cultivation License may require additional environmental review when compared to the existing licenses that are being converted, a licensee seeking conversion must be required to provide evidence that the premises to be licensed is compliant with laws regarding environmental review requirements. This proposed subsection is necessary to

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ensure that the Department only provides conversions to Medium or Large Cultivation Licenses to licensees who are compliant with environmental review requirements.

Proposed subsection (c) indicates that the Department may request additional information. This proposed subsection is to ensure that the Department is able to obtain all of the information that may be needed in order to make licensing decisions related to specific requests for conversions.

Proposed subsection (d) indicates that the Department shall verify that all requirements for a conversion are met. This is necessary to ensure that only licensees that meet the requirements will receive a conversion. This proposed subsection also indicates that if they requirements are met, the Department will provide notice to the licensee and indicate they may be the applicable license fee provided for in section 15014.2 or 15014. This is necessary to inform the license the requirements have been met and that they can pay the fee. The proposed subsection also requires that a licensee pay the licensing fee applicable to the converted license within 30 calendar days of the notification that the conversion has been approved. The Department has determined that providing 30 days for licensees to pay the license fee for the converted license is appropriate and consistent with similar timelines found in the regulations. The proposed subsection is necessary to clarify for licensees when the license fee must be paid and to allow the Department the ability to effectively collect licensing fees which are used to fund the Department's regulatory operations. The proposed section also indicates that the converted Medium or Large Cultivation License becomes active on the date the fee associated with the converted license is paid in full. This proposed subsection is necessary to indicate to licensees, the Department, and all interested parties when a converted license becomes active. Making the date the license becomes active the same date that payment in full is received is consistent with the Department's practice for all licenses and ensures that fees are paid before a license is active. The proposed subsection indicates that if a licensee is granted a fee deferral, which allows payment of fees after a license becomes active, the converted license will become active on the date the Department provides notice that the conversion requirements have been met and that the fee associated with the converted license shall be paid in accordance with the fee deferral. This is necessary because Business and Professions Code section 26249 requires the Department to implement a fee deferral program no later than January 1, 2023; therefore, it is necessary to inform licensees of when the license will be active if a fee deferral has been granted and to clarify that the fee will remain subject to the fee deferral provisions for when payment is due. The Department determined that the date of the notice was the appropriate date for the license to become active if the licensee has a fee deferral as the only remaining step for the license to be active is payment of the fee.

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Proposed subsection (e) indicates that a conversion shall not be subject to an application fee. As conversions require an existing license, in all cases, the licensee requesting the conversion has already paid an application fee for the existing license. The Department has determined that it is not necessary to charge an additional fee for the conversion. This proposed subsection is necessary to clarify that requests for conversions do not require a separate application fee.

Proposed subsection (f) allows licensees to apply a prorated value of licensing fees paid for the existing licenses to the fee for the converted Large or Medium Cultivation License. The proposed subsection also indicates that the amount credited shall not exceed the converted license fee. As these license types have not been available until now, the Department has determined that it would be appropriate to allow licensees who are seeking a conversion to apply some portion of the license fees of existing licenses to the license fee for the converted license. A license fee paid by a licensee is generally applied to the license period of one calendar year. In most cases where a conversion is requested under the proposed section, the conversion will be taking place prior to the expiration of the existing licenses. Since these licensees have already paid a license fee for the entire 12-month period and there will likely be time remaining on the existing licenses, it is appropriate to apply those payments to the converted license. Additionally, this proration is necessary because each conversion will include multiple licenses with each having its own unique expiration date. Further, the expiration dates are likely to vary widely. Attempting to align expiration dates prior to conversion is not operationally feasible for the Department or licensees, therefore the Department determined that proration of previously paid license fees is appropriate in this circumstance. This proposed subsection is necessary to clarify that amounts paid as licensing fees for existing licenses would not be completely lost in conversion and can potentially be applied to the converted license.

Proposed subsection (g) indicates that once licenses have been converted into a Medium or Large Cultivation License, all other cultivation licenses that exist within the boundaries of the licensed premises and those identified in the conversion process will be cancelled by the Department. This proposed subsection is necessary to ensure that the Department is not maintaining multiple active licenses on the same premises and to clarify for licensees that only one active license can be held at any given time on a particular licensed premises.

Section 16201.1. Large Cultivation Licenses.

The Department proposes adopting section 16201.1, which provides general information regarding the Large Cultivation Licenses.

Proposed subsection (a) states that, beginning January 1, 2023, the Department may begin issuing Large Cultivation Licenses. This is a restatement of Business and

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Professions Code section 26061, subsection (c) and is restated for clarity. This proposed subsection is necessary to provide notice to applicants and licensees as to when Large Cultivation Licenses will be available.

Proposed subsection (a)(1) clarifies that Large Outdoor cultivation licenses are for cultivation sites with more than one acre of canopy. This provision is a restatement of Business and Professions Code section 26061, subsection (b)(1), and is restated here for clarity. The proposed subsection is necessary to provide applicants and licensees with information regarding the canopy size for Large Outdoor Cultivation licenses.

Proposed subsection (a)(2) clarifies that Large Indoor cultivation licenses are for cultivation sites with more than 22,000 square feet of canopy. This provision is a restatement of Business and Professions Code section 26061, subsection (b)(2), and is restated here for clarity. The proposed subsection is necessary to provide applicants and licensees with information regarding the canopy size for Large Indoor Cultivation licenses.

Proposed subsection (a)(3) clarifies that Large Mixed-Light Cultivation Licenses are for cultivation sites with more than 22,000 square feet of canopy. This provision is a restatement of Business and Professions Code section 26061, subsection (b)(3), and is restated here for clarity. The proposed subsection is necessary to provide applicants and licensees with information regarding the canopy size for Large Mixed Light Cultivation Licenses.

Section 16300.1. Cultivation Requirements for Large Licenses.

The Department proposes adopting section 16300.1 which provides the requirements for engaging in cultivation under a Large Cultivation License.

Proposed subsection (a) indicates that Large Cultivation Licensees must comply with requirements applicable to licenses engaging in the cultivation of cannabis. This proposed subsection ensures that licensees cultivating under the Large Cultivation License are aware that they are still required to comply with cultivation requirements found in the regulations that apply to the other cultivation license types. This proposed subsection is necessary to reduce the risk of confusion on the part of Large Cultivation Licensees regarding which of the existing cultivation requirements apply to the license type.

Proposed subsection (b) states that a holder of a Large Cultivation license is not eligible to apply for or hold a Type 8, Type 11, or Type 12 license. This is a restatement of Business and Professions Code section 26061, subsection (d). The provision is restated here for clarity. The proposed subsection is necessary to provide notice to applicants and licensees seeking a Large Cultivation License that obtaining the license would prohibit them from holding other specific license types under the current law.

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Incorporation by Reference

No documents have been incorporated by reference.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents

ERA Economics, LLC. *Analysis of Economic and Fiscal Impacts of Large and Converted Cannabis Cultivation License Regulations* (May 6, 2022).

Economic Impact and Fiscal Impact Assessment

Business Impact

Licensed cultivators will now have the ability to choose to obtain a single large license instead of multiple smaller licenses to engage in cultivation on a larger parcel of land. This will result in the need for fewer individual cultivation licenses overall. Additionally, licensees will have the opportunity to convert existing licenses into a Large or Medium Cultivation License. This provides licensed cultivators with added flexibility in operating their cultivation operations.

Estimated Costs to Businesses

Costs to licensed cultivators include one-time conversion costs such as reviewing the new regulations and preparing a request for conversion which is estimated to equal \$7,585 per Large Cultivation License. The estimated one-time cost for converting a Medium Cultivation License is approximately \$1,385. The estimated annual costs to licensed cultivators to maintain a Large Cultivation License is approximately \$3,000 for internal staff and legal/consulting resources used to maintain the license. The estimated annual cost of maintaining a Medium Cultivation License is approximately \$1,500. The total annual gross direct costs to licensed cultivators are estimated to equal \$1.295 million per year during the lifetime of the regulation.

Estimated Benefits of Regulation

The reduction in the overall number of licenses due to the availability of Large Cultivation Licenses leads to a reduction in the amount of licensing fees paid by licensed cultivators and a reduction in the annual costs for licenses that would be converted to Large or Medium Cultivation Licenses. It is estimated that under the proposed regulations, 4,239 existing cultivation licenses will be consolidated into 319 Large Cultivation Licenses. Additionally, it is estimated that 103 existing cultivation licenses would be consolidated into 29 Medium Cultivation Licenses.

It is estimated that savings in total annual license fees paid by cultivators will equal \$4.549 million per year. The estimated annual operating cost savings per stacked license due to reduced owner time and reduced hours for consulting and/or legal

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services is approximately \$1,102 per license. Multiplied over the total reduction in licenses, the estimated total gross cost savings for operational costs of cultivation businesses is approximately \$4.787 million per year. Therefore, the estimated direct benefit to cultivation businesses equals \$9.336 million per year.

When compared to the estimated cost to businesses, the direct net benefit to cultivation businesses from the proposed regulations is estimated to equal \$8.041 million per year.

Economic Impact Assessment

The proposed regulations will not have a significant adverse economic impact on businesses.

In relation to jobs, the Department anticipates a total net increase of 18.3 Full-Time Equivalent (FTE) jobs. The proposed regulations are expected to eliminate 21.9 FTE jobs and create 40.3 FTE jobs. All jobs are expected to be in cannabis cultivation or related industries.

The proposed regulations would affect approximately 333 businesses. Of these businesses 300 are estimated to meet the criteria for being classified as a small business. The representative costs for a typical business to convert all licenses to a Large Cultivation License would equal \$7,625 in one-time costs, followed by \$3,000 annually. The annual benefits would equal \$5,900 in reduced business expenses, as well as between \$0 and \$6,480 in annual license fee savings, depending on the cultivation method. The annual cost savings associated with the proposed regulations for a small business equals \$2,600.

The proposed regulations would neither create nor eliminate businesses. The proposed regulations may encourage expansion of businesses in the State as there is an opportunity and incentive for cultivators to expand to realize economies of scale. The proposed regulations would not affect the ability of businesses in the State to compete.

The proposed regulations are estimated to result in a total net increase of 18.3 FTE jobs, \$9.014 million in labor income, \$2.339 million in value added, and \$4.424 million in total output.

The proposed regulations would not affect worker safety.

The proposed regulations would also provide benefits to the State's environment that are not monetized. This may include encouraging more cannabis businesses to remain in the licensed market. To the extent that unlicensed cannabis operations can cause negative environmental impacts, the proposed regulations would provide indirect benefits to the State's environment. In addition, consumers could benefit to the extent that some of the producers' cost savings are passed on to them.

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Fiscal Effect on State Government

There is likely going to be an increase in the Department staff time needed in the first year to accommodate the shift to Large Cultivation Licenses. However, the annual staff time required to manage licenses will decrease in subsequent years as there will be fewer individual cultivation licenses. There is also expected to be an increase in cultivation license fee collected in the first year, followed by a decrease in cultivation license fees collected in subsequent years as there will be fewer licenses overall. It is estimated that Department license fee revenue will decrease by \$4.5 million annually.

Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: Reduction of \$4.5 million in license fees.

Cost or savings in federal funding to the state: None.

Effect upon housing: There is no effect on housing.

Specific Technologies or Equipment

None.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The first alternatives considered for the proposed regulations concerns the method for determining the annual license fee for the Large Cultivation Licenses being introduced through the proposed regulations. The proposed regulations include a method for determining the appropriate annual license fee for a Large Cultivation License based on the total canopy size of the cultivation. This method is consistent with the methods currently used for determining the licensing fees for all other existing cultivation license types. The Department considered an alternative method of determining the licensing

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fees based on a measure of output rather than canopy size. The annual license fees for a number of commercial cannabis license types regulated by the Department are determined by the licensed business' annual gross revenue. Another potential measure of output could be a measure of the physical amount of cannabis harvested as the basis for determining the annual license fee. The Department considered applying a similar method using a measure of output such as gross revenue or total pounds of cannabis harvested to determine the license fees for Large Cultivation Licenses. Currently, all cultivation license types regulated by the Department have annual license fees that are determined based on the canopy size. At this time, it is not clear which of the methods would be less expensive to implement or more effective. The Department has determined that either method may be reasonably used to determine an effective annual license fee for Large Cultivation Licenses. To keep the annual license fee calculation for Large Licenses consistent with the calculation for annual license fees for all other types of cultivation licenses, the Department has decided to determine the annual license fee for Large Cultivation Licenses based on canopy size as proposed in the regulations, rather than determining the annual license fee based on a measure of output. By keeping the method for determining license fees consistent among all cultivation license types, the Department hopes to reduce any confusion that may occur among licensees and applicants who are seeking a cultivation license.

The second alternative considered by the Department was to not develop new regulations. The Department would not create new regulations to provide guidance for applicants and licensees who seek to obtain a Large Cultivation License. The Department would rely only on existing regulations. The current regulations were not developed with the Large Cultivation Licenses in mind and do not currently contain any provisions that are specific to Large Cultivation Licenses. This alternative would be less costly than the method proposed within the regulations as it would not require the Department to take any action. However, this alternative is much less effective than the proposed regulations. Failing to provide licensees and applicants with clear information regarding Large Cultivation Licenses prior to the January 1, 2023, date when the licenses become available will likely cause confusion for licensees and applicants. Additionally, failing to provide applicants and licensees with a clear process for obtaining Large Cultivation Licenses will likely result in none of these licenses being issued. Failure to provide Large Cultivation Licenses will deny both the commercial cannabis industry and the Department the benefits intended by the statutory language by eliminating the net direct economic benefits of the proposed regulations. Any cost savings to both businesses and the Department due to the availability of the Large Cultivation License type will not be realized. For the stated reasons, the Department has decided not to implement this alternative to the proposed regulations.

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