

Department of Cannabis Control
California Code of Regulations Title 4, Division 19
Notice of Proposed Rulemaking

Notice Date: June 17, 2022

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.

Notice is hereby given that the Department of Cannabis Control (Department) proposes to adopt the proposed regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

Public Hearing

The Department will hold a virtual public hearing at the following date and time listed below:

Tuesday, August 1, 2022 – 1:00 PM to 4:00 PM

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Charisse Diaz at Charisse.Diaz@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on **July 29, 2022**, to request a link to the meeting. Links to the meetings will also be posted on the Department's website no later than 9:00 a.m. the day of the hearings.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact

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Charisse Diaz at Charisse.Diaz@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on **July 29, 2022**, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 4:00 PM, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that a person who makes oral comments at the hearing also submits a written copy of their testimony via email.

Written Comment Period

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments may be submitted by mail or e-mail to the addresses listed below.

Comments submitted must be received by the Department at its office by 5:00 p.m. on August 2, 2022.

Submit comments to:

Department of Cannabis Control
Legal Affairs Division
2920 Kilgore Road
Rancho Cordova, CA 95670
E-mail: publiccomment@cannabis.ca.gov

Authority and Reference

Business and Professions Code section 26013 authorizes the Department to adopt these proposed regulations. 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, interpret, and make specific the requirements for obtaining a Large Cultivation License under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, section 26000 et. seq.)

Informative Digest / Policy Statement Overview

The purpose of these regulations is to implement, interpret, and make specific requirements for obtaining a Large Cultivation License under MAUCRSA. These regulations also provide a pathway for existing licensees to convert to a Large Cultivation License once the license type becomes available on January 1, 2023.

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Additionally, the regulations provide a pathway for existing licensees to convert to Medium Cultivation Licenses once the limitation on the number of such licenses that may be held by the same owner expires.

Existing Law

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. Application requirements, fees, and other general requirements for all license types are contained in Chapter 1, Division 19, of Title 4 of the CCR. Requirements for the cultivators are contained in Chapter 7, Division 19 of Title 4 of the CCR. Business and Professions Code section 26061, subsection (c) allows the Department to begin issuing Large Cultivation Licenses on January 1, 2023. Additionally, CCR, title 4, section 16209 prohibits a person or owner from holding more than one Medium Cultivation License until January 1, 2023.

Policy Statement

This rulemaking action would specify the rules governing Large Cultivation Licenses which the Department may begin issuing on January 1, 2023. The proposed regulations would provide applicants and licensees with the requirements for applying for a Large Cultivation License or converting smaller sized cultivation licenses into a Large Cultivation License. Similarly, the proposed regulations would provide applicants and licensees with the requirements for converting smaller sized cultivation licenses into the Medium Cultivation Licenses. The prohibition of holding more than one Medium Cultivation License is set to expire on January 1, 2023. The proposed regulations would provide applicants and licensees with the application fees and annual licensing fees that must be paid in order to obtain and operate under a Large Cultivation License. The same proposed regulations would allow the Department to collect application and annual licensing fees that are required in order to effectively issue and regulate Large Cultivation Licenses. Additionally, the proposed regulations would provide licensees with the requirements that must be followed when engaging in cultivation under a Large Cultivation License.

Regulation Objectives and Anticipated Benefits of the Proposed Regulations

The broad objective of the proposed regulations is to integrate the newly available Large Cultivation license into the Department's existing commercial cannabis licensing system. 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 cultivation licenses into a Large Cultivation License

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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.

Adoption of the proposed regulations will provide clear guidance to applicants and licensees seeking a Large Cultivation license. The proposed regulations will provide applicants and licensees with specific guidance regarding applying for Large Cultivation Licenses, payment of application and annual license fees for Large Cultivation Licenses, and the cultivation requirements for operating under a Large Cultivation License. Additionally, the proposed regulations will allow the Department to issue Large Cultivation Licenses, collect fees relating to Large Cultivation Licenses, and regulate Large Cultivation Licenses in a manner that is consistent with all other commercial cannabis license types regulated by the Department. The regulations will also allow cultivators to convert smaller cultivation licenses into a Large or Medium Cultivation License with a cultivation area that is the equivalent of the combined smaller licenses, which will result in efficiencies and added flexibility for cultivation licensees, as well as increased efficiencies for the Department.

The proposed regulations will allow the Department to issue Large Cultivation Licenses beginning January 1, 2023, as allowed under Business and Professions Code section 26061, subsection (c). The proposed regulations will clarify the requirements and the process for obtaining a new Large Cultivation License. Under the proposed regulations, licensees and applicants may obtain a new Large Cultivation either through application for a new license or through conversion of existing cultivation licenses. The proposed regulations clarify the requirements and the process for obtaining a Large Cultivation License using either method. This will reduce the risk of confusion for licensees and applicants who are seeking a Large Cultivation License beginning the January 1, 2023, date when Large Cultivation Licenses become available

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.

The proposed regulations provide clear guidance regarding the requirements that a cultivator must comply with to engage in the commercial cultivation of cannabis under a Large Cultivation License. This will reduce the risk of confusion regarding what requirements are applicable to the newly available license.

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The introduction of the Large Cultivation license is likely to result in increased efficiency as well as providing licensed cultivators additional flexibility in operating their businesses. Prior to the introduction of the Large Cultivation Licenses, licensed cultivators who were engaging in cultivation activities on land that exceeded the maximum size of a small or medium license were required to obtain multiple cultivation licenses. With the Large Cultivation License becoming available, cultivation licensees who in the past had to apply for and maintain multiple cultivation licenses may now conduct their cultivation activities under one license. This will result in an overall net direct cost savings to cultivation businesses that is estimated to be \$8.041 million per year. The addition of the Large Cultivation License is expected to result in an increase of jobs within the state. Additionally, consolidating multiple smaller cultivation licenses into one Large or Medium Cultivation License is likely to result in increased efficiency for the Department as the administrative and regulatory costs of issuing and maintaining one license for a single cultivation site on a single parcel of land is likely to be substantially less than the costs for issuing and maintaining multiple cultivation licenses on that same parcel of land.

After an initial increase in Department staff time needed in the first year to accommodate the initial shift to Large Cultivation Licenses, the annual staff time required to manage cultivation licenses will decrease in subsequent years as there will be fewer cultivation licenses overall.

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.

Section 15014.2. Fees—Large Cultivation License.

This section would specify the fees for the Large Cultivation License. The section would provide fees, set in accordance with existing fees, for applications and would establish a base license fee with incremental increases based on additional square footage of canopy.

Section 15027.1. Conversion to Large and Medium Cultivation Licenses.

In recognition of existing license holders and current restrictions on Large and Medium Cultivation Licenses, this section would provide a pathway for conversion. The section would specify the requirements for conversion, information to be submitted for a conversion, when a converted license becomes active, when the associated fee must be paid, and resolve issues with multiple expiration dates by prorating previously paid license fees.

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Section 16201.1. Large Cultivation Licenses.

This section would provide the general rules and requirements governing Large Cultivation Licenses.

Section 16300.1. Cultivation Requirements for Large Licenses.

This section would specify that the requirements for cultivating cannabis under a Large License are the same as those for other cultivation license types. This section would also restate statutory prohibitions on specific license types that may not be held by Large Cultivators.

Incorporated by Reference

There are no documents incorporated by reference.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

Evaluation of Inconsistency with Federal Regulation Statute

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

Plain English Requirement

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

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.

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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 on Housing Costs: The proposed regulations will have no fiscal or other effect upon housing in the state.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The proposed regulations would affect approximately 319 businesses. Of these businesses 300 are estimated to meet the criteria for being classified as a small business. The annual cost savings associated with the proposed regulations for a small business equal \$2,600.

Cost Impacts on a Representative Private Person or Business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Economic Impact and Fiscal Impacts

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 be \$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 roughly \$1,500. The total annual gross direct costs to licensed cultivators is estimated to be \$1.295 million annually.

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 regulatory costs for the Department. It is

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estimated that under the proposed regulations 4,239 existing cultivation licenses will be consolidated into 319 Type 5 Large Cultivation License. Additionally, it is estimated that 103 existing medium cultivation licenses would be consolidated into 29 Medium Cultivation Licenses.

It is estimated that the reduction in total annual license fees paid by cultivators will equal a total of \$4.549 million a year. The estimated annual operating cost savings per stacked license due to reduced owner time and reduced hours for consulting and/or legal services is roughly \$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 total cost benefit to cultivation businesses is estimated at \$9.336 million annually.

When compared to the estimated cost to businesses, the direct net benefit to cultivation businesses from the proposed regulations is estimated to be \$8.041 million a 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 319 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 be \$7,625 in one-time costs, followed by \$3,000 annually. The annual benefits would be \$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 equal \$2,600.

The proposed regulations would neither create nor eliminate businesses. The proposed regulations are likely to 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.

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Benefits of the Proposed Regulation

The proposed regulations would not affect the health and welfare of California.

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.

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.

Consideration of Alternatives

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The first alternative 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.

Contact Person

Inquiries concerning the proposed administrative action may be directed to:

Charisse Diaz
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9025
Charisse.Diaz@cannabis.ca.gov

The backup contact person for these inquiries is:

Kaila Fayne
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-251-4544
Kaila.Fayne@cannabis.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting the contact person at the address, email or phone number listed above.

Availability of Changed or Modified Text

After considering all timely and relevant comments received, the Department may adopt the proposed regulations, substantially, as described in this Notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

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Availability of The Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the contact person at the above address, email, or phone number indicated above.

Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Department's website at www.cannabis.ca.gov/resources/rulemaking/.