

**Department of Cannabis Control
California Code of Regulations Title 4, Division 19**

Notice of Modifications to Text of Proposed Regulations

Notice Date: August 30, 2022

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

Sections Affected: Title 4, California Code of Regulations, sections 15014.2, 15027.1, 16201.1, and 16300.1.

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of title 1 of the California Code of Regulations, the Department of Cannabis Control (Department) hereby provides notice of changes made to the proposed regulation sections listed above which were the subject of public hearing on August 1, 2022. The text of the regulation with proposed modifications is attached to this Notice.

The Department will accept written comments on the proposed changes from August 30, 2022, to 5:00 p.m. on September 15, 2022. All written comments received by 5:00 p.m. on September 15, 2022, will be summarized and responded to in the Final Statement of Reasons. **Please limit your comments to the modifications to the text.** Modifications to the text are displayed in either **bold, double underlined** or ~~**bold, double strikethrough**~~ type font.

Written Comment Period

Written comments may be submitted by mail or e-mail to the address listed below. **Comments submitted must be received by the Department at its office by 5:00 p.m. on September 15, 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.)

Updated Informative Digest

Section 15027.1. Conversion to Large and Medium Cultivation Licenses

Proposed subsection (b) has been amended to include the words “an eligible licensee” for clarity. This is necessary to make sure applicants and licensees understand that only those who meet the eligibility requirements should submit a request for conversion and provide the required information. This proposed change does not alter the substance of the subsection.

Proposed subsection (b)(7) has been added to the proposed section. The proposed subsection requires that licensees seeking conversion to a medium or large cultivation license identify owners and financial interest holders for the converted license. The proposed subsection also requires that all information pertaining to owners and financial interest holders, that would be collected in a license application, be submitted. The proposed subsection also clarifies that this information shall be submitted by entering it into the appropriate fields in the Department’s licensing system. This requirement is necessary to ensure that the Department obtains accurate information regarding the owners and financial interest holders for the converted license. This is also necessary to explain how to submit the information and to ensure it is entered into the system appropriately, as those requesting a conversion will not be submitting a new application. Additionally, the requirement allows to Department to verify that the ownership for the converted license is consistent with the ownership on record for the licenses that are being converted, as required in proposed subsection (a)(2).

There were no other changes in the laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of the Proposed Regulatory Action.

Section 16300.1. Cultivation Requirements for Large Licenses

Proposed subsection (b) has been amended to further clarify and implement the restriction found in Business and Professions Code section 26061, subsection (d), which prohibits a licensee who holds a Type 5 license from applying for or holding a Type 8, Type 11, or Type 12 license. The clear intent of this provision is to prevent a

single business from obtaining a Type 5 license in combination with any of the licenses listed. However, the term “hold” is not defined by statute. The Department has determined that it is necessary to clarify which individuals are considered to hold commercial cannabis licenses. This is necessary to prevent those persons that have an interest in a Type 5 license from holding certain additional types of commercial cannabis licenses, specifically distribution activities under Type 11 or Type 12 licenses, as such activities may allow for monopolistic behavior through vertical integration. The proposed amendment clarifies the statutory restriction by explicitly stating that persons identified as owners or financial interest holders of a licensee that holds a Type 5 license would also be prohibited from applying for or holding a Type 8, Type 11, or Type 12 license, or being an owner or financial interest holder of a licensee that holds both a Type 5 license and a Type 8, Type 11, or Type 12 license. The addition is necessary to clarify the requirement in alignment with the intent of the statutory language. The statutory language alone may potentially be interpreted to allow a business to bypass the restriction by simply creating a separate business entity that is still controlled by the business or same individuals, to hold the large cultivation license. Under this interpretation, a single business could hold both a Type 5 license through ownership in one entity, while also holding a Type 8, Type 11, or Type 12 license through ownership of a separate entity. This would violate the intent of the restriction found in Business and Professions Code section 26061, subsection (d). Owners include persons that hold equity interests in the licensed business as well as persons that exercise direction, control, and management of the license. Financial interest holders are identified as persons that do not rise to the level of owner but may have an equity interest in the license and may exert direction of a certain portion of licensed activities for shares of profits. As both owners and financial interest holders are able to exert influence and control over the operations, capturing both as persons that hold a license is essential.

Proposed subsection (c) has been added to the section. The proposed subsection indicates that the act of applying for, or requesting a conversion to, a Large Cultivation license constitutes an attestation by the applicant or licensee that no person who holds an ownership or financial interest in the Large Cultivation license being sought also holds an ownership or financial interest in a Type 8, Type 11, or Type 12 license, in violation of Business and Professions Code section 26061, subsection (d). The proposed subsection also requires that an applicant or licensee submitting an application or request for conversion for a Large Cultivation license to attest that no person who will hold an ownership or financial interest in the Large Cultivation license will, in the future, obtain an ownership or financial interest in a Type 8, Type 11, or Type 12 license while maintaining their interest in the Large Cultivation license. This proposed subsection is necessary to ensure that the Department receives adequate assurance from applicants and licensees that they are not currently violating and will not in the future violate the provisions of Business and Professions Code section 16061, subsection (d). Additionally, the proposed subsection provides applicants and licensees who are seeking to obtain a Large Cultivation license additional clarification regarding the restrictions, found in Business and Professions Code section 26061, pertaining to

Large Cultivation licenses. Licensees and applicants who provide false information in the form of the required attestation are potentially subject to discipline from the Department. The proposed subsection provides licensees with notice that the submission of a separate attestation is not required and that by submitting an application or conversion request for a Large Cultivation license, they are attesting that they are in compliance and will continue to comply with Business and Professions Code section 26061, subsection (d).

There were no other changes in the laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of the Proposed Regulatory Action.

Incorporated by Reference

The following documents are incorporated into the regulations by reference:

There are no documents incorporate by reference.

Contact Person

Inquiries concerning the proposed administrative action may be directed to:

Charisse Diaz
Department of Cannabis Control
Legal Affairs Division
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
Legal Affairs Division
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 Charisse Diaz 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 Charisse Diaz 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.

Availability of The Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Charisse Diaz 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 proposed regulations can be accessed through the Department's website at: <https://cannabis.ca.gov/cannabis-laws/rulemaking/>.