

CALIFORNIA CODE OF REGULATIONS

Title 3. **FOOD AND AGRICULTURE**

Division 8. **CANNABIS CULTIVATION**

Chapter 1. **CANNABIS CULTIVATION PROGRAM**

Initial Statement of Reasons

The Problems and Legislative Requirements to Resolve Them

The California Department of Food and Agriculture (Department) is required by law to regulate the cultivation of commercial cannabis, pursuant to Senate Bill 94 (Committee on Budget and Fiscal Review, Chapter 27), which was enacted by the California State Legislature and signed by Governor Edmund G. Brown, Jr. on June 27, 2017.

Senate Bill 94, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), requires the Department to license commercial cannabis cultivation operations in California; establish a track-and-trace system to track commercial cannabis activities from seed to sale; and create reasonable rules and regulations to implement, administer, and enforce these actions. The regulations outlined here are intended to address how the Department plans to meet this obligation.

The Benefits

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 proposed regulations promote a fair and equitable marketplace for licensed commercial cannabis cultivators in California and are 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 the environment through implementation of environmental protection measures and enforcement of existing environmental protection laws;
- Creating legitimate businesses and tax revenue sources;
- Increasing worker safety through enforcement of existing employee protection laws;
- Reducing crime.

Another essential component of these regulations is 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 a cannabis product to the source, thereby preventing untested and unlicensed 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, thereby preventing diversion of regulated product to the unregulated market or inversion of unregulated product into the regulated market.

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 medicinal and adult-use cannabis from the cultivation stage through the production chain, in accordance with BPC Section 26067.

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 these code sections. The Chapter will have seven Articles, each containing rules for different aspects of the licensing program. The purpose and necessity of each Article are explained below.

Article 1. Definitions

Section 8000 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 26001. They have been duplicated in the proposed regulations for ease of reference and to provide clarity and understanding for the regulated public. Those definitions are: **applicant, batch, bureau, commercial cannabis activity, cultivation, cultivation site, dried flower, lot, nursery, person, premises, and unique identifier**. The remaining definitions were drafted for reasons outlined below.

Subsection (a) defines **Act**. This definition is added to simplify references to all code sections under MAUCRSA and the authority granted to the Department as a part of it.

Subsection (c) defines **applicant entity**. This definition is added to clarify what information is required about an entity or sole proprietor in the application and is necessary to distinguish between the applicant who must be the owner of the entity or sole proprietorship and the business that is applying for a license.

Subsection (f) defines **canopy** as the area a licensee will use for mature plants and provides how to calculate canopy. The definition allows for non-contiguous canopy areas under one license. If licensees are utilizing shelves for their mature plants, each shelf area will need to be included in the canopy calculation to ensure all mature plant production is accounted for. These proposed regulations are added to clarify the

statutory reference to canopy throughout MAUCRSA, specifically BPC Section 26061(a), where license size limits are determined by canopy. The canopy limits defined in BPC Section 26061(a) for producers of mature plants and the lack of canopy limits for nursery licenses led the Department to believe the intent of MAUCRSA was to restrict canopy to mature plant production areas. The Department considered definitions from various counties as well the traditional agriculture definition of canopy, which would not count the space between plants as canopy. However, the Department rejected these definitions as unreasonable to apply when determining license type sizes and concluded that it was reasonable to require identifiable boundaries in order to determine canopy.

Subsection (j) defines **Department**. This is to simplify references to the California Department of Food and Agriculture throughout the proposed regulation text and is consistent with other Department regulations.

Subsection (l) defines **flowering** as the stage in plant development when flowers begin to form. These proposed regulations are added to clarify when a plant is officially considered mature by the Department. Feedback from industry stakeholders, as seen in the Department's *Medical Cannabis Cultivation Program, Scoping Report*, indicated that flowering is associated with when the plant begins to bloom and produce a flower or harvestable "bud". The Department determined this definition is reasonable because it is congruent with other states' cannabis regulations defining flowering as the cannabis plant being in a reproductive state with physical signs of flower budding. As canopy measurements determine the license type issued by the Department, and will only include mature plants, providing a measurable point during the growth of a cannabis plant in which plants will be considered mature provides transparency to cultivators and consistency for enforcement.

Subsection (m) defines **immature plant** as a cannabis plant that has produced a leaf or roots, but is not yet flowering. These proposed regulations are added to differentiate between the canopy and other areas at a cultivation site and provide transparency to

cultivators and consistency for enforcement of canopy and plant tagging requirements. The Department determined this definition is reasonable because it is congruent with other states' cannabis regulations, which define immature plants as those that are nonflowering. Feedback and comments from industry stakeholders, as seen in the Department's *Medical Cannabis Cultivation Program, Scoping Report*, indicated that the time period up until flowering is what the industry within the state of California determines to be an immature plant.

Subsection (n) defines **indoor cultivation** as a method of cultivation within a permanent structure or in any structure that uses more than twenty-five watts per square foot of artificial light. These proposed regulations are added to clarify BPC Section 26061(a). The Department was required by MAUCRSA to determine a threshold for artificial lighting used in mixed-light cultivation. This artificial lighting threshold provides a distinction between indoor and mixed-light cultivation; cultivation methods above the artificial lighting threshold for mixed-light are considered indoor. The analysis the Department used to determine twenty-five watts per square foot is detailed in the description of the mixed-light definition below. This definition will enable applicants to determine the appropriate license type for their cultivation site and the fees associated with application and licensing.

Subsection (o) defines **kief** as the trichomes that accumulate or are separated from cannabis. This definition is necessary to provide clarity where this term is used in other portions of the regulations. The Department arrived at this term by looking at other definitions and also in consultation with the California Department of Public Health.

Subsection (p) defines **licensee** as a person issued a license by the Department specifically for cultivation activities and clarifies that references to the term licensee used in these proposed regulations are not extended to other segments of commercial cannabis. This definition is necessary to clarify the definition of licensee in BPC Section 26001(z).

Subsection (q) defines **light deprivation** as the use of any technique to eliminate natural light to induce flowering. This definition is necessary to ensure the use of the term is consistent throughout the newly regulated industry.

Subsection (s) defines **mature plant** as a cannabis plant that is flowering. These proposed regulations are added to clarify BPC Section 26061(a). Mature cannabis production is highly regulated by the Department to ensure public safety is not threatened by the inversion or diversion of product to the illicit market, to ensure all licensees are in compliance with license type size limits, and to maintain the integrity of the regulated market. This definition is necessary for Program staff and licensees to differentiate between the canopy and propagation areas at a cultivation site, for applicants and licensees to determine the license type, and to clarify when plants must be individually tagged in the track-and-trace system. All plants producing flowers must be individually tagged and accounted for in the track-and-trace system as further detailed in Section 8402 of these proposed regulations.

Subsection (t) defines **mixed-light cultivation** as the cultivation of cannabis using a combination of artificial light or light deprivation and natural light.

Subsection (t)(1) defines mixed-light cultivation as the cultivation of cannabis in a structure using light deprivation and natural light and an artificial lighting model separated into two tiers. The first tier artificial lighting model allows light deprivation to be used with no artificial light and includes the use of artificial light at a rate above zero watts per square foot, but no more than six watts per square foot. The Department determined that it was necessary to include the use of light deprivation as mixed light cultivation, even if no artificial lights are used because light deprivation can be used to obtain multiple harvests in the same way artificial light and natural light can be used to obtain multiple harvests. The second tier artificial lighting model is at a rate above six and below or equal to 25 watts per square foot. Further explanation for the watts per square foot thresholds for the two tiers is provided below.

Subsection (t)(2) defines mixed-light cultivation as the cultivation of cannabis in a structure using natural light and an artificial lighting model also divided into two tiers. The first tier requires a use of artificial lighting at a rate above zero watts per square foot, but no more than six watts per square foot. The second tier artificial lighting model is at a rate above six and below or equal to 25 watts per square foot.

These proposed regulations are added to provide a clear differentiation from indoor and outdoor cultivation and to specify the maximum threshold for mixed-light cultivation required by BPC Section 26061(a). To determine the threshold, the Department solicited stakeholder feedback in December 2016 through a survey about light use in various cultivation methods. A total of 303 responses were collected and analyzed by the Department. Of the 303 responses, 132 survey participants indicated they were indoor cultivators. Of the 132 indoor cultivators, 95 percent reported using more than twenty-five watts per square foot to induce flowering of the plants. The remaining survey participants identified themselves as outdoor or greenhouse cultivators and reported using sunlight or less than twenty-five watts per square foot to induce flowering.

The Department used this data to determine that a reasonable maximum threshold for mixed-light cultivation is twenty-five watts per square foot. The survey and methodology are summarized in the Department's *CalCannabis Light Use Survey*. Light deprivation is included in the proposed definition of mixed-light cultivation because light deprivation is an artificial means of manipulating the natural growing cycle of cannabis resulting in the potential of multiple harvests annually. This differentiation is important in establishing appropriately scaled licensing fees and for the Department to ensure appropriate resources are available to ensure compliance at sites with potential for multiple harvests. The Department is proposing to tier the amount of light used per square foot in a canopy area after receiving comments on regulations proposed for the Medical Cannabis Regulation Safety Act. Stakeholders provided input that cultivation techniques generally used above six watts per square foot or well below six watts per square foot and closer to zero. Tiering the mixed-light license category will enable the Department to fairly distribute licensing fees to cultivators.

Subsection (u) defines **net weight** of harvested cannabis as that which meets the requirements in Section 8406(b). For further detail please see Section 8406(b) below. This definition is necessary to ensure licensees accurately enter the appropriate information into the track-and-trace system and to be consistent with the Revenue and Taxation Code Section 34010 definition for cannabis flower and leaf which are described as the dry weight of flower and leaf.

Subsection (v) defines **nonmanufactured cannabis product** as flower, shake, leaf, pre-rolls, and kief that is obtained from the method prescribed in the definition. These proposed regulations are added to clarify when cannabis products require a manufacturing license from products containing only raw cannabis that are allowed to be produced under a cultivation license. This provision allows cultivators to do a minimal amount of processing and packaging under a cultivation license without requiring the cultivator to also get a manufacturing license from the California Department of Public Health. With respect to kief, it also prescribes the process by which kief may be obtained so that it remains a processing activity and not a manufacturing activity that would require a manufacturing license. Based on input from scoping meetings the Department held across the state, this distinction will reduce the regulatory burden on the industry without impacting accurate tracking and testing of regulated products. The Department also consulted with the California Department of Public Health to ensure that there was no conflict and the definition was reasonable for those products that are not manufactured.

Subsection (x) defines **outdoor cultivation** as a method of cultivation that does not use light deprivation techniques or artificial light to induce flowering. It does allow for lights to be used to maintain immature plants to use as a source for propagation (mother plants). These proposed regulations are added to clarify BPC Section 26061(a) and differentiate between outdoor cultivation and cultivation methods using light manipulation to increase the number of harvests per year. The Department needs measurable parameters to define a cultivation method to ensure effective enforcement of the Program

requirements. This definition will enable applicants to easily determine the appropriate license type for their cultivation site and the fees associated with application and licensing.

Subsection (y) defines **pest** as a detrimental disease, insect, or weed. These proposed regulations are added to clarify what the program considers a pest for enforcement of potential pest infestations. This definition is consistent with California Food and Agricultural Code Section 12754.5.

Subsection (aa) defines **pre-roll** as any of the following rolled in paper flower, shake, leaf, pre-rolls, or kief that is obtained in the method described in the definition. The inclusion of a definition for pre-rolls is necessary to maintain its integrity as a nonmanufactured cannabis product. With respect to kief, it also prescribes the process by which kief may be obtained so that it remains a processing activity and not a manufacturing activity that would require a manufacturing license. The proposed regulation clarifies the intent to allow the production of pre-rolls as nonmanufactured cannabis products which may otherwise become a manufactured product with the addition of manufactured cannabis products, which would require a manufacturing license from the California Department of Public Health.

Subsection (ab) defines **processing** as activities performed at cultivation sites that do not include planting or growing cannabis. This definition clarifies what activities can occur on a licensed processor premises. The “processor” license is added as a new license type in Section 8303 of these proposed regulations. The definition was developed as a result of feedback provided at stakeholder meetings and is necessary to distinguish between traditional cultivation activities and those used solely for the preparation of cannabis for manufacturing or as a finished product.

Subsection (ac) defines the **track-and-trace system** as the state-approved system for tracking commercial cannabis activity and movement. These proposed regulations are

added to clarify BPC Section 26067 and ensure uniform understanding and use of the term.

Subsection (ae) defines **watts per square foot** as the light wattage used to flower plants divided by the area where the flowering is occurring. These proposed regulations are added to specify the approved methodology for determining how many watts per square foot a cultivation site uses to determine which license type applies. This definition was developed based on the scientific basis of this term and is consistent with how it is used with respect to energy usage.

Subsection (af) defines **wet weight** of harvested cannabis. This definition is necessary to ensure licensees enter accurate information in the track-and-trace system and to facilitate the calculation of the cultivation tax post-harvest pursuant to Revenue and Taxation Code Section 34012(a).

Article 2. Applications

Section 8100 Temporary Licenses

As established in BPC Section 26050.1, the Department has exercised discretion for the issuance of temporary commercial cultivation licenses. This section establishes the requirements for issuance of a temporary license and the Department's procedure for verifying local compliance.

Subsection (a) establishes the procedural requirement for the submission of temporary license application.

Subsection (b) establishes the required information and documentation necessary for an applicant to provide the Department for review prior to issuing a temporary commercial cannabis cultivation license. Subsubsection (1) includes the requirement of an applicant to designate whether they are applying for an A-license or M-license. This is necessary because some local jurisdictions have ordinances that only allow medicinal cannabis activity and licensees will need to clearly identify themselves as M-licensees,

as opposed to A-licensees. Designation as either an A-license or an M-license allows cultivators to become licensed by the Department and engage in the statewide regulated cannabis market while maintaining compliance in accordance to the ordinances in place by the local jurisdiction.

Subsection (b) including subsections (2) and (3) requires provision of information related to the applicant and business to allow the Department to cross reference records. Subsection (b)(4) requires the applicant to provide contact information for a designated responsible party who is an owner with legal authority to bind the applicant entity, serve as the agent of service of process, and to serve as the primary contact. As temporary applications do not require the disclosure of all owners and financial interests related to the license, this subsection ensures that the Department will have the ability to contact the designated responsible party for information pertaining to the application with the authority to make changes to the application.

Subsection (b) including subsections (5), (6), (7), (8), and (9) require the applicant to provide information pertaining to the physical premises. While applicants are required to be authorized by the local jurisdiction for commercial cannabis cultivation prior to state licensure by statute, the additional requirements of a cultivation plan, identification of water sources, and evidence of enrollment with an applicable water quality protection program have been added to mitigate the increased potential risk of environmental degradation. The cultivation plan was also required to assist the Department in distinguishing between multiple applications on the same parcel, which is necessary to determine which temporary licensees have applied for an annual application. The additional required documentation is based upon environmental protections recommended the Department's *Literature Review on the Impacts of Cannabis Cultivation* and was deemed necessary by the Department and other consulting state agencies to mitigate potential environmental risks to instream flow, water quality, and fish and wildlife.

Subsection (c) establishes the process by which the Department will confirm the validity of a local license, permit, or other authorization voluntarily submitted by an applicant in accordance with BPC Section 26055(e). The statute permits the Department to presume that an applicant that voluntarily submits a local license, permit, or other authorization is in compliance with local ordinances. However, local jurisdictions expressed concerns to the Department that invalid authorizations may be submitted and requested the opportunity to confirm the document's validity. In order to accommodate the request, the Department added a process for confirmation that parallels the confirmation process for annual licenses. After reviewing feedback and comments from local jurisdictions the Department determined ten (10) calendar days to be a reasonable amount of time for a local jurisdiction to provide local authorization for a temporary license.

Subsection (d) specifies that the temporary license is only valid for 120 days from the effective date and that no temporary license is effective prior to January 1, 2018. This has been added to clarify and be consistent with the requirements in BPC Section 26050.1.

Subsection (e) specifies that at the Department's discretion, a temporary license may be extended for 90-day periods only if a complete application has been submitted pursuant to the application requirements in Section 8102. This has been added to clarify and be consistent with the requirements in BPC Section 26050.1.

Subsection (f) provides that the issuance of a temporary license does not obligate the Department or create a vested right for the temporary licensee to get an annual license. This has been added to clarify and be consistent with the requirements in BPC Section 26050.1.

Subsection (g) states that temporary applications and licenses are exempt from fees. The Department determined that it was not necessary to charge fees for temporary licenses because the time and effort it would take to collect fees would be more than the

time and effort staff would spend processing the applications. In the early part of 2018 when most of the temporary applications were processed, the Department had no mechanism to collect cash, which would have been necessary if fees had been imposed.

Subsection (h) specifies that the Department will not issue any new temporary licenses or extensions after December 31, 2018. It further clarifies that temporary licenses that have an expiration date after December 31, 2018 will be valid until the expiration date, but shall not be granted an extension. This is to further clarify the legislative requirements for temporary licensing conditions as set forth in the BPC Section 26050.1 which is no longer effective after December 31, 2018, but does not require that temporary licenses expire on that date. The Department determined it would be reasonable to allow temporary licenses to be valid until their expiration date, even if it was after December 31, 2018.

Section 8101 Annual License Application Fees

This section establishes application fees for each type of license. These proposed regulations are added 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 Standardized Regulatory Impact Assessment (SRIA) to determine the application fee for each type of license necessary to cover the costs of the Program. The Department determined application fees should cover 10 percent of its total annual budget (currently ~32 million dollars), with the remaining budget covered by license fees. The Department further determined that cultivator, processor, and nursery license types should cover 85, 10, and 5 percent of the Program cost allocated to application fees, respectively. Application fees for cultivator license types were calculated based on the total estimated production (quantity) of cannabis in the market. The cost of application fees per pound of cannabis in the medical market for cultivator license types (excluding processors and nurseries) is equal to the share of Program budget allocated to cultivator application fees divided by the estimated total market quantity (~250,000 lb.). The total application fee for each cultivator license type is calculated by multiplying

the estimated cost per pound and the average estimated average annual production (in pounds) of that cultivator type. Application fees for nursery and processor license types is equal to the share of Program budget allocated to nursery and processor application fees divided by the estimated number of nurseries and processors, respectively. The Department determined it was reasonable to spread the costs across the various license types and scaled proportional to the expected annual production for the license type.

Section 8102 Annual License Application Requirements

This section details the application process for a cultivator and provides specific direction to applicants for the required application components. These proposed regulations are added to specify and compile, in one section, the statutory requirements related to applications and supplemental information the Department needs to ensure an applicant can meet the demands of licensure. Each subsection discussed below was added because each requirement is typical and consistent for business license applications and state regulations.

Subsection (a) requires the applicant entity's legal business name. This subsection is necessary for the Department to identify applicant entity by business name.

Subsections (b) and (c) require the applicant to provide the desired license type and a list of licenses issued by the Department or another licensing authority that the applicant already holds. Subsection (b) includes the requirement of an applicant to designate whether they are applying for an A-license or M-license. This is necessary because some local jurisdictions have ordinances that only allow medicinal cannabis activity and licensees will need to clearly identify themselves as M-licensees, as opposed to A-licensees. Designation as either an A-license or an M-license permits cultivators to become licensed by the Department and engage in the statewide regulated cannabis market while maintaining compliance in accordance to the ordinances in place by the local jurisdiction. The Department included subsections (b) and (c) to efficiently determine whether an applicant is eligible for licensing based upon previously issued

licenses by all cannabis licensing authorities and what application and license fees apply.

Subsections (d) and (e) require contact information for the applicant and the applicant's business. These subsections ensure the Department can communicate with the applicant and locate the licensed premises for inspection and enforcement purposes.

Subsection (f) requires that the applicant identify the hours in which the applicant entity will have staff on the licensed premises, with a minimum requirement of two hours of operation that are between 8:00am and 5:00pm, Monday through Friday. This is necessary to ensure that Department staff will have an opportunity to contact someone on premises for enforcement and compliance activities.

Subsection (g) requires the identification of a designated responsible party, who will be one of the owners, and all of their contact information. This subsection will ensure the Department has a responsible point of contact for each application and, if applicable, licensee.

Subsection (h) requires an applicant to identify an agent for service of process. This subsection ensures that the Department will have the ability to serve legal documents to the licensee's registered agent when necessary.

Subsection (i) requires a complete list of every owner and specific personal and business identification information for each owner, including a history of convictions and evidence of rehabilitation for each conviction. This subsection is added to clarify the statutory provisions in BPC Section 26057 permitting the Department to determine that the owner, applicant, or licensee is suitable to be issued a license and would not compromise public safety. Each requirement of subsection (i), including subsections (1) through (13), includes details the Department will need from an applicant in order to thoroughly review and approve or deny an application. Collection of ownership information as specified in subsections (8), (9), and (11) will establish who is liable for

the license and the responsible parties subject to license enforcement actions in accordance with BPC Section 26031. Per BPC Section 26057(a)(4), the Department shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. Through the collection of information related to criminal convictions as proposed in subsection (i)(12), the Department will be able to perform comprehensive review of each applicant as applicable to protect public safety. Subsection (i)(14) also requires owners to provide a description of any administrative order or civil judgment for violation of labor standards or commercial cannabis license disciplinary actions within the three years immediately preceding the date of the application. Consistent with BPC Section 480(a)(3)(A), a licensee may be denied a license for any act that would give rise to a suspension, revocation, or other disciplinary action. This section is necessary to identify incidents that may prevent the applicant from receiving a license.

Subsection (j) requires a list of financial interest holders and their identifying information. This will ensure the Department can determine ownership interests in an applicant entity pursuant to BPC section 26051.5(d). Subsection (j) is clarified further in Section 8103 of these proposed regulations.

Subsection (k) requires copies of all business formation documents and all documents filed with the California Secretary of State. This will ensure the Department can accurately identify the applicant entity and review each application thoroughly.

Subsection (l) requires a seller's permit number or confirmation the applicant has applied for a seller's permit from the California Department of Tax and Fee Administration. These proposed regulations are added to clarify the statutory provision in BPC Section 26051.5(a)(6) and ensures the applicant has filed the necessary paperwork for taxation purposes.

Subsection (m) requires that any applicant entity that is also a cannabis cooperative, as defined by Division 10, Chapter 22 (commencing with section 26220) of the BPC, must submit a list of their members. It specifies that the identifying information must include the following: each member's license number for commercial cannabis activity, the licensing authority that issued the license, and the name of the licensed business. This will allow the Department to verify all members are active licensees, which is necessary to ensure eligibility for a license as a cannabis cooperative consistent with BPC Section 26223.

Subsection (n) requires evidence that the applicant has the legal right to occupy and use the location. This subsection is added to clarify the statutory provision in BPC Section 26051.5(a)(2). Subsection (n) is clarified further in Section 8104 of these proposed regulations.

Subsection (o) requires evidence of a surety bond in the amount of not less than \$5,000 to cover the Department's cost of the destruction of cannabis if necessary. These proposed regulations are added to clarify the statutory provision in BPC Section 26051.5(a)(10) and ensures the Department can be reimbursed for the cost of destroying product found in violation of licensing requirements. Based on the costs associated with plant destruction of conventional agricultural products, the Department does not anticipate destruction costs exceeding \$5,000.

Subsections (p) and (q) require evidence that an applicant has been appropriately permitted by a regional water board or the State Water Resources Control Board and has performed a hazardous materials record search for the cultivation site. It also requires an applicant to supply the Department with protocols for protecting employee safety should the search reveal the presence of hazardous materials. These proposed subsections are added to clarify the statutory provisions in BPC Sections 26060.1 and 26066 and are necessary for the Department to determine an applicant has implemented environmental protection measures sufficient to diminish the risks associated with water quality pollution by cannabis cultivation and hazardous materials

identified by the Department's *Literature Review on the Impacts of Cannabis Cultivation*. These proposed subsections were also developed in consultation with the State Water Resources Control Board to ensure that the regulations are consistent with terminology and requirements.

Subsection (r) requires evidence the local jurisdiction or the applicant complied with the California Environmental Quality Act (CEQA). This requirement includes a copy of the Notice of Determination or Notice of Exemption and a copy of the CEQA document or reference to its electronic location. This proposed subsection is added to clarify the statutory provision in BPC Section 26060(c). As the responsible agency for issuing licenses, the Department determined the provision of local CEQA documentation and evidence of discretionary review is necessary to ensure CEQA compliance was still being performed by the lead agencies for site specific impacts. If the local jurisdiction does not prepare a CEQA document or amend an existing one because they do not have any type of permitting process, the Department must act as the lead agency. This requires the applicant to be responsible for providing an environmental document in compliance with CEQA that can be certified by the Department. This subsection is necessary to ensure that the Department can fulfill its obligations under CEQA as outlined in the Department's *Final Program Environmental Impact Report*.

Subsection (s) requires indoor and mixed-light applicants to identify all power sources to the Department if any activities such as illumination, heating, cooling, and ventilation are occurring. These proposed subsections are added to clarify the statutory provision in BPC Section 26060(c). The Department must be informed of all power sources in order to verify environmental protection measures implemented by the applicant are sufficient to diminish the risks associated with greenhouse gas emissions identified in the Department's *Literature Review on the Impacts of Cannabis Cultivation*.

Subsections (t) and (u) require a diagram of the property and a proposed cultivation plan. These proposed regulations are added to address the statutory provision in BPC Section 26051.5(c), requiring the applicant to submit a property diagram. The property

diagram and cultivation plan are expanded on in Sections 8105 and 8106 of the proposed regulation text and necessary in the application for the Department to determine the appropriate license type and compliance with regulations. The diagram and corresponding cultivation plan will assist the Department in carrying out compliance and enforcement activities.

Subsection (v) requires the applicant to identify all of the following water supply sources used for cultivation activities: retail water supplier, groundwater well, rainwater catchment system, and diversion from a surface waterbody or an underground stream flowing in a known and definite channel. In addition to specifying a source, an applicant will also need to provide supplemental information about the source as detailed in Section 8107 of the proposed regulations. This proposed subsection is meant to clarify BPC Section 26060.1(a) and make specific what water sources are acceptable for cultivation.

Subsection (w) requires a copy of a lake or streambed alteration agreement issued by the California Department of Fish and Wildlife (CDFW), or written verification from CDFW that a lake or streambed alteration agreement is not required. These proposed regulations are added to clarify the statutory provision in BPC Section 26060.1(b) and ensures that the Department does not issue a license to an active cultivation site that is not compliant with Section 1602 of Fish and Game Code. This subsection was developed in consultation with CDFW to ensure that it is consistent with their terminology and requirements.

Subsection (x) requires applicants to attest that the proposed location is at least 600 feet from a school providing instruction in kindergarten or any grades one through twelve, or a day care center or youth center as defined in BPC Section 26001, that is in existence at the time the application is submitted, or that the premises complies with a local ordinance specifying a different radius. This is necessary to ensure compliance with BPC Section 26054(b) and mirrors the statutory requirement for ease of reference. The subsection also describes how the distance is to be measured and is a duplicate of

statute included for ease of reference. Additionally, the subsection requires attestation that the applicant's premises is in compliance with this obligation, which the Department determined was reasonable and consistent with how similar license requirements are addressed in other state regulations.

Subsection (y) requires applicants that have more than 20 employees at any time during the licensed period to attest to entering into a labor peace agreement. This proposed subsection is added to clarify the statutory provision in BPC Section 26051.5(a)(5), which is necessary because agricultural businesses often have seasonal or fluctuating employee numbers. Due to the seasonal variability in the number of employees and the increased likelihood of contracted labor, the requirement of a labor peace agreement for more than 20 employees mitigates labor related issues and promotes labor peace between employees and employers at any time during the licensed period. It is also necessary for the Department to verify compliance with this requirement, so the regulation requires the applicant to submit a copy of the signature page for the labor peace agreement either at the time of application or as soon as reasonably practicable after licensure. The Department determined that because labor peace agreements can be lengthy and there is no value in the Department receiving the whole agreement; only the signature page is necessary to verify compliance. Additionally, applicants may not be required to have a labor peace agreement at the time of application, so the Department needed to provide an alternative for those applicants who had not yet entered into a labor peace agreement.

Subsection (z) requires the applicant entity to attest to being an "agricultural employer" as defined by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 as required by BPC Section 26051.1(a)(8).

Subsection (aa) requires an applicant for an indoor license to attest that the local fire department is aware of the cultivation site. These proposed regulations are aligned with BPC Section 26066. The Department's *Literature Review on the Impacts of Cannabis Cultivation* determined a common concern regarding indoor cultivation is the potential

impact related to fire protection services and the increased risk to first responders at a cultivation site, including but not limited to electrical hazards, fire behavior, entanglement hazards, explosion hazards, mold, and oxygen deficiency. Requiring disclosure of a licensed indoor cultivation site to the local fire department will require cultivators to maintain compliance with building and fire codes. In order to mitigate risks that may be inherently more likely to occur at an indoor cultivation site and increase safety for first responders and the public, applicants are required to notify their local fire department of the presence of the indoor cultivation site. This followed the example of other local jurisdictional requirements for notice and is the most practicable solution to alert first responders of the potential hazards inside.

Subsection (bb) requires an applicant located in an area with sovereign immunity to provide the Department with a limited waiver of sovereign immunity. This section is intended to specify the rules required in order for sovereign entities, such as federally recognized tribes, to apply for and receive a license to cultivate cannabis. This is necessary to ensure that tribes or other qualifying sovereign entities can participate in the regulated cannabis cultivation in the same way as the general public. The Department is statutorily mandated to issue licenses only to qualified applicants and must be able to conduct reviews of all applications. Requiring sovereign entities to fully waive immunity specifically with respect to implementation and enforcement for commercial cannabis licensing to allow the Department to fulfill its mandate. Furthermore, the Department is tasked with establishing a track-and-trace system to track commercial cannabis activities from seed to sale and creating reasonable rules and regulations to implement, administer, and enforce these actions. Without a waiver of immunity, the Department will be unable to properly oversee cultivation operations located on sovereign lands, leaving those located on sovereign land unable to participate in the legal cannabis market. In order for sovereign entities to participate in the cannabis market, the Department is using its general rulemaking authority provided under BPC Section 26013 to require a limited waiver of immunity. The section is included based on inquiries from tribes within California expressing interest in participating in the cannabis marketplace.

The protection of the public is paramount for all licensing agencies pursuant to BPC Section 26011.5. Therefore, the regulation of activities related to cannabis cultivation on sovereign lands is necessary to protect that paramount interest. Only a unified system of regulation protects the interests of the public purchasing cannabis products on tribal lands.

Subsection (bb)(1) requires an applicant or licensee to submit a written waiver of sovereign immunity to the Department in order to participate in the regulated commercial cannabis market. This provision will provide for fair and efficient regulation in the cannabis industry, while allowing tribal governments the opportunity to participate in the legal regulated industry.

Paragraphs (A) – (F) require the written limited waiver agree to various conditions, including that the applicant or licensee has lawful authority to enter into waiver; the applicant will conduct all commercial cannabis activity in full compliance with all state laws and regulations; that the Department has access to all licensed areas; access to all records pertaining to commercial cannabis activity; and that all licensees may only sell product to other licensees and customers meeting the legal requirements to purchase cannabis goods. These provisions are necessary to ensure the Department has the ability to fully enforce all statutes and regulations related to the licensing of cannabis business activities and that all cannabis licensees are regulated with the same standards and expectations. Without this specific language, it may be unclear which regulations would be applicable to a tribal government, thus creating business and enforcement uncertainty.

Paragraph (G) clarifies the applicable body of substantive and procedural laws and which legal forum will be used to resolve disputes. Without this language in the waiver, it is unclear which court or administrative tribunal is the appropriate forum for redress of claims, which could lead to confusion and delay. This language is necessary to clarify this complex intersection of state, federal, and sovereign immunity law and avoid

conflict of legal jurisdiction and choice of forum for dispute resolution. It also clarifies the applicable law, legal claims and rights afforded to the parties. This provision is necessary to ensure that all matters related to the licenses issued by the Department related to commercial cannabis activity in California will be governed by California law and litigated in California.

Subsection (bb)(2) requires the licensee to notify the Department when any material changes occur that may affect the applicant or licensee's compliance with the terms of the waiver of sovereign immunity. Without requiring a licensee to update the Department of material alterations of facts, there is no assurance the changes are permitted within the statutory and regulatory framework. Without an affirmative duty placed on a licensee to notify the Department, a noncompliant change may go a significant amount of time before discovery. Placing an affirmative duty to notify ensures the Department is kept consistently aware of the shape, condition and legality of the licensee and licensed premises. This requirement is applicable to other licensees as well, therefore it is included here for clarity.

Subsection (bb)(3) clearly states the consequences for statutory or regulatory non-compliance. This subsection is necessary to clarify non-compliance of any of these terms and conditions could lead to denial or discipline of a licensee.

Subsection (cc) requires an applicant to provide evidence that the proposed premises is not located in whole or in part in a watershed or other geographic area that the State Water Resources Control Board or the Department of Fish and Wildlife has determined to be significantly adversely impacted by cannabis cultivation pursuant to section 8216. The purpose of this section is to assist the Department and the applicant in identifying when a proposed premises is subject to BPC section 26069(c)(1). Per BPC Section 26069(c)(1) the Department is prohibited from issuing a license in an impacted watershed. The Department determined it was necessary for the applicant, when applicable, to provide evidence that they are not in an impacted watershed.

Subsection (dd) requires the Department to ensure approval of an application would not violate the provisions of any local ordinance or regulation where the licensed premises is to be located. This subsection aligns with BPC Section 26200 and ensures the Department does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis cultivators.

Section 8103 Owners and Financial Interest Holders

Subsections (a) and (b) are added to clarify which individual(s) associated with the business need to be identified on the application for a license. These subsections clarify what it means to be an owner as well as establishes a method to determine who qualifies as an owner should no one hold enough interest. The **owner(s)** are the people, who will be required to provide specific information on a license application, including criminal background checks as detailed in Section 8102(h). These subsections mirror BPC Section 26001(a) because restating the ownership requirements to applicants clarifies the application requirements for the subsequent subsections and is included for ease of reference.

Subsection (c) defines **financial interest** as an investment into a commercial cannabis business, a loan provided to a commercial cannabis business, or any other fully-vested equity interest in a commercial cannabis business. This subsection also specifies that any individual or business entity holding a financial interest in a commercial cannabis business, but does not fall under the definition of owner, is listed on an application for licensure. This subsection is added to clarify BPC Section 26051.5(d).

Subsection (d) outlines specific interests that are not considered owners or financial interest holders, including, but not limited to, banks or financial institutions that loaned money to an applicant and those individuals associated with a business that do not meet the criteria set in subsections (a), (b), or (c). This section is proposed to specify the statutory requirements of BPC Sections 26001(a) and 26051.5(d) and clarify who is required to be named as an owner on a cultivation license application.

Section 8104 Legal Right to Occupy

This section describes the evidence the Department needs prior to licensure to ensure property owner approval. These proposed regulations are added to clarify the statutory provision in BPC Section 26051.5(a)(2) and provide potential applicants a clear understanding of what they will need to provide the Department to demonstrate a legal right to occupy and use the proposed location for its proposed commercial cannabis activity. The Department determined that these documents can reasonably be provided by applicants and are consistent with what applicants for licensure routinely provide for verification.

Section 8105 Property Diagram

This section establishes the requirements of the property diagram that must be submitted with each application. The Department determined that in addition to the statutorily required premises diagram in the cultivation plan discussed in Section 8106, a property diagram would be needed in order to adequately assess the environmental impacts an applicant may have due to areas outside the premises. This is also intended to assist the Department with determining when a parcel is being used for multiple commercial cannabis activities. This is necessary for future inspections and enforcement so that the Department can distinguish between different licensed premises on the same parcel and ensure that regulations are being followed with respect to activities that are required to be performed on the licensed premises and cannot be shared between the same licensee.

Subsections (a) and (b) require identification of property boundaries pursuant to BPC Section 26051.5(c). Requiring an applicant to provide the proposed premises where commercial cannabis activity is to take place on the property diagram is the least burdensome way to determine an applicant is compliant in commercial cannabis cultivation activity for licensure and enforcement.

Subsections (c), (d), and (e) further clarify the requirements of BPC Section 26051.5(c) regarding the disclosure of location for all roads, water crossings, water sources, and

the accessor's parcel number(s). These subsections are necessary to ensure the Department has enough detail about the premises to verify that the diagram is an accurate representation of the property and that the premises is compliant for licensing. The property and premises diagram will provide consistent, detailed information regarding cultivation activities for compliance and enforcement inspections.

Subsection (f) requires the diagram to be to scale as deemed necessary by the Department for the scientific review of determining proximity to water sources, sensitive sites, and as an aid for compliance and enforcement activity.

Subsection (g) requires the diagram not contain highlighting because when scanning highlighted documents, necessary information may be obscured.

Section 8106 Cultivation Plan Requirements

This section establishes the cultivation plan requirements for the various license types. Subsection (a) addresses the requirements for specialty cottage, specialty, small, and medium licenses; subsection (b) addresses the requirements for nurseries; and subsection (c) addresses the requirements for processors. This section is necessary to implement the requirements in BPC Section 26051.5(c).

Subsection (a)(1) requires a diagram of the premises in the cultivation plan, which must outline the specific purpose of each area featured in the plan. Specific designations required by the cultivation plan are: canopy, propagation, pesticide storage, cannabis holding, processing, packaging, product storage, composting, refuse, and water storage areas. This will allow the Department to ensure compliance with the licensing requirements, which are being implemented to ensure public safety and environmental protection. A diagram will also significantly aid the Department with enforcing these requirements.

Subsection (a)(2) requires, for indoor and mixed-light license types, a lighting diagram, including the location of lights in the canopy areas and the maximum wattages used.

This is necessary for the Department to ensure the appropriate license type is being issued to the applicant and for enforcing the requirements of the specific license.

Subsection (a)(3) requires a pest management plan, which includes listing all pesticides to be used on cannabis at the site and any integrated pest management protocols the applicant plans to implement. These proposed regulations are added to clarify the statutory provision in BPC Section 26060(e). This portion of the cultivation plan is necessary for the Department to ensure the environment is protected from the illegal use of pesticides and ensures the licensee has a plan for handling potential pest introductions and infestations. The Department's *Literature Review on the Impacts of Cannabis Cultivation* discusses the risk to the environment of improper pesticide use and storage and the Department determined it was necessary to know about a licensee's pesticide use and storage plans in order to transition them into a regulated environment.

Subsection (a)(4) requires a cannabis waste management plan that meets the requirements of Section 8108 of these proposed regulations. This information will help the Department ensure compliance with its licensing requirements, regardless of whether a cultivator disposes of waste off-site or on-site. This subsection also ensures licensees are complying with existing waste disposal laws and regulations.

Subsection (b)(1) requires a diagram of the premises in the cultivation plan for nursery licenses, which must outline the specific purpose of each area featured in the plan. To enable nurseries the ability to conduct research and development and to produce seeds for sale, the cultivation plan requires these areas to be delineated from the immature plant production area(s). This section is necessary to specify the cultivation plan requirements for nursery licenses and will allow the Department to ensure compliance with the licensing requirements, which are being implemented to ensure public safety and environmental protection.

Subsection (b)(2) requires a pest management plan, which includes listing all pesticides to be used on cannabis at the site and any integrated pest management protocols the applicant plans to implement. These proposed regulations are added to clarify the statutory provision in BPC Section 26060(e). This portion of the cultivation plan is necessary for the Department to ensure the environment is protected from the illegal use of pesticides and ensures the licensee has a plan for handling potential pest introductions and infestations. The Department's *Literature Review on the Impacts of Cannabis Cultivation* discusses the risk to the environment of improper pesticide use and storage and the Department determined it was necessary to know about a licensee's pesticide use and storage plans in order to transition them into a regulated environment.

Subsection (b)(3) requires a waste management plan that meets the requirements of Section 8108 of these proposed regulations. This information will help the Department ensure compliance with its licensing requirements, regardless of whether a cultivator disposes of waste off-site or on-site. This subsection also ensures licensees are complying with existing waste disposal laws and regulations.

Subsection (c) clarifies the requirements for a cultivation plan being submitted for a processor license. The Department determined processors are prohibited from having live plants, therefore the cultivation plan would not include the designated areas used for growing plants. The premises diagram must outline the specific purpose of each area featured in the plan, including designated areas for processing, packaging, composting, waste, and storage, if applicable. This will allow the Department to ensure compliance with the licensing requirements, which are being implemented to ensure public safety and environmental protection. This information also helps prevent diversion of product into the illicit market; protects the environment from composting and waste disposal activities that may have negative impacts; and assists inspectors in verifying that supplies match track-and-trace records. This subsection also requires the creation of a cannabis waste management plan pursuant to section 8108 of these proposed regulations. This information will help the Department ensure compliance with

its licensing requirements, regardless of whether a cultivator disposes of waste off-site or on-site. This also ensures licensees are complying with existing waste disposal laws and regulations.

Section 8107 Supplemental Water Source Information

This section details the supplemental information that an applicant must provide for each type of water source they list in their application.

Subsection (a) requires applicants with retail water suppliers to provide the name of the supplier and a copy of the most recent water service bill. If they are a large retail supplier such as a municipal provider, that is the extent of the information required of the applicant. Pursuant to BPC Section 26060.1(a)(1)(B), if the retail water supplier has 10 or fewer customers, the applicant receives 10 percent or more of the water supplied by the retail supplier, more than 25 percent of the water delivered by the retail supplier is used for cannabis cultivation, or the applicant and the retail supplier are affiliates, as defined by Section 2814.20 of Title 23 of the California Code of Regulations, then additional information is required. Applicants using these small retail suppliers will need to provide the retailer's water source (geographic location coordinates of either a diversion or a groundwater well), a copy of the most recent water service bill, the maximum amount of water delivered to the applicant for cannabis cultivation in any year, and specific information regarding the location of a water diversion or well.

Subsection (b) requires applicants using groundwater wells to provide location of the well and information about the well log.

Subsection (c) requires applicants collecting rainwater in a catchment system to provide information about the size and storage capacity of the system.

Subsection (d) requires applicants diverting from a waterbody (lake, stream, river, etc.) to provide documentation of their right to divert water. Applicants diverting from a

waterbody and claiming an exception from the requirement to file a statement of diversion and use must provide detailed information verifying their exception is existent.

The information required in Section 8107 is necessary for the Department to collect in order to ensure each water source is verifiable by the State Water Resources Control Board and to provide clarity to applicants regarding what information the Department must receive for a complete application. The Department consulted with the State Water Resources Control Board in developing this section to determine the appropriate requirements.

Section 8108 Cannabis Waste Management Plan

Subsections (a), (b), and (c) identify the options for the disposition of cannabis waste that an applicant must choose from when managing cannabis waste. Public comment and stakeholder input as seen in the Department's *Medical Cannabis Cultivation Program, Scoping Report* make it evident that waste management was a significant concern among stakeholders. The implementation of a waste management plan that documented actions taken to reduce and dispose of waste and recyclable material was recommended. The waste management plan is necessary to ensure the Department has a record of each licensee's method of cannabis waste handling to protect public safety and prevent the potential diversion of cannabis to the illicit market. The Department consulted with CalRecycle to determine the classification of "cannabis waste" as organic waste and to ensure consistency and uniformity with other provisions.

Section 8109 Applicant Track-and-Trace Training Requirement

This section establishes requirements for track-and-trace training necessary for cultivators to effectively utilize the online track-and-trace system. Subsections (a) and (b) ensure cultivators will register and complete training in a timely manner. In consultation with other states whom are already in process of utilizing track-and-trace systems, the need to quickly implement track-and-trace by each cultivator for data collection is paramount. With recommendations from other states, 10 days was determined to be a reasonable and adequate amount of time for a cultivator to complete

the online training. Due to the complexity of the track-and-trace system, requiring mandatory training within 10-days will mitigate the delay of data entry due to user error. Establishing procedure and training requirements will ensure that illicit inversion and diversion of cannabis is not taking place.

Section 8110 Proof of Local License, Permit, or Other Authorization

This section establishes the process by which the Department will confirm the validity of a local license, permit, or other authorization voluntarily submitted by an applicant in accordance with BPC Section 26055(e). The statute permits the Department to presume that an applicant that voluntarily submits a local license, permit, or other authorization is in compliance with local ordinances. However, local jurisdictions expressed concerns to the Department that invalid authorizations may be submitted and requested the opportunity to confirm the document's validity. In order to accommodate the request, the Department added a process for confirmation that parallels the confirmation process for temporary licenses.

Section 8111 Priority Application Review

This section gives priority review to applicants who can demonstrate their commercial cannabis business was in compliance with the Compassionate Use Act before September 1, 2016 and establishes what information can be demonstrated as evidence of such compliance. This section is added to clarify the statutory provisions in BPC Section 26054.2(a) and ensures that the Department consistently provides priority review to applicants that can demonstrate they qualify.

Section 8112 Annual License Application Review for Completeness

This section requires the Department to provide applicants with an official written notice confirming receipt of a complete application or indication whether additional information is necessary. It also provides an applicant with 90 days to provide missing information to the Department and specifies that the Department will notify an applicant in writing if the application has been approved or denied. A reason for a denial will be provided by the Department. The Department determined 90 days would be a reasonable amount of

time for an applicant to provide missing information without unreasonably delaying the processing of an application and by reviewing other regulations related to licensing that have similar provisions. A specified period of time with which to provide missing information is necessary to clarify and add transparency to the application review process and allow for an applicant to submit information that may have been inadvertently left off the application.

Section 8113 Substantially Related Offenses Review

This section defines when the Department may deny a license based on an act or crime committed by the applicant that was substantially related to the license type for which the application is being made. The Department looked at similar regulatory language from other licensing programs to develop this language. This proposed section is added to clarify the statutory provision in BPC Section 26057(b)(4). This section also defines when and how the Department will consider an applicant's rehabilitation for a criminal offense or act. These proposed regulations are added to clarify the statutory provision in BPC Section 26057. Including this information in the regulations will provide consistency and standardize the Department's approach to evaluating such offenses and provides a transparent process to the applicant. It also enables the applicant to collect the information needed to determine rehabilitation prior to applying.

Section 8114 Withdrawal of Application

This section allows an applicant to withdraw his or her application at any time before the Department makes a decision to approve or deny and includes the procedures and restrictions for such a withdrawal. This section is necessary to clarify that an applicant can withdraw an application and not impact their ability to reapply. The Department is collecting application fees necessary to cover the costs incurred by processing and reviewing the applications which would begin immediately upon submission of an application, therefore application fees are not refundable.

Section 8115 Notification and Grounds for Denial of a License; Petition for Reconsideration

This section specifies reasons for denying a license in addition to those referenced in BPC Section 26057. These proposed regulations are added to provide additional clarification to BPC Section 26057 and are necessary to provide transparency to the industry regarding additional reasons the Department may choose to deny a license.

Article 3. Cultivation License Fees and Requirements

Section 8200 Annual License Fees

This section establishes licensing fees for each type of license. These proposed regulations are added to specify the statutory provisions of BPC Section 26180, which require the Department to scale its fees. The Department used cannabis market assumptions from its Standardized Regulatory Impact Assessment (SRIA) to determine the license fee for each type of license necessary to cover the costs of the Program. The Department determined licensing fees should cover 90 percent of its total annual budget (currently ~32 million dollars), with the remaining budget covered by application fees. The Department further determined that cultivator, processor, and nursery license types should cover 85, 10, and 5 percent of total Program cost allocated to license fees, respectively. License fees for cultivator license types were calculated based on the total production (quantity) of cannabis in the medical market. The cost of license fees per pound of cannabis in the medical market for cultivator license types (excluding processors and nurseries) is equal to the share of the Program budget allocated to cultivator license fees divided by the total estimated market quantity (~250,000 lb.). The total license fee for each cultivator license type is calculated by multiplying the estimated cost per pound and the estimated average annual production (in pounds) of that cultivator type. License fees for nursery and processor license types are equal to the share of Program budget allocated to nursery and processor license fees divided by the estimated number of nurseries and processors, respectively.

Section 8201 Cultivation License Types

This section defines the types of cultivation licenses the Department is responsible for issuing. In addition to the cultivation licenses required by BPC Section 26061(a),

duplicated here for ease of reference, the Department has created a processor license, as described below.

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 26061(a). These license types would allow licensees to process the cannabis cultivated on that licensed premises site as well.

Subsection (f) defines the processor license, which was created by the Department. These proposed regulations are added to implement the authority to create new license types found in BPC Section 26012(a)(2). During the scoping meetings held in September 2016, it was brought to the Department's attention that some cultivators send untrimmed, uncured, or unpackaged cannabis to locations off-site for processing (that is, not where the product is grown). Sometimes local ordinances may require processing activities to occur away from cultivation areas. To accommodate these instances, the Department created a license type that will allow a business to be licensed solely for processing cannabis. The processor licensee may also hold other types of cultivation licenses, but would be prohibited from growing cannabis plants at a licensed processing facility. These proposed regulations are added to clarify the statutory provision in BPC Section 26061(a) and provides the industry with an additional type of license that is consistent with current industry practices.

Section 8202 General License Requirements

This section establishes general licensing requirements that will apply to all licensed cultivators.

Subsection (a) establishes the validity of a license for 12 months. These proposed regulations are consistent with BPC Section 26050(c), which requires licenses to be valid for 12 months and renewed annually. The Department included the text for ease of finding important business information within the regulations.

Subsections (b) and (c) require applicants to apply for one license for each premises, and establish that the licenses are not transferrable. Requiring a license for each unique premises and prohibiting the transfer of a license allows the Department to ensure each licensee went through the appropriate state application process—a process designed to protect public safety and preserve the environment.

Subsection (d) prohibits a licensee from conducting business with unlicensed entities and individuals, even if no money is ever exchanged. This stipulation is essential to track the movement of regulated product and prevent the inversion or diversion of products to the illicit market, thereby protecting public safety and providing a mechanism for enforcement should licensees violate this requirement.

Subsection (e) requires the licensee to display his or her current state license where the Department, other state agencies, and local agencies can easily see it. This will allow any agency representative on a routine inspection to readily determine validity of a license. This protocol is widely used by licensing agencies for many types of licenses. This section is necessary to clarify the Department's expectation of a licensee to post their license and to provide regulatory bodies consistency in their ability to verify state licensure.

Subsection (f) prohibits a licensee from subletting any portion of the licensed premises. This will ensure the Department has access to all portions of a licensed premises for the duration of the licensed period.

Subsection (g) prohibits the use of light deprivation techniques at outdoor cultivation sites. This proposed subsection is necessary for enforcement of outdoor cultivation license types to clarify that light deprivation is prohibited for outdoor cultivation. This will ensure that inspectors at outdoor cultivation sites can issue notices of violation if tools used for light deprivation, such as blackout tarps, are found in use at the site

Section 8203 Renewal of License

This section defines the process and required timeline for license renewals.

Subsection (a) establishes that license renewals must be submitted at least 30 days before a license expires as is typical and consistent with other state applications and licensure programs.

Subsection (b) clarifies that if a renewal application is received prior to the expiration date, the licensee is allowed to continue to operate until the renewal application has been approved. The Department determined it was reasonable to allow the applicant to continue operations because there could potentially be an unreasonable impact on the licensee's business when they would otherwise have a valid license.

Subsections (c) and (d) establish a penalty of 50 percent of the application fee for license renewals received up to 30 days after the license expires. The 50 percent penalty fee was determined to be the amount necessary to offset costs incurred to the Department as a result of requiring an expedited review. Subsection (d) also clarifies renewal applications submitted 30 days after expiration will forfeit their eligibility to submit a renewal. It is necessary for the Department to establish a time frame when renewal is no longer available for clarity to licensees and applicants for renewal. The penalty and established timeframes are necessary to encourage timely compliance with renewal. Absence of these requirements will allow a cultivator to renew their license late with no consequence.

Subsection (e) provides the detailed requirements for a renewal application. The licensee must also attest that all of the information originally provided in the licensing application is still current and accurate. These proposed regulations are added to clarify the renewal procedures required by BPC Section 26050(d).

Subsection (f) specifies how a licensee may change from an A-License to an M-License, or vice versa, at the point of renewal. This is necessary to clarify when a

licensee may change A or M designations, so the Department can ensure the appropriate tags are issued to the licensee.

Subsection (g) provides the additional requirements for renewable energy sources that applicants must include in renewal applications beginning in 2022. The Department determined the impact of indoor cultivation sites to the state's energy resources was potentially significant if cultivators were not held to the same standard of renewable energy use as other businesses in the state. By requiring licensees to disclose their energy use, including that from renewable sources, the Department can verify they are complying with California's standards for greenhouse gas emissions.

The Department determined the information required by this section would allow for a thorough, but expedient review of a renewal application and provide clear expectations to the licensees. The Department is establishing a late fee because the renewal application will have to undergo an expedited review.

Section 8204 Notification of License Information Change

This section permits a licensee to make specific changes to an application without submitting an entirely new application, except if there is a change in ownership. The Department has set a 10-day limit for informing the Department of changes, which is consistent with other Department programs and has been determined to be a reasonable amount of time for the applicant to submit such changes. This section is necessary to provide licensees with a process for informing the Department of changes that are anticipated to occur and to verify that all information regarding the licensee is true and current. This section also requires notification by a licensee within 48 hours of a criminal conviction or judgement, revocation of a local license, violations of labor standards, or changes to the licensee's designated track-and-trace system account manager. The Department determined this shorter time frame for notifications of this sort was necessary to ensure that Department can follow up quickly on what may be matters of public safety.

Section 8205 Physical Modification of Premises

This section restricts the licensee from making physical modifications to his or her premises unless the Department has granted prior approval. The section also establishes what is required by a licensee to request modifications, how the licensee should inform the Department, and allows the Department to request additional information as needed to process such requests. This section provides the Department with the authority to ensure proposed physical modifications of premises remain compliant with the issued license by allowing a licensee to modify the licensed premises only if he or she makes the modification(s) after receiving the Department's approval.

The Department determined that the fire hazard risk associated with electrical modifications being performed by a layperson was significant enough to require evidence they be performed by licensed electricians. This section is necessary to provide licensees with the flexibility to modify a cultivation site using a specific process for making approved modifications to a cultivation site, while allowing the Department to verify the changes do not affect license types or environmental and public protections. The Department anticipates changes to cultivation sites will occur during a licensed period.

Section 8206 Death or Incapacity of a Licensee

The Department recognizes that certain events may inhibit an owner's ability to effectively satisfy the conditions of licensure. The purpose of this section is to specify what happens to a license in the event of an owner's death, incapacity, receivership, assignment for the benefit of creditors of an owner, or other event rendering an owner incapable of performing the duties associated with the license. This section is necessary as it provides an owner's successor in interest the opportunity to transition the owner's operations and/or wind-down the licensed business' affairs prior to expiration of the license. This regulation provides that, although the successor in interest may continue operations on the licensed business premises for a period of time, the successor in interest is not automatically guaranteed issuance of a state cannabis license. Requiring

the successor in interest to submit a new application for licensure after a certain period enables the Department to determine a new owner's fitness for licensure.

Section 8207 Disaster Relief

This section allows the Department to waive certain regulatory licensing requirements during a disaster and is necessary to ensure that licensees who have been impacted by a disaster are not deemed to have surrendered, abandoned, or quit their licenses, due to the impacts of the disaster, if their intent is to continue as a licensee. Additionally, as MAUCRSA places public safety as the top priority for licensing authorities (BPC Section 26011.5), the provisions allowing a licensee to move product to a location different than the original location approved by the Department is critical to public safety to ensure that cannabis and cannabis products are secured and unable to be accessed by the general public.

The Department has determined that in certain circumstances a licensee may be relieved from regulatory provisions. Additionally, Government Code Section 8571 provides that during a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or orders, rules, or regulations of any state agency, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency. This section would allow licensees that have been impacted by a disaster to be relieved from rules, orders and regulations that would otherwise delay mitigation of the effects of the disaster and the ability to keep cannabis and cannabis products secured to prevent diversion in the illegal market and prevent minors from accessing cannabis or cannabis products. This section is also necessary to ensure that licensees are provided an opportunity to exercise the privileges of their license, when otherwise prohibited from doing so by forces and circumstances beyond their control, that have made compliance with the regulations so onerous that the operation under their license is not worthy of being carried out in practice.

Subsection (a) states that if a licensee is unable to comply with any licensing requirement due to a disaster, the licensee may notify the Department of its inability to comply and request relief from the specific licensing requirement. Licensees may be tempted to walk away from a business or choose not to adhere to the law when a disaster occurs. This provision is reasonably necessary to ensure businesses have an opportunity to recover and remain compliant.

Subsection (b) allows the Department to exercise its discretion to provide temporary relief from specific regulatory requirements in this chapter and from other licensing requirements when allowed by law. It is likely that some licensees will request disaster relief, but will not meet the threshold established by the Department. This provision is reasonably necessary as it provides clarity to the regulated industry, and provides the Department flexibility in determining whether a licensee should be exempted from the licensing requirements.

Subsection (c) states temporary relief from specific licensing requirements shall be issued for a reasonable amount of time in order to allow the licensee to recover from the disaster. This provision is reasonably necessary to allow a business time to recover without being subject to licensing requirements that may be incapable of being met during a disaster.

Subsection (d) specifies the Department may require that certain conditions be followed in order for a licensee to receive temporary relief from specific licensing requirements. Temporary relief of licensing requirements is not intended to suspend all statutory and regulatory requirements. Therefore, it is reasonably necessary for the Department to request a licensee to meet certain conditions in order to receive temporary relief.

Subsection (e) states a licensee shall not be subject to an enforcement action for a violation of a licensing requirement in which the licensee has received temporary relief. This provision is reasonably necessary to provide clarity to the regulated industry.

Subsection (f) defines **disaster**. This provision is reasonably necessary to provide clarity to the regulated industry on what constitutes a disaster.

Subsection (g) provides that a licensed premises vacated due to a disaster shall not be deemed surrendered pursuant to section 8208. This is necessary to clarify that licensees seeking disaster relief are not subject to the implications of surrendering their license and the privileges a license provides.

Subsection (h) provides that, if a licensee needs to move cannabis or cannabis products stored on the premises to another location immediately to prevent loss, theft, or degradation of the cannabis or cannabis products from the disaster, the licensee may move the cannabis or cannabis products without obtaining prior approval from the Department if the following conditions are met:

Paragraph (1) the cannabis or cannabis products are moved to a secure location where access to the cannabis or cannabis products can be restricted to the licensees, its employees, and its contractors. This provision is reasonably necessary to reduce the potential for diversion;

Paragraph (2) the licensee notifies the Department in writing that the cannabis or cannabis products have been moved and that the licensee is requesting relief from complying with the specific licensing requirements pursuant to subsection (a) of this section within 24 hours of moving the cannabis or cannabis products. The Department has determined that 24 hours is sufficient time for the licensee to immediately secure cannabis or cannabis products while providing prompt notice of the change in location to the Department;

Paragraph (3) the licensee agrees to grant the Department access to the location where the cannabis or cannabis products have been moved. BPC Section 26160(e) specifies that a licensee who refuses an inspection of the premises has committed a violation of

the Act. This provision is reasonably necessary to ensure the Department can inspect the location where the cannabis product is being held;

Paragraph (4) the licensee submits in writing to the Department within 10 days of moving the cannabis or cannabis products, a request for temporary relief that clearly indicates what statutory and regulatory sections relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time. The Department has determined that 10 business days is the appropriate time to allow a licensee to provide the Department with a request for relief as it allows the licensee time to address the immediate effects of the disaster on the licensee's business while not allowing too much time to elapse before the Department can evaluate the proposed plan

Section 8208 Surrender of License

This section provides for the process for a licensee to surrender their license and close down their inventory. This is necessary to allow for a way for licensees to conclude licensed activities on a premises. Additionally, it provides a process for the Department to verify that the activities have concluded which is necessary for enforcement of the regulations.

Subsection (a) authorizes the licensee to surrender the license, but requires written notice to the Department.

Subsection (b) provides the timeframe in which the surrender of the license becomes effective. The time frame is thirty days unless the Department determines that it could be accomplished sooner. Thirty days was determined to be a reasonable time frame to allow the Department to determine if additional inspection or investigation was necessary before the license is suspended. This subsection also provides that if there are pending suspensions, revocations, investigations, and examinations the surrender would not become effective. This is necessary to ensure that the licensee does not just

surrender the license to avoid an action against the licensee by the Department. This is consistent with other regulations for businesses requiring a license.

Subsection (c), sets forth conditions under which a license is deemed to have surrendered the license such as abandoning or closing the premises. This is necessary to ensure licenses do not remain active if the business is no longer operating to ensure public health and safety and ensure that cannabis is not diverted to the unregulated market.

Subsection (d) clarifies that the surrender of a license does not affect the licensee's civil or criminal liability for acts committed prior to the surrender of the license. This is necessary to ensure that the licensee understands that liability may still attach even if the license is surrendered.

Subsection (e) clarifies that the power of investigation and examination by the department is not terminated by the surrender, suspension or revocation of any license issued by the department and the department shall have continuous authority to exercise the powers set forth in the Act and the rules and regulations promulgated thereunder. This is necessary so that if a licensee has violated the law, he or she cannot surrender their license, thereby positioning themselves to not be accountable for any violations of the law while holding the license.

Section 8209 Medium Cultivation License Limits

This section limits the number of medium licenses a person may have to one (as defined by MAUCRSA). These proposed regulations are added to clarify the statutory provision in BPC Section 26061(a) which obligates the Department to limit the number of medium licenses issued. After reviewing the economic impact data provided by the SRIA, it was determined that limiting the medium licenses to one per person would provide for more than enough cannabis to fulfill the market's needs. The Department is also aware that local agencies have issued medium licenses without the availability of the state limit criteria. By allowing one per person, the Department is limiting potential

impacts to cultivators that have already been issued a medium cultivation licenses by a local agency. This section specifies the Department imposed limit on the issuance of medium licenses.

Section 8210 Sample Collection by the Bureau

This section provides that the Bureau of Cannabis Control (Bureau), the agency responsible for licensing testing laboratories, has 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. The Bureau will need to, on occasion, collect “split samples” from a cannabis batch at the same time the sampling agent from the licensed testing laboratory collects samples for analysis for the official, state-mandated testing. The Bureau will collect samples in the same amount as the testing laboratory does (according to the weight of the lot) and will analyze the samples and compare the results with the results from the licensed testing laboratory. The Bureau will perform these analyses to ensure the testing laboratory reported 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 a seizure of split samples for use by the Bureau. Cannabis batches are subject to quality assurance and testing pursuant to BPC Section 26110. This Section was developed in consultation with the Bureau to ensure consistency and uniform application of regulations.

Section 8211 Prohibition of Product Returns

This section prohibits cultivators from accepting product returns after transferring actual possession of cannabis or nonmanufactured cannabis products to another licensee after testing has occurred. The Department included this provision to correspond with the Bureau’s regulations. These requirements are designed to create a one-way chain of custody for cannabis and nonmanufactured cannabis products post-delivery to a licensed distributor, and post quality assurance testing by a state-licensed testing lab.

This chain of custody construct is essential to protect public consumers from exposure to cannabis and nonmanufactured cannabis products that have failed quality assurance testing. The track-and-trace system will ensure the product is accounted for throughout its existence and facilitates efficient enforcement activities.

Section 8212 Packaging and Labeling of Cannabis and Nonmanufactured Cannabis Products

This section establishes the requirements licensed cultivators must meet if packaging or labeling cannabis or nonmanufactured cannabis products.

Subsection (a)(1) establishes that licensees must abide by the applicable packaging and labeling requirements in MAUCRSA, specifically BPC Sections 26070, 26120, and 26121. This subsection is necessary to ensure compliance with statute and provide clarity to the licensee.

Subsection (a)(2) establishes that licensees must also abide by packaging and labeling requirements established by the Bureau and the California Department of Public Health. This is necessary because MAUCRSA tasked the California Department of Public Health with establishing standards for labeling manufactured cannabis products, as well as specifying the requirements that all packages of manufactured cannabis must adhere. Similarly, the Bureau is tasked under MAUCRSA with establishing standards for the labeling and packaging of cannabis for licensed distributors and, should a distributor also hold a manufacturing license, labeling and packaging its own manufactured cannabis products. For this reason, it is necessary to reference both the Bureau and the Department of Public Health in this subsection to provide clarity to licensed cultivators and ensure consistency and uniform application of regulations.

Subsection (a)(3) establishes that licensees must abide by the applicable packaging and labeling requirements found in the Fair Packaging and Labeling Act, located in Chapter 6 (commencing with Section 12601), Division 5 of the Business and

Professions Code. This subsection was added to provide clarity to the licensee regarding relevant existing law and to protect purchasers from deception and misrepresentation.

Subsection (b) establishes that a label may specify the county of origin only if one hundred (100) percent of the cannabis or nonmanufactured cannabis product contained in the package was produced within the designated county. This subsection was added to further clarify the standards set forth in BPC Section 26063.

Section 8213 Requirements for Weighing Devices and Weighmasters

Subsection (a) requires licensees to use weighing devices that are registered, tested, and sealed whenever they are using a device for commercial purposes consistent with Division 5, Chapter 5 of the BPC, as required by BPC Section 26060(b)(1). This section also requires that a licensee use an approved and registered device when entering any transaction into the track-and-trace system and is necessary to ensure accurate measurement of cannabis for track and trace purposes to prevent inversion and diversion.

Subsection (b) provides a way for weighing devices to be registered, tested, and sealed in cities that are located in counties that have adopted their own ordinances to regulate commercial cannabis activity. BPC Section 26200(d) requires cities to assume regulatory functions that would otherwise be performed by the county which includes approving and registering weighing devices used for commercial purposes. The proposed language in Section 8213(b) gives licensees the option to have the Department perform the duties of the county sealer in those circumstances because cities do not have the equipment necessary to register, test, and seal these weighing and measuring devices and may not be able to enter into an agreement to perform this work in lieu of the county. The Department's Division of Measurement Standards already performs these functions for counties that are unable to.

The Department also consulted with its Division of Measurement Standards to determine the fee that should be charged for this work. Based on this consultation, the Department is incorporating by reference the schedule of fees for registering, testing, and sealing weighing and measuring devices set forth in BPC Section 12240. The Department chose to incorporate the fees by reference because the fees set by statute are reasonable and necessary for the Department to be reimbursed for the services provided as this is what the Division of Measurement Standards already charges for these services to other industries. This subsection is necessary to provide an option for cannabis licensees to comply with the requirements of Section 8213 where cities are unable to provide these services.

Subsection (c) provides that the licensee uses wet with or net weight in standard units of measure. This subsection is necessary to provide clarity to licensees for how cannabis and nonmanufactured cannabis products should be weighed and measured. The definition for wet weight and net weight have been previously provided and are used here for consistency with the regulations and compliance with Revenue and Taxation Code section 34012(a). The Department consulted with the Division of Measurement Standards regarding this language for consistency of terms with respect to standard units of measure and determined that the regulations was reasonable and provides necessary clarity to licensees.

Subsection (d) provides the meaning of numerical count for the purposes of this section. It is necessary to clarify how cannabis plants, seeds, or product units will be counted if they are not being verified by weight.

Subsection (e) provides any licensee that weighs or measures cannabis products in accordance with subsection (a) above is required to be a licensed weighmaster. This is necessary to clarify licensee's obligations per BPC Section 26060(b)(1) requiring the Department to incorporate Division 5, Chapter 5 of the BPC in the regulations. Additionally, licensees are required to be licensed weighmasters to assist with enforcement. A licensed weighmaster is required to be proficient in accurately weighing

and measuring commodities and is accountable if they do not accurately weigh and measure the commodity. This is necessary for enforcement purposes to ensure that licensees are held accountable for the weight and measure listed in all the circumstances under subsection (a). The Department consulted with the Division of Measurement Standards regarding this language for consistency of terms with respect to standard units of measure and determined that the regulations was reasonable and provides necessary clarity to licensees.

Section 8214 Commercial Cannabis Activity Between Licensees

This section is necessary to clarify that regardless of the A or M designation of the license, licensees may conduct business with each other. The Department determined that there are no requirements that distinguish cultivation activities of an A-license from an M-license and that limiting licensees to doing business with licensees of the same designation is overly burdensome.

Section 8215 Personnel Prohibited from Holding Licenses

This section prohibits certain individuals from holding a license issued by the Department, or having any direct or indirect ownership interest in any commercial cannabis business operating under a cannabis license. Such prohibited individuals are those whose professional duties include the enforcement of MAUCRSA or any other legal provisions regarding the sale, use, possession, transportation, distribution, testing, manufacturing, or cultivation of cannabis goods. Proposed subsections (a) and (b) clarify these individuals to include any such persons employed by any agency of the State of California, any of its political subdivision, and any persons employed in any district attorney's office, sheriff's office, city attorney's office, or as a peace officer in the State Department of Justice. Proposed subsection (c) specifies that the individuals identified in subsection (a) and (b) may have not any ownership interest, directly or indirectly, in any business to be operated or conducted under a cannabis license. Proposed subsection (d) clarifies that this section does not apply to those holding a license in his or her capacity as an executor, administrator or guardian. Without restrictions on certain types of commercial cannabis business owners, individuals

tasked with carrying out and enforcing the provisions of MAUCRSA could legally own or hold an interest in commercial cannabis businesses. This would create either the appearance of a conflict or an actual conflict of interest. This section is necessary to ensure that certain personnel execute their duties and obligations in a fair and objective manner on behalf of the State of California, without the risk or threat of partiality or bias.

Section 8216 License Issuance in an Impacted Watershed

This section provides the process by which the State Water Resources Control Board and the Department of Fish and Wildlife will notify the Department if they have made a determination that cannabis cultivation has had a significant impact on the environment in a watershed or other geographic area. It further states that this finding shall be made consistent with BPC Section 26069(c)(1). The purpose of this section is to clarify BPC Section 26069(c)(1) and provide licensees and the public with a reference to this requirement. This language is necessary to clarify how the State Water Resources Control Board and the Department of Fish and Wildlife will notify the Department and was developed in consultation with them.

Article 4. Cultivation Site Requirements

Section 8300 Cultivation Requirements for Specialty Cottage, Specialty, Small, and Medium Licenses

This section provides clarification on canopy, plant tagging, and that licensees selling plants or seeds need to obtain a nursery license. This is necessary to ensure licensing requirements and enforcement activities are implemented uniformly across the program.

Subsection (a) clarifies the necessity to tag and move plants that flower to the designated canopy without delay. Cultivators are permitted to maintain immature plants outside of the designated canopy with batch unique identifiers (UIDs) which poses a risk for plants to flower outside of the designated canopy that may lead to illicit diversion. To ensure compliance with track-and-trace and the conditions of the annual license, plants that flower must have individual UID tags and be located in the designated canopy or are subject to enforcement action. The clarification provided in this section provides

transparency to cultivators regarding the prohibition of flowering plants outside of the designated canopy.

Subsection (b) states that all plants or portions of plants used for seed production must be tagged with a UID. As it is permissible for cultivation sites to maintain immature plant areas including male cannabis plants, it is necessary to tag all plants associated with seed production to determine lineage in track-and-trace. As a matter of public health and safety it is necessary to be able to determine the origin of seeds to mitigate risks associated with cannabis cultivated from seed that is deemed unfit for human consumption.

Subsection (c) clarifies that distribution of immature plants and seeds is prohibited without a nursery license. Specialty cottage, specialty, small, and medium license holders are solely permitted to distribute nonmanufactured cannabis products. This subsection provides transparency to cultivators and consistency for enforcement regarding permissible activity according to license type.

Subsection (d) requires that licensees process harvested cannabis in their designated processing area(s) pursuant to their cultivation plan. This subsection provides transparency to cultivators and consistency for enforcement regarding compliance with the provided cultivation plan and processing requirements in the proposed regulations.

Section 8301 Seed Production Requirements for Nurseries

This section clarifies that nursery licensees can produce seed for distribution and that those licensees cannot distribute flower or other nonmanufactured cannabis products. This is necessary for licensing staff to ensure the appropriate license is being issued for the corresponding activity occurring at a licensed site. This subsection provides transparency to cultivators and consistency for enforcement regarding cultivation activities and track-and-trace requirements for nursery licensees.

Section 8302 Research and Development Requirements for Nurseries

This section allows nursery licensees to have an area for mature plant production to conduct research and development, provided that flower and any nonmanufactured cannabis products produced do not enter the distribution chain. This is necessary for licensing staff to ensure the appropriate license is being issued for the corresponding activity occurring at a licensed site. This subsection provides transparency to cultivators and consistency for enforcement regarding permissible activities for nursery licensees.

Section 8303 Cultivation Requirements for Processor Licenses

This section provides clarification that processor licensees cannot cultivate plants and must adhere to track-and-trace requirements as well as packaging and labeling requirements. This is necessary to ensure the program is implemented uniformly throughout the state.

Subsection (a) clarifies track-and-trace requirements are adhered to when batches of nonmanufactured cannabis product are aggregated. Due to the track-and-trace requirements in sections 8405 and 8406 of these proposed regulations and necessity for the traceability of origin, aggregation of product may increase the risk of illicit diversion or inversion. Lack of correct record keeping would limit the ability to delineate origin of cannabis if tested and proved to be harmful to human health. Adherence to track-and-trace requirements is important to mitigate potential risks associated with aggregation. This subsection provides transparency to cultivators and consistency for enforcement regarding aggregation of product.

Subsection (b) ensures compliance of licensed processors to only produce nonmanufactured cannabis product with a cultivation license. This is necessary to clarify that processors can only produce nonmanufactured cannabis products and to provide for enforcement by the Department should the licensee violate this requirement.

Subsection (c) clarifies that while the processing license is a cultivation license issued by the Department, processors are not permitted to cultivate cannabis. This subsection

provides transparency to processor licensees to ensure compliance with license type and consistency for enforcement regarding prohibition of cultivation on a processor license type premises.

Section 8304 General Environmental Protection Measures

After consideration of the provisions put into place by legislation in BPC Section 26060(c), the Department is required to implement the California Environmental Quality Act (CEQA) related to the licensing of commercial cannabis cultivation. To protect the natural resources available to all the people of California, programmatic environmental impacts were identified through the Department's *Literature Review on the Impacts of Cannabis Cultivation*. General environmental protection measures were determined necessary to establish in order to mitigate significant risks as foreseen by prior research to protect natural resources, including, but not limited to, protections for instream flow, water quality, and fish and wildlife.

Subsections (a) and (b) were included pursuant to BPC Section 26060.1(b)(1) as the Department is obligated to include requirements established pursuant to Section 13149 of the Water Code to protect fish, wildlife, fish and wildlife habitat, and water quality.

Subsections (c) and (g) regarding shielding of outdoor lighting was included upon review of the Department's *Medical Cannabis Cultivation Program, Scoping Report*. Mitigating light pollution from outdoor security lights mitigates potentially harmful effects on wildlife migration patterns. It was brought to the Department's attention through the *Medical Cannabis Cultivation Program, Scoping Report* that aesthetic light pollution is a concern that many people have that impacts nighttime views. Shielding should mitigate this impact.

Subsection (d) regarding the cessation of cultivation activities upon the discovery of human remains was added pursuant to Health and Safety Code Section 7050.5 and is a typical requirement regarding any human remains found within the State of California.

Subsection (e) requires compliance with generator requirements based upon recommendation of the Department's *Literature Review on the Impacts of Cannabis Cultivation*. Cannabis cultivation has the potential for the use of gasoline- or diesel-fueled equipment resulting in air emissions from fuel combustion exceeding air quality standards. Compliance with section 8306 would mitigate potential environmental risks and degradation of air quality.

Subsection (f) requires compliance with pesticide laws and regulations pursuant to section 8307 of this chapter pursuant to BPC Section 26060(c). This is necessary to provide clarity to licensees regarding their requirement for compliance with pesticide regulations.

Section 8305 Renewable Energy Requirements

Greenhouse gas emissions and high levels of energy consumption are controversially associated with commercial cannabis cultivation. The Department's *Literature Review on the Impacts of Cannabis Cultivation* estimates that three percent (3%) of all electricity use in California is associated with cannabis cultivation. The California legislature has declared that global climate change is a matter of increasing concern for public health and the environment and has enacted laws to offset greenhouse gas emissions. The California Renewables Portfolio Standard Program, as declared in the Public Utilities Code, is one such program that is working to offset greenhouse gas emissions. This proposed section of regulation identifies additional requirements that indoor and mixed-light tier 2 licensees will need to adhere to regarding the use of renewable energy requirements pursuant to the California Renewables Portfolio Standard Program. As recommended by the Department's *Literature Review on the Impacts of Cannabis Cultivation*, subsections (a) and (b) require evidence of carbon offsets or allowances from specified sources. Over time the renewable energy requirements will decrease the energy utilization and greenhouse gas emissions associated with commercial cannabis cultivation and assist in achieving the statewide goal of reducing greenhouse gas emissions.

Section 8306 Generator Requirements

This section clarifies the requirements for licensees using generators of various sizes. As cannabis cultivation may include the use of gasoline- or diesel-fueled equipment the potential for emissions of air pollutants or noxious gases impacts were determined to be significant by the Department's *Literature Review on the Impacts of Cannabis Cultivation*. Recommendations included restricting the use of generators to ensure human health hazards are minimized and significant impacts to air quality are mitigated.

Subsection (a) clarifies that the definition of generator for the purpose of section 8306 is consistent with the California Code of Regulations Section 93115.4. This is necessary to ensure consistency with other state regulations and provide clarity to licensees so that they know if the equipment they are using qualifies as a generator.

Subsection (b) establishes procedures for demonstration of compliance for generators rated at 50 horsepower and greater pursuant to the Airborne Toxic Control Measures. Documentation of compliance may either be provided by the California Air Resources Control Board or through the Local Air District with jurisdiction over the licensed premises. Generators that have demonstrated compliance with either regulatory body will mitigate human health hazards as well as greenhouse gas and air pollutant emissions.

Subsection (c) ensures compliance with the renewable energy requirements to be implemented by the year 2023. Subsection (c) aligns with the recommendation put forth by the Department's *Literature Review on the Impacts of Cannabis Cultivation* to limit generator usage to temporary or emergency use to reduce greenhouse gas emissions associated with cannabis cultivation. The proposed subsection requires the use of generators rated below 50 horsepower to be designated as low use, for emergency use only, or for the generator to come into compliance with the Air Resources Board requirements for compression ignition engines.

Subsection (d) requires all generators to be equipped with non-resettable hour-meters. If a generator does not come equipped with a non-resettable hour-meter an after-market non-resettable hour-meter shall be installed. The use of non-resettable hour-meters is required to ensure that cultivators are compliant in meeting California's Renewable Energy Requirements. Allowing cultivators to buy an external meter to be placed on an existing generator will mitigate risk of noncompliance as the whole generator does not need to be replaced.

Section 8307 Pesticide Use Requirements

This section establishes the requirements for pesticide use at a licensed site and is necessary to ensure compliance with CEQA. Pesticide use requirements are necessary for the Department to ensure the environment and natural resources are protected from the illegal use of pesticides and ensures the licensee maintains compliance with the Department of Pesticide Regulation.

Subsection (a) reiterates The Department of Pesticide Regulation (DPR) as the authority on pesticide enforcement and regulations, as designated in BPC Section 26060(c). DPR has determined pesticide use requirements to meet the application of pesticides or other pest control in connection with cannabis cultivation compliant with Division 6 of the Food and Agricultural Code and its implementation.

Subsection (b) establishes requirements, as recommended by the Department's *Final Program Environmental Impact Report*, to protect natural resources, including but not limited to pollinators, surface water, ground water, and wildlife, through the assurance pesticides comply with all state laws and regulations. Section 8307 of the proposed regulations was developed with assistance from DPR.

Section 8308 Cannabis Waste Management.

This section establishes rules for the handling of cannabis waste. It was developed with assistance from CalRecycle. Regulated waste management is necessary to protect public safety and prevent the potential diversion of product to the illicit market. The

regulation of cannabis waste also prevents soil, plant, and solid waste from noncompliant disposal resulting in destruction of natural water resources and fish and wild life habitat.

Feedback received by stakeholders during workshops and review of public comments for the Department's *Medical Cannabis Cultivation Program, Scoping Report* made it evident that waste management was a significant concern among stakeholders. The implementation of a waste management plan that documented actions taken to reduce and dispose of waste and recyclable material was recommended. The waste management plan is necessary to ensure the Department has a record of each licensee's method of cannabis waste handling to protect public safety and prevent the potential diversion of cannabis to the illicit market.

Subsections (a) and (b) define "cannabis waste" as organic waste and require management of hazardous waste according to the Public Resources Code as determined necessary with the guidance of CalRecycle.

Subsection (c) requires licensees to obtain all required clearance and comply with all other regulatory agencies regarding waste compliance. As soil, plant, and solid waste may potentially pose significant risk for environmental degradation, including but not limited to improper disposal of large quantities of solid waste produced in association with cannabis activities or sediment runoff into waterways as determined in the Department's Literature Review on the Impacts of Cannabis Cultivation. Requiring compliance with other regulatory bodies, including but not limited to the regional water control boards, local health agencies, and fire authorities mitigates potential significant risk posed by unmanaged solid, plant, and soil waste.

Subsection (d) provides for the disposal of cannabis waste in a secured waste receptacle that is only accessible by the licensee, licensee's employees, or the appropriate waste hauler. This subsection is necessary to ensure that cannabis waste is not illegally diverted to the illicit market and is disposed of by the means the licensee

has agreed to.

Subsections (e), (f), (g), and (h) establish the methods of compliance for managing cannabis waste as identified on the cannabis waste management plan. With the assistance of CalRecycle the Department has determined that composting, local agency collection, and self-hauling to a solid waste facility as acceptable means of managing waste.

Subsections (i) and (j) establish procedures and requirements for maintaining accurate and comprehensive records of cannabis waste weights and disposal. Maintaining weight records of cannabis waste before disposal and entering the information into track-and-trace is the most efficient way for the Department to monitor for diversion of cannabis to the illicit market. These subsections provide transparency to cultivators and consistency for enforcement.

Article 5. Records and Reporting

Section 8400 Record Retention

This section defines the specific records related to commercial cannabis activity each licensee must maintain, and the requirements, including timeframes and location, for retaining these records. Records retention requirements are fundamental to an effective regulatory oversight program. It is necessary for required records and documentation to be retained and made readily available to Department staff, who will be inspecting licensed facilities to determine compliance with California's cannabis licensing requirements. These proposed regulations are added to address the statutory provision in BPC Section 26160(a) requiring licensees keep accurate records of commercial cannabis activity, and is a consistent/typical requirement for businesses in California.

Subsection (a) requires records to be kept for a minimum of seven years as mandated in BPC Section 26160(b).

Subsection (b) addresses the requirement in BPC Section 26160(d) which states records must be kept on the licensed premises, available for inspection, and be delivered to the licensing authority upon request; subsection (e) clarifies the records must be kept in an area to maintain legibility for examination by the licensing authority to perform its duties under BPC Section 26160(c). In the absence of specific records retention requirements, licensees would have the discretion to dispose of or destroy business records that often serve as the primary basis for determining statutory and regulatory compliance, the importance of which relates to BPC Sections 26160(e) and (f), which create a violation or fine for failing to either maintain required records or allow inspection of required records.

Subsection (c) clarifies BPC Section 26160(c) by defining standard business hours; the 8:00am – 5:00pm time frame is a customary standard.

Subsection (d) provides a list of records required to be kept on the licensed premises, clarifying BPC Section 26160(d), and is added to specify and compile, in one section, the statutory requirements related to the storage of records for inspection by the licensing authority. The list of required documents was determined by statutory requirements mandated in BPC Section 26069(b), related to required licensure; Section 26051.5 related to licensing requirements; Section 26055(g)(2), related to local approval; Section 26060(c) related to CEQA compliance; Section 26060(b) related to weighing and measuring devices; Section 26066 related to protection of the environment; Sections 26067 and 26069(c)(2)(A) related to track-and-trace and unique identifier requirements; and Section 26160(a) related to commercial cannabis activity which includes cultivation, possession, storing, packaging labeling and transportation of cannabis and cannabis products. Other required financial, personnel, and contractual records are consistent and typical with records requirements for other California businesses.

Section 8401 Sales Invoice or Receipt Requirements.

Every sale or transport is required by statute to be recorded on a sales invoice or receipt; which must be made available by authorized licensing authorities. This section specifies licensee requirements for the use of a signed sales invoice or receipt for every sale or transfer of cannabis or cannabis product to another licensee.

Subsections (a) and (b) reflect the statutory requirements in BPC Section 26053 requiring all cannabis activity to be conducted between licensees.

Subsections (c) and (d) reflect the requirement in BPC Section 26161(b)(2) regarding information required to be included on a sales invoice.

Subsections (e) (f) and (g) reflect the requirements in BPC Section 26161(b)(3) regarding information required to be included on a sales invoice.

Subsections (h) and (i) require seller and purchaser signatures as attestations that the information contained on the sales invoice or receipt is accurate. This is a standard/common provision for most commercial transactions.

This section is necessary to prevent the unlawful diversion of product from the commercial cannabis distribution chain during transfer and to allow the opportunity for the Department, other state licensing authorities, any state or local law enforcement, and the California Department of Tax and Fee Administration to verify legitimacy of the sale and off-site movement of cannabis or cannabis products.

Section 8402 Track-and-Trace System

This section outlines licensee requirements under BPC Sections 26067 and 26069 for using the track-and-trace system, which is designed to accurately record the movement of cannabis plants on the licensed premises and monitor commercial cannabis activity.

Subsection (a) reflects requirements under BPC Sections 26160(a) and 26067(b)(2)(A) for accurate data recordation so irregularities within the system can be identified.

Subsection (b) reflects requirements under BPC Section 26068(a) which requires the use of the state's seed to sale track-and-trace system for the different stages of the commercial cannabis activity, including, but not limited to cultivation, harvest, processing, distribution, inventory and sale.

Subsection (c) was developed to require the highest level of accuracy from licensees by requiring each licensee to establish one individual as their account manager, who is required to complete track-and-trace system training, train other users designated by the licensee to access the system, monitor designated users, and correct erroneously entered data within a specified time period.

Subsection (d) was included to place the responsibility of all data entered into the track-and-trace system on the licensee and not on the licensee's representatives delegated to enter data into the track-and-trace system on the licensee's behalf. Strict accountability on the licensee for data entered into the track-and-trace system is foundational to the Department's ability to effectively administer the system and to pursue administrative action when evidence of potential fraud or unlawful activity is found.

Subsection (e) was added to protect the integrity of the track-and-trace system data per BPC Sections 26067, 26068, and 26160(a). These provisions are made for a temporary loss of access to the track-and-trace system. Because the track-and-trace system is a critical tool for state licensing agencies to monitor and track cannabis activities and to protect against unlawful inversion to and diversion from the commercial cannabis supply chain, it is deemed necessary for licensees to keep accurate records during a temporary loss of access to the system. It was determined that three (3) days provides a reasonable amount of time to enter inventory tracking activities that may have occurred during the loss of access, once access is restored, or to obtain access to the system at an alternate connection point and enter the required data. Accurate and

timely entry of data into the track-and-trace system is paramount especially related to transportation of cannabis and cannabis products from one licensee to another. BPC Section 26070(e) requires that a system generated shipping manifest be prepared prior to transporting cannabis and cannabis products, and BPC Section 26070(f) requires that a physical copy of a shipping manifest must be maintained by the licensed distributor who must make it available to law enforcement officers upon request. Without a system generated manifest, law enforcement officers would not have necessary documentation to validate the subject transportation of cannabis and cannabis products is associated with licensed commercial cannabis businesses. Therefore, a determination was made to prohibit transfers of product during a temporary loss of access to the track-and-trace system because doing so would be in direct violation of these statutory provisions and would increase the risk for potential for unlawful diversion from the commercial cannabis distribution chain.

Section 8403 Track-and-Trace System Unique Identifiers (UID)

BPC Section 26067 mandates the Department, in consultation with the Bureau, establish a track and trace program for reporting the movement of cannabis and cannabis products using a unique identifier pursuant to BPC Section 26069. This section outlines the licensee requirements for the use and application of the Department-issued track-and-trace system UID for each lot (a lot is comprised of no more than one hundred (100) plants) of immature cannabis plants of the same strain and for each individual mature cannabis plant.

Subsection (a) specifies a five (5) day requirement for the designated account manager to request UID tags. Only the licensee's designated account manager, who has been credentialed by the Department, can place an online order for the required UIDs. It is critically important that a licensee's on-hand inventory, if any, of cannabis and cannabis products be entered into the track-and-trace system as soon as possible. To ensure timely application of UIDs to existing inventory, it was necessary to place a time requirement to ensure the licensee had initiated the first step in the process for doing so. Because ordering tags in the system is comparable to ordering a product online five

(5) days was determined to be a reasonable timeline for the licensee to place an order for UIDs. Three (3) business days was determined reasonable to document physical receipt of the ordered UIDs using the track-and-trace system. These timelines were also established to ensure the Department is complying with BPC Section 26069(c)(2)(A) by issuing UIDs as quickly as possible.

Subsection (b) requires that a UID shall accompany cannabis through all phases of the growing cycle beginning with lots of up to one-hundred (100) immature plants; and lots of immature plants shall be uniform in strain. Based in part on input and feedback the Department received from cannabis cultivators during the regulatory scoping workshops, the Department determined that tracking lots of immature plants would simplify the process for tracking by making allowances for standard plant loss in the early stages of plant development, while ensuring all living plants at a site, regardless of size, are accounted for in the track-and-trace system. Since there are no restrictions for the total number of immature plants or immature plant lots allowed on a licensed cultivator's premises, it is possible for thousands of immature plants to be housed on a licensee's premises at any given time. Consequently, the one-hundred (100) plant maximum per immature lot of plants consisting of a uniform strain was determined by the Department to be a reasonable number to facilitate field inspections, validate corresponding data entered into the track-and-trace system, and maintain an effective mechanism to trace product back to its source. Similarly, immature plants intended for retail sale must have a UID affixed, or be labeled with the sourced lot UID number, and be recorded in the track-and-trace system prior to transfer from the licensed nursery. Each flowering plant or plant moved to the canopy area is required to have its own UID tag. Location of the tag on the plant was determined so as to facilitate field inspections and to comply with BPC Section 26069(c)(2)(A).

Subsection (c) requires each harvest to be designated a harvest batch name which is associated with the individual plant UIDs contained in the harvest batch as defined in regulations. This regulation was established to ensure tracking of harvest batches is consistent with the existing track-and-trace system design and functionality.

Subsection (d) requires UIDs for all packages of cannabis and nonmanufactured cannabis products created from the licensee's designated harvest batches are tracked throughout the commercial cannabis supply chain pursuant to BPC Section 26067(a).

Subsection (e) requires that UIDs be retired in the track-and-trace system within three (3) business days after destruction or disposal of cannabis or cannabis products. Three (3) business days was determined reasonable for the licensee to retire applicable UIDs in the system. Timely and affirmative system documentation of disposal of cannabis and cannabis products, and the corresponding retirement of associated UIDs, is critically important for the Department to ensure cannabis and cannabis products are not being unlawfully diverted from the commercial cannabis distribution chain.

Individual UID application to mature plants ensures consistent application and verification of UIDs by Department field staff during the phase of the cultivation lifecycle when the risk of activities associated with unlawful inversion and/or diversion of cannabis and cannabis products to and from the licensed commercial cannabis distribution chain is at its highest.

Section 8404 Track-and-Trace System User Requirements

This section provides specific track-and-trace system user requirements. These provisions are included to protect the integrity of the data in the track-and-trace system.

Subsection (a) requires track-and-trace account managers or user to have a unique system log-on, which is prohibited from being used by any other person.

Subsection (b) requires track-and-trace account managers to maintain a unique log-on which may not be shared. Unique log-on requirements for software applications are standard in both the public and private sectors.

Subsection (c) prohibits falsification of information entered into the track-and-trace system. Information must be accurate for effective tracking.

Subsection (d) requires the account manager to monitor and respond within a specified time to notifications from the licensing authority, as needed. Timely responses are intended to ensure and protect the integrity of data in the track-and-trace-system.

The inclusion of information associated with the unique identifier and the licensee in the track and trace program is required by statute. Traceability of unique track-and-trace system users is necessary to ensure the reliability of data entered into the system and to ensure all individuals entering data into the system are affiliated with a licensed commercial cannabis business.

Section 8405 Track-and-Trace System Reporting Requirements

This section defines the specific information and timing requirements for licensees to report information related to a change in disposition of cannabis and nonmanufactured cannabis products on a licensed premises—and the transfer of cannabis plants or nonmanufactured cannabis products to another licensed entity to comply with BPC Section 26067. These provisions are included to protect the integrity of the data in the track-and-trace system and to clarify BPC Section 26067(a).

Subsection (a) requires annual licensees to report transfers of cannabis in the track-and-trace system per statute.

Subsection (b) specifies entering data regarding cannabis received or rejected from another licensee within twenty-four (24) hours. Twenty-four (24) hours was deemed reasonable for a licensee to document in the system physical receipt or rejection of cannabis and cannabis products. This provision was added to ensure that book inventory in the system corresponds to the physical transfer of products between licensees and is captured in the system in a reasonable and timely manner.

Subsection (c) requires reporting a change in the disposition of cannabis plants be made within three (3) business days. Three (3) business days to document a change in cannabis disposition is consistent with other Department regulatory data entry timelines. Changes to cannabis disposition are defined in this subsection for clarity. For subsection (c)(4)(A), in order to be consistent with the Revenue and Taxation Code Section 34012(c) and to provide an objective basis for calculation of the mandated cultivation tax for categories of unprocessed or frozen cannabis plants and shipment of cannabis directly to manufacturers before any drying, curing or trimming activities occur, the Department established a requirement to obtain the wet weight of harvest cannabis immediately after harvest of the plant. The wet weight, harvest batch weight, and weight of waste for each cannabis plant is required to be entered into the track-and-trace system.

Subsection (d) specifies data to be entered into the track-and-trace system to clarify BPC Sections 26067(a) and (b) and BPC Section 26069.

Subsection (e) prohibits the use of the track-and-trace system by temporary license holders, who alternatively must adhere to section 8401. The Department determined that to allow temporary licenses who have not paid fees or submitted comprehensive licensing documentation would present a risk to the integrity of data in the track-and-trace system.

Subsection (f) allows annual licensees using the track-and-trace system to conduct business with temporary licensees. The provision requires annual licensees to enter required data associated with transactions with temporary licensees into the system. Licensees are required by statute to keep accurate records of cannabis activity. Establishing consistent, accurate, and complete data-entry requirements for authorized track-and-trace system users is necessary to ensure the integrity, reliability, and consistency of the mandated system.

Section 8406 Track-and-Trace System Inventory Requirements

This section requires the licensee to use the track-and-trace system for all inventory-tracking activities at the licensed premises. These provisions are included to protect the integrity of the data in the track-and-trace system and to clarify BPC Section 26067(a).

Subsection (a) requires licensees to reconcile all on-premises and in-transit inventories at least once every fourteen (14) days. The Department considered industry input to determine that fourteen (14) days is a reasonable time limit to allow a licensee to review its inventory data in the track-and-trace system to ensure the data is current and reliable for inspection and validation purposes.

Subsection (b) requires the recordation of net weight of harvested cannabis after the majority of drying, trimming, and curing activities have been completed or within sixty (60) calendar days, whichever is sooner. In order to be consistent with Revenue and Taxation Code Section 34010 and to provide an objective basis for calculation of the mandated cultivation tax based upon the 'dry-weight ounce' of cannabis flowers and cannabis leaves, the Department established a requirement to obtain the net weight of harvested cannabis. Freshly harvested cannabis flowers and leaves contain a significant amount of moisture which begins to immediately evaporate after harvest. Based upon industry input and feedback, the Department learned that although drying, trimming and curing techniques can vary significantly from cultivator to cultivator, the majority of these activities were completed by cultivators within sixty (60) days of harvest. In recognition of potential variability from cultivator to cultivator and to meet the mandated need to establish a basis, and a date certain, for determining the 'dry-weight ounce' of flowers and leaves for calculation of the cultivation tax, the Department determined that sixty (60) days is a reasonable time limit for the majority of drying, trimming, and curing activities to be completed and for the net weight to be determined and entered into the track-and-trace system.

Subsection (c) requires a licensee to close out their physical inventories of cannabis and UIDs upon a voluntary surrender, expiration, or revocation of their license. This

provision was added to prevent misuse of the track-and-trace system and prevent the risk of unlawful inversion or diversion of cannabis and cannabis products to/from the commercial cannabis distribution chain after a licensee is no longer part of the regulated market.

Subsection (d) specifies the items that are required to be closed out in the track-and-trace system as required in subsection (c).

Subsection (e) requires that all transfers and sales shall be documented either using a sales invoice or receipt and entered into the track-and-trace system to comply with BPC Section 26161(a) and (b) and BPC Section 26067.

The track-and-trace system is a real-time inventory-management system; it will be one of the primary tools for all state licensing agencies to monitor and track cannabis and cannabis products from seed to sale. The inventory reconciliation and close-out requirements are necessary to protect against unlawful inversion and diversion to and from the licensed commercial cannabis distribution chain.

Section 8407 Track-and-Trace System Requirements for Cannabis and Nonmanufactured Cannabis Products in Temporary Licensee Possession at the Time of Annual License Issuance

This section describes the process and timeline for a temporary licensee to report each immature lot and each individual mature cannabis plant and cannabis product in the licensee's physical possession on the licensed premises at the time the state annual license is issued.

Subsection (a) requires that within thirty (30) days after receipt of UIDs, the new annual licensee must enter into the track-and-trace system each existing immature plant lot, individual mature plants, and all nonmanufactured cannabis products on the premises. It is critically important that a licensee's on-hand inventory of cannabis and cannabis products be entered into the track-and-trace system as soon as possible. The

Department considered industry input and feedback for determining that thirty (30) days from physical receipt of the UIDs was reasonable to report assignment of UIDs to the licensees on-hand inventories of cannabis and cannabis products. This timeline was also established to ensure the Department is complying with BPC Section 26069(c)(2)(A).

Subsection (b) requires that after the thirty (30) days has expired, all newly acquired cannabis at the licensed premises must be entered into the track-and-trace system, starting with seed, propagated clone, or seedling purchased from a licensed nursery. This provision sunsets July 1, 2019. The sunset date was adopted based on the statutorily mandated temporary license cutoff date of December 30, 2018 and includes a one-hundred and twenty (120) day temporary license period and one possible extension of ninety (90) days. At that point, the Department expects that only annual licenses will be issued and all licensees will be credentialed and will be using the track-and-trace system.

The proposed regulations are added to clarify the statutory provisions in BPC Section 26067. Specific requirements outlining how and when licensed cultivators will need to address and report on-hand inventory was not covered in statute. These proposed regulations are necessary to provide a clear and consistent procedure for addressing and reporting cannabis and cannabis products existing at a temporary licensee's premises at the time of annual licensure, and to protect against unlawful inversion and diversion to and from the licensed commercial cannabis distribution chain.

Section 8408 Inventory Audits

This section provides the Department with the authority and discretion to perform an audit of the licensee's physical inventory and inventory as reported in the track-and-trace system. Physical inventory audits shall be conducted during standard business hours or other reasonable time. The provision adopted a customary standard for normal operating business hours. Variances between the results of the physical audit and inventory reflected in the track-and-trace system (not associated with normal moisture

loss) may be subject to violation. These proposed regulations are added to clarify the statutory provisions in BPC Sections 26015, 26067, and 26160. Licensing authorities may, by statute, examine records and inspect the premises of a licensee. Inventory audits are necessary to ensure a proper accounting of all cannabis and cannabis products, and to deter activities associated with the unlawful inversion and/or diversion of cannabis and cannabis products to and from the licensed commercial cannabis distribution chain.

Section 8409 Notification of Diversion, Theft, Loss, or Criminal Activity

This section requires licensees to notify the Department of any discovered diversion, theft, loss, or criminal activity associated with their inventory of cannabis and nonmanufactured cannabis products. These proposed regulations are added to further public protection in accordance with BPC Sections 26013 and 26015. A specific requirement for a licensed cultivator to communicate product diversion, theft, loss, or criminal activity was not covered in statute. The Department determined that notification of diversion, theft, loss, or criminal activity to a licensing authority within three (3) business days was a reasonable time. Three (3) business days to for notification is consistent with other Department regulatory reporting timelines. These notifications are necessary to ensure a proper accounting of all cannabis and cannabis products, and to deter activities associated with the unlawful inversion and/or diversion of cannabis and cannabis products to and from the licensed commercial cannabis distribution chain.

Article 6. Inspections, Investigations, and Audits

Section 8500 Inspections, Investigations, and Audits Applicability

This section states the general authority for the Department—as well as other state or local government officials—to conduct an inspection, investigation, or audit of licensed premises to determine compliance with state laws and local ordinances. These proposed regulations are added to clarify the Department’s statutory authority provided in BPC Section 26015 and Fish and Game Code Section 12029(c).

Subsection (a) clarifies BPC Section 26015 which allows licensing authorities to examine records, inspect the premises of a licensee, or carry out investigations as necessary to carry out its duties.

Subsection (b) provides for coordinated inspections, investigations, examinations, and audits with the State Water Resources Control Board and the Department of Fish and Wildlife as they have existing programs targeted toward illegal cannabis cultivation.

The purpose of Department inspections, investigations, and audits is to ensure licensed cultivators are in full compliance with the reporting, recordkeeping, and operational requirements and will help establish a level playing field for all licensees. Inspections are necessary to ensure approved environmental mitigations and protections are in place and to detect, deter, and prevent potential fraud and abuse in the commercial cannabis distribution chain, to ensure a proper accounting of all cannabis and cannabis products, and to deter activities associated with the unlawful inversion and/or diversion of cannabis and cannabis products to and from the licensed commercial cannabis distribution chain.

Section 8501 Inspections, Investigations, and Audits

This section provides authority for the Department to inspect, investigate, examine, or audit the books, records, accounts, inventory, and on-site operations specific to the licensee anytime the licensee is exercising privileges under the license or other reasonable time. This provision was added under the authority of BPC Section 26160 (c) so the Department can inspect a licensee's premises and records for compliance.

Subsection (a) provides a list of purposes for which the Department may conduct an inspection under BPC Section 26160 (c).

Subsection (b) provides that the Department may conduct inspections, investigations, and audits at any time, without prior notice if deemed necessary to perform its regulatory duties. This provision was added because unlike a regular audit which can be

scheduled, an inspection, or a site visit as part of an investigation, may necessitate that the field visit not be announced in advance. This is especially true during harvest, which occurs at all hours due to the timely nature of the operation. The point of harvest has a higher risk of unlawful inversion to or diversion from the commercial cannabis supply chain than other times in the cannabis cultivation life cycle.

Subsection (c) prohibits a licensee, licensee's agent, or employees from interfering, obstructing, or impeding an inspection, investigation, or audit; and specifies behaviors that are considered interference, obstruction, or impediment. This subsection clarifies BPC section 26160(e).

Subsection (d) provides assurance that applicants or licensees will be notified of the results of an inspection, investigation, or audit, and any action that may be taken. Pursuant to statute, Department field staff must be permitted access to licensed premises and it is an operational necessity for them to have the ability to conduct field activities freely, without obstruction or impediment. It is fundamental to the Department's ability to effectively monitor licensed cultivators, to ensure a proper accounting of all cannabis and cannabis products, and to deter activities associated with the unlawful inversion and/or diversion of cannabis and cannabis products to and from the licensed commercial cannabis distribution chain.

Article 7 Enforcement

Section 8600 Enforcement Applicability

This section provides authority for the Department to take administrative or licensing action against the licensee (or any responsible party) at any time within five (5) years after the Department discovers any violation of state law or local ordinance. The purpose of this provision is to clarify the Department's statutory enforcement authority provided in BPC Sections 26031 and 26034. Licensing authorities shall by law, file accusations against a licensee within five (5) years, of the act or omission unless committed through fraud, in which case within five (5) years from discovery of the fraudulent act.

Section 8601 Administrative Actions

This section 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. The purpose of these proposed regulations is 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 is proposing establish ranges with minimum and maximum amounts based upon the violation category (i.e., minor, moderate, or serious). Fine amounts were determined by calculating the potential impact of the violation on the environment, public safety, and the Department’s ability to effectively administer the program. These regulations are necessary to provide licensees with a clear structure for the application of civil penalties and to ensure the Department is consistent and transparent in its application of administrative remedies associated with violations of the statutes and regulations.

Subsection (a) provides definitions of serious, moderate, and minor categories of violations that were developed to deter non-compliance. These definitions were developed based upon violation categories used in other Departmental programs. Regulations under the Department’s Division of Measurement Standards were used as a reference for this section; specifically, Section 4802.

Subsection (b) specifies that repeat violations may result in an escalation of violation class. This provision was added as a progressive disciplinary action to deter ongoing violations by licensees.

Subsection (c) includes a violation for a licensee who fails to maintain or provide required records under BPC Section 26160(f).

Subsection (d) contains the table which lists the violations and the corresponding category of serious, moderate, or minor.

Section 8602 Notice of Violation

This section provides authority for the Department to issue a Notice of Violation for violations of applicable statutes and regulations. The purpose of these proposed regulations is to clarify the Department's statutory enforcement authority provided in BPC Section 26031.

Subsection (a) identifies to whom the notice of violation shall be served and defines the information required to be included in the notice of violation. This provision was developed based on violation notice protocols currently used by the Department.

Subsection (b) specifies that if a respondent does not respond in writing within 30 days, the right to a hearing is deemed waived. This provision is to ensure licensees provide timely responses regarding their due process rights to a hearing and to facilitate the Department's need to schedule and process appeal requests in a timely manner.

Licensing agencies are authorized by statute to discipline licensees after proper notice and hearing to the licensee. These regulations are necessary to provide licensees with a clear structure for the application of civil penalties and to ensure the Department is consistent and transparent in its application of administrative remedies associated with violations of the statutes and regulations. This section is consistent with other similar Department regulations regarding Notice of Violation procedures.

Section 8603 Emergency Decisions

This section outlines when the Department may issue an emergency decision and order to a licensee to provide for temporary, interim relief to prevent or avoid an immediate danger to public health, safety, or welfare. The provisions of this regulation have been adopted to clarify Government Code Sections 11460.10 through 11460.80.

Subsection (a)(1) through (6) set forth the circumstances that constitute immediate danger to the public health, safety, or welfare. These include any illegal diversion or inversion of cannabis, nonmanufactured cannabis products, or cannabis products

(collectively “cannabis”) because the source of the cannabis is unverified and poses a high risk of being exposed to illegal pesticides or exposure to other harmful chemicals. All the other situations enumerated pose an immediate danger to the public either as a result of threats to the environment, unsafe labor practices, or the threat posed by continued illegal activity. The Department determined that these situations were reasonable and necessary to include as being subject to an emergency decision based on conferring with the other licensing authorities and the intent of the MAUCRSA.

Subsection (b) provides that the Department may temporarily suspend a license or issue an administrative hold of cannabis. This subsection clarifies what actions the Department may take when noticing a condition pursuant to subsection (a). The Department determined it was necessary to include a temporary suspension when a licensee’s actions, are so egregious they should not be allowed to continue operating. It is reasonable for a licensing agency to have this ability to not authorize or license illegal activity. The administrative hold is necessary to allow the Department to take emergency action with respect to specific cannabis under the licensee’s control and prohibit the subject cannabis from entering the supply chain if it is dangerous. This is reasonably necessary to protect the public from harm.

Subsection (c) sets forth the Department’s requirements for the content of the emergency decision. This subsection is necessary to include the requirements of Government Code section 11460.50.

Subsections (d)(1) through (6) provides procedures for the Department to issue an administrative hold. These sections provide clarity regarding issuance of the administrative hold order to the licensee and how the licensee is required to comply with the order. First, the order must identify the product subject to the administrative hold. This is necessary to provide clear instruction to the licensee as to the product subject to the hold. Second, the Department must indicate in the track-and-trace system the cannabis subject to the hold. This is necessary to ensure accurate tracking of the product and to provide a source for ensuring compliance and accuracy in the tracking

system. Third, licensees are required to physically segregate the cannabis subject to the hold. This is necessary and reasonable to ensure the cannabis subject to the hold is not inadvertently sold or transferred to another licensee or off the licensed premises. Additionally, this would prevent potential contamination of other cannabis. Fourth, while the administrative order is in effect, the cannabis subject to the hold cannot be moved. This is necessary to clarify the obligation of the licensee with respect to the property subject to the hold and protect the public. Fifth, this section clarifies that the licensee may otherwise continue to conduct certain cultivation activities on the property subject to the hold. Until the underlying issues that gave rise to the hold are resolved, it is necessary and prudent to allow the licensee to maintain the cannabis so it is not lost. Cannabis plants must be maintained. If the hold order is resolved and the cannabis subject to the order is eventually allowed to move, the Department does not want to be liable for product loss. Lastly, this subsection specifies that licensees may voluntarily surrender the product, which must be identified in the track-and-trace system, while preserving the licensee's hearing rights. This is necessary to give the licensee an option to voluntarily relinquish the cannabis subject to the hold. This is reasonable to protect the rights of the licensee and ensure accountability for the cannabis subject to the hold.

Subsection (e) provides the conditions for a temporary suspension. Subsection (e)(1) specifies that the licensee must immediately cease all commercial cannabis activity unless otherwise specified. This is necessary to provide clear direction to the licensee as to the effect of a temporary suspension. Subsection (e)(2) specifies that a licensee may continue to possess, cultivate, or harvest cannabis plants during a temporary suspension. As with the administrative hold, this is to prevent loss of the licensee's property while the underlying issues giving rise to the emergency decision are resolved. This is reasonable and necessary to protect property and prevent claims against the Department for property loss.

Subsection (f) provides the procedures by which the Department will issue an emergency decision and order. This is necessary to provide due process to licensees as required by law. Subsection (f)(1) provides that a licensee will have notice and an

opportunity to be heard, if practicable. This is necessary to clarify Government Code Section 11460.40. Subsection (f)(2) provides the manner in which the Department will provide notice as necessary to satisfy due process. Subsection (f)(3) specifies who can receive the notice to satisfy due process requirements. This is necessary to provide clarity as how to effectuate service of process. Subsection (f)(4) provides the licensee due process rights to request a hearing. The licensee is provided three (3) business days to request a hearing and the hearing must be held within five (5) business days. The Department determined these time frames were reasonable given that these are emergency proceedings and are consistent with, or similar to, time frames for other emergency proceedings. Subsection (f)(5) provides specificity as to the hearing procedures the Department will use in Section 8604. However, it clarifies that the time frames specified in Section 8604 are not applicable. The Department determined this was necessary and reasonable to reference the same procedure, but due to the emergency nature, reduce time frames. Subsection (f)(6) provides that if a hearing is held, the decision shall be issued within five (5) business days of the hearing. The Department determined this was necessary and reasonable because five (5) business days provides enough time for the Department to issue the decision and is consistent with the emergency nature of the proceedings.

Subsection (g) provides that, consistent with Government Code Section 11460.60, a determination on the underlying issues that gave rise to the emergency decision must be provided within ten (10) days. This section is necessary to clarify the requirements that the hearing on the underlying issues will be held pursuant to a formal hearing as required under BPC Section 26031.

Subsection (h) allows that a licensee, upon conclusion of the formal hearing, may appeal the decision to the Cannabis Appeals Panel in accordance with BPC Section 26043. This is necessary to clarify the appeal options after a formal hearing.

Subsection (i) specifies that a licensee may seek judicial review of the emergency decision under Section 1094.5 of the Code of Civil Procedure. This is necessary to

clarify the separate option the licensee has for review of the emergency decision and order as required in Government Code Section 11460.80, even in the absence of exhausting administrative remedies.

Section 8604 Informal Administrative Hearings

Licensing agencies are authorized by statute to discipline licensees after proper notice and hearing to the licensee. This section provides authority and outlines the process and procedures for a timely and effective adjudication of a licensee's appeal of a Notice of Violation and/or an order of administrative hold via an informal administrative hearing. The purpose of these proposed regulations is to clarify the Department's statutory enforcement authority provided in BPC Section 26031 and follows protocol outlined in the California Government Code related to administrative adjudication. This section is consistent with other similar Department regulations regarding informal hearing proceedings.

Subsection (a) provides specific instructions of how and when a licensee may appeal a Notice of Violation and request an informal hearing. It provides a list of information that must be contained in the request for an informal hearing. The requested information is standard/common and includes the basis of the appeal. Thirty (30) days for a licensee to request an appeal would allow licensees who use a post office box and/or who may not live on the cultivation site adequate time to respond to a Notice of Violation. The California Government Code related to administrative adjudication allows only fifteen (15) days for a response. The Department felt the cannabis industry, with its various and potentially unconventional business models, should be provided more time to respond.

Subsection (b) specifies that a licensee's failure to submit a timely written request constitutes a waiver of respondent's right to appeal. Since the Department is providing a licensee with thirty (30) days to respond to a Notice of Violation or administrative hold, it was deemed reasonable to believe that if a response was not received within the thirty

(30) days, a response would not be forthcoming, and the right to appeal would terminate as a result.

It is necessary to establish an informal hearing process to provide due process for licensees, and to adjudicate an appeal of fines or an order of administrative hold, to avoid potential adverse impacts to the licensee and the Department.

Section 8605 Informal Hearing Schedule and Notification

Licensing agencies are authorized by statute to discipline licensees after proper notice and hearing to the licensee. This section outlines the Department's procedure and timeframe for scheduling and notifying a licensee of an informal administrative hearing in response to his or her appeal of the Department's issuance of a Notice of Violation or an order of administrative hold. The purpose of these proposed regulations is to clarify the Department's statutory enforcement authority provided in BPC Section 26031. This section is consistent with other similar Department regulations regarding informal hearing scheduling and notification

Subsection (a) requires the Department to schedule an informal hearing within forty-five (45) calendar days from receipt of the request for an informal hearing.

Subsection (b) requires that the Department's notice to the respondent of the informal hearing contain specified standard/common information, including a statement notifying the respondent that they may be represented by legal counsel at any or all stages of the proceedings.

It is necessary to establish an informal hearing process to provide due process for licensees and to adjudicate an appeal of fines or an order of administrative hold to avoid potential adverse impacts to the licensee and the Department. Informal hearings to adjudicate appeals of fines, or an administrative hold are currently used in the Department and are critical to avoid potential adverse impacts to the licensee and the Department.

Section 8606 Conduct of Informal Hearings

Licensing agencies are authorized by statute to discipline licensees after proper notice and hearing to the licensee. This section outlines the procedures, time requirements, and conduct of an informal administrative hearing. The purpose of these proposed regulations is to clarify the Department's statutory enforcement authority provided in BPC Section 26031. This section is consistent with other similar Department regulations regarding Notice of Violation procedures.

Subsection (a) provides that the standard of proof in an informal hearing be based on evidentiary facts.

Subsection (b) allows for an informal hearing to be conducted by phone at the request of the respondent. This provision was added because many licensees are located in distant and/or remote areas. This provision protects the due process rights of licensees and mitigates potential hardships by providing licensees with the option to participate in hearings remotely.

Subsection (c) requires the decision of the hearing officer to be in writing and to include a statement of the legal basis for the decision. This is a standard/common practice.

Subsection (d) requires the Department to issue a decision within thirty (30) calendar days after the hearing. This provision provides the licensee with a date certain for receiving the hearing officer's decision and a quick resolution of their appeal.

Subsection (e) requires the decision to be served on the respondent via the same method by which the appeal request was received. This is a standard/common practice.

Subsection (f) provides notice that a respondent may appeal the Department's decision to the Cannabis Appeals Board per BPC Sections 26043 and 26044.

It is necessary to establish an informal hearing process to provide due process for licensees and to adjudicate an appeal of fines or an order of administrative hold to avoid potential adverse impacts to the licensee and the Department.

Section 8607 Licensing Actions

Licensing agencies are authorized by statute to discipline licensees after proper notice and hearing to the licensee. This section expresses the authority and outlines the licensing action the Department may take against a licensee, including the authority to simultaneously revoke, suspend, or impose conditions on some or all applicable cultivation licenses, if the licensee holds multiple licenses. The purpose of these proposed regulations is to clarify the Department's process and to ensure it is consistent with statutory enforcement authority provided in BPC Section 26031.

Subsection (a) provides the authority to the Department to take a licensing action for any violation of this chapter under BPC Section 26031.

Subsection (b) defines what licensing actions may be taken against a licensee who holds multiple licenses. Many licensees have more than one cultivation-type license. This provision allows the Department discretion to take action on all or some of the licenses as are deemed necessary in performing its required duties under BPC Section 26031.

Section 8608 Formal Administrative Hearings

This section outlines the Department's authority to give a licensee a notice of intent to hold a formal administrative hearing in accordance with the provision of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, to pursue disciplinary actions against a licensee as required by BPC Section 26031. The purpose of these proposed regulations is to clarify the Department's process and to ensure it is consistent with the statutory enforcement authority provided in BPC Section 26031. Licensing agencies are authorized by statute to discipline licensees after proper

notice and hearing to the licensee, but required to do so through a formal administrative hearing if denying a license or renewal, revocation, or suspension.

Standardized Regulatory Impact Assessment Summary

These regulations impose significant costs on cannabis cultivators, thereby increasing the cost of cannabis production. The increased costs are proportionally greater for outdoor cultivators. The net effect is a reduction in the commercial cannabis market quantity and a small increase in price. The gross output value of outdoor, mixed light, and nurseries decreases, and indoor production increases slightly.

The increase in the marginal cost of production has two effects: a decrease in cultivator–proprietor income, and an increase in purchases from other sectors of the economy that supply the inputs to comply with medicinal and adult-use cannabis regulations (this includes material purchases, employee labor, and local government agency fees). In addition, Department expenditures generate economic activity through direct Department activities and contracting for technical consulting services, such as hiring staff to issue licenses, conducting license enforcement, and providing track-and-trace and related services.

Some benefits are explicitly quantified, such as a reduction in the risk premium, but many cannot be analyzed until better industry data are available. These might be considered in future economic impact analyses.

These impacts do not include the effect of expenditure changes in other related industries, namely adult-use cannabis, domestic illegal-market cannabis, and exported illegal-market cannabis. These impacts also do not include changes in the processing sector, which, given the uncertainty about this new business type, is treated as a transfer-of-cultivator-harvest labor cost. This analysis takes a conservative approach to estimating Department economic impacts. Local fees and permits for other state

agencies explicitly required by Department regulations are included in the economic impact analysis.

A complete copy of the Standardized Regulatory Impact Assessment is attached as Appendix A.

Information Relied Upon

The Department referred to the following studies and reports while developing the proposed regulations for commercial cannabis cultivation:

- California Department of Food and Agriculture *Final Program Environmental Impact Report*, November 2017,
<https://www.cdfa.ca.gov/calcannabis/PEIR.html>
- Blue Ribbon Commission on Marijuana Policy, *Pathways Report: Policy Options for Regulating Marijuana in California*, July 22, 2015,
safeandsmartpolicy.org/wp-content/uploads/2015/07/BRCPathwaysReport.pdf
- California Department of Food and Agriculture, *Medical Cannabis Cultivation Program, Scoping Report*, January 2017,
<https://static.cdfa.ca.gov/MCCP/document/Medical%20Cannabis%20Scoping%20Report%20-%20January%202017.pdf>
- California Department of Food and Agriculture, *Literature Review on the Impacts of Cannabis Cultivation*, February 2017,
https://static.cdfa.ca.gov/MCCP/document/Literature%20Review_February_2017.pdf

- California Department of Food and Agriculture *Cannabis Cultivation Light Use Survey*, January 2017,
<https://static.cdfa.ca.gov/MCCP/document/Light%20Survey%20Results.pdf>
- California Department of Food and Agriculture, *Standardized Regulatory Impact Assessment*, February 2017,
dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/20170203FinalMCCPSRIA.pdf
- California Department of Food and Agriculture, Letter to the Department of Finance summarizing comments on the Standardized Regulatory Impact Assessment and CDFA's response to them, March 15, 2017.
- California Department of Justice, Office of the Attorney General, *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008,
ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf
- California State Water Resources Control Board, California Regional Water Quality Control Boards, and California Department of Fish and Wildlife, *Strategy Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater Caused by Marijuana Cultivation*, July 2014,
waterboards.ca.gov/water_issues/programs/enforcement/docs/2014strategicplan_wbcdfw.PDF
- *Joint Report to the Legislature on the Department of Fish and Wildlife and State Water Resources Control Board Pilot Project to Address the Environmental Impacts of Cannabis Cultivation (Watershed Enforcement Team)*, April 2015

Consideration of Reasonable Alternatives

The Department reviewed all comments that were provided for the now withdrawn regulations under the Medicinal Cannabis Regulation and Safety Act. Some of these comments were considered during the development of the regulations. Those that were not considered were either in conflict with existing statute or just not reasonable to adopt. The Department also considered several reasonable alternatives to the regulations proposed. For example, the Department considered alternative fee structures, mixed-light thresholds, definitions for canopy and premises, and limits to medium size licenses. However, no reasonable alternative considered or otherwise 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 as effective as or less burdensome to affected private persons than the proposed regulations. Furthermore, other reasonable alternatives were not chosen in order to be consistent with other cannabis licensing agencies or supported by surveys and comments from the public.

Pursuant to Government Code Section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for accepting or rejecting the proposed alternatives.

Mandated Use of Technology

The proposed regulations mandate the use of the Department's track-and-trace system by a licensee. BPC Section 26067 specifies that the Department is required to establish a track-and-trace system for reporting the movement of commercial cannabis items throughout the distribution chain that utilizes a unique identifier. The Department was unable to consider any other alternatives including those that do not prescribe the use of specific technologies.

Conflicts with Federal Regulations

The U.S. Food and Drug Administration (FDA) currently lists cannabis as a Schedule 1 drug under the Controlled Substances Act and has not approved cannabis for medical uses: “To date, the FDA has not approved a marketing application for marijuana for any indication. The FDA generally evaluates research conducted by manufacturers and other scientific investigators. Our role, as laid out in the Federal Food, Drug, and Cosmetic (FD&C) Act, is to review data submitted to the FDA in an application for approval to assure that the drug product meets the statutory standards for approval.”

The U.S. Department of Justice issued a Memorandum on January 29, 2013 titled “Guidance Regarding Marijuana Enforcement,” commonly referred to as the Cole Memo. The Cole Memo set forth marijuana enforcement priorities as guidelines for state and local regulatory and enforcement systems. However, the Cole Memo was rescinded by the Attorney General Jeff Sessions via the Sessions Memo title “Marijuana Enforcement” on March 21, 2018. The Sessions Memo shifted federal policy from the hands-off approach of the Cole Memo to permitting federal prosecutors across the country to decide individually how to prioritize resources to crack down on cannabis possession, distribution, and cultivation in states where it is legal.