

Cannabis Cultivation Licensing: The California State Regulatory Process

Frequently Asked Questions

Q. What is the California Department of Food and Agriculture's regulatory authority for licensing cannabis cultivators and implementing a track-and-trace system?

A. When a state legislature passes—and the governor approves—a law (also known as a statute), this enacts a new program or changes the laws governing an existing program. After the law's passage, one or more state agencies must adopt new regulations, amend existing regulations, and/or repeal existing regulations to ensure the program runs effectively. When the California State Legislature passed the Medical Cannabis Regulation and Safety Act in 2015, and California voters passed the Adult Use of Marijuana Act (Proposition 64) in 2016, both acts designated responsibilities for oversight of commercial cannabis to several state agencies.

The California Department of Food and Agriculture (CDFA) was granted the authority to (a) establish a cannabis cultivation licensing process for the state, and (b) develop a track-and-trace system to record the movement of cannabis and cannabis products through the state's supply chain. As a result, CDFA created a new division called **CalCannabis Cultivation Licensing**, which is tasked with overseeing these projects.

On June 27, 2017, California Governor Jerry Brown signed the cannabis trailer bill (also known as California Senate Bill 94). A trailer bill is legislation that implements specific changes to the law to enact the state budget. Generally a separate trailer bill is needed for each major area of budget appropriation, such as transportation, human services, education, revenue, or, in this case, cannabis. These bills typically are negotiated as part of the entire budget package each fiscal year.

In this instance, the cannabis trailer bill effectively merged the two existing cannabis bills—the Medical Cannabis Regulation and Safety Act and the Adult Use of Marijuana Act—into one streamlined bill: the **Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)**. Having one comprehensive state law will provide for a more unified and efficient regulatory process governing both medicinal and adult-use (recreational) cannabis. For a link to the most recent version of MAUCRSA, please visit the CalCannabis website at cannabis.cdfa.ca.gov.

Q. What is the process for creating the state cannabis cultivation regulations?

A. The California Administrative Procedure Act establishes the rulemaking procedures and standards for California's state agencies. The act's requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations and help ensure the regulations are clear, necessary, and legally valid.

The majority of adopted regulations that conform to the Administrative Procedure Act are submitted to the Office of Administrative Law as a **“regular rulemaking.”** Unless a proposed rulemaking action is submitted to the Office of Administrative Law as an **“emergency rulemaking,”** or is exempt from the Administrative Procedure Act, the regular rulemaking process must be followed when a state agency undergoes a rulemaking action.

Q. What is the regular rulemaking process?

A. The state agency must prepare the following documents and submit them to the Office of Administrative Law to initiate the regular rulemaking process:

- **Economic Impact Assessment** (for nonmajor regulations with less than \$50 million in economic impacts) or **Standardized Regulatory Impact Assessment** (also known as a SRIA, pronounced *sir-RHEE-uh*, for major regulations with more than \$50 million in economic impacts) – A SRIA is required with the California Department of Food and Agriculture's (CDFA) regulatory package because the cannabis cultivation regulations are considered a major regulation. It includes information on how the regulations will impact businesses and jobs and the potential impacts on competition and investment in California. The SRIA is posted on the California Department of Finance website at dof.ca.gov.
- **Economic and Fiscal Impact Statement (Form STD.399)** – This is a California Department of Finance form that includes information on the estimated economic and fiscal monetary impacts of the proposed regulations.
- **Notice of Proposed Action** – This notice provides critical information about the regulations, including a summary of existing laws that pertain to cannabis, the specific statutory authority that requires CDFA to create regulations, and details about the process for receiving the public's comments.

- **Initial Statement of Reasons (ISR)** – The Initial Statement of Reasons provides the rationale behind CDFA’s decisions for including each section of the regulations and describes the purpose, need, and benefits of the regulations. It also identifies the supporting materials used to make regulatory decisions.
- **Proposed Text of Regulations (Express Terms)** – This text identifies any proposed changes to the California Code of Regulations.

The state agency must publish the Notice of Proposed Action in the California Regulatory Notice Register and mail a copy to those who have requested it. The agency also must post on its website the Notice of Proposed Action, Initial Statement of Reasons, and the Proposed Text of Regulations.

Once a Notice of Proposed Action has been issued by the state agency and published by the Office of Administrative Law, a regular rulemaking record will officially be opened and the minimum 45-day public comment period commences.

The state agency may hold a public hearing; if the agency does not schedule a public hearing, anyone interested in having one may submit a written request for a hearing at least 15 days prior to the close of the written comment period, and that request must be granted. The state agency then receives and reviews the comments received during the official public comment period—and must summarize and respond to all of the comments. Some comments might ask for clarification of the proposed regulations, other comments might propose regulatory changes.

If the state agency makes changes to the regulations, the changes are categorized as follows:

- **Nonsubstantial Changes—Or No Changes**
Nonsubstantial changes do not alter the regulatory effect of the proposed provisions, and therefore the rulemaking process continues. The state agency updates the Informative Digest and prepares a Final Statement of Reasons (with a summary and a response to the public comments) and a Final Text of Regulations.

- **Substantial and Sufficiently Related Changes**

These are changes considered reasonably foreseeable based on the Notice of Proposed Action and must be made available for public comment for at least 15 days. The state agency mails a notice of opportunity for commenting on the proposed changes (along with a copy of the proposed changes) to each person who has submitted written comments about the proposal, testified at an official public hearing (and provided contact information), or asked to receive any notices of modification. The agency also must post this notice on its website. When no further substantial changes are made to the proposed regulations, the agency updates the Informative Digest and prepares the Final Statement of Reasons (with a summary and a response to the public comments) and the Final Text of Regulations.

- **Substantial Changes Not Sufficiently Related—Or Major Changes**

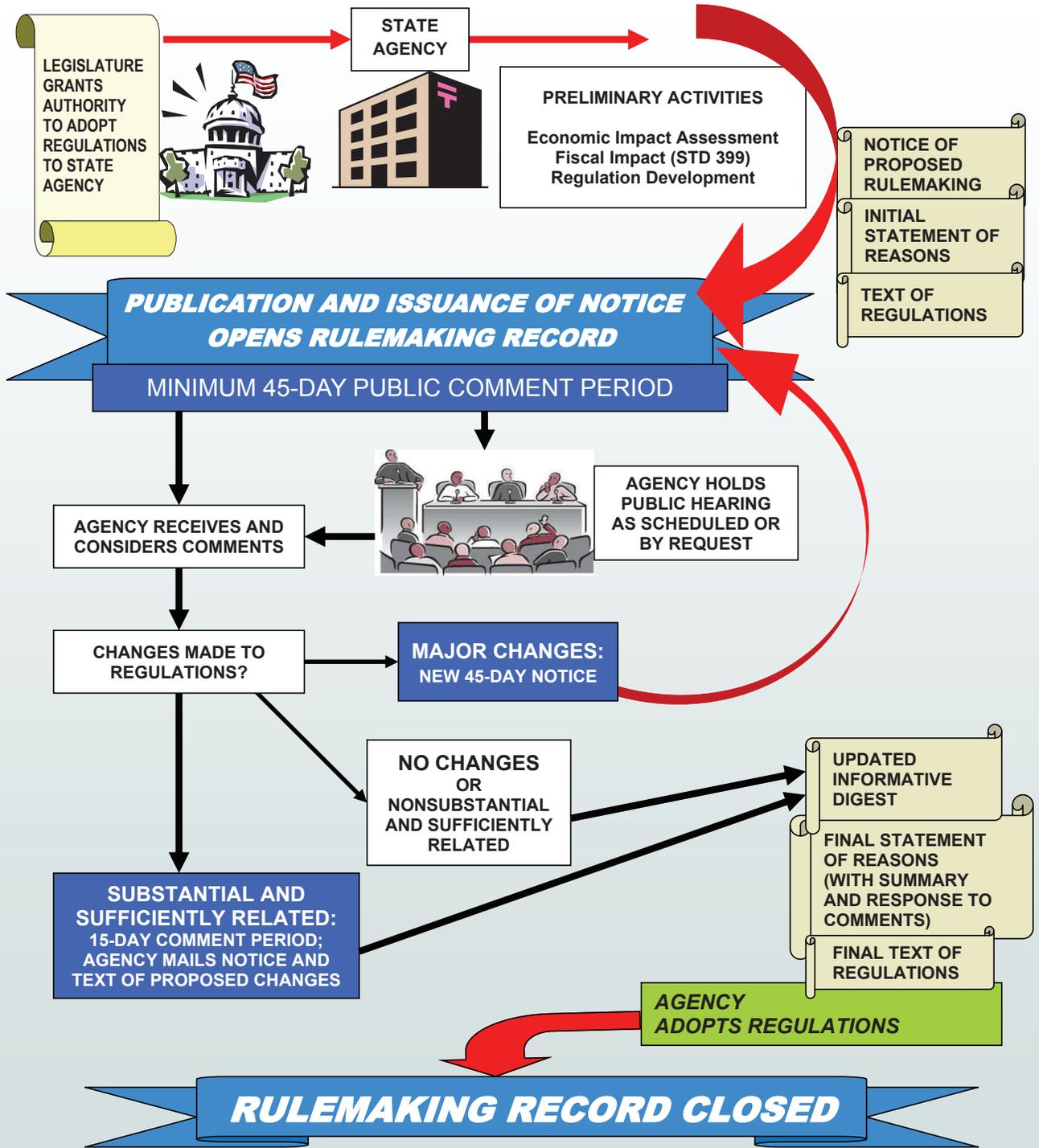
These are changes to the original proposal that are not reasonably foreseeable based on the Notice of Proposed Action. The state agency is obligated to publish another Notice of Proposed Action in the California Regulatory Notice Register, and hold another 45-day or longer public comment period. When no further substantial changes are made to the proposed regulations, the agency updates the Informative Digest and prepares the Final Statement of Reasons (with a summary and a response to the public comments) and the Final Text of Regulations.

The state agency must transmit a rulemaking action to the Office of Administrative Law for review within one year from the date the notice was published in the California Regulatory Notice Register. Once submitted, the Office of Administrative Law has 30 working days to conduct a review of the rulemaking record.

Generally regulations go into effect on one of four quarterly dates, which are based on the dates the final regulations are filed with California's Secretary of State: January 1, April 1, July 1, and October 1. However, an effective date may vary if a specific effective date is stated in statute or other law, the adopting agency requests a later effective date, or the agency demonstrates good cause for an earlier effective date.

For an illustrated step-by-step guide to this process, see the flowcharts on pages 5 and 7 for regular rulemaking and emergency rulemaking.

REGULAR RULEMAKING



Courtesy of the California Office of Administrative Law

Q. What is the emergency rulemaking process?

A. Before California Governor Jerry Brown approved the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in June 2017, the California Department of Food and Agriculture (CDFA) had followed the regular rulemaking process and submitted proposed regulations for the Medical Cannabis Regulation and Safety Act to the Office of Administrative Law. However, once MAUCRSA became law, CDFA had to withdraw those regulations; instead, a new set of regulations consistent with changes in the new law was proposed in November 2017.

CDFA followed the emergency rulemaking process for these regulations. This will be followed immediately by the regular rulemaking process to make the regulations permanent.

To initiate the emergency rulemaking process, the state agency files emergency regulations with the Office of Administrative Law (OAL) at least 10 calendar days before the effective date.

During the first five days of OAL's review period, the public may submit comments to OAL, with a copy for the state agency.

The state agency has until the eighth day of OAL's 10-day review period to submit to OAL a rebuttal to any public comments; however, this step is optional.

The OAL's deadline for a decision is on the tenth day after the emergency regulations were filed, and, if approved, the emergency regulations are filed with the Secretary of State and will become effective immediately for 180 days. (MAUCRSA allows for one 180-day re-adoption if the agency is making progress toward adopting the permanent regulations.)

For an illustrated step-by-step guide to this process, see the flowcharts on pages 5 and 7 for regular rulemaking and emergency rulemaking.

EMERGENCY RULEMAKING

(State agency should choose desired effective date and count backwards at least 17 days)

At least 5 working days before filing with OAL, the state agency must mail and post an emergency Notice, but 5-day Notice is not required if it is a Government Code § 11346.1(a)(3) emergency.

Notice consists of:

1. Proposed text
2. Finding of Emergency, which includes:
 - 1 CCR § 48 statement
 - Justification of emergency
 - Gov. Code § 11346.5(a)(2)-(6) information

AT LEAST 10 CALENDAR DAYS BEFORE DESIRED EFFECTIVE DATE, AGENCY MUST FILE EMERGENCY WITH OAL

Filing with OAL consists of:

1. Form 400, plus six copies
2. Proposed text, plus six copies
3. Form 399
4. Finding of Emergency
5. 1 CCR § 50(a)(5)(A) statement

During the first 5 days of OAL's review, the public may submit comments to OAL with a copy to the state agency, unless it is a Government Code § 11346.1(a)(3) emergency.

The agency generally has until the 8th day of OAL's 10-day review to submit rebuttal to any public comments to OAL (optional).

The 10th day after the emergency is filed with OAL is OAL's deadline for a decision, and, if approved, for filing with the Secretary of State.

If approved, the emergency is effective upon filing with the Secretary of State and is effective for 180 days.

Up to two 90-day readoptions are allowed if the agency is making progress towards adopting permanent regulations.

To make regulations permanent, the agency must conduct a regular rulemaking, providing for a regular notice and comment period (known as a Certificate of Compliance).

Courtesy of the California Office of Administrative Law

Q. Where can I read more about California's cannabis licensing process?

A. For information about state licenses for cannabis farmers, please visit the **CalCannabis Cultivation Licensing** website at calcannabis.cdfa.ca.gov. For details on other types of cannabis licensing in California, including manufacturing (such as edibles), testing, distribution, and retail, go to the **California Cannabis Portal** at cannabis.ca.gov.