CalCannabis Cultivation Licensing

Medical Cannabis Cultivation Licensing PROPOSED REGULATIONS

Frequently Asked Questions

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

A.

The California Administrative Procedure Act (California Government Code, Section 11340 et seq.) establishes 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 ensure the regulations are clear, necessary, and legally valid.

The majority of adopted regulations that conform to the Administrative Procedure Act (APA) are submitted to the Office of Administrative Law (OAL) as a **"regular" rulemaking**. Unless a proposed rulemaking action is submitted to the OAL as an **"emergency" rulemaking**, or is exempt from the APA, the regular rulemaking process must be followed when a state agency undergoes a rulemaking action (see the illustrated flowcharts on the next page).

The Step-by-Step Process:

- The California State Legislature grants authority to a state agency—in this case it's the California Department of Food and Agriculture (CDFA)—to adopt regulations.
- The state agency initiates preliminary activities, which may include preparing an **Economic Impact Assessment** (for nonmajor regulations with less than $50 million in economic impacts), a **Standardized Regulatory Impact Assessment** (for major regulations with more than $50 million in economic impacts), an **Economic and Fiscal Impact Statement (STD 399)**, a **Notice of Proposed Action,** an **Initial Statement of Reasons,** and a **Proposed Text of Regulations**.
- The state agency publishes a Notice of Proposed Action, an Initial Statement of Reasons, and the Proposed Text of Regulations in the California Regulatory Notice Register. The agency also must mail the Notice of Proposed Action to those who have requested a copy, and post on its website the Notice of Proposed Action, Proposed Text of Regulations, and Initial Statement of Reasons.
- Publication and issuance of a Notice of Proposed Action opens a rulemaking record.
- The minimum **45-day public comment period** commences.
- The state agency has the option to hold **public hearings**. If the agency does not schedule a public hearing, an interested person may submit in writing a request for a hearing to be held.
- The state agency receives and considers public comments. The public's comments and any resulting changes to the regulations may be 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**.

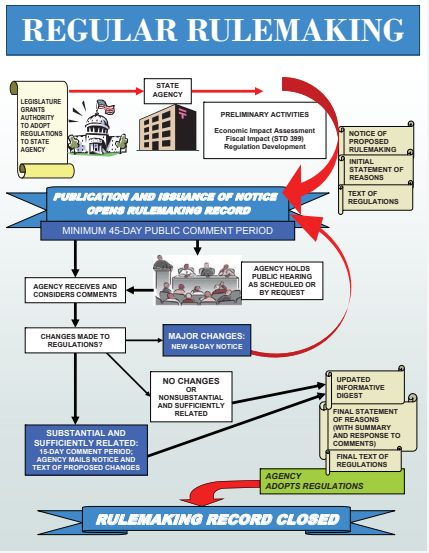
- **Substantial Changes That Are Sufficiently Related**
  These are changes considered reasonably foreseeable based on the Notice of Proposed Action, and they must be made available for public comment for at least 15 days. The state agency mails a notice of opportunity for commenting on the proposed 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, 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**.

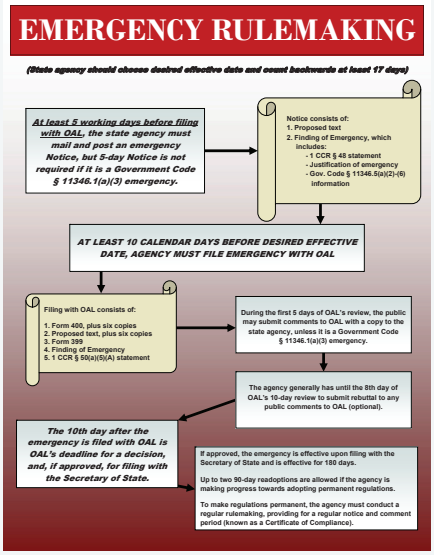
- **Substantial Changes Not Sufficiently Related—Or Major Changes**
  These are changes to the original proposal that are not reasonably foreseeable based on the Notice of Proposed Action. The state agency is obligated to publish another 45-day Notice of Proposed Action in the California Regulatory Notice Register, which is similar to the original Notice of Proposed Action. 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 OAL for review within one year from the date the notice was published in the California Regulatory Notice Register. Once submitted, the OAL 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 more information on this step-by-step process, click on the illustrated flowcharts below for **regular rulemaking** and **emergency rulemaking**.





Courtesy of the Office of Administrative Law

Q. Where can I get a copy of California's proposed medical cannabis cultivation regulations?

A. Visit the CalCannabis Cultivation Licensing website.

Q. How can I get a state cannabis cultivation license?

A. The California Department of Food and Agriculture is not currently accepting applications or issuing *any* state licenses for cannabis cultivation until January 1, 2018.

As of January 1, 2018, you will be able to apply online for medical and adult-use (nonmedical) cannabis cultivation licenses through the CalCannabis Cultivation Licensing website. Until then, please see the proposed medical cannabis cultivation regulations for licensing application requirements and guidance on the application process. There may be changes to the proposed regulations before the final regulations are published. Any changes to the proposed regulations would trigger another opportunity for the public to review and comment on those changes.

Q. When is the public comment period?

A. The public comment period is from Friday, April 28, 2017, until 5pm (PST) Wednesday, June 14, 2017.

Q. How can I submit a comment?

A. Only comments submitted via one of the three methods listed below will be considered as formal comments. Please note that statements or verbal comments made to CalCannabis staff are not considered formal comments. Formal verbal comments may be heard only at one of the four official CalCannabis public hearings listed below.

Email Comments

Write in the email subject line: Comments on Medical Cannabis Cultivation Regulations
Address the email to: CalCannabisRegs@cdfa.ca.gov

Mail Comments

California Department of Food and Agriculture
Attn: Rachelle Kennedy
CalCannabis Cultivation Licensing
Proposed Medical Cannabis Cultivation Regulations
1220 N Street, Suite 400
Sacramento, CA 95814

Provide Verbal Comments

Attend one of the following four public hearings offered by CalCannabis Cultivation Licensing to provide your comments verbally; please see the hearing schedule on the next page.

Public Hearing Schedule

Tuesday, May 16, 2017
1pm-3pm
Delhi Center, Ballroom
505 East Central Avenue, Santa Ana, CA 92707

Thursday, May 18, 2017
1pm-3pm
Visalia Convention Center, Sequoia Room
303 East Acequia Avenue, Visalia, CA 93219

Thursday, May 25, 2017
1pm-3pm
Ukiah Convention Center, Cabernet Room
200 South School Street, Ukiah, CA 95482

Wednesday, June 14, 2017*
1pm-3pm
California Department of Food and Agriculture Auditorium
1220 N Street, Sacramento, CA 95814

***NOTE:** A listening-only webinar will be available at the Sacramento hearing. Webinar registration information will be posted online on June 1, 2017, at: http://calcannabis.cdfa.ca.gov. Please note that comments may not be submitted via the webinar.*

Q. What is the most effective way to make comments?

A.

- Be concise and focus directly on the proposed medical cannabis cultivation regulations.
- Identify the specific part of the proposed medical cannabis cultivation regulations you are commenting on (if possible, indicate the regulation section number you're referring to).
- Include supporting evidence and facts, and provide complete references and/or citations, particularly if you're referring to a website (for example, provide the specific website url).

The public comment period is from Friday, April 28, 2017, until 5pm (PST) Wednesday, June 14, 2017.

Q. When is the last day to submit comments?

A. Written comments must be submitted (or postmarked) by 5pm (PST) Wednesday, June 14, 2017. Verbal comments may be submitted only at one of the four public hearings (see the hearing schedule above).

Q. Will every comment be considered?

A. The California Department of Food and Agriculture (CDFA) must summarize and respond to comments submitted during the 45-day public comment period; however, CDFA is only required to do this for comments about the proposed regulations or the procedures followed by CDFA during the rulemaking action. For each comment, CDFA must include either an explanation of how the proposed action has been changed to accommodate the comment or state the reason why the comment has been rejected. The summary and response to comments is included as part of the rulemaking file in a document called a **Final Statement of Reasons**.

Q. What is an Initial Statement of Reasons and a Notice of Proposed Action?

A. In addition to the proposed regulation text, the regulation package posted online includes two documents: the **Notice of Proposed Action (Notice)** and the **Initial Statement of Reasons (ISOR)**.

The Notice provides critical information about the regulations, including a summary of existing laws that pertain to cannabis, the specific statutory authority that requires the California Department of Food and Agriculture (CDFA) to create regulations, and details about the commenting process.

The ISOR provides the reasoning behind CDFA's decisions for including each regulation, and describes the purpose, need, and benefits of the regulations. It also identifies the supporting materials used to make regulatory decisions, including an economic analysis called the **Standardized Regulatory Impact Assessment** (also known as the SRIA, pronounced *sir-RHEE-uh*).

The SRIA is required with the CDFA regulatory package because the medical cannabis cultivation regulations are considered a "major regulation." A major regulation is defined as one with estimated costs or benefits exceeding $50 million. The SRIA contains the information required with the standard economic analysis of a nonmajor regulation, including how the regulations will impact businesses and jobs, and information such as the potential impacts on competition and investment in California. You can read the state's medical cannabis regulation SRIA online here.

Q. What is the emergency rulemaking process? How is it different from the regular rulemaking process?

A. The California Department of Food and Agriculture (CDFA) is required to follow the statutory requirements found in the California Administrative Procedure Act when adopting regulations. Regulations may be established through regular rulemaking or emergency rulemaking. The Medical Cannabis Regulation and Safety Act and the Adult Use of Marijuana Act allow CDFA to use emergency rulemaking if necessary.

An emergency means a situation that calls for immediate action to avoid serious harm to the peace, health, safety, or general welfare of the public. Emergency regulations must be followed immediately by the regular rulemaking process to make the regulations permanent. If a state agency does not complete regular rulemaking within the prescribed time period, the regulations become void. When a situation calls for emergency regulations, the following occurs:

- The state agency files emergency regulations with the Office of Administrative Law (OAL) 10 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 applicable state agency.
- The state agency has until the eighth day of OAL's 10-day review period to submit a rebuttal to OAL to any public comments; however, this step is optional.
- The OAL's deadline for a decision is on the tenth day, and, if approved, the emergency regulations are filed with the Secretary of State and will become effective immediately for 180 days. (Up to two 90-day re-adoptions are allowed if the agency is making progress toward adopting the permanent regulations.)
- Emergency rulemaking is always followed by regular rulemaking.

Q. What is a trailer bill?

A. A trailer bill—also known as a budget 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, or revenue. These bills typically are negotiated as part of the entire budget package each fiscal year.

This year, the California governor's office introduced a trailer bill for cannabis regulations; you can read the bill here.

Q. How does this trailer bill affect the state's medical cannabis cultivation regulations?

A. There is currently budget trailer bill language designed to align the Medical Cannabis Regulation and Safety Act with the Adult Use of Marijuana Act (also known as Proposition 64). If the trailer bill passes, the proposed regulations will be withdrawn and a new set of regulations consistent with changes in the law will be proposed. However, public comment on the regulations published on April 28, 2017, are still very important. Many of the provisions in these licensing regulations will carry over to new regulations if the trailer bill passes. Public comment now will provide valuable information and guide efforts when crafting any new regulations.