

## FINDING OF EMERGENCY

### **Required Notice of Proposed Emergency Action**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations set forth in Government Code section 11349.6.

This document provides the required notice that the department will submit a proposed emergency action to the Office of Administrative Law to implement the Medicinal and Adult-Use Cannabis Regulation and Safety Act and begin licensing commercial cannabis farmers January 1, 2018. As required by subdivisions (a)(2) and (b)(2) of Government Code section 11346.1, this notice includes and incorporates the following: (1) the specific language of the proposed regulations and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, and required determinations.

### **Specific Facts Demonstrating the Need for Immediate Action**

On June 27, 2017, Governor Edmund Brown Jr. signed California Senate Bill 94, which effectively merged two existing laws – the Medical Cannabis Regulation and Safety Act (MCRSA) and the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) – into one streamlined law: the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis. The act designates applicable responsibilities for oversight of cannabis commerce to several state agencies, one of which is the California Department of Food and Agriculture (department). The department is tasked with licensing commercial cannabis cultivation operations in California and establishing a track and trace system for tracking commercial cannabis activities from seed to sale. Business and Professions Code (BPC) 26013 grants the department the authority to adopt emergency regulations to implement the MAUCRSA and begin licensing commercial cannabis farmers January 1, 2018.

### **Authority and Reference**

The department is proposing to adopt sections 8000 – 8608 of Title 3 of the California Code of Regulations.

Business and Professions Code (BPC) sections 26000, 26001, 26010, 26010.5, 26012, 26013, 26050, 26050.1, 26051.5, 26053, 26055, 26057, 26058, 26060.1, 26061, 26067, and 26180 and Health and Safety Code (HSC) 11362.768 authorize the department to prescribe, adopt, and enforce the emergency regulations governing the licensing of commercial cannabis cultivation. The emergency regulations will implement, interpret, make specific, or reference sections 12700, 26001, 26012, 26013, 26015, 26031, 26038, 26050, 26050.1, 26051, 26051.5, 26053, 26054, 26054.2, 26055, 26057, 26058, 26060, 26061, 26060.1, 26063, 26066, 26067, 26069, 26070, 26106, 26110, 26120, 26121, 26130, 26160, 26161, 26180, and 26201 of the Business and Professions Code (BPC), section 2105 of the Corporations Code, sections 1602 and 1617 of the Fish and Game Code, sections 5006, 5721-5723, 12753, 12754.5, 55530, and 56193 of the Food and Agricultural Code, section 1140 of the Labor Code, sections 40151, 40191, and 42649.8 of the Public Resources Code, and sections 5101, 13149, and 13751 of the Water Code.

### **Informative Digest**

#### *Existing Law:*

Proposition 215 (1996), passed by California voters, also known as the Compassionate Use Act of 1996 prohibited prosecution for growing or using cannabis of Californians who have an oral or written recommendation from their doctors (patients), and these patients' caregivers.

Senate Bill 420 (2003), the Medical Marijuana Program Act enacted by the Legislature, required the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use cannabis for medical purposes, and required the establishment of guidelines, including limits, for the lawful cultivation of cannabis grown for medical use.

Assembly Bill 243 (Chapter 688, 2015), Assembly Bill 266 (Chapter 689, 2015), and Senate Bill 643 (Chapter 719, 2015), established a regulatory program for the cultivation of medical cannabis as part of the Medical Cannabis Regulation and Safety Act (MCRSA). The MCRSA mandated the department to establish the Medical Cannabis Cultivation Program (MCCP) to regulate, implement, and enforce the MCRSA as it pertains to the cultivation of commercial medical cannabis. The legislation mandated regulation to encourage environmental protection measures by the cultivator to prevent further pollution of water, degradation of the natural environment, wildlife endangerment, and to protect public peace, health, and safety. The department is required to develop and enforce regulations for statewide commercial medical cannabis cultivation activities occurring at nurseries; and indoor, outdoor, and mixed-light cultivation sites. The MCRSA also obligated the department to create and implement a track-and-trace system to monitor commercial medical cannabis from cultivation through the distribution chain, to be the lead agency in implementing California Environmental Quality Act (CEQA) requirements for the statewide cultivation program, and ensure that

weighing or measuring devices used for the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with section 12001). Fees associated with cultivation are required to be scaled and must cover the department's costs of implementing and enforcing the commercial cultivation licensing program and subsequent regulations. The MCRSA has since been repealed, but all of the department's obligations listed above have been incorporated into the MAUCRSA.

AUMA (2016) legalized the consumption and cultivation of cannabis for adult use and specifies conditions under which cannabis may be cultivated, processed, and sold for commercial purposes in California.

MAUCRSA, also known as Senate Bill 94 (2017), repeals the MCRSA, which was established by AB 266, AB 243, Senate Bill (SB) 643, and SB 837, and incorporates the department's obligations under the MCRSA into the AUMA. MAUCRSA combines the MCRSA and AUMA into one single system that prioritizes consumer and public safety, environmental protection, and tax compliance for commercial cannabis cultivation. This law creates agricultural cooperatives for small cannabis cultivators, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

Assembly Bill (AB) 133 (2017) trailed MAUCRSA making technical changes on cannabis related issues necessary to implement the 2017 Budget Act. This new law further clarifies the intent of the legislature regarding MAUCRSA.

#### *Inconsistency with Federal Regulation Statute*

The United States Drug Enforcement Administration under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. Meaning, this is a drug with a high potential for abuse, has no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision.

Controlled Substances Act, Title 21 - Food and Drugs, Chapter 13 - Drug Abuse and Prevention Control, Subchapter 1 - Control and Enforcement:

<https://www.fda.gov/regulatoryinformation/lawsenforcedbyfda/ucm148726.htm>

#### *Consistency with Existing State Regulations*

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

#### *Policy Statement*

#### Regulation Objectives

The department has developed these emergency regulations to further clarify or make specific sections of MAUCRSA pertaining to the licensing of commercial cannabis cultivators. The regulations will:

- Address the obligation of the department to regulate the cultivation of commercial cannabis;
- Establish regulatory licensing and enforcement programs to ensure that cannabis cultivation will be performed in a manner that protects the environment, cannabis cultivation workers, and the general public from the individual and cumulative effects of cultivation operations;
- Develop a track-and-trace system to monitor the movement of cannabis from the cultivation stage through the production chain; and
- Establish uniform standards for licensure for consistency in implementation efforts.

### 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 emergency regulations promote a fair and equitable marketplace for licensed commercial cannabis cultivators in California and have been 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 of the environment through implementation of environmental protection measures and enforcement of existing environmental protection laws;
- Creation of legitimate businesses and tax revenue sources;
- Increased worker safety through enforcement of existing employee protection laws; and
- Reduction in crime.

Another essential component of these regulations is the 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 cannabis and cannabis products to the source; thereby, preventing any untested and unlicensed cannabis and/or cannabis 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; thus, preventing diversion of regulated product to the unregulated market.

### Environmental Information and California Environmental Quality Act Compliance

One of the largest effects of unregulated cannabis cultivation has been serious adverse impacts to the environment. The State Water Resources Control Board (SWRCB), the North Coast Regional Water Quality Control Board (RWQCB), and the California Department of Fish and Wildlife (CDFW), have documented an increase in the number of unregulated cannabis cultivation sites and corresponding increases in impacts to

water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste.

The department has prepared and certified the Programmatic Environmental Impact Report (PEIR), in accordance with the provisions of the California Environmental Quality Act. The PEIR provides stakeholders, which includes the public, responsible agencies, and cannabis farmers with information about the potential significant environmental impacts associated with the adoption and implementation of these emergency regulations and mitigations to address significant environmental impacts at cannabis cultivation sites in California.

To access the PEIR, visit the following website: <http://calcannabis.cdfa.ca.gov/>.

#### Plain English Requirement

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

#### **Mandate on Local Agencies and/or School Districts**

*LOCAL MANDATE:* There will be no local mandate.

*COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT PURSUANT TO GOVERNMENT CODE SECTION 17500 et seq:*

None

*ANY OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:*

None

#### **Cost or Savings Estimate to State Agencies (Fiscal Impact)**

*ANY COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:*

None.

The department is tasked with issuing cannabis cultivation licenses and administering all aspects of the cannabis cultivation regulations. The total ongoing annual agency budget of approximately \$32 million includes administration of both medicinal cannabis and adult-use cannabis program activities.

The budget detail is broken-down by department staff costs, other department costs, and external consulting and technical services costs (including the track-and-trace program). The total estimated operating costs of the department for this program is \$47.7 million once regulations are in place and licenses are being issued. This analysis assumes the department budget represents the market in equilibrium post-department regulations. These costs will be recovered through application and licensing fees charged to cultivators.

The department is tasked with enforcing department regulations for licensed cannabis cultivation operations. This includes site inspections and ensuring cultivator compliance with the track-and-trace system. The department's enforcement staff will also be responsible for referring complaints about unlicensed operations to appropriate state and local law enforcement.

It is likely that more illegal grow sites will be reported and local and state agencies, including the CDFW, as well as the SWRCB, will need to allocate more resources to eradication. However, because legal cultivators will be licensed by the department and local authorities, it will be easier for enforcing agencies to identify illegal grow sites and the cost per eradication will likely decrease over time.

### **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 cannabis and cannabis products from the cultivation stage throughout the distribution chain, in accordance with BPC section 26067.

The proposed emergency regulations required consultation with other state agencies pursuant to the authorities found in the BPC. The California State Water Resources Control Board and the California Department of Fish and Wildlife were consulted pursuant to BPC sections 26051.5(b)(7), 26060.1(c), and 26069(c)(1). The Bureau of Cannabis Control was consulted pursuant to BPC sections 26060, 26060.1, 26067(a), 26068(b), and 26069(c)(1). The California Department of Tax and Fee Administration (formerly known as the California State Board of Equalization) was consulted pursuant to BPC sections 26067(b)(1) and 26068(a). The department met the statutory consultation requirements through a series of meetings, conference calls, and consistent communication with the required agencies throughout the development of these proposed emergency regulations.

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 the Act. The Chapter will have seven Articles, each containing rules for different aspects of the licensing program.

The necessity regarding key sections is explained below.

### ***Article 1*** **Definitions**

The department is adding section 8000 and subsections (a) through (ae) 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. These are included in the proposed emergency regulations for ease of reference. The unique definitions were drafted based on outreach to and feedback from cultivators and others in the cannabis cultivation industry.

### ***Article 2*** **Sovereign Immunity**

The department included in the proposed emergency regulations a waiver of sovereign immunity for federally recognized tribes or other sovereign entities (section 8102(aa)(1)). This is necessary to ensure that tribes or other qualifying sovereign entities can participate in the regulated cannabis cultivation market in the same way as the general public.

### **Property and Cultivation Plan Requirements**

The proposed emergency regulations require two distinct diagrams be submitted to the department; a property diagram (section 8105) and a cultivation plan which includes a detailed premises diagram (section 8106).

The property diagram requirements and detailed premises diagram are established to specify the statutory provisions of BPC section 26051.5(c) and 26060, which requires an applicant to provide a complete detailed diagram of the proposed premises with sufficient particularity to enable ready determination of specific details, including boundaries, roads, water crossings, and points of water diversion.

The property diagram is necessary to have a scaled broad overview of the boundary of the property the premises is located on, the boundary of the premises within the property, roads and access points. The detailed premises diagram within the cultivation plan is more specific to get an accurate scaled diagram of identified areas on the premises such as canopy area(s), propagation area(s), etc.

While developing its previous medical regulations, the department received input from stakeholders and the industry that one diagram was insufficient, resulting in the two diagrams found in the proposed emergency regulations. These sections are necessary to ensure that the department has enough detail about the property and premises to review and verify that they are acceptable for licensing and to provide detailed information for compliance inspections. The diagrams will allow the department to

ensure compliance with the licensing requirements, which are being implemented to ensure public safety and environmental protection.

### **Applicant Track-and-Trace Training Requirement**

The proposed emergency regulations require documentation of the completion of state mandated track-and-trace training within ten (10) days of completion (section 8109(b)). Proof of completion is a prerequisite for licensed applicants to be granted access to the track-and-trace system. The system vendor, on behalf of the department, will be providing the training to applicants, so it is imperative the applicant provide the department with proof of completion to prevent unauthorized access to the track-and-trace system. These are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use and the department's administration of the track-and-trace system.

### **Timing of License Issuance**

Section 8110 of the proposed emergency regulations provides local jurisdictions ten (10) calendar days to respond to notification by the department that an applicant has provided a license, permit, or other authorization from the local jurisdiction where the licensed premises is or will be located. The ten day timeframe was established based on consultation with local agencies and the other licensing authorities and consistent with other regulatory programs.

### **Applicants Convicted of a Criminal Offense**

Section 8113(c)(4) of the proposed emergency regulations includes language that the department may consider as evidence of an applicant's rehabilitation evidence of any act committed subsequent to the act of offense under consideration that could be considered grounds for denial, suspension, or revocation of a commercial cannabis activity license. These proposed regulations are added to clarify the statutory provisions in BPC sections 26057 and 26059. Including this information in the regulations will provide consistency and standardize the department's approach to evaluating such offenses and provide a transparent process to the applicant.

### **Article 2 & Article 3**

#### **Fees**

The proposed emergency regulations cover application fees for each type of license (section 8101) as well as annual license fees due to the department prior to the issuance or renewal of a license (section 8200).

The application fees and licensing fees are established in the proposed emergency regulations 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 pending Standardized Regulatory Impact Assessment (SRIA) to determine the application fee and license fee for each type of license necessary to cover the costs of

the program. Because the department's SRIA is still being finalized in advance of the regular rulemaking process, these fees are subject to change. The department anticipates reevaluating its fees regularly as the number of licensees changes and the program's budget needs adjusting.

### **Article 3**

#### **License Types**

References to the specific cultivation license types the department is responsible for issuing are listed and referenced in proposed sections 8100, 8200, and 8201.

Specifically, section 8201, 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 26050(a).

Section 8201 describes all license types, including mixed-light types, which are tiered (Tier 1 and Tier 2) based on the definitions found in section 8000 (Definitions) of the proposed emergency regulations. This is necessary to ensure license types accurately encompass current industry practices and provide an equitable structure for tiering the license fees.

Section 8201, subsection (f) defines the processor license, which was created by the department pursuant to the department's authority in BPC section 26012(b). This addition was based on industry feedback that some cultivators send untrimmed, uncured, or unpackage cannabis to locations off-site for processing (i.e., not where the product is grown). Some local ordinances may require processing activities to occur away from cultivation areas. The creation of the processor license is meant to allow a business to be licensed solely for processing cannabis and provides the industry with an additional type of license that is consistent with current industry practices. Also, processing does not meet the definition of manufacturing and so would not fall under a manufacturer's license.

#### **Sample Collection**

Section 8210 of the proposed emergency regulations provides the Bureau of Cannabis Control (bureau), the agency responsible for licensing testing laboratories, 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. 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 the seizure of samples for use by the bureau.

#### **Transition Period**

Section 8214 of the proposed emergency regulations provides licensees until July 1, 2018 to conduct commercial cannabis activities with any other licensee, regardless of the A or M designation of the license. This is necessary to facilitate the adult-use market for which there is currently no licensed or regulated product, unlike the medicinal market. The transition will allow for adult-use licensees to the regulated market and allow licensees a period of time to bring operations into compliance with the emergency regulations.

#### ***Article 4***

#### **Environmental Protection Measures**

Sections 8304 through 8307 of the proposed emergency regulations requires all licensees to comply with environmental protection measures determined by the department to diminish potential risks identified in the department's Literature Review on the Impacts of Cannabis Cultivation. These measures include shielding of outdoor security lighting, halting all activity if human remains are discovered, setting restrictions on the use of generators, requiring licensees to follow all existing laws and regulations related to pesticides, and follow all pesticide application and storage protocols for legal products not required to be registered with the Department of Pesticide Regulation. These sections are necessary to clarify BPC section 26060 and provide specific requirements to licensees that the department determined was necessary to fulfill its obligation to protect the environment from potential risks of activities conducted by the licensee.

#### ***Article 5***

#### **Track-and-Trace System**

Sections 8402 and 8403 outline licensees' requirements for using the track-and-trace system and the requirements for the use and application of the department-issued track-and-trace system unique identifier (UID) for each lot of immature cannabis plants and for each individual mature cannabis plant. The track-and-trace system is designed to record the movement of cannabis plants on the licensed premises and monitor commercial cannabis activity. These proposed regulations are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use of the track-and-trace system and unique identifiers.

#### **User Requirements for the Track-and-Trace System**

Section 8404 of the proposed emergency regulations provides specific track-and-trace system user requirements. These proposed regulations are added to clarify the statutory provisions in BPC section 26067 as they pertain to a licensee's mandatory use of the track-and-trace system. The system will provide notifications to users and the users must adhere to the timeframes in those notifications. Notifications include, but are not limited to, administrative holds of cannabis and cannabis products and rejected

shipping manifests or transfers. Traceability of unique track-and-trace users and adherence to the system requirements are critically important to ensuring the integrity of data and reliability of the mandated system.

### **Article 6**

#### **Inspections, Investigations, and Audits**

Sections 8500 and 8501 of the proposed emergency regulations provide the department with the authority and discretion to inspect, investigate, or audit the books, records, accounts, inventory, and on-site operations specific to an applicant or licensee during standard business hours (i.e., 8:00am – 5:00pm (Pacific Standard time) or as mutually agreed upon by the department and licensee. It prohibits a licensee, licensee’s agent, or employees from interfering, obstructing, or impeding an inspection, investigation, or audit. Upon completion of an inspection, investigation, or audit, applicants and licensees will be notified of any violations and/or action the department is taking. These proposed emergency regulations are added to clarify the statutory authority provided in BPC section 26015 and 26160. Permitted access to licensed premises and the ability to conduct field activities freely, without obstruction or impediment, is fundamental to the department’s ability to effectively monitor licensed cultivators.

### **Article 7**

#### **Enforcement**

Section 8601 of the proposed emergency regulations 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 and are intended 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 proposes have established ranges with minimum and maximum amounts based upon the violation category (i.e., minor, moderate or serious). Fine amounts were set to be commensurate with the potential impact of the violation on the environment, the public, and the department’s ability to effectively administer the program. It is the department’s intent to be consistent and transparent in its application of administrative remedies associated with violations of the statute and regulations.

Sections 8602 through 8608 provide authority for the department to issue violations and outline hearing and appeal processes. The proposed regulations relating to the licensee’s right to appeal and the process for filing an appeal; the department’s procedure and timeframe for scheduling and notifying a licensee of an informal administrative hearing in response to his or her appeal; and the conduct of an informal administrative hearing were added because they were not specified in the statutory provisions in BPC section 26031. Therefore, the proposed emergency regulations are needed to establish a process and procedures for timely and effective adjudication of licensee’s appeal of a Notice of Violation and/or an order of administrative hold. It is the

department's intent to be consistent and transparent in its application of administrative remedies associated with violations of the statutes and regulations.