

Department of Cannabis Control
California Code of Regulations Title 4, Division 19
Notice of Proposed Rulemaking

Notice Date: November 1, 2024

Subject Matter of Proposed Regulations: Cultivation license changes pursuant to Business and Professions Code (BPC) section 26061.5.

Section Affected: Title 4, California Code of Regulations (CCR), sections 15020.1, 15020.2, and 15020.3.

Notice is hereby given that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

Public Hearing

The Department will hold a virtual public hearing at the following date and time listed below:

Tuesday, December 17, 2024 – 10:00 AM to 1:00 PM

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Randy Allen at Randy.Allen@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on Monday, December 16, 2024, to request a link to the meeting. The link to the meeting will also be posted on the Department's website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact Randy Allen at Randy.Allen@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on Monday, December 16, 2024, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 1:00 PM, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email.

Written Comment Period

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail to the addresses listed below **must be received by the Department at its office by December 17, 2024.**

Submit comments to:

Department of Cannabis Control
Legal Affairs Division
2920 Kilgore Road
Rancho Cordova, CA 95670
E-mail: publiccomment@cannabis.ca.gov

Authority and Reference

BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. These regulations will implement, make specific, or reference BPC section 26249.

Informative Digest / Policy Statement Overview

The purpose of these proposed regulations is to further clarify or make specific sections of MAUCRSA pertaining to cultivation license changes pursuant to Senate Bill 833 (Chapter 886, Statutes of 2023; BPC section 26249). The proposed regulations will implement the Department's responsibility to allow for certain cultivation license changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. The proposed regulations will not only establish a regulatory process for licensees to request such changes, but will clarify what information shall accompany a request for changes to a cultivation license. Moreover, the proposed regulations will inform cultivation licensees of their duties and responsibilities if certain changes are granted by the Department.

Existing Law

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. BPC section 26050, subdivision (a) authorizes the Department to issue 15 different commercial cultivation licenses based on three factors: lighting type used by the cultivator; the size of the cultivation operation; the scope of cultivation activities. BPC section 26050, subdivision (c) further provides that a license issued by the Department shall be valid for no more than 12 months from the date it was issued or renewed. BPC section 26012 authorizes the Department to collect fees in connection with its regulation of such commercial cannabis activities. BPC section 26180 further establishes a scale of application, licensing, and renewal fees intended to cover the costs of administering the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA, BPC §§ 26000 et seq.). BPC section 26249 requires the Department to develop and implement a program to provide waivers or deferrals of application fees, licensing fees, and renewal fees. Additionally, BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal.

The present emergency regulations established the framework for the Department's processing of certain cultivation license changes at renewal and were filed with the Office of Administrative Law (OAL) on February 29, 2024. The emergency regulations were approved on March 11, 2024, and filed the same day with the Secretary of State, making them effective immediately. Following the establishment of the Department's emergency regulations, on August 23, 2024, the Department filed an action with OAL to readopt the emergency regulations. The readoption action was approved by OAL on September 3, 2024, and filed with the Secretary State with an effective date of September 9, 2024.

Policy Statement

This rulemaking action would make permanent provisions that enable the Department to comply with the requirements found in BPC section 26061.5. BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes to their licenses, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. The rulemaking would provide an overview of the definitions that are applicable to the cultivation license change regulations. The proposed regulations would also provide an overview of what constitutes a complete request for cultivation license changes. The proposed regulations would clarify how license fees are calculated depending on the types of cultivation license changes that are requested. Finally, the

proposed regulations would identify any requirements or conditions associated with requested cultivation license changes.

Regulation Objectives and Anticipated Benefits of the Proposed Regulations

The broad objectives of these regulations are to further clarify or make specific sections of MAUCRSA pertaining to cultivation license changes pursuant to Senate Bill 833 (Chapter 886, Statutes of 2023). The proposed regulations will implement the Department's responsibility to allow for certain cultivation license changes required by MAUCRSA, while establishing a regulatory process for licensees to request such changes. Accordingly, the proposed regulations will clarify what information shall accompany a request for changes to a cultivation license, and inform cultivation licensees of their duties and responsibilities if certain changes are granted by the Department.

Under MAUCRSA, there are 15 different cultivation types which are based on the lighting type utilized by the cultivator licensee, the cultivator licensee's operation size, and the scope of the cultivator licensee's cultivation activities. A variety of commercial cannabis market forces – including, but not limited to, market volatility, climate, drought, and oversupply – may persuade a cultivation licensee to reduce their operations and thus their cultivation crop yield. However, there has been no pathway for cultivation licensees to change their state license type to a smaller size or cease operations temporarily, without having to reapply for licensure and pay the application and licensing fees associated with submitting a new application for licensure.

Designed to assist cultivators, BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal.

Allowing for cultivation license changes such as changes to the type of size of a cultivation license or placing the cultivation license in inactive status gives cultivator licensees more control over their operations. Processing these types of changes will eliminate the need for cultivation licensees to submit new applications for licensure if certain material changes are made to their cultivation licenses, thereby reducing administrative burdens on cultivation licensees and the Department. Moreover, cultivation licensees will be able to respond to commercial cannabis market fluctuations in a timely manner by adjusting their operations at the time of renewal, while maintaining state commercial cannabis licensure at reduced administrative and financial costs. Allowing such changes at renewal allows cultivators, who may otherwise drop out of the regulated commercial cannabis market due to unforeseen market forces, to retain licensure while operating at a reduced size or ceasing operations temporarily.

Allowing for a one-time change to a cultivation license's date of renewal provides cultivation licensees more control as to when they submit their renewals and remit their annual licensing fees to the Department. BPC section 26050, subdivision (c) provides

that a license issued by the Department shall be valid for up to 12 months from the date it was issued or renewed. The date of license issuance is dependent upon when the Department completes its review of an application for licensure, which could occur at any point during the calendar year. If the date of renewal falls prior to or during harvest, this can be administratively and financially burdensome for a cultivation licensee. This is largely due to the cyclical nature of commercial cannabis cultivation; the time period leading up to harvest can be labor intensive and often cultivation licensees have less financial capital prior to selling their harvest. In contrast, a cultivation licensee may have more time to process administrative submittals and more financial capital available to pay annual license fees following a harvest. The ability to modify the date of expiration on a license will provide cultivation licensees the opportunity to plan their time and financial resources around the busy harvest season.

Under the proposed regulations, the Department would be able to approve certain changes to active cultivation licenses. The proposed regulations are necessary to provide clear guidance to licensed cultivators and will reduce the risk of confusion regarding how cultivation licensees may request certain changes to their licenses. The proposed regulation will also provide specific guidance regarding the Department's process for calculating relevant fees. Providing clarity regarding how the Department will process such requests reduces the risk of confusion for licensed cultivators. Moreover, the proposed regulation will provide clarity regarding any duties or conditions if changes are granted by the Department, thereby reducing the risk of confusion for cultivator licensees who request changes to their license. The Department's processing of these changes for cultivation licensees will not only further the stated intent of MAUCRSA by reducing barriers to maintaining licensure in the regulated commercial cannabis industry, but will aid the state in its goal of reducing the illegal cannabis market by keeping more people in the regulated marketplace.

Section 15020.1. Cultivation License Limited Operations Status.

BPC section 26061.5 requires the Department to allow cultivation licensees to place a cultivation license in inactive status. Accordingly, the proposed section would provide clarity regarding the Department's process for evaluating cultivation licensee requests to be placed in Limited Operations Status. The proposed regulations would define the term "Limited Operations Status." The proposed regulations would clarify prohibitions on cultivation licensees with a Limited Operations Status from maintaining mature plants. The proposed regulations would specify the contents of a request to be placed in Limited Operations Status. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested Limited Operations Status have been met. The proposed regulations will clarify the duration of the Limited Operations Status. The proposed regulations will clarify that processor licenses and nursery licenses are not eligible to request to be placed on Limited Operations Status. Finally, the proposed regulation will clarify that cultivation licenses that are changed to a Reduced-Size Cultivation License pursuant to

section 15020.2 shall not be placed in Limited Operations Status during the same license term.

Section 15020.2. Cultivation License Reductions in Size.

BPC section 26061.5 requires the Department to allow cultivation licensees to change the type of size of a cultivation license. Accordingly, the Department proposes adopting section 15020.2 to provide clarity regarding the Department's process for evaluating cultivation licensee requests to be changed to a Reduced-Size Cultivation License. The proposed regulations would define the terms "Original Cultivation License" and "Reduced-Size Cultivation License." The proposed regulations would specify the contents of a request to change to a Reduced-Size Cultivation License. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested change to a Reduced-Size Cultivation License have been met. The proposed regulations will clarify the duration of the Reduced-Size Cultivation License. The proposed regulation will clarify considerations for provisional licensees who wish to change to a Reduced-Size Cultivation License. The proposed regulations will clarify that processor licenses and nursery licenses are not eligible to request to be placed on Limited Operations Status. Finally, the proposed regulation will clarify that cultivation licenses that have been placed in Limited Operations Status pursuant to section 15020.1 shall not be changed to a Reduced-Size Cultivation License during the same license term.

Section 15020.3. Modifying Cultivation License Renewal Date.

BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including making a one-time change to a cultivation license's date of renewal. Accordingly, the Department proposes adopting section 15020.3 to provide clarity regarding the Department's process for evaluating cultivation licensee requests for a modified renewal date. The proposed regulations would define the terms "Modified License Term", "Original Renewal Date", and "Prorated Daily License Fee". The proposed regulations would specify the contents of a request to modify a cultivation license's date of renewal. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested Limited Operations Status have been met. The proposed regulation would clarify how to calculate the license fee that must be paid for the Modified License Term or the amount that will be refunded to the cultivation licensee by the Department. The proposed regulations will clarify when fees must be paid of the requesting cultivation licensee has received a fee deferral. The proposed regulations will clarify that cultivation licensees may request to be placed in Limited Operations Status or change to a Reduced-Size Cultivation License for the duration of the Modified License Term. Additionally, the proposed regulations would clarify that, consistent with BPC section 26061.5, a cultivation licensee may only modify the renewal date of a cultivation license one time.

Incorporated by Reference

There are no documents incorporated by reference.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

Evaluation of Inconsistency with Federal Regulation or Statute

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

Plain English Requirement

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

Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: The Department's staff workload associated with processing cultivation license changes under these regulations can be absorbed by existing staff. However, the reduced licensing fees associated with entering Limited Operations Status would result in an estimated net reduction in license fees by \$1,914,694.

Cost or savings in federal funding to the state: None.

Effect upon housing: The proposed regulations will have no fiscal or other effect upon housing in the state.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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Small Business Determination: The proposed regulations may affect small businesses. The proposed regulations would affect approximately 2,953 distinct cultivation businesses. Of these businesses, an unknown number are estimated to meet the criteria for being classified as a small business.

Cost Impacts on a Representative Private Person or Business: The proposed regulations would result in net annual cost savings for cultivation businesses from \$2,965 to \$19,875 per year.

Economic Impact and Fiscal Impacts

Business Impact

The proposed regulation does not impose any new licensure eligibility or operational requirements. Rather, it provides an opportunity for active cultivator licensees to make certain changes to their cultivation licenses, which may result in a reduction in license fees or a one-time adjustment to the license renewal date. Requesting changes to an active cultivation license is voluntary and only requires submission of information to establish eligibility for the requested changes.

The Department initially implemented the cultivation license change program on March 11, 2024. Based on currently available information, the Department believes that there are approximately 2,953 distinct cultivation businesses, each of which may hold multiple licenses, that could be eligible to make changes under the proposed regulations. The businesses impacted by the regulation are cultivation licensees who wish to change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal.

Estimated Costs to Businesses

The proposed regulations require cultivation licensees to complete and submit certain information prescribed by the Department to request changes to a cultivation license. Cultivation licensees who use the Limited Operations Status established by statute would be able to pay a reduced license fee at a minor administrative cost. However, cultivators will incur some administrative costs associated with the proposed regulations, including time spent reviewing the new regulations, deciding on what actions to take, and filing the necessary submittals associated with the Limited Operations Status, temporary license size change, and one-time license renewal date change. The total direct cost of administrative and consultant costs incurred under the proposed regulations amounts to approximately \$1,722,669 per year.

Estimated Benefits of Regulation

The Department anticipates that the proposed regulations would allow cannabis cultivation licensees who use the Limited Operations Status established by statute to pay a reduced license fee. They also facilitate the statutory requirements to allow cultivators to change licenses sizes and to change the renewal date of licenses. Between the license fee savings for cultivation licensees entering Limited Operations

Status, and the savings associated with renewal date changes, the proposed regulations would amount to direct economic benefits of approximately \$2,892,494.

The proposed regulations could also indirectly result in the expansion of cannabis cultivation businesses by allowing more businesses to stay in the market in the long run, which would facilitate the potential expansion of businesses when market conditions are favorable. The regulatory framework would allow for the retention of licensed cultivators in the licensed cannabis market, while discouraging transitions to the unlicensed market. Thus, the Department's ability to enable certain license changes under BPC section 26061.5 will further the stated intent of MAUCRSA by reducing barriers to maintaining licensure in the regulated commercial cannabis industry.

Results of the Economic Impact Assessment

The proposed regulations will not have a significant adverse economic impact on businesses.

The proposed regulations would result in a net decrease of 85.7 full-time equivalent (FTE) jobs. Notably, this net reduction is a short-term impact on employment resulting from cultivators no longer producing at a loss during years with poor market conditions. In the long run, more firms would stay in the licensed market and employ workers.

The proposed regulations would neither create nor eliminate businesses.

The proposed regulations would affect approximately 2,953 distinct businesses. These businesses are licensed cannabis cultivators, each of which may have multiple licenses. Of these businesses an unknown number are estimated to meet the criteria for being classified as a small business. The representative costs for a typical business to request cultivation license changes under the proposed regulations would equal \$750 to \$9,713 in the initial year, with annual ongoing costs of \$750 to \$7,813 per year. However, the proposed regulations allow cannabis cultivation licensees who use the limited operations status established by statute to pay a reduced license fee. They also facilitate statute allowing cultivators to change license sizes and to change the renewal date of licenses, amounting to total statewide benefits in approximately \$2,892 million per year.

The proposed regulations could indirectly result in the expansion of cannabis cultivation businesses by allowing more businesses to stay in the market in the long run, which would facilitate more potential expansion of businesses when market conditions are favorable.

The proposed regulations would not affect worker safety.

The proposed regulations would provide benefits to public health and safety by retaining cultivation businesses in the licensed cannabis market, and discouraging transitions to the unlicensed market.

Fiscal Effect on State Government

The primary fiscal impact of the proposed regulations to the Department is changes in Department revenue from license fees as a result of cultivators that obtain Limited Operations Status. The Department determined that the reduced licensing fees associated with entering Limited Operations Status would result in an estimated net reduction in license fees by \$1,914,694. This includes a reduction in fees due to cultivators that opt to use the Limited Operations Status instead of producing and paying their full license fee, and an increase in fees due to more cultivators staying in the licensed market in the long run. The Department's staff workload associated with processing cultivation license changes under these regulations can be absorbed by existing staff.

Consideration of Alternatives

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The first alternative considered was not adopting the regulations. This alternative was rejected because BPC section 26061.5 requires the Department to provide cultivation licensees an opportunity to make certain changes, including: changing the type of size of a cultivation license; placing a cultivation license in inactive status; or making a one-time change to the license's renewal date. If the Department does not adopt regulations, there will be no specific process for applicants and licensees to follow to make changes to their existing cultivation licenses.

The second alternative considered was to impose a larger fee to enter Limited Operations Status. This alternative was rejected because it would provide insufficient benefits to cultivators that elect to use the Limited Operations Status. The purpose of the Limited Operations Status option is to allow cultivators to save costs during times with adverse market conditions. Reducing the fees paid by cultivators using the limited operations by only 50 percent would save cultivators substantially less than under the proposed regulations. While the fiscal impact of this alternative would be less of a reduction in gross revenue from license fee revenue for the Department, it would not encourage as much participation in using the Limited Operations Status.

The final alternative considered was to not impose a fee to enter Limited Operations Status. Although this alternative would maximize benefits for cultivators who wish to enter Limited Operations Status and maximize participation, this alternative was

rejected because it would not cover any costs for the Department to conduct activities related to licensing and compliance, which would continue to be necessary for licenses in limited operations.

Contact Person

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9025
Regulations@cannabis.ca.gov

The backup contact person for these inquiries is:

Nicole Niermeyer
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-251-4535
Nicole.Niermeyer@cannabis.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting the contact person at the address, email or phone number listed above.

Availability of Changed or Modified Text

After considering all timely and relevant comments received, the Department may adopt the proposed regulations, substantially, as described in this Notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Please send

requests for copies of any modified regulations to the attention of the contact person at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

Availability of The Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the contact person at the above address, email, or phone number indicated above.

Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Department's website at:

<https://cannabis.ca.gov/cannabis-laws/rulemaking/>.