

CHEAC Summary

CDFA Emergency Cannabis Regulations

Cultivation

The California Department of Food and Agriculture (CDFA) has released emergency regulations focused on the licensure of cultivators of medicinal and adult-use cannabis and implementation of a track-and-trace system to record the movement of cannabis throughout the distribution chain in California. We encourage members to read the entire emergency regulations document released by CDFA; however, a summary of the most relevant aspects is provided below.

Key Changes Made in Regulations

- Total cultivation limits removed. No limit continues to exist in the number of cultivation licenses one person/entity is authorized to hold (with the exception of medium cultivation licenses). Previously, the total cumulative licensed cultivation canopy could not exceed four acres; this has since been removed.
- 72-hour cannabis waste holding period removed. (Question submitted by CHEAC)
- License application fees and annual license fees have increased. Fees are scaled based on the average annual production of the license type. Application fees range from \$135 to \$8,655 and annual license fees range from \$1,205 to \$77,905.
- All cannabis and nonmanufactured cannabis products packaged and/or labeled by a cultivator must meet all requirements set forth by the Bureau of Cannabis Control and the California Department of Public Health.
- In instances of diversion, theft, loss, or criminal activity, licensees now have three business days to notify CDFA and law enforcement (previously 24 hours).
- Law enforcement personnel and state employees who have any responsibility for cannabis related enforcement activities are prohibited from holding a license for cannabis activity.
- Weights and measures shall be used for various cannabis product related purposes and must be registered with the county sealer.
- License applicants are required to complete track-and-trace training within 10 days of receiving notice that their complete application has been received and approved by CDFA.
- Pursuant to statute, a person(s) engaging in commercial cannabis activity without a license shall be subject to civil penalties of up to three times the amount of the license fee for each violation.
- Pursuant to statute, licensees that fail to maintain or provide required records are subject to a citation and fine of up to \$30,000 per individual violation.

- Allows licensees to apply for licensing relief by state regulatory agencies during a disaster.

Operational Definitions (pages 1-3)

- Issues cultivation-related definitions, in addition to those stated in statute.
- Cultivation – any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- Canopy – designated area(s) at a licensed premises, except nurseries, that will contain mature plants at a point in time.

Temporary Licenses (pages 3-4)

- Allows for the issuance of a temporary license before an annual license is issued.
- Applicants must submit a CDFA application, a copy of a local license, permit, or other authorization issued by the local jurisdiction where the commercial cannabis activity is to occur.
- Temporary licenses are operative for 120 days from their effective date and may be extended for additional 90-day periods if the temporary license holder submits a complete licensure application to CDFA.

Annual License Fees and Requirements (pages 4-10)

- Nonrefundable license application fees are scaled based on the average annual production of the license type and range from \$135 to \$8,655.
- To apply to the State for licensure, applicant must submit a completed CDFA application form including, among others, the following attestations:
 - Commercial cannabis business is operating in compliance with all local ordinances.
 - Identification of all water sources used for cultivation activities.
 - Proposed location is not within a 600-foot radius of the perimeter of a school, daycare center, or youth center (or is in compliance with a local ordinance specifying a different radius).
- Applicants must also submit delineated business information, owner information, and cultivation premises and operations information.
- Any applicant or licensee that falls within the scope of sovereign immunity must conduct all commercial cannabis activity in full compliance with state laws and regulations governing commercial cannabis activity, including all enforcement provisions.

- Must allow access as required by state statute or regulation to persons or entities charged with duties under state law or regulations governing commercial cannabis activity.

Property Diagram and Cultivation Plan Requirements (pages 11-13)

- Requires applicants to submit a diagram of proposed premises that include, among others, perimeter dimensions, entrances/exits, and water sources.
- Requires applicants to submit a cultivation plan based on license type. Information to be included in cultivation plans detail premise usages and locations, lighting diagrams and information, pest management plans, and cannabis waste management plans.

Cannabis Waste Management (pages 15-17)

- Requires licensees to obtain all permits, licenses, or other clearances and comply with all orders, laws, and regulations or other requirements of regulatory agencies, including, but not limited to, local health entities, air quality management districts and air pollution control districts, local land use authorities, and fire authorities.
- All cannabis waste must be disposed of in a secure waste receptacle or secure area (physical access restricted to licensee, employees of licensee, or local agency or local agency contracted/franchised waste hauler).
- Licensees must identify one or more of the following methods for managing cannabis waste:
 - On-premises composting
 - Waste hauler (by local agency, local agency franchised/contracted, or permitted)
 - Self-hauling (to manned landfill facility or waste operation)
- Licensees must use the track-and-trace system and other documentation methods to identify, weigh, and track disposal of all cannabis waste products.
- Licensees are no longer required to hold cannabis waste for a minimum of 72 hours.
- Licensees are no longer prohibited from selling cannabis waste.

Applicant Track-and-Trace Training (page 17)

- Applicants are required to complete a training session for the track-and-trace system within 10 days of receiving notice that their complete application has been received and approved by CDFA.

Proof of Local License, Permit, or Other Authorization (page 17)

- Pursuant to statute, when an applicant provides a license, permit, or other authorization from the local jurisdiction where the license premise will be or is located, CDFA will notify the local jurisdiction contact person. If the local jurisdiction does not respond to CDFA's notification within 10 days, CDFA may issue a license to the applicant.

Priority Application Review (pages 17-18)

- Priority review of annual license applications shall be given to applicants that can demonstrate the commercial cannabis business was in compliance with the Compassionate Use Act of 1996 before September 1, 2016.
- Eligibility is determined by, among others, local license, permit, or other authorization, tax or business forms, and incorporation documents dated prior to September 1, 2016.

Notification and Grounds for Denial of a License (page 20)

- CDFA must notify the applicant in writing if the application is denied with the reasons for denial. A license may be denied if:
 - Applicant's premises does not fully comply with all statutes and regulations;
 - Applicant denied CDFA access to premises to verify compliance;
 - Applicant made material misrepresentations on the application;
 - Licensee had a license, permit, or other authorization to engage in commercial cannabis activity denied, suspended, or revoked by a state licensing authority or local agency; or
 - Applicant or licensee has outstanding fees owed to CDFA.

Cultivation License Fees and Types (pages 20-22)

- Annual cultivation license fees are scaled based on the average annual production of the license type and range from \$1,205 to \$77,905.
- License types include (each type consists of outdoor, indoor, or mixed-light):
 - Specialty Cottage
 - Specialty
 - Small
 - Medium
- Each license type has cultivation site and canopy size limits.
- Additional license types:
 - Nursery (cultivation site that conducts cultivation solely as a nursery; outdoor/indoor/mixed-light does not apply)
 - Processor (cultivation site that conducts only trimming, drying, cutting, grading, packaging or labeling of cannabis and nonmanufactured cannabis products; outdoor/indoor/mixed-light does not apply)

General License Requirements and Renewal Procedures (page 22-23)

- Every business entity shall obtain a separate license for each premises where it engages in commercial cannabis cultivation. No limit exists on how many licenses one business entity may hold. A limit no longer exists on total cumulative licensed cultivation canopy size across all licenses held by one entity (previously limited to four acres of canopy).
- Licensee may hold both an A and an M license on the same premises, provided the inventory for each license type is kept separate and distinct.
- Renewal cultivation applications must be submitted to CDFA at least 30 calendar days prior to the expiration date of the current license.

Notification of License Information Change (page 23-24)

- Licensees must notify CDFA in writing within 10 calendar days if, among others, disciplinary proceedings are initiated by any state or local government agency.
- Licensees must notify CDFA in writing with 48 hours of, among others, receiving notification of the revocation of a local license, permit, or other authorization.

Physical Modification of Premises (page 24)

- A licensee shall not make physical modifications of the licensed premises that materially or substantially alter the licensed premises without the prior written approval of CDFA.

Disaster Relief (pages 25-26)

- Allows for licensees to request relief from state licensing entities due to disaster, including fire, flood, storm, tidal wave, earthquake, or similar public calamity.

Medium Cultivation License Limits (pages 26-27)

- Licensees shall be limited to one Medium Outdoor, or one Medium Indoor, or one Medium Mixed-Light A-License or M-License. No other license limits exist on other license types.

Prohibition of Product Returns (page 27)

- Licensees are prohibited from accepting returns of cannabis plants or other nonmanufactured cannabis products after transferring possession of cannabis to another licensee after testing is performed pursuant to statute.

Packaging and Labeling of Cannabis and Nonmanufactured Cannabis Products (page 27)

- All product packaging and/or labeling must be in compliance with all applicable statutes and requirements specified by the Bureau of Cannabis Control (BCC) and California Department of Public Health (CDPH).
- A label may specify the county of origin only if 100 percent of the cannabis product contained in the package was produced within the designated county.

Requirements for Weighing Devices and Weighmasters (page 28)

- Any weighing devices used by a licensee must be approved, tested, sealed, and registered with the county sealer.

Transition Period (page 28)

- Licensees may conduct commercial cannabis activities with any other licensee, regardless of the A or M designation of the license, until July 1, 2018.

Personnel Prohibited from Holding Licenses (pages 28-29)

- New regulations are included delineating personnel that are prohibited from holding cultivation licenses including:
 - Any person holding office in or employed by any agency of the State or any of its political divisions when the duties of that person have to do with the enforcement of the Act or any other penal provisions of law prohibiting or regulating the sale, use, possession, transport, distribution, testing, manufacturing, or cultivation of cannabis goods.
 - Law enforcement including anyone employed by the State Department of Justice, any district attorney's office employees, any city attorney's office employees, any local sheriff's office employees or any local police department employees.
- All of the aforementioned employees are also prohibited from having any ownership interest in any business to be operated under a cannabis license.

Cultivation Site Requirements (pages 29-33)

- Specifies requirements for each license type, including plant locations, seed production, research and development activities, environmental protection and renewable energy requirements, generator requirements, and pesticide use requirements.

Record Retention (pages 33-34)

- Licensees shall keep and maintain specified records for at least seven years from the date the document was created.
- All records are subject to review by CDFA during standard business hours without prior notice to licensees.

Sales Invoice or Receipt Requirements (page 35)

- Licensees shall prepare and retain all sales invoices and receipts for every sale or transport of cannabis products to other licensees. Documents must be readily accessible for examination by CDFA, other state licensing authorities, any state or local law enforcement authority, and the California Department of Tax and Fee Administration.

Track-and-Trace System Requirements (pages 35-41)

- Each licensee shall report in CDFA's track-and-trace system all applicable commercial cannabis activities.

- Unique Identifiers (UIDs) shall accompany all cannabis products through all phases of the growing cycle. UIDs are to be created and maintained using the track-and-trace system.
- Any and all cannabis or nonmanufactured cannabis products physically received or rejected from another licensee must be reported within 24 hours of receipt or rejection of the products.
- Any change in the disposition of cannabis plants shall be reported within three business days of the change in disposition of cannabis plants.
- Temporary licensees are not required to record commercial cannabis activity using the track-and-trace system. Instead, temporary licensees shall record all commercial cannabis activity in accordance with sales invoice and receipt requirements.

Inventory Audits (page 41)

- CDFA may perform an audit of the physical inventory and inventory reported in the track-and-trace system. Audits shall be conducted during standard business hours or at another mutually agreed-upon time. Prior notice is not required.

Notification of Diversion, Theft, Loss, or Criminal Activity (page 41)

- Licensees shall notify CDFA and law enforcement authorities within three business days of any diversion, theft, loss of, or criminal activity related to the licensee's cannabis products.

Enforcement (pages 42-62)

- The three violation classes are designated as: minor, moderate, and serious. Administrative fines for minor range from \$100 to \$500; moderate range from \$501 to \$1,000; and serious range from \$1,001 to \$5,000. Repeat violations may result in an escalation of the violation class.
- Pursuant to statute, a person(s) engaging in commercial cannabis activity without a license shall be subject to civil penalties of up to three times the amount of the license fee for each violation.
- Pursuant to statute, a licensee that fails to maintain or provide required records is subject to a citation and a fine of up to \$30,000 per individual violation.
- CDFA shall issue a notice of violation to a licensee that is in violation of applicable statutes and regulations. If the respondent fails to respond in writing within 30 calendar days from the date the notice of violation was received, the right to a hearing will be deemed waived.
- CDFA may order an administrative hold of cannabis or nonmanufactured cannabis products to prevent destruction of evidence, illegal diversion of products, or to address potential threats to the environment or public safety. During an administrative hold, the licensee may retain its inventory pending further inspection or enforcement action from CDFA.

- Regulations stipulate processes for informal and formal hearings related to violations and enforcement.
- CDFA may take a licensing action for any violation of statute and/or regulations. For licensees holding multiple cultivation licenses, CDFA may revoke the license, suspend the license for a specified period of time, issue a probationary license with terms and conditions determined by CDFA, and/or order an administrative hold of all cannabis products.