



CALIFORNIA CANNABIS INDUSTRY ASSOCIATION

PUBLIC COMMENTS TO CDFA

The California Cannabis Industry Association (CCIA) was formed to unite the legal cannabis industry to help educate and act as a resource to lawmakers and our members. Our unified voice includes over 460 California businesses representing nearly 650 brands and approximately 10,000 employees. We would like to thank the California Department of Food and Agriculture (CDFA) for their hard work in crafting the proposed draft permanent regulations. We appreciate the time and diligent efforts the CDFA has extended to address the concerns of the cannabis industry as well as ensuring the safety of patients and consumers of cannabis products.

CCIA, representing a collective group of California cannabis industry businesses and its customers, along with our supply chain committees and Board of Directors, would like to take this opportunity to submit these comments to the draft permanent regulations.

Our comments seek to optimize the draft permanent regulations by addressing the business concerns of the cannabis industry as well as clarify public safety issues. The objective is not to reject regulation but rather to enhance regulations to combat the illicit market and support the newly regulated cannabis industry, pushing it towards success both commercially as well as maintaining patient and consumer safety.

In implementing the draft permanent regulations we ask that the CDFA be thoughtful of the industry as a whole. While there are some large commercial cannabis businesses, many are small and independently operated, and new to regulated markets. CCIA has found its members are eager to comply with issued regulations but at the same time overwhelmed by the financial and logistical burdens of implementation.

We thank the CDFA for its review and objective consideration of these comments.

SUMMARY of COMMENTS:

1. Section 8000(m). “Immature plant”
2. Section 8000(x). “Outdoor cultivation”
3. Section 5301. “Storage-Only Services”
4. Additional Recommendations: “Light Deprivation Prohibition & Equitably Scaled Licensing “
5. Further Recommendation
 - a. Supply Chain Sampling
 - b. Compassionate Care Programs
 - c. Research & Development

1. Section 8000(m). “Immature plant”

Section 8000(m) states the following:

(m) “Immature plant” or “immature” means a cannabis plant which has a first true leaf measuring greater than one half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one half inch wide at its widest point (if vegetatively propagated), but which is not flowering.

Comment:

This language moves away from the scientific definition previously used in the emergency regulations, and narrowly defines what is considered “immature.” The newly proposed definition of immature plant could force nurseries and cultivators alike to apply the track and trace requirements to young plant material well before the plant is considered viable.

Recommendation:

CCIA supports the definition of “immature” plant as re-adopted in the emergency regulations on June 4, 2018. This definition provides certainty to cultivators and clearly defines what constitutes an “immature plant”. CCIA strongly encourages the CDFA to use the existing definition of “immature plant” as defined in the emergency regulations.

2. Section 8000(x). “Outdoor cultivation”

Section 8000(x) states the following:

(x) “Outdoor cultivation” means the cultivation of mature cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants outside the canopy area.

Comment:

This language prohibits the ability for outdoor cultivators to conduct light deprivation activities and forces them to obtain a mixed-light, tier 1 license in order to conduct such activities. Outdoor cultivators often conduct light deprivation activities for a multitude of reasons, including but, not limited to:

- Achieving staggered harvests. Outdoor cultivators often use light deprivation activities to ensure that they can stagger their harvest times, vastly reducing the amount of space and staff persons needed for the drying and processing of cannabis.
- Reducing the water storage infrastructure associated with the States’ forbearance requirements. Outdoor cultivators are required to store, or forbear, 100% of the water used for outdoor cultivation between the months of April and November. Light deprivation techniques are often utilized by outdoor cultivators to ensure that the crop is finished in

early July, greatly reducing the amount of water the farmer is required to store over a cultivation season.

- Maximize yield and quality. Flower quality and crop yield is directly impacted by light intensity and quality. Light deprivation techniques are commonly applied in the outdoor tier to ensure that the flower development stage of the plant's life cycle occurs during peak sunlight days, which is most intense around the time of the summer solstice.
- Light deprivation tarps ensure that 'dark sky' requirements are met. In some jurisdictions, outdoor cultivators who use supplemental lighting to assist the propagation cycle, are required to utilize light deprivation curtains to ensure that supplemental lighting does not escape the propagation area between the hours of sunset to sunrise. Additionally, many local jurisdictions require outdoor cultivators to propagate in their canopy area which often requires affected cultivators to have light deprivation curtains in the canopy area for the purposes of meeting a 'dark sky' requirement.
- Maximizing opportunities for outdoor cultivators to scale. Many outdoor cultivators utilize light deprivation techniques to achieve two, or more, harvests annually without the use of artificial lighting in the canopy area. Due to the current prohibition on light deprivation in the outdoor tier, many legacy farmers are being forced into the mixed-light tier of licensing, which in general equates to a 40% increase in State licensing fees. However, if we consider the cost of licensing per square foot of cumulative canopy harvested, a small mixed-light cultivator achieving only two harvests per year will pay \$0.66 per square foot for their license, while a cultivator in the same tier who achieves four harvests per year pays only \$0.33 per square foot. Conversely, a small mixed-light, tier 2 farmer, who achieves five harvests per year pays \$0.37 per square foot. This pricing system fails to provide a scalable licensing opportunity for California's legacy seasonal farmers and encourages more intensive forms of year round cultivation, which inevitably results more intensive use of resources such as water, nutrient, electricity, and fuel.

Recommendation:

CCIA respectfully requests that CDFA allow light deprivation activities in the outdoor cultivation tier so long as no supplemental or artificial lighting is utilized in the flowering canopy area.

3. Section 5301. "Storage-Only Services"

Section 5301 states the following:

(a) A licensed distributor may provide cannabis goods storage services, including storage-only services to a licensed cultivator, manufacturer, microbusiness, nonprofit, or another distributor, that are unrelated to the quality assurance and laboratory testing processes, to a licensed cultivator, licensed manufacturer, licensed microbusiness, licensed retailer, or another licensed distributor.

(b) A licensed distributor may provide storage services to other licensees for only cannabis goods, cannabis accessories, and licensees' branded merchandise or promotional materials.

(c) Notwithstanding subsection (b) of this section, a licensed distributor shall not store live plants on the licensed premises.

Comment:

The language of subsection (c), while allowing distributors to *move* clones, does not allow distributors to *store* clones on a licensed property. This language, as proposed would create logistical challenges for distributors generally, and nurseries in particular, by prohibiting them from storing clones on currently licensed premises. The proposed language also causes logistical uncertainty for nurseries. For example, it is unclear if a nursery, also in possession of a distributor license, that moves a clone from one area of a licensed premises to another licensed premise would be in violation of the regulations, as distributors cannot move live plants. This technical read of the

regulatory language appears to have the unintended consequence of unduly restricting distributors who also function as nurseries.

Recommendation:

CCIA recommends that subsection (c) be removed so that it is clear that clones may be stored with a licensed distributor.

4. Additional Recommendations: “Light Deprivation Prohibition & Equitably Scaled Licensing”

Comment:

As stated in our comments to relative to Section 8000(x), CCIA believes that the prohibition on light deprivation in the outdoor tier has consequences for seasonal, legacy farmers. Currently, outdoor cultivators are permitted to utilize supplemental lighting for the purposes of propagation. It is common for outdoor cultivators to propagate within their flowering canopy. The prohibition on light deprivation and ultimately light deprivation tarps, will force these outdoor cultivators out of compliance with local ‘dark skies’ regulations that require supplemental lighting to not escape the propagation area. We note here that light deprivation tarps are commonly used in the outdoor cultivation license tier to manage adverse and extreme weather conditions to protect the safety and quality of the plants. The only means to ensure that supplemental light does not escape the propagation area is to use light deprivation tarps while the supplemental lighting is in use. There are currently a number of local municipalities that have mandated these requirements.

Recommendation:

CCIA respectfully requests that CDFA focus on regulating cannabis cultivation with an open interpretation to the methods by which farmers cultivate cannabis. We strongly believe this will ensure a more level playing field for both indoor and outdoor cultivators such that seasonal farmers are not subjected to unfair disadvantages. In furtherance of this goal, we respectfully request that CDFA consider the following:

1. Permit the use of blackout tarps in propagation areas, even if these propagation areas are in the canopy. Tarps should also be permitted to protect plants during extreme weather conditions.
2. Allow seasonal farmers to use light deprivation to address their crop issues.
3. Licensing tiers should be tied to the amount of production, providing a more equitable situation for growers and cultivators.
4. Authorize outdoor cultivators to stagger harvests in order to manage the infrastructure associated with harvest.

5. Further Recommendations:

(a) Supply Chain Sampling

Allowing distributors to provide samples to retailers is an important business activity. However, a strict interpretation of Section 26153 of the Business & Professions Code prohibits a licensee from giving away any amount of cannabis or cannabis products, or any cannabis accessories. In other

consumed good industries such as wine and food products, distributors and others in the supply chain are able to provide limited samples of products to retailers for them to sample to determine if the product meets their consumer and sales needs. For example, a retailer may only want to carry products that complement existing inventory or address a specific flavor. Being able to provide a sample allows retailers to make more informed choices about the products they carry and address business concerns. Similarly, cultivators may want to provide samples of plants to distributors, retailers and manufacturers to demonstrate quality or consistency of a plant line. This activity is performed in other agricultural industries and cannabis is being unfairly restricted as the current regulatory language would prohibit such activities. For clarity, CCIA is not recommending samples be made available to end consumers in any form. Rather CCIA understands the legitimate business needs of cultivators, distributors and retailers in purchasing new products, carrying product lines and understanding the plants themselves. Samples address this need. As this poses no public safety issues and continues to restrict sample to end consumers, we recommend that the BCC provide guidance that expressly permits licensed distributors to provide free products samples to retailers as part of its normal business activity.

(b) Compassionate Care Programs

Compassionate care programs are a foundational cornerstone of the regulated cannabis market. These programs provide necessary care for patients and are essential to maintain. As such, CCIA strongly urges the BCC to exempt compassionate care programs from paying state cannabis taxes when they are providing free medical cannabis to financially disadvantaged people living with serious health conditions. Not-for-profit donation programs have been serving medical cannabis patients for decades and are now being forced to pay taxes meant for commercial businesses. The current cannabis tax structure is placing compassionate care programs at risk and needlessly burdening seriously ill patients and their caregivers. Patients with life threatening conditions such as HIV/AIDS, cancer and epilepsy will be faced with considerable costs for medical cannabis and in many cases will no longer be able to access as programs close and financial burdens increase. Compassionate care programs should be exempt from paying state cannabis taxes so they can continue to use their resources to support financially disadvantaged patients.

(c) Research & Development

Little is known about which cannabis contaminants pose a health risk to humans, especially when the cannabis in question is combusted prior to consumption. CCIA recommends that the state fund research into the public safety threat posed by microbiological and/or pesticide contaminants present in cannabis products intended for consumption by combustion.

CCIA further recommends that future changes to increase testing standards are proposed only in response to demonstrated consumer safety threats. Furthermore, where perceived risks are shown to be unwarranted, CCIA recommends that testing standards are liberalized.

In addition, current regulations provide no allowance for any license type (other than nurseries) to conduct R&D internally for product development. While funding research is necessary and much needed, so is internal exploration for product development and the ability to do market research.