

Department of Cannabis Control
Finding of Emergency Readopt and
Notice of Proposed Readoption of Emergency Regulations

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

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

Required Notice of Proposed Emergency Action

Government Code (Gov. 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 (OAL), 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 OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations set forth in Gov. Code section 11349.6.

This document provides the required notice that the Department of Cannabis Control (Department) will submit a proposed emergency action to the OAL to readopt its emergency regulations that implement cultivation license changes pursuant to BPC section 26061.5.

As required by subdivisions (a)(2) and (b)(2) of Gov. 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 October 13, 2023, Governor Gavin Newsom signed California Senate Bill 833. This chaptered bill, codified in 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 such cultivation license changes would enable cultivation licensees to adjust their operations in response to fluctuations in the commercial cannabis market, while maintaining state commercial cannabis licensure.

BPC section 26061.5 granted the Department the authority to adopt or readopt emergency regulations to implement the section and deemed such regulations as an emergency and necessary for the immediate preservation of public peace, health, safety, or general welfare.

The present emergency regulations were filed with 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. The Department has made substantial progress and proceeded with diligence to move the emergency regulations to permanent regulations via a Certificate of Compliance. The Department anticipates filing notice of its intent to permanently adopt the emergency regulations through a Certificate of Compliance by September 2024. The Department will also provide a regulatory public hearing during the 45-day comment period for members of the public to provide oral testimony. The Department anticipates that the Certificate of Compliance will be completed and filed with OAL within the readoption period.

Authority and Reference

The Department proposes readopting CCR, title 4, sections 15020.1, 15020.2, and 15020.3. BPC section 26061.5 authorizes the Department to develop and implement regulations to enable cultivation licensees to make certain changes. These emergency regulations will implement, make specific, or reference BPC section 26061.5.

Informative Digest / Policy Statement Overview

Existing Law

The Department regulates all commercial cannabis license holders in California, including cultivators, manufacturers, retailers, distributors, microbusinesses, testing laboratories, 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. Because a cultivation license is issued for a particular commercial cannabis business at a particular premises, material modifications involving changes to total physical size or capacity of the licensed premises, or a change in operations, generally require submittal of a new application for licensure.

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.). In furtherance of these statutory directives, section

15014 of the Department's regulations enumerates the fees collected by the Department and paid by applicants and licensees to establish consistency in application and licensure requirements. Specifically, the Department's regulations clarify the annual license fees for each license type, depending on the size of the business, and how and when the license fees can be paid. In addition, section 15014.1 of the Department's regulations outlines the Department's program to provide fee waivers and deferrals of annual license fees to qualified equity applicants or licensees.

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.

Policy Statement

Regulation Objectives

The Department has developed this emergency regulation 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.

Anticipated Benefits to the Public

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 the date of renewal for a cultivation license 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.

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.

Add Section 15020.1. Cultivation License Limited Operations Status.

BPC section 26061.5 required the Department to allow cultivation licensees to place a cultivation license in inactive status. Accordingly, the Department proposes readopting the added section 15020.1, which establishes the process for a cultivation licensee to request such changes.

The Department proposes readoption of subsection (a), which provides that cultivation licensees may place a cultivation license, expiring on or after March 1, 2024, in Limited Operations Status. This section is necessary because it clarifies the types of cultivation license changes available pursuant to this section, consistent with BPC section 26061.5. Because licensees may begin renewing their licenses 60-days prior to the

expiration of their licenses, the Department determined it was necessary to clearly delineate when cultivation licensees may begin requesting changes to their cultivation licenses. The Department determined that establishing a March 1, 2024 date would provide sufficient notice to cultivation licensees to make informed business decisions related to licensure renewal. The March 1, 2024 date is also necessary because it provides the Department with sufficient time to make the required changes to its online licensing system.

The Department proposes readoption of subsection (b), which defines the term “Limited Operations Status” as an inactive license status. While BPC section 26061.5 uses the term “inactive status” for cultivation licensees who will not be in operation during the annual license term, such status is already utilized in the Department’s licensing system for former Department licensees that are non-operational. Accordingly, the Department determined that the term “Limited Operations Status” is necessary to distinguish cultivation licensees that temporarily cease activities pursuant to BPC section 26061.5 from existing classifications utilized in the Department’s online licensing system. Moreover, this term recognizes that a cultivation license with this applied status may still engage in the limited activities enumerated in BPC section 26021.5, subdivision (c)(1).

The Department proposes readoption of subsections (b)(1) and (b)(2), which further clarify that cultivation licensees that have been placed in Limited Operations Status may continue to engage in the drying, curing, grading, trimming, packaging, and sale of cannabis harvested before the date the cultivation license status became effective, or possess and maintain seeds and immature plants used solely for propagation to preserve the genetic lineage of the cultivation licensee’s cannabis plants. These activities are a restatement of BPC section 26061.5, subdivision (c)(1) and are included here for convenience and clarity.

The Department proposes readoption of subsection (c), which clarifies that mature plants are prohibited on the premises of a cultivation license in Limited Operations Status. This subsection is intended to clarify the duties and responsibilities of a cultivation licensee that holds a license in Limited Operations Status and is necessary for consistency with BPC section 26061.5, subdivision (c)(1) Per statute, inactive cultivation licensees may only engage in the drying, curing, grading, trimming, packaging, and sale of cannabis harvested before the date the license status was applied, and possess or maintain seeds and immature plants used solely for propagation to preserve the genetic lineage of the cultivation licensee’s cannabis plants. Proposed subsection (c) further clarifies that mature plants that have not been harvested prior to the cultivation license being placed in Limited Operations Status shall be destroyed by the cultivation licensee within 30 days. Because BPC section 26061.5, subdivision (c) limits a licensed cultivator’s ability to maintain mature plants on the licensed premises while inactive, this language is necessary to inform cultivation licensees on how to handle mature plants that are at their licensed premises at the time that the Limited Operations Status is applied to their cultivation license, or that develop on their licensed premises during the Limited Operations Status license period. The

Department determined that 30 days is a reasonable amount of time for a cultivation licensee to destroy and dispose of any mature plants that develop on the licensed premises during the Limited Operations Status period.

The Department proposes readoption of subsection (d), which clarifies how cultivation licensees may place their license in Limited Operations Status. This proposed subsection is necessary to inform cultivation licensees about the information that is required to accompany such requests. To that end, proposed subsection (d)(1) provides that a cultivation licensee must specify on the license renewal form described in section 15020(d) or the modified renewal date request described in section 15020.3(e), the request to place the cultivation license in Limited Operations Status. This subsection is necessary to inform cultivation licensees that the Department will only consider written requests to be placed in Limited Operations Status on either the Department's license renewal form or the modified renewal date request.

The Department proposes readoption of subsection (d)(2), which clarifies that in addition to submitting a request to be placed in Limited Operations Status, the cultivation licensee must remit 20 percent of the applicable annual license fee for the cultivation licensee's current license type, required by section 15014 or section 15014.2 to the Department. This subsection is necessary to inform cultivation licensees of the reduced annual license fee that they are responsible for remitting to the Department. BPC section 26061.5, subdivision (c)(3) provides that a cultivation licensee who has been placed in an inactive status shall pay a reduced fee in an amount determined by the Department. Based on the *Economic and Fiscal Analysis, Limited Operations Cultivation Licenses* prepared by ERA Economics, LLC, the Department determined that 20 percent of the applicable annual license fee for the licensee's current license type pursuant to section 15014 or 15014.2 was appropriate because it satisfies the requirements of BPC section 26061.5, subdivision (c)(3) for a reduced fee and is economically beneficial to cultivators using the Limited Operations Status. It would also encourage continued market participation by allowing licensed cultivators a way to stay in the regulated commercial cannabis market at a reduced monetary cost. Moreover, this fee would also cover some of the Department's costs related to licensing and compliance, which would continue to be necessary for such cultivation licenses in limited operations.

The Department proposes readoption of subsection (d)(3), which provides that a cultivation licensee requesting to be placed in Limited Operations Status must also satisfy all outstanding renewal requirements pursuant to sections 15001.2 and 15020 if applicable. This subsection is necessary to clarify to cultivation licensees that are submitting a request to be placed in Limited Operations Status does not eliminate their duty to satisfy all outstanding requirements for licensure renewal for their applicable license, as enumerated in sections 15001 and 15020 of the Department's regulations.

The Department proposes readoption of subsection (e), which provides that the Department shall verify that all requirements to place the cultivation license in Limited Operations Status have been met. This is necessary to ensure that only cultivation licensees that meet the relevant requirements can enter Limited Operations Status. This proposed subsection also indicates that upon confirming the requirements have been met, the Department shall notify the cultivation licensee in writing that the requirements to place the cultivation license in Limited Operations Status have been met. This is necessary to inform the cultivation licensee that the Department's review is complete and the requirements for their request have been satisfied.

The Department proposes readoption of subsection (f), which clarifies that Limited Operations Statuses granted pursuant to this section shall remain in effect for the duration of the license term and that the cultivation licensee may request to place their license in Limited Operations Status at each subsequent renewal. This section is necessary to inform cultivation licensees of their license change options at the time of subsequent renewal, consistent with BPC section 26061.5, subdivision (c)(2).

The Department proposes readoption of subsection (g), which clarifies that the section does not apply to certain cultivation licenses, including nursery licenses, processor licenses. BPC section 26061.5, subdivision (c)(1) clarifies the types of activities that cultivation licensees in limited operations status may engage in, allowing for: (A) the drying, curing, grading, trimming, packaging, and sale of cannabis harvested before the date the cultivation license was placed in inactive status; and (B) possession and maintenance of seeds and immature plants used solely for propagation to preserve the genetic lineage of the cultivation licensee's cannabis plants. Because nursery licensees and processor licensees may already engage in the activities identified by BPC section 26061.5(c)(1), application of a Limited Operations Status would have no effect on such licensees. Accordingly, the Department determined that it was necessary to clarify that nursery and processor licenses do not qualify for Limited Operations Status under this section.

The Department proposes readoption of subsection (h), which specifies that licenses that are changed to a Reduced-Size Cultivation License pursuant to section 15020.2 shall not also be placed in Limited Operations Status during the same license term. The Department determined it was necessary to clarify that cultivation licensees may request to either place a cultivation license in limited operations status or change an Original Cultivation License to a Reduced-Size License, but not both. The Department determined that a restriction on the types of changes that can be made in the same renewal period is necessary because the Department has determined that adjusting the size of a mature plant canopy through a cultivation license type change is incompatible with the application of a limited operations status in the Department's online license system; in limited operations status there is no mature plant canopy to reduce.

Add Section 15020.2. Cultivation License Reductions in Size.

BPC section 26061.5 required the Department to allow cultivation licensees to change the type of size of a cultivation license. Accordingly, the Department proposes readopting the added section 15020.2, which establishes the process for a cultivation licensee to request such changes.

The Department proposes readoption of subsection (a), which provides that cultivation licensees may change an Original Cultivation License, expiring on or after March 1, 2024, to a Reduced-Size Cultivation License. This section is necessary because it clarifies the types of cultivation license changes allowable based on BPC section 26061.5. Because licensees may begin renewing their licenses 60 days prior to the expiration of their licenses, the Department determined it was necessary to clearly delineate when cultivation licensees may begin requesting changes to their cultivation licenses. The Department determined that establishing a March 1, 2024 date would provide sufficient notice to cultivation licensees to make informed business decisions related to licensure renewal. The March 1, 2024 date is also necessary because it provides the Department with sufficient time to make the required changes to its online licensing system.

The Department proposes readoption of subsection (b), which identifies definitions that are relevant to the proposed regulations. Proposed subsection (b)(1) defines the term “Original Cultivation License” as the provisional or annual cultivation license type that was indicated on the license prior to any reduction in size pursuant to the section. This is necessary to provide a means to refer to the license type identified in the Department’s online license system for licensure in a short and succinct manner. This language also recognizes that, since the time an original application for licensure was submitted, a cultivation licensee may have converted preexisting cultivation licenses to a Large or Medium Cultivation license pursuant to section 15027.1. Such Large or Medium Cultivation licenses would be considered the Original Cultivation License for the purposes of this section.

The Department proposes readoption of subsection (b)(2), which defines the term “Reduced-Size Cultivation License” as a cultivation license type that has a smaller maximum canopy size than the Original Cultivation License and uses the same type of lighting as the Original Cultivation License (e.g., Indoor, Outdoor, Mixed-Light Tier 1, or Mixed-Light Tier 2). This is necessary to provide a means to refer to the new cultivation license type with a smaller maximum canopy size than the Original Cultivation License in a short and succinct manner. The Department determined it was necessary to clarify that the lighting utilized by the Reduced-Size Cultivation License should be the same as the Original Cultivation License, because changes to cultivation lighting type could be considered a major modification that requires additional review and consideration by the Department pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

The Department proposes readoption of subsection (c), which clarifies what a cultivation licensee shall submit to the Department to obtain a cultivation license type change. This proposed subsection is necessary to inform cultivation licensees about the information that is required to accompany such requests. To that end, proposed subsection (c)(1) provides that a cultivation licensee shall specify on the license renewal form specified in section 15020(d) or the modified renewal date request specified in section 15020.3(e), the request to the Department to change the Original Cultivation License to a Reduced-Size Cultivation License. The request shall identify the Reduced-Size Cultivation License a cultivation licensee wants to transition their Original Cultivation License to. This subsection is necessary to inform cultivation licensees that the Department will only consider written requests for a Reduced-Size Cultivation License on either the Department's license renewal form or the modified renewal date request.

The Department proposes readoption of subsection (c)(2), which clarifies that, in addition to submitting a written request to change to a Reduced-Size Cultivation License, a cultivation licensee must also submit an updated premises diagram for the cultivation license that satisfies the requirements of section 15006 and identifies the canopy areas of the Original Cultivation License and the canopy areas for the Reduced-Size Cultivation License. This section is necessary to clarify what specific information is required to be included on a premises diagram at the time of a license type change request. BPC section 26051.5, subdivision (c) requires that an applicant for licensure provide a complete detailed diagram of the requested premises wherein the license privileges will be exercised, with sufficient particularity to enable ready determination of the bounds of the premises. Additionally, Department staff often physically inspect the premises of commercial cannabis licensees and rely on the premises diagram during such inspections. This change ensures that Department staff have accurate, up-to-date information regarding the activities they can expect on the licensed premises. Proposed subsection (c)(2) further states that the Reduced-Size Cultivation License canopy area shall be located within the canopy area of the original license. The Department determined it was necessary to clarify that the canopy area of the Reduced-Size Cultivation License should be within the footprint of the Original Cultivation License, because reconfigurations of the cultivation premises could be considered a major modification that requires additional review and consideration by the Department.

The Department proposes readoption of subsection (c)(3), which provides that the cultivation licensee must also remit the annual license fee due for the Reduced-Size Cultivation License pursuant to section 15014 or 15014.2. The Department's licensing fees are based on license type, are scaled to the size of the business entity licensed, and are reflective of the Department's administrative cost associated with each license type. Accordingly, this language is necessary to ensure that cultivation licensees remit the appropriate fees that correspond to their licensed activities.

The Department proposes readoption of subsection (c)(4), which provides that a cultivation licensee requesting to change to a Reduced-Size Cultivation License must also meet all renewal requirements pursuant to sections 15001.2 and 15020, if

applicable. This subsection is necessary to clarify to cultivation licensees that submitting a request for a Reduced-Size Cultivation License does not eliminate their duty to satisfy all outstanding requirements for licensure renewal for their applicable license, as enumerated in sections 15001 and 15020 of the Department's regulations.

The Department proposes readoption of subsection (d), which provides that the Department shall verify that all requirements to change the cultivation license type have been met. This is necessary to ensure that only cultivation licensees that meet the relevant requirements can change their license type. This proposed subsection also indicates that upon confirming the requirements have been met, the Department shall notify the cultivation licensee in writing that the requirements to change license types have been met. This is necessary to inform the cultivation licensee that the Department's review is complete and the requirements for their request have been satisfied.

The Department proposes readoption of subsection (e), which provides that Reduced-Size Cultivation License changes granted pursuant to this section shall remain in effect for the license term. This subsection further clarifies that at each subsequent renewal, the cultivation licensee has the option to: (1) Retain the Reduced-Size Cultivation License; (2) Change to a different Reduced-Size Cultivation License; or (3) Restore the Original Cultivation License. This section is necessary to inform cultivation licensees of how long a Reduced-Size Cultivation License will remain in effect, as well as their license change options at the time of subsequent renewal, consistent with BPC 26061.5, subdivision (b)(2).

The Department proposes readoption of subsection (f), which clarifies additional considerations for provisional licensees seeking Reduced-Size Cultivation License changes pursuant to this section. Specifically, proposed subsection (f) clarifies that a provisional cultivation licensee shall continue to actively and diligently pursue the requirements for annual licensure, as required by section 15001(d). The provisional cultivation licensee may pursue annual licensure for either the Original Cultivation License or a Reduced-Size Cultivation License. This is a restatement of BPC section 26061.5, subdivision (b)(3), which is necessary for the ease and convenience of cultivation licensees.

The Department proposes readoption of subsection (f)(1), which clarifies that the provisional cultivation licensee shall immediately notify the Department in writing if it chooses to pursue annual licensure for a Reduced-Size Cultivation License and inform the Department of the annual cultivation license type they are pursuing. This subsection is necessary to inform cultivation licensees that the Department will only consider written requests from provisional cultivation licensees if they wish to change the annual license type they are pursuing. The Department must ensure that for the purposes of transitioning a provisional cultivation license to an annual license, it is reviewing accurate application and licensing information to make an informed determination. Accordingly, the Department determined that it was necessary for clarity to inform

cultivation licensees that they must provide their notification as soon as they determine which license they intend to pursue. Moreover, the Department determined it was necessary to clarify how cultivation licensees may submit their notifications; email was determined to be an efficient mechanism for licensees to notify the Department, thereby ensuring the Department's timely review and consideration of such requests. Further, to ensure that the Department reviews and considers notifications for the appropriate license, the Department determined it was necessary to clarify to cultivation licensees that as part of their notifications, they should identify the license application number, as well as the annual license type that the provisional licensee is pursuing.

The Department proposes readoption of subsection (f)(2), which clarifies that, notwithstanding subsection (b)(1), after the issuance of an annual cultivation license, that cultivation license shall be considered the cultivation licensee's Original Cultivation License for the purposes of this section. This is necessary because it makes clear to licensees that by pursuing annual licensure for a maximum canopy size of their choosing, they would be able to revert back to that larger cultivation license type at a subsequent renewal period.

The Department proposes readoption of subsection (g), which clarifies that the section does not apply to certain cultivation licenses, including nursery licenses and processor licenses. The Department determined it was necessary to clarify that nursery and processor licenses do not qualify for a Reduced-Size License under this section because such licensees do not have a mature plant canopy to reduce in size.

The Department proposes readoption of subsection (h), which specifies that a cultivation license 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. The Department determined it was necessary to clarify that cultivation licensees may request to either place a cultivation license in limited operations status or change an Original Cultivation License to a Reduced-Size Cultivation License, but not both. The Department determined that a restriction on the types of changes that can be made in the same renewal period is necessary because the Department has determined that adjusting the size of a mature plant canopy through a cultivation license type change is incompatible with the application of a limited operations status in the Department's online license system; in limited operations status, there is no mature plant canopy to reduce.

Add section 15020.3. Modifying Cultivation License Renewal Date.

BPC section 26061.5 required 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 readopting the added section 15020.3, which establishes the process for a commercial cannabis business licensee to request such changes.

The Department proposes readoption of subsection (a), which provides that cultivation licensees may modify a cultivation license's date of renewal. This subsection is necessary for clarity and is a restatement of BPC section 26061.5, subdivision (d) regarding cultivation licensees' ability to modify their date of renewal.

The Department proposes readoption of subsection (b), which defines the term "Modified License Term" as a period of time that falls between submission of a cultivation licensee's request to modify a license date of renewal and the requested modified renewal date. The Department determined that this definition is necessary for clarity, to distinguish the licensure term that results from the Department's processing of the modified license renewal date, in a short and succinct manner.

The Department proposes readoption of subsection (c), which defines the term "Original Renewal Date" as the scheduled date of renewal indicated on the cultivation license, prior to any renewal date modification pursuant to this section. The Department determined that this definition is necessary for clarity to distinguish the modified renewal date from the scheduled date of renewal originally indicated on the cultivation license in a short and succinct manner.

The Department proposes readoption of subsection (d), which defines the term "Prorated Daily License Fee" as the prorated license fee for one calendar day, which shall be calculated by dividing the applicable annual license fee by 365. The subsection further provides that the applicable annual license fee shall be the license fee required by section 15014, section 15014.2, or section 15020.1(d)(2). To ensure that cultivation licensees are remitting the appropriate fees for the appropriate license terms, the Department determined it was necessary for administrative ease and clarity to provide instructions on how to calculate prorated daily license fees. These instructions will not only aid stakeholders in determining the appropriate fees for their license, but Department staff in implementing the provisions of this section. This term also enables the Department to refer to these calculations within the regulations, in a short and succinct manner.

The Department proposes readoption of subsection (e), which informs cultivation licensees about what information they shall submit to modify their renewal date, and is necessary to inform cultivation licensees about the information that is required to accompany such requests. Specifically, proposed subsection (e) provides that in order to modify the renewal date of a cultivation license, the licensee shall submit to the Department a request through the Department's online licensing system or by submitting a modified renewal date form via electronic mail to the Department at a specific email address. The Department determined it was necessary to provide clarity regarding how cultivation licensees may submit requests to modify a renewal date. Similar to other licensee submittals processed by the Department, the Department will consider requests that are submitted via the Department's online licensing system or via form. Proposed subsection (e) further identifies the specific information that shall be provided by a cultivation licensee requesting to modify their renewal date.

The Department proposes readoption of subsection (e)(1), which requires requesting cultivation licensees to provide the name of the licensee making the request. Requiring the name of the licensee that is requesting the modification is necessary for administrative ease and clarity, and ensures that the Department considers modified renewal dates for the appropriate licensee.

The Department proposes readoption of subsection (e)(2), which requires requesting licensees to provide the license number and current expiration date. The Department determined that requiring the license number and current expiration date is necessary for administrative ease and clarity, and ensures that the Department has all necessary information to process the request and considers modified renewal dates for the appropriate cultivation licensee.

The Department proposes readoption of subsection (e)(3), which requires requesting licensees to identify a requested modified renewal date that is on or after the date of submission of all the information required by this section to the Department. The Department determined that requiring the cultivation licensee to identify a requested modified renewal date is necessary for clarity, as it ensures that the Department has all relevant information required to process the request. Licensees cannot retroactively change their past commercial cannabis activities that have already been exercised under their license; accordingly, the Department determined that it was necessary to clarify to cultivation licensees that they may only identify a modified renewal date that is on or after the date of submission of their request.

The Department proposes readoption of subsection (e)(4), which allows requesting cultivator licensees to concurrently identify whether they are also requesting to be placed in Limited Operations Status pursuant to section 15020.1, or make a change in cultivation license size pursuant to section 15020.2 to effectuate the changes allowed by the statute. Moreover, the Department has determined requesting information for concurrent requests is necessary for administrative ease; it enables the Department to process all pending cultivation license requests in an efficient and timely manner.

Finally, the Department proposes readoption of subsection (e)(5), which requires a requesting cultivation licensee to provide the name, phone number, email address, and signature of the designated primary contact person or designated responsible party for the cultivation licensee submitting the request. Oftentimes, the Department has found that as it reviews licensee submittals, it has clarifying questions that must be directed to the licensee. The Department determined it is necessary to clarify that cultivation licensees should provide an appropriate point of contact in case the Department must reach out for additional information related to the request.

The Department proposes readoption of subsection (f), which provides that the Department shall verify that all requirements for modifying a cultivation license renewal date have been met. This is necessary to ensure that only cultivation licensees that meet the requirements will qualify for a modified renewal date. This proposed subsection also indicates that upon confirming the requirements have been met, the

Department shall notify the cultivation licensee in writing that the requirements for the requested modified renewal date have been met and shall disclose the fees the cultivation licensee must pay for the modified license term or the amount that will be refunded by the Department. This is necessary to inform the cultivation licensee that the requirements for their request have been met and inform the cultivation licensee of the appropriate licensing fee that must be paid, or alternatively, the amount of refund they are entitled to for excess fees paid to date.

The Department proposes readoption of subsection (g), which provides an overview of how the Department will determine fees that must be paid for the Modified License Term or the amount that will be refunded by the Department. This subsection is necessary because it provides clear instructions for stakeholders and Department staff regarding how license fees will be calculated upon the processing of a request for a modified renewal date.

To that end, the Department proposes readoption of subsection (g)(1), which provides instructions on how to determine the gross amount of any credit due from the Department to the licensee. A license fee paid by a licensee is generally applied to the license period of one calendar year. A modification of a license renewal date will go into effect prior to the expiration of the existing license. Since such cultivation licensees have already paid a license fee for the entire 12-month period and there will likely be time remaining on the existing license, the Department determined that it is appropriate to calculate the appropriate credit for the cultivation license seeking a modified renewal date.

The Department proposes readoption of subsection (g)(1)(A), which provides that, in order to determine the gross amount of any credit due from the Department to the cultivation licensee, it must first determine the Prorated Daily License Fee for the current license. The Department determined that this calculation is necessary, because it provides an accurate calculation of the prorated daily license fees for the license subject to the request. This is an integral step in calculating the amount of credit due to a cultivation licensee for fees paid.

The Department proposes readoption of subsection (g)(1)(B), which provides that the Prorated Daily License Fee shall then be multiplied by the number of days the current license would have remained valid in the absence of any change to its renewal date, counting from the date the cultivation licensee submitted a request under this section until the Original Renewal Date. The Department determined that this subsection is necessary because this calculation provides a clear and fair mechanism to prorate the resulting amount of excess fees paid on the license subject to the modification for the period of time between the date the request was made and the Original Renewal Date.

The Department proposes readoption of subsection (g)(2), which provides instructions on how to determine the gross amount of the fee due from the cultivation licensee to the Department for the Modified License Term. A modification of a license renewal date will go into effect prior to the expiration of the existing license. Such cultivation licensees

may also couple their request to modify a renewal date with a request to enter Limited Operations Status or to change to a Reduced-Size Cultivation License. This is necessary to implement the intent of the statute by allowing licensees to take advantage of the new options immediately upon implementation. The Department determined that calculating the gross amount of fee due from the cultivation licensee to the Department for the Modified License Term is a clear and fair mechanism to calculate the amount of fee due for the period of time the cultivation licensee begins operating under the new renewal date.

The Department proposes readoption of subsection (g)(2)(A), which provides that, in order to determine the gross amount of the fee due from the cultivation licensee to the Department, it must first determine the Prorated Daily License Fee for the Modified License Term. The Department determined that this calculation is necessary, because it provides an accurate calculation of the prorated daily license fees for the cultivation license once any modifications to the license are applied. This is an integral step in calculating the amount owed by a cultivation licensee for the Modified License Term.

The Department proposes readoption of subsection (g)(2)(B), which provides that the Prorated Daily License Fee shall then be multiplied by the number of days remaining on that cultivation license, counting from the date the licensee submitted a request under this section until the licensee's requested modified date of renewal. The Department determined that this subsection is necessary because this calculation provides a clear and fair mechanism to prorate the amount of fees owed on the cultivation license subject to the request, for the Modified License Term.

The Department proposes readoption of subsection (g)(3), which provides instructions on how to calculate the net difference between the gross amount of any credit due from the Department, and the gross amount of fee due from the cultivation licensee to the Department. The Department determined that this calculation is necessary for administrative ease and clarity because it allows the Department to make an efficient calculation of the net amount of fees owed or to be refunded, rather than processing separate, individual transactions, which could lead to further confusion.

The Department proposes readoption of subsection (g)(3)(A), which provides that where the gross amount of credit due under subsection (g)(1) exceeds the gross amount of fee due under subsection (g)(2), the net difference shall be refunded to the cultivation licensee by the Department. As license fees are based on license type, are scaled to the size of the business entity licensed, and are reflective of the Department's administrative cost associated with each license type, the Department determined that this calculation was necessary to ensure that cultivation licensees are only responsible for remitting fees that are consistent with the licensee's actual reported operations. Proposed subsection (g)(3)(A) further provides that refunds issued by the Department shall not exceed the license fee subject to the modified license term. Refunding fees in excess of the license fee subject to the modified license term would result in a negative balance with the Department, with fees not properly apportioned for the cultivation

licensee's desired commercial cannabis activity. This language is included for clarity in the Department's refund calculations.

The Department proposes readoption of subsection (g)(3)(B), which provides that where the gross amount of credit due under subsection (g)(1) is less than the gross amount of the fee due under subsection (g)(2), the cultivation licensee shall pay that net difference to the Department. As license fees are based on license type, are scaled to the size of the business entity licensed, and are reflective of the Department's administrative cost associated with each license type, the Department determined that this calculation was necessary to ensure that licensees are responsible for remitting fees that are consistent with the licensee's actual reported operations. Proposed subsection (g)(3)(B) further provides that payment shall be due within 30 calendar days of the notification from the Department required by subsection (f). Requiring payment within 30 calendar days is consistent with the time period identified by the Department for similar submittals and is included for administrative ease and clarity. It also is intended to encourage cultivation licensees to remit fees in a timely manner, thereby ensuring that they are not subject to late fees for failure to remit timely payment.

The Department proposes readoption of subsection (h), which provides that, notwithstanding section 15014.1(h)(1), cultivation licensees who have obtained a fee deferral pursuant to section 15014.1 shall pay all license fees in full within six months of the deferral being granted, or prior to the modified renewal date, whichever is sooner. The Department determined that enabling cultivation licensees who have requested a modified license term to defer their license fees in this manner was necessary and consistent with section 15014.1(h)(1), which allows for deferrals for six months. In situations where the renewal would fall prior to a typical six-month deferral date, the Department determined that tendering all fees prior to license renewal was necessary to ensure that all licensing fees are remitted as required by the Act, and that cultivation licensees do not put themselves in the position of creating large "balloon payments" over time. Moreover, due to the administrative burdens associated with license renewal processing, it is necessary for the Department to require all licensing fees prior to the conclusion of the modified license term.

The Department proposes readoption of subsection (i), which provides that a cultivation licensee may only modify the renewal date of a cultivation license pursuant to this section once for each cultivation license. This language is necessary to clarify to prospective requestors that, consistent with BPC section 26061.5, subdivision (d), the Department will not consider multiple requests to change the date of license expiration. Once the date of expiration has been changed on a license, each subsequent renewal of the license will be for a 12-month licensure term, as enumerated in BPC section 26050, subdivision (c).

Inconsistency with Federal Regulation 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.

Consistency with Existing State Regulations

As required by Gov. 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.

Plain English Requirement

Department staff prepared these emergency 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, subdivision (a)(1). The emergency 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.

Any costs or savings in federal funding to the state: None.

Economic Impact and Fiscal Impacts

Business Impact

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.

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

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Option 1: Not adopt 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.
2. Option 2: 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 license fee revenue for the Department, it would not encourage as much participation in using the Limited Operations Status.
3. Option 3: Do not impose a fee to enter Limited Operations Status. Business and Professions Code section 26180 requires the Department to establish a scale of application, licensing, and renewal fees, that cover the costs of the Department's administration of MAUCRSA. 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.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon

1. ERA Economics, LLC. *Economic and Fiscal Impact Analysis, Limited Operations Cultivation Licenses* (February 2024).