

Proposed Issues Applicable to Emergency Regulations and State Licensing From the County's State Licensing Working Group

Introduction: In addition to the suggested changes or adjustments from the State Licensing Working Group to be considered by the Board of Supervisors, this proposal recommends forming a rapid response team in order to offer input to the state's emergency regulations within the five calendar days mandated by the Bureau of Cannabis Control (BCC). The rapid response team would be composed of stakeholders and county staff from the State Licensing Working Group and at least one Supervisor.

Goal: Send a Letter to the BCC no later than October 18, 2017 with recommendations to be included in the Emergency Regulations. Given that there will be a tight time frame between the issuance of the Emergency Regulations in November, and the effective date of those regulations, it is imperative that we suggest that issues critical to our County be incorporated into the final drafting of the Emergency Regulations BEFORE they are issued.

The following list of issues are in part taken from state agencies' Responses to Public Comments that were released on 9/28/17. While the responses were to the proposed regulations that were in the rule-making process under MCRSA and those proposed rules have since been withdrawn, the state responses to the public comments on those proposed rules provide helpful insight into how the State is thinking about those issues with respect to MAUCRSA and the Emergency Regs that will be issued in November. Please NOTE that the canopy issue is not listed in this section since the CDFA Response to Comments indicated that this issue must be handled by new legislation. It is therefore included in the section asking for assistance from Legislators. The issues of greatest importance to the effective regulation of Mendocino County cannabis businesses are:

1. **Refine definition of canopy to exclude walkways and space.** For outdoor cultivation, canopy should be measured by the drip line of each plant. Cultivators should be responsible for providing the measurements and square footage of their gardens, with spot checks as necessary from inspectors. Take into consideration agricultural best practices by inter-planting non-cannabis plants.
2. **Co-location of microbusiness activities under separate licenses for same licensee.** Mendocino County has taken the lead to protect its environment and natural resources in part by limiting permitted cultivation to a maximum of 10,000 square feet of canopy (for flowering cannabis, and up to 12,000 square feet of immature/ plants for nurseries). As such, all of our cultivators are "small" compared to the state licensing levels. The primary way for our cannabis producers to compete in the larger market is to engage in value-added activities, to take advantage of microbusiness licenses, and/or to cooperatively and collectively share costs for expensive facilities and processes. Our dispensaries and retail outlets, all of which have been operating here for years, are faced with having to attract other cannabis businesses to share buildings and facilities in order to scale up and compete in the new marketplace as well as afford the compliance and taxation costs of the new regulatory environment. While we appreciate that AB 133 removed the requirement that licensed premises be separate and distinct, we are concerned that the implementing regulations should be written in a manner that take into account the needs of these small farmers and businesses.
3. **Allow licensed neighbors to share facilities for drying and processing to reduce unnecessary infrastructure costs while adhering to Track & Trace requirements.** Properly commercially permitted facilities (under California Building Code and local codes) require extensive infrastructure and expense, including in many cases ADA bathrooms, parking spaces, etc. For some rural farms, this infrastructure could cause more environmental disturbance than is tolerable. If farmers are allowed to dry and process the product in a shared neighborhood facility, it would reduce the negative

environmental impact. While some licensed cannabis processors will accommodate the off-farm processing, many small farmers will not be able to afford the added costs of paying for licensed processors. Alternatively, drying and processing should be allowed to occur at off-farm premises within a certain radius of the farm. Farmers with two permitted sites in the County should be allowed to co-mingle their product at one of their permitted drying and processing locations.

4. **Allow greater amounts of time for cultivators to report under Track and Trace given the rural nature of most cultivators and the frequency of internet problems and accessibility, especially in winter.** Sadly, high speed internet is not as prevalent in rural areas (yet). Add to that the fact that in winter it can be difficult to get good signals on satellite dishes and that roads can often be blocked (for those who have to travel to town to use internet) and there is no wonder that sometime a 24-hour response time might be infeasible. Additionally, at harvest time, if the rains start early, small farmers are spending all of their time trying to fight mold and mildew. These farmers cannot afford to hire separate personnel to handle their administrative needs.
5. **Reduce extensive security requirements where the rural nature of the cultivation sites and other conditions make it impractical** to have the level of surveillance initially requested. Internet access is not reliable in rural locations even where it is available. Having internet- based security camera requirement is unfeasible.
6. **Reduce extensive security requirements for dispensaries / retail outlets** that, in Mendocino County, have no history of criminal activity and have posed no threat to the community or disturbances to neighborhoods. These would include *not* requiring redundant security systems such as surveillance cameras, *and* alarm systems, *and* security guards or off-site security companies.
7. **Allow transportation for cultivators from farm-to-testing facility/ farm-to-processor/ farm-to-distributor/ farm-to-other licensed location under microbusiness model for same licensee.** Under these provisions, it would be helpful if two licensed cultivation sites for one licensee are able to transport both permitted farms' materials to a licensed testing facility, distributor, or processor. A licensed cultivator should be able to bring their material to their licensed manufacturing site, etc. if they have a microbusiness license without having to obtain a distributor activity license.
8. **Implement a phase-out procedure for use of generators in place of an immediate prohibition, as indicated in the CDFA Response to Public Comment on the previously proposed regulations.** In Mendocino County, we have implemented a two-year phase-out of use of generators as the primary source of power. We require cultivators to demonstrate that they have sufficient alternative power to support all operations in the following phases: one half of all power by the end of the first year of the County issued permit to cultivate and 100% of alternative power by the end of the 2nd year of the permit to cultivate. We allow the use of generators as a back-up in case of inclement weather and other emergencies so long as the sufficient alternative power exists and environmental protocols and safety are implemented.
9. **We support the creation of a separate license specifically for delivery of medical cannabis infused products to patients with 215 medical recommendations. (See Attachment A below)**
10. **Allow local jurisdictions to determine what constitutes "other authorization"** for the acceptance of applications and granting of provisional licenses.
11. **Approve the use of an Embossed Receipt as the "Other Authorization" for an applicant's submittal to the State for a state provisional license** (different from the process for "normal" or non-provisional state license, see below). The Board of Supervisors has directed Staff to bring back a proposal regarding this. It is imperative that Staff work with the Working Group to ensure that the system takes into account the needs of both the County and the prospective state licensees.

Further Suggestions

A. Rapid Response Team

1. Establish a rapid response team of State Licensing Working Group members and at least one Supervisor to review Emergency Regs when they are issued and to identify and draft comments in response.
 2. Secure Board of Supervisors expedited review of proposed comments for approval.
 3. Submit to State within required five calendar days of issuance of emergency regulations.
- B. Create a system for submitting an affirmative local good standing certificate, or a not in good standing response. The Board has previously indicated that it would be inclined to issue affirmative good standing certificates for applicants. The process needs to be clarified and established well in advance of January 2018. This is separate and distinct from the affirmative issuance of a local “other authorization” necessary to be eligible for a state provisional license.
- C. Request legislation at the beginning of 2018 to allow unique identifiers for batch or lot in the Track and Trace program in addition to unique identifiers for each plant. Cultivators can choose which unique identifiers best applies to their practice and situation. Further request legislation at the beginning of 2018 to address other issues not included in the Emergency Regulations.

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ATTACHMENT A

Regulations for Delivery of Medical Cannabis to Legal 215 Patients

The Bureau of Cannabis Control will issue a special license type 10-D to applicants who will serve as a courier service to exclusively deliver medical cannabis infused products to a patient or caregiver who has a verified, legal medical recommendation subject to the following rules:

1. Deliveries will be made as a result of a purchase from an “M” licensed commercial retailer, including both storefront outlets and retail from a technology-based platform, as is defined in the state licensing regulations.
2. Deliveries will be made solely to the patient or patient’s caregiver after purchase is made from the retailer.
3. Deliveries will be made to a residence, defined as a dwelling such as a house or apartment but not to include a dormitory, hotel, motel, bed and breakfast or similar commercial business.
4. Cannabis products to be delivered will not include flower, wax, shatter, hash, rosin, or any other commonly considered “adult use” cannabis products. Direct-to-patient/caregiver deliveries will include only those cannabis products designated “M” by the state system and defined as part of the category of “infused products”.
5. All medicinal cannabis products must be packaged according to the state guidelines issued to all retailers.
6. The originating retail licensee shall comply with the specific rules associated with the final weighing and packaging of medical cannabis before such items are prepared for transport pursuant to this rule.
7. Type 10-D licensees will not handle or carry cash and all sales for medical cannabis products will be completed by the patient/caregiver and retail licensee prior to delivery.
8. Delivery times for direct-to-patient/caregiver medical cannabis deliveries will be restricted to between the hours of 8:00 am and 9:00 pm. To accommodate the impact inclement weather can have on driving conditions and other unpredictable events that could delay a delivery, a verifiable “statement of delay” may be submitted along with the proof of delivery manifest.

9. the individual performing delivery must check the identification of the individual to whom delivery is being made in order to determine that it is the same individual who submitted the order, and must require the individual to sign a document indicating that the items were received;
10. Delivery licensees will carry a detailed manifest with the following:
 - a. description of the exact medicinal products to be delivered, along with already issued track and trace unique identifiers for each product;
 - b. Delivery vehicle make and model and license plate number;
 - c. Name, state-issued license number, and signature of the licensee accompanying the transport;
 - d. the name of the patient/caregiver who placed and paid for the order;
 - e. a copy of the patient/caregiver legal medical recommendation;
 - f. the address of the residence to which delivery is being made;
 - g. Time/date stamp of delivery required on manifest.
11. Delivery licensees will abide by the following transport rules:
 - a. Medicinal cannabis products will be kept in a lock-box securely affixed inside the delivery motor vehicle;
 - b. Transport of medical cannabis shall be conducted in a motor vehicle that is properly registered in the state of California pursuant to motor vehicle laws, but need not be registered in the name of the licensee;
 - c. Transport of medical cannabis shall be accompanied by a copy of the originating retail licensee's business license, the driver's valid delivery license, the driver's valid motor vehicle operator's license, and all required vehicle registration information.

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