



Making sense of the Medical and Adult Use Cannabis Safety and Regulation Act of 2017

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Introduction and Background

Long before the passage of Proposition 215 in 1996, California was known around the world as a leading producer of cannabis. As the first state in the country to allow for medical use, our state also cracked the monolithic war on drugs and set in motion a nationwide wave of reform.

For nearly 20 years the medical cannabis industry grew in the state with few rules. Tax payment and regulatory compliance were not the norms, and public safety impacts became increasingly severe.

By the end of 2014 the problems had boiled over and the stage was set for the passage of the Medical Marijuana Regulation and Safety Act (MMRSA) in 2015. This act established a framework for licensing cannabis.

In June of 2016 the State legislature amended the MMRSA with the passage of the the Medical Cannabis Regulation and Safety Act (MCRSA). This legislation included groundbreaking environmental policies that will ensure cannabis is the most sustainable crop grown in California.

In November of 2016 the voters passed Proposition 64, the Adult Use of Marijuana Act AUMA. Though largely modeled on the MMRSA, the adult use law differed from the medical regulations.

In 2017 Governor Jerry Brown released the proposed budget in January and set out to unify the two laws. After more than 6 months of focused work from the governor's administration, the state legislature and stakeholders, SB 94—the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) was passed.

On June 27, 2017 Governor Brown signed the Medical and Adult Use Cannabis Regulation and Safety Act and—with a quick stroke of the pen—fundamentally changed the business of cannabis in California.

This law will be the foundation of regulated cannabis in California. Cal Growers was honored to be included in the process and provide this report as a starting point for understanding this new law.

With love and gratitude,



Hezekiah D. Allen, Executive Director

License Types

A total of twenty license types will be issued by three different agencies starting on January 1, 2018. The MAUCRSA includes twenty license type. In addition, the law authorizes the licensing agencies to create new licenses. Three additional license types have been proposed in current regulations. Three types of large scale cultivation licenses that will not be available until at least January 1, 2023.

Cal Cannabis: Department of Food and Agriculture

- Type 1—Cultivation; Specialty outdoor; Small.
- Type 1A—Cultivation; Specialty indoor; Small.
- Type 1B—Cultivation; Specialty mixed-light; Small.
- Type 1C—Cultivation; Specialty cottage; Small.
- Type 2—Cultivation; Outdoor; Small.
- Type 2A—Cultivation; Indoor; Small.
- Type 2B—Cultivation; Mixed-light; Small.
- Type 3—Cultivation; Outdoor; Medium.
- Type 3A—Cultivation; Indoor; Medium.
- Type 3B—Cultivation; Mixed-light; Medium.
- Type 4—Cultivation; Nursery.
- Type 5—Cultivation; Outdoor; Large.
- Type 5A—Cultivation; Indoor; Large.
- Type 5B—Cultivation; Mixed-light; Large.
- Type P – Processing

Office of Manufactured Cannabis Safety: Department of Public Health

- Type 6—Manufacturer 1.
- Type 7—Manufacturer 2.
- Type P – Packaging
- Type N – Infusion

Bureau of Cannabis Control: Department of Consumer Affairs

- Type 8—Testing laboratory.
- Type 10—Retailer.
- Type 11—Distributor.
- Type 12—Microbusiness.

ADULT USE OR MEDICAL?

With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician’s recommendation, all licenses issued under this division shall bear a clear designation indicating

whether the license is for commercial adult-use cannabis activity as distinct from commercial medicinal cannabis activity by prominently affixing an “A” or “M,” respectively. Examples of such a designation include, but are not limited to, “A-Type 1” or “M-Type 1.” Except as specifically specified in this division, the requirements for A-licenses and M-licenses shall be the same. For testing laboratories, the bureau shall create a license that indicates a testing laboratory may test both adult-use and medicinal cannabis.

WHAT IS A PREMISES?

“(ap) “Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.”

The MAUCRSA states that: “a person may apply for and be issued more than one license under this division, provided the licensed premises are separate and distinct.”

LOCAL LICENSES

The MAUCRSA does not limit the authority of a city or county to pass and enforce “local ordinances to regulate businesses licensed under this division, including...to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”

Further, MAUCRSA is clear that licenses will not be approved if they are in violation of a local ordinance.

An applicant may supply a local license or permit as evidence that they are not in violation of a local ordinance, but a local license or permit will not be required.

LICENSE FEES

Each agency shall develop and determine application fees and annual licensing fees for each license. Tiered fees were a CalGrowers priority in 2015, and the MAUCRSA ensures that fees shall be “set on a scaled basis by the licensing authority, dependent on the size of the business.”

Fees were proposed in the medical regulations. These fees may change a bit but have been included in this document as a reference point.

DEPARTMENT OF FOOD AND AGRICULTURE

Cultivation is defined as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.”

California’s tiered cultivation licensing framework was a high priority of Cal Growers in 2015. The licenses are based on square footage of canopy as well as growing method:

	Indoor	Outdoor	Mixed Light
Cottage	500 sq ft	25 plants	2500 sq ft
Specialty	5,000 sq ft	5,000 sq ft or 50 plants	5,000 sq ft
Small	10,000 sq ft	10,000 sq ft	10,000 sq ft
Medium	22,000 sq ft	1 acre	22,000 sq ft
Large	More than 22,000 sq ft	More than 1 acre	More than 22,000 sq ft

The MAUCRSA defines the following:

- **Outdoor** as cultivation using “no artificial lighting.” The proposed regulations prohibit light dep, even if no lights are used; this may change.
- **Mixed light** as cultivation “supplemental artificial lighting at a maximum threshold to be determined by the licensing authority.” The department has proposed 25 watts per square feet; though this may change.
- **Indoor** as cultivation “using exclusively artificial lighting”

TYPE 1C: COTTAGE CULTIVATION

The cottage cultivation license was first established in law with the passage of AB 2516 (Wood) in 2016. This was CalGrowers sponsored legislation and the intent was to provide an option for regulators and local governments to develop streamlined and reduced cost options for cottage cultivators. There is also opportunity to stimulate urban agriculture with this license type.

Proposed fees:

- *Outdoor: Application, \$65; license \$595*
- *Indoor: Application, \$100; license \$900*
- *Mixed light: Application \$285; license \$2560*

TYPE 1 & 2: SPECIALTY AND SMALL CULTIVATION

Unlimited Type 1 (Specialty) and Type 2 (Small) licenses will be available to qualified applicants. This was a high priority of

CalGrowers in 2015. The provisions were included in the MMRSA and have remained stable throughout each iteration of the law.

Proposed fees:

Type 1: Specialty

- *Outdoor: Application \$130; License \$1,185*
- *Indoor: Application \$1,070; License \$9,620*
- *Mixed light: Application \$555; License \$4,980*

Type 2: Small

- *Outdoor: Application \$265; License \$2,370*
- *Indoor: Application \$1,935; License \$17,430*
- *Mixed light: Application \$1,105; License \$*

TYPE 3: MEDIUM CULTIVATION

The MAUCRSA requires that the department “shall limit the number of licenses allowed of this type,” similar to the provisions in the MCRSA. The proposed medical regulations include Section 8205 that explains “a person shall be limited to one Medium Outdoor, or one Medium Indoor, or one Medium Mixed Light license.”

Proposed fees:

- *Outdoor: Application \$765; License \$6,890*
- *Indoor: Application \$4,260; License \$38,350*
- *Mixed light: Application \$2,435; License \$21,915*

TYPE 5: LARGE SCALE CULTIVATION

The MAUCRSA includes language that states: “No Type 5, Type 5A, or Type 5B cultivation licenses may be issued before January 1, 2023.” Fees have not been proposed.

TYPE 4: NURSERY

A nursery license is appropriate for cultivators who produce “only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.”

There will be no limit on the number of nursery licenses that will be issued to qualified applicants.

Proposed fees: Application \$65; License \$560

TYPE P: PROCESSOR

DEPARTMENT OF CONSUMER AFFAIRS

TYPE 8: TESTING

(b) A person that holds a state testing laboratory license under this division is prohibited from licensure for any other activity, except testing, as authorized under this division. A person that holds a state testing laboratory license shall not employ an individual who is also employed by any other licensee that does not hold a state testing laboratory license.”

“(g) All testing laboratories performing tests pursuant to this section shall obtain and maintain ISO/IEC 17025 accreditation as required by the bureau in regulation.”

“cannabis or cannabis products shall not be sold pursuant to a license provided for under this division unless a representative sample of the cannabis or cannabis products has been tested by a licensed testing laboratory.”

“(d) The distributor shall arrange for a testing laboratory to obtain a representative sample of each cannabis batch at the distributor’s licensed premises. After obtaining the sample, the testing laboratory representative shall maintain custody of the sample and transport it to the testing laboratory.”

TYPE 10: RETAIL AND DELIVERY

One of the biggest problems with the MCRSA was the failure to establish a license option for non storefront dispensaries (delivery services). The MAUCRSA addresses this by clarifying that: “A retailer’s premises may be closed to the public. A retailer may conduct sales exclusively by delivery.”

TYPE 11: DISTRIBUTION

“The transportation of cannabis and cannabis products shall only be conducted by persons holding a distributor license under this division or employees of those persons.”

Distributors will meet “minimum security and transportation safety requirements”

“(b) A licensee that holds a valid distributor license may act as the distributor for the licensee’s cannabis and cannabis products.

(c) The distributor shall store, as determined by the bureau, the cannabis batches on the premises of the distributor before testing and continuously until either of the following occurs:

This license type was proposed in the medical regulations; it is expected to remain a feature of the MAUCRSA. Processing is defined as “means all activities associated with drying, curing, grading, trimming, storing, packaging, and labeling of nonmanufactured cannabis products.”

Proposed fees: \$310, \$2,790

DEPARTMENT OF PUBLIC HEALTH

TYPE 6: MANUFACTURING 1

“Manufacturing Level 1,” for sites that manufacture cannabis products using nonvolatile solvents, or no solvents

TYPE 7: MANUFACTURING 2

“Manufacturing Level 2,” for sites that manufacture cannabis products using volatile solvents.

TYPE N: INFUSION

This license type was proposed in the medical regulations; it is expected to remain a feature of the MAUCRSA. This license is for manufacturers that make edible or topical products using infusion processes and that do not conduct extractions.

TYPE P: PACKAGING

This license type was proposed in the medical regulations; it is expected to remain a feature of the MAUCRSA. This license type is for businesses that only package or repackage or label or relabel products

LICENSE TIERS AND FEES

The proposed regulations published by the Department in April contained “tiers” of licenses that were determined based on gross revenue. These fees and tiers may change, but have been included below for reference:

- Tier I (up to \$100,000 revenue per year) - \$2,000
- Class II (up to \$500,000 revenue per year) - \$7,500
- Class III (up to \$2,000,000 revenue per year) - \$15,000
- Class IV (up to \$5,000,000 revenue per year) - \$35,000
- Class V (above \$5,000,000 revenue per year) - \$50,000

All classes of licenses must pay a \$1,000 non-refundable application fee.

(1) The cannabis batch passes the testing requirements pursuant to this division and is transported to a licensed retailer.

(2) The cannabis batch fails the testing requirements pursuant to this division and is destroyed or transported to a manufacturer for remediation as allowed by the bureau or the Department of Public Health.

“obtain a representative sample of each cannabis batch at the distributor’s licensed premises. After obtaining the sample, the testing laboratory representative shall maintain custody of the sample and transport it to the testing laboratory”

“A distributor performing services pursuant to this section may collect a fee from the licensee for the services provided. The fee may include, but is not limited to, the costs incurred for laboratory testing.”

TYPE 12: MICROBUSINESS

The MAUCRSA includes a license for “microbusinesses.” This license allows for “the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer.”

TEMPORARY EVENT LICENSES

The MAUCRSA “does not prohibit the issuance of a state temporary event license” for “onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair or district agricultural association event.”

Cannabis Cooperative Associations

New to the MAUCRSA, the cannabis cooperative was a high priority to Cal Growers throughout the development of SB 94. Modeled on Agricultural Cooperatives, Chapter 22 of Division 10 of the Business and Professions Code establishes the Cannabis Cooperative Association, a new entity type. Cannabis cooperatives may be formed by three or more licensed Type 1 or Type 2 cultivators. Cumulatively the cultivators shall not grow more than 4 acres.

Activities:

- The cultivation, marketing, or selling of the cannabis products of its members.
- The growing, harvesting, curing, drying, trimming, packing, grading, storing, or handling of any product of its members.

- The manufacturing, selling, or supplying to its members of machinery, equipment, or supplies.
- The financing of the activities that are specified by this section.

Purposes:

- Promote, foster, and encourage the intelligent and orderly marketing of cannabis product through cooperation.
- Eliminate speculation and waste.
- Make the distribution of cannabis product as direct as can be efficiently done.
- Stabilize the marketing of cannabis product.

Appellations and organic standards

The MAUCRSA expands the scope of appellations first established by the MCRSA to include “standards, practices and varieties” in addition to “region of origin.” The law also requires CDFA to develop this program by 2021. Appellations will ensure that consumers know what their cannabis is, where it was grown and how it was grown.

Cal Growers spearheaded this change to law and is proposing the following:

ORIGIN

Appellation of origin focuses on where a product came from. There are several levels to consider when establishing appellations of origin:

- **Region:** these multi-county regions are the highest level of organization for Canna Cultural areas. Cal Growers proposed regions can be seen here: http://www.calgrowersassociation.org/growing_regions
- **County:** the name of a California County may not be used in the marketing or labeling of a cannabis product unless that product was grown in that county.
- **Watershed:** watershed boundaries—and other ecological factors like soil type or rainfall patterns—could be the basis for appellations of origin
- **Community:** Sub-county level units of organization, communities are often times based on roads, schoolhouses, post offices, or other socio-cultural factors.
- **Neighborhood:** Sometimes there are neighborhoods within communities that are both part of the community but also distinct from it.

STANDARDS

Developed by third party's certifiers, universities, and other experts in specific fields. Standards should be objective and clear. Examples could include:

- Carbon Free Standard
- Pesticide Free Standard
- Family Farmed Standard
- Estate Grown
- Cooperatively Grown Standard
- "CalGanic" - in existing law

PRACTICES

Developed by growers. More objective and focused on cultural practices more than objective standards. Examples of standards could include:

- Handcrafted is a set of practices that maximizes the job creation potential of the
- Regenerative is a set of practices that focuses on restoring healthy ecology in and around the cultivation area
- Traditionally Grown is a set of practices that focusses on pre-industrial agricultural methods and includes limited use of plastic materials and is grown from seed

VARIETALS

Varietals are named strains that are distinct and consistent in their characteristics.

Environmental protections

The MAUCRSA is very clear: law requires the establishment of an enforcement program and a multiagency task force to take immediate action to address the impacts of unlawful water diversion for cannabis irrigation specifically—and cannabis cultivation in general.

Taxes

"Effective January 1, 2018, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer."

"Effective January 1, 2018, there is hereby imposed a cultivation tax on all harvested cannabis that enters the

commercial market upon all cultivators. The tax shall be due after the cannabis is harvested and enters the commercial market."

"(1) The tax for cannabis flowers shall be nine dollars and twenty-fivecents (\$9.25) per dry-weight ounce.

(2) The tax for cannabis leaves shall be set at two dollars and seventy-five cents (\$2.75) per dry-weight ounce."

"(c) The board may from time to time establish other categories of harvested cannabis, categories for unprocessed or frozen cannabis or immature plants, or cannabis that is shipped directly to manufacturers. These categories shall be taxed at their relative value compared with cannabis flowers."

"(b) (1) A distributor in an arm's length transaction shall collect the cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer. A distributor in a nonarm's length transaction shall collect the cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer, or at the time of retail sale by the cannabis retailer, whichever is earlier. A distributor shall report and remit the cannabis excise tax to the board pursuant to Section

34015. A cannabis retailer shall be responsible for collecting the cannabis excise tax from the purchaser and remitting the cannabis excise tax to the distributor in accordance with rules and procedures established under law and any regulations adopted by the board.

(1) A distributor shall collect the cultivation tax from a cultivator upon entry into the commercial market. This paragraph shall not apply where a cultivator is not required to send, and does not send, the harvested cannabis to a distributor.

"(m) "Enters the commercial market" shall mean cannabis or cannabis product that has completed and complies with all quality assurance, inspection, and testing, as described in Section 26110 of the Business and Professions Code."ⁱ

(2) (A) A manufacturer shall collect the cultivation tax from a cultivator on the first sale or transfer of unprocessed cannabis by a cultivator to a manufacturer. The manufacturer shall remit the cultivation tax collected on the cannabis product sold or transferred to a distributor for quality assurance, inspection, and testing, as described in Section 26110 of the Business and Professions Code. All

cultivation tax applicable to a unique identifier shall be paid upon the first sale or transfer of cannabis or cannabis product with an associated unique identifier. This paragraph shall not apply where a distributor collects the cultivation tax from a cultivator pursuant to paragraph ”

(m) “Enters the commercial market” shall mean cannabis or cannabis product that has completed and complies with all quality assurance, inspection, and testing, as described in Section 26110 of the Business and Professions Code.

Track and Trace

“The department [of Food and Agriculture], in consultation with the bureau, shall establish a track and trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain that utilizes a unique identifier...”

“If the State Water Resources Control Board or the Department of Fish and Wildlife finds, based on substantial evidence, that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the department shall not issue new licenses or increase the total number of plant identifiers within that watershed or area.”

“A unique identifier shall be issued for each cannabis plant. The department shall ensure that unique identifiers are issued as quickly as possible to ensure the implementation of this division. The unique identifier shall be attached at the base of each plant or as otherwise required by law or regulation.”

“(B) Unique identifiers shall only be issued to those persons appropriately licensed by this section.”

Next Steps

The MAUCRSA is simply the foundation. Cannabis policy in California will continue to evolve as the regulated marketplace takes flight. CalGrowers will continue to pursue our mission.

STRATEGIC PLANNING

Our board of directors meets to review and update our strategic plan 4 times a year. Seasonal meetings are held in Sacramento in the following months:

- January
- March
- July
- September

LEGISLATIVE AFFAIRS

Though SB 94 included many priority issues there are several other pieces of legislation related to cannabis. The legislature will be adjourned from September to January.

CalGrowers Legislative affairs calls: Tuesday at 8:30 AM

REGULATORY AFFAIRS

The MAUCRSA includes emergency rulemaking authority for regulatory agencies. The agencies will exercise this authority and promulgate rules pursuant to the law prior to January 1, 2018. Emergency regulations have a limited public comment period and must be renewed or replaced with regular regulations in a certain time period.

CalGrowers Regulatory affairs calls: Wednesday at 8:30 AM

POLICY PRIORITIES

Cal Growers maintains a dynamic list of policy priorities that is updated at least quarterly. You can review our current priorities at: www.calgrowersassociation.org/priorities

If you have questions or comments about this report or would like to get involved with the Cal Growers Policy Committee please email policy@cagrowers.org for more information.

About Cal Growers

The mission of the California Growers Association is the promotion and protection of the independent farms and businesses in the cannabis marketplace and the protection of the public health and patient's rights, the restoration of natural resources and watersheds, and to provide for the welfare of communities and the mutual benefit of public and private interests.

The California Growers Association is the largest association of cannabis growers and businesses in the state of California.

With over 1,100 members up and down the state Cal Growers represents several diverse cross sections of Californians. From cottage growers to statewide companies, in urban and rural communities, Cal Growers is unifying cannabis business owners to ensure that California's biggest cash crop is also the states most sustainable—and that the economic opportunities of cannabis commerce are accessible to and benefit all Californians.

JOIN TODAY

Membership is open to any cannabis patient, consumer, grower, extractor, food or topical maker distributor, delivery service, retailer, testing lab, dispensary or any other business company or brand involved with the cannabis industry.

Membership is organized into the following classes:

Supporting Member – Appropriate for individual patients, consumers or other people who just support our mission.

- Minimum contribution \$100 annually

Associate member – Appropriate for any individual or business seeking a license pursuant to the MAUCRSA. The membership dues for 2017 are:

- Cottage Class: \$500/yr. or \$50/mo.
- Specialty: Class 1: \$1000/yr. or \$100/mo.
- Small: Class 2: \$2500/yr. or \$250/mo.
- Medium: Class 3: \$5000/yr. or \$500/mo.

Partner – Appropriate for any individual or business that offers a product or service to our Associate members.

- Sponsorships start at \$2500 per season (quarter) or \$10,000 annually