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**CGA Comment on CDFA Proposed Regulations – November 2018**

On behalf of the California Growers Association, representing small and independent cannabis businesses throughout the state, the below comments represent our perspective on the proposed regulations.

This comment period represents the last opportunity for CDFA to revisit its regulations before permanent regulations go into effect. With these stakes in mind, our comments focus on the highest-priority issues that face small and independent cultivators in California. Despite challenges – and in contrast to other agricultural industries – most licensed growers continue to cultivate at a small scale, and most of the licensed acreage in the state continues to be distributed under the stewardship of hundreds of small, independent farms. Ensuring that these businesses have a pathway to success is vital to the overall health of the regulated market, and for the economic viability of the communities that are reliant on the activity generated by small farms.

We urge special attention to regulations that may be appropriate for large and/or urban businesses, but that constitute major barriers from the perspective of small, cottage, or off-grid businesses. Restrictions on shared processing space, standardized operational hours, no-notice inspections, and annual fees that are not scaled by size are examples of regulations that are especially burdensome from the perspective of small farmers who are based in remote areas, lack access to capital, and don't qualify for traditional small business loans. Attention to these regulations will be necessary to fulfill Proposition 64's intent to "ensure the nonmedical marijuana industry in California will be built around small and medium sized businesses."

We appreciate your attention to these difficult issues, and we look forward to continuing to work with you to develop rules that promote the success of California's regulated marketplace, protect public health and safety, and reduce barriers to entry for the thousands of small and independent cannabis businesses throughout the state.

Respectfully,

Tawnie Scarborough (Nov 5, 2018)

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Board Chair
California Growers Association

Ross Gordon (Nov 5, 2018)

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## Comments on CDFA Regulations

**1. Amend CDFA §8106 to allow single cultivators with multiple licenses to share processing, immature plant, and packaging areas in addition to storage, compost, and waste areas.**

We strongly support allowing small farms with multiple licenses – for example, a single licensee with two separate 5,000 square foot mixed-light and outdoor premises – to share non-canopy areas. Many small farms are organized in this fashion and enabling shared space is one of the most important policies that CDFA can pursue to reduce barriers to entry for small businesses.

However, the most important areas for sharing from a small farm perspective – processing, immature plants, and packaging – cannot be shared under §8106 as proposed. Processing is considered an F1 occupancy by most local governments, regardless of whether employees are present, and therefore triggers strict building code requirements. Meeting these requirements twice is normally not feasible, and so sharing is essential. Areas designated for immature plants and packaging may also trigger burdensome land use requirements and separating these areas is not practical for small farms. Sharing space for these activities is far more efficient and provides essential flexibility.

Given that packaging, processing, and nursery licenses can all be obtained independently, it's well within reason for a very large farm to obtain an independent processing or nursery license and effectively "share" it among its cultivation licenses. A farm with two small or specialty cultivation licenses, however, cannot cost-effectively obtain a separate processing or nursery license and is heavily disadvantaged. This issue of equitable access to shared space is compounded because nurseries and processing licenses are the only licenses, including BCC and DPH licenses, that are not scaled based on size: all nurseries and processors pay the same annual licensing fee, regardless of size.

To address this, we suggest allowing processing, immature plant, and packaging areas to be shared among cultivation licenses held by a single licensee.

**2. Support – clarification in §8400b clarification that records may be kept electronically.**

We appreciate this clarification. Storing seven years of required records on a cultivation premises is extremely burdensome if electronic records are not allowed, and in many cases may not be the most secure location to store large amounts of private or personal records.

While the amended regulation is helpful, ideally it would be possible to be store records off-premises as long as they can be made immediately available on request. In our understanding, it is the capacity to hold a licensee accountable during a site visit – not the precise physical location of the records – that is CDFA's concern. If a licensee is able to immediately provide access to records during a CDFA inspection, we believe this should be sufficient to ensure accountability.

**3. Remove the requirement in §8102(f) to specify daily operational hours for cultivation sites, and instead a) allow inspections during normal business hours (8-5) while providing reasonable notice of at least two hours and b) allow cultivators to specify seasonal operations.**

We continue to have serious concerns regarding this regulation. §8102(f) would require licensees to specify at least two hours per day, on each weekday, as "operational hours" and guarantee that staff will be on premises during these hours. This requirement is trivial for large-scale farms in accessible areas, but impractical for many smaller farms and farms in remote rural areas. While individual situations vary, our members face a number of practical barriers to an inspection policy that relies on set-in-stone daily hours, rather than reasonable notice, to ensure a licensee is on-site for an inspection. These include situations where:

- The farm is individually or family operated, but the owners live 1-2 hours off-farm and don't work on the farm each day, or work on weekends.
- The farm is individually or family operated, and the owner lives on-site, but needs to leave the farm at times for business or personal reasons.
- The farm is behind a locked gate that controls access to several properties and can be opened, but not always immediately and on-demand.
- The farm operates seasonally and is closed for large parts of the year.
- The farm is difficult to access due to weather conditions at certain times of year.

More broadly, requiring licensees to be on-site at certain times each day of the week is inconsistent with the intent of MAUCRSA and Prop 64 to promote cottage and specialty-scale businesses. Reasonable notice will allow CDFA to hold licensees accountable without tethering family farms to their land at set times every day of the week.

**4. Amend §8200 to assess annual fees at the lower "outdoor" fee tier for cultivators who use light deprivation, but no artificial light, and only complete one harvest per year.**

This regulation continues to be a major concern for our members. As written, regulations would charge substantially higher "mixed-light" cultivation fees to farmers who utilize light deprivation but no artificial light. These fees are about 2.5 times higher than the fees for "outdoor"

cultivation, and total an additional $7,000 per year for a small farmer cultivating under 10,000 square feet.

In its Initial Statement of Reasons (ISOR), CDFA states that farmers using light deprivation are charged higher fees because light deprivation enables multiple harvests per year. While true in some cases, this reasoning doesn't consider the many situations in which farmers utilize light deprivation while only completing one harvest per year. Triggering early flowering with light deprivation can be essential in response to environmental conditions such as water scarcity and late-season fog, and can also enable earlier harvests to meet market demand when supply is low.

With the first annual licenses starting to be issued, and track-and-trace in effect, CDFA will be able to easily verify whether a cultivator is completing multiple harvests per year.

Lowering annual fees for farmers who only complete a single harvest a year would decrease barriers to entry for thousands of small farmers who lack access to capital and don't qualify for traditional small business loans. It would also be in alignment with the Cannabis Advisory Committee, which recommended this policy by an 18-1 vote at its March meeting. As small farmers struggle to come into compliance due to high taxes, testing and distribution bottlenecks, and local land use issues, this change would be a commonsense way for CDFA to support the regulated market as it continues to struggle against unlicensed competition.

**5. Amend §8200 to create licensing tiers for nurseries and processors, including "self-processing" or "micro-processing" tiers for small farms processing their own product.**

Under §8200, all nursery and processor licenses are currently charged the same annual licensing fee regardless of size. In reality, nursery and processor business models vary substantially from boutique to very large. Various nurseries and processors have very different profit margins and presumably require different levels of resources to effectively regulate: for instance, some processors are large commercial scale operations, while others are intended to streamline processing from two or three small-scale cultivation licenses held by the same licensee. Nurseries and processors are currently the only cannabis license types - including BCC and DPH licenses - whose fees are not scaled by either size or gross receipts.