

Marijuana Cultivation

Recent Legislation

▶ 2015 Bills

- ▶ AB 243 (Wood)
- ▶ AB 266 (Bonta)
- ▶ SB 643 (McGuire)

▶ 2016 Bills

- ▶ SB 837 (Committee on Budget)
- ▶ AB 2516 (Wood)



Cultivation Licenses

- ▶ Issued by California Department of Food and Agriculture
- ▶ 10 cultivation license types (11 if Governor signs AB 2516)
- ▶ Licensing requirements (background checks)
- ▶ Licenses must be renewed annually
- ▶ Licensing begins **January 1, 2018**

Cultivation License Types

	Outdoor (no artificial light)	Indoor (exclusively artificial light)	Mixed - Light (both natural and artificial light)	Other Licenses Allowed
Specialty Cultivator	Type 1 Up to 5,000 sq ft or up to 50 mature plants on noncontiguous plots	Type 1a Up to 5,000 sq ft	Type 1b Up to 5,000 sq ft	Manufacturing, Dispensary
Small Cultivator	Type 2 5,001 - 10,000 sq ft	Type 2a 5,001 - 10,000 sq ft	Type 2b 5,001 - 10,000 sq ft	Manufacturing, Dispensary
Medium Cultivator*	Type 3 10,001 sq ft to one acre	Type 3a 10,001 sq ft to one acre	Type 3b 10,001 sq ft to one acre	None, unless part of 10A license
Nursery	Type 4	Type 4	Type 4	None, unless part of a 10A

* CDFA will limit number of “medium” size cultivation licenses.

Conditions for Licensing

- ▶ Submit application and fee
- ▶ Submit fingerprints to DOJ for background check
- ▶ Submit documentation from local jurisdiction certifying applicant will comply with local rules
- ▶ Submit evidence that applicant has the legal right to occupy and use the proposed location
- ▶ Submit evidence that applicant is more than 600-feet from a school
- ▶ Submit seller's permit number, or evidence of application for a seller's permit

Conditions for Licensing

- ▶ Provide proof of a bond to cover cost of destruction of products if found in violation of license
- ▶ Provide description of operating procedures for:
 - ▶ Cultivation
 - ▶ Extraction and infusion methods
 - ▶ Transportation
 - ▶ Inventory procedures
 - ▶ Quality control
 - ▶ Security protocols
- ▶ Identify source of water supply and proof of water right

Business Practice Requirements

- ▶ Reporting associated with “track and trace” program
- ▶ Cannot be licensed alcohol retailers
- ▶ 7-year record keeping requirement



Environmental Requirements



- ▶ Water Rights
- ▶ Use reporting (surface and ground)
- ▶ Streambed Alteration Agreements
- ▶ SWRCB/DFW principles and guidelines for water diversion and use
 - ▶ Instream flow objectives
 - ▶ Diversion limitations
 - ▶ Groundwater extractions
 - ▶ Protection of springs, wetlands, and aquatic habitats

Grounds for Permit Denial

- ▶ Violations of state or local rules regarding cannabis cultivation
- ▶ Failure to provide required information
- ▶ Certain criminal convictions:
 - ▶ Crimes related to the qualifications, functions, or duties of the business;
 - ▶ Felony convictions related to manufacture, transportation, cultivation, or sale of controlled substances;
 - ▶ Violent and serious felony convictions; and
 - ▶ Felony convictions involving fraud, deceit, or embezzlement.
- ▶ Business relationship with a licensed physician making medical cannabis recommendations

Grounds for Permit Denial

- ▶ Past fines or penalties for cultivation or production of a controlled substance while trespassing on public or private lands (Fish and Game Code Violation)
- ▶ Past sanctions by state or local licensing authorities for unlicensed medical cannabis activities. Having a license revoked in the past three years is also grounds for permit denial.
- ▶ Failure to obtain and maintain a seller's permit
- ▶ Failure to follow operating procedures outlined in license application

Pesticide Use

- ▶ DPR is required to develop guidelines for the use of pesticides and residue levels
- ▶ No pesticides are registered for marijuana federally
- ▶ DPR has developed a list of pesticides with registration exemptions or broad label claims it deems allowable for use in marijuana cultivation
- ▶ Development of Organic Standard for marijuana

Taxes and Fees

- ▶ Gives counties authority to tax cannabis
- ▶ Fees:
 - ▶ Local license
 - ▶ State license
 - ▶ Background check
 - ▶ Tags under “track and trace” program
 - ▶ Water use reporting

Distribution System

- ▶ All marijuana goes through a distributor for batch testing
- ▶ Still allowed to contract with dispensary or manufacturer for price and quantity

Labor Rules

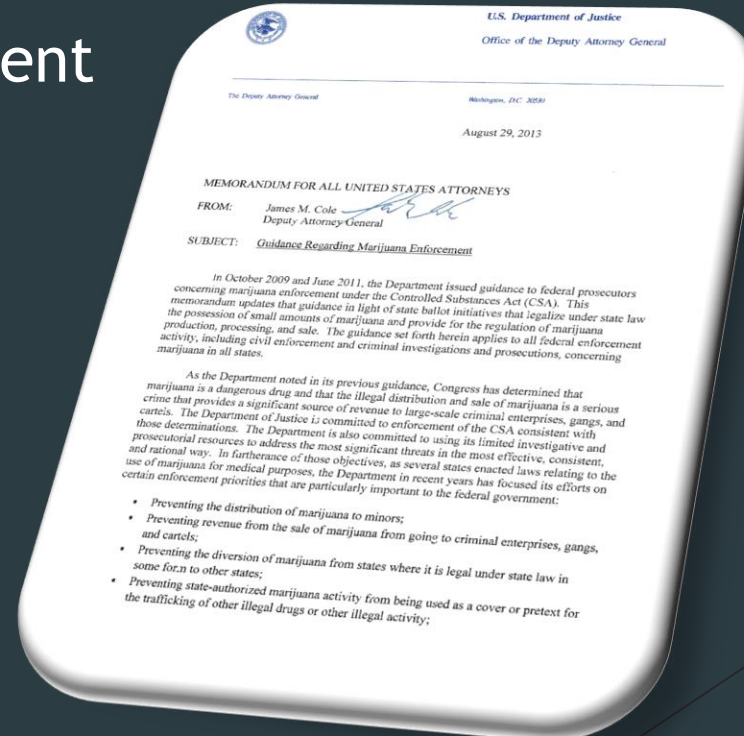
- ▶ Employers with more than 20 employees must agree to enter into a labor peace agreement
- ▶ Must declare yourself an agricultural employer
- ▶ Employees are subject to Wage Order 4-2001 (rather than 14-2001)
- ▶ Division of Occupational Safety and Health will be determining whether to develop specific Cal-OSHA standards for workers in the industry

Agricultural Product

- ▶ California Health and Safety Code 11362.777(a) specifies: “For purposes of this section and Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code, medical cannabis is an agricultural product.” The identification as an agricultural crop does not extend to other areas of the law. For example, cannabis is not an agricultural crop with respect to local “right to farm” ordinances.

Federal Status

- ▶ Marijuana is a Schedule I Drug making it illegal under federal law
- ▶ Rohrabacher - Farr Amendment
- ▶ Cole Memo



Proposition 64

- ▶ No requirement for local licenses
- ▶ Starting in 2023 allows for licenses to be issued to large operations without a size limit
- ▶ Establishes a statewide tax
 - ▶ Fifteen percent excise tax applied at sale
 - ▶ Sales and use tax on recreational marijuana
 - ▶ Cultivation tax
 - ▶ \$9.25/oz - flowers
 - ▶ \$2.75/oz - leaves
- ▶ Requires labeling, which includes list of solvents, nonorganic pesticides, herbicides, and fertilizers that were used in cultivation.

Upcoming Regulatory Development Meetings

- ▶ **CDFA Pre-Regulatory Meeting**
 - ▶ September 27th - Pasadena - 4:00 pm - 7:00 pm
 - ▶ September 28th - Desert Hot Springs - 4:00 - 7:00 pm
- ▶ **BMCR and DPH Pre-Regulatory Meeting**
 - ▶ October 5th - San Diego
- ▶ **SWRCB Cultivation & Water Rights Meeting**
 - ▶ September 22nd - Fresno - 4:00 pm - 6:00 pm
 - ▶ October 4th - Sacramento - 4:00 pm - 6:00 pm (will be webcast)