Attention: California Department of Food and Agriculture **9/25/2016**

Amber Morris (C.D.F.A.), California Department of Public Health, Monica Wagner (D.D.P.H.)

C.c.: Senator Mike McGuire, Senator Rob Bonta, Assemblyman Jim Wood,

Regarding: Proposed Regulations for Cannabis Cultivation Licensing in 2018

From: Jason Browne (Expert Witness / Cannabis Industry Consultant)

Greetings,

After having reviewed the C.D.F.A. website and workshop survey, my partner and I were pleased to attend two of your recent public workshops. We've prepared a complete analysis of the questions and issues that you've raised so far regarding development of the Medical Cannabis Cultivation Program, for your review and consideration. The answers appear in the exact order they are presented in the survey, followed with some new subjects at the end.

I'll begin with a brief concern, which stems from the realization that none of the private consultants that we met at your meetings seemed to know anything about the cannabis industry. They were all very helpful in terms of gathering information, and the meetings were organized and very inviting to the public. But so far, it appears as though CDFA has not considered retaining cannabis industry consultants and experts, and is instead relying on our participation through these public meetings (sitting on the sidelines, as it were).

The information contained herein effectively answers the questions presented in your workshop survey, and will also serve to explain many things which CDFA has yet to ask, or may have previously been unaware. This document is separated into relevant topics, for your convenience, and is intended to provide enough information to successfully begin the task of implementing this Program. I intend on following up with all Licensing Agencies and State Legislators, in order to facilitate better regulations and suggest potential "clean up" language in M.C.R.S.A. by 2018.

I have 20 years of experience with the cannabis industry, and my experiences include serving as an Expert Witness to the Courts. If your agency decides to retain consultants with actual industry experience, I have a current W-9 and a Vendor Number with Sacramento County, am available as an independent contractor and would like to help.

Sincerely,

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1) Definitions of terms.

A) Canopy. Plant canopy is defined as the area shaded by the plant's leaves, and the area of the leaves themselves. The plant canopy directly determines the plant's ability to absorb light energy, and is one primary factor used in the equation required to determine the probable yield of any given plant (with the other primary factor being the amount of available light itself, in Lumens).

Cannabis plants continue their radial outward growth until about 1/3 way through their flowering stage. After which point, the plants cease growing completely and dedicate 100% of their energy to completing their flower (or seed) production. Therefore, the time to measure a plant in order to determine its final canopy is when it's 1/3 of the way into flowering.

In order to ensure uniformity in the application of this term, the measurements should always refer to "feet" or "square feet". The area of a plant is determined by first measuring its diameter, then dividing that by 2 in order to determine its radius, then applying the calculation $A = \pi r^2$

Note: While there is no "statutory definition" of plant canopy, there are well established, scientific agricultural practices regarding this subject, and I must point out that it is no different for cannabis than any other plant. For the purposes of the discussion regarding whether to include the entire grow space, or to measure the plants individually, I have three suggestions:

I. Allow applicants to choose either method, based on their growing techniques (not all farms grow cannabis in "rows"). If farmers choose the "individual plants" option, provide them with within the Track and Trace Program for them to record and verify the individual plant measurements;

II. For applicants who choose the "grow area" option, in order to not misidentify the space required for walkways in between the rows of plants as being part of the plant canopy (which it most certainly is not), simply allow farmers to measure each individual row's plant canopy and then add all of the rows together to establish the total. This data can likewise be recorded and verified through a Track and Trace Program;

III. Likewise, the total area used to cultivate cannabis will naturally include other non-producing areas, including: storage areas for equipment and supplies; work spaces for on-site processing and handling; staging areas for plant quarantines and pest management; crew breakrooms and restrooms; and even extra space to

accommodate Security Features and Local Setback requirements (which vary between jurisdictions). Therefore, any rules which include these areas, or the walkways discussed above, within the total "area" of allowable cultivation will artificially decrease the space allowed for actual plant canopy, and thus reduce the possible yields from the cannabis plants. The term "plant canopy" should not be incorrectly used to include these spaces, as part of the total area allowed under each Cultivation Category (i.e. 2500 sq. ft., 5000 sq. ft., 10,000 sq. ft., 22,000 sq. ft. and 43,560 sq. ft. / 1 acre, respectively).

B) Flowering. I suggest that you also include the word "mature", if you mean to contrast the description with your next word, "immature". For the purposes of M.C.R.S.A., "flowering" and "mature" do not share the same meaning.

While cannabis plants are in the "flowering" stage of growth, they transform energy into flower (or seed) production. In the northern hemisphere, flower production begins in outdoor plants mid-way between the Summer Solstice and the Autumn Equinox, on or around August 1.

Contrary to popular belief, the flowering process in cannabis is actually triggered by the hours of total darkness, not by the hours of available light. **Note:** Any artificial lights (security, etc.) aimed at cannabis plants at night will interrupt and damage the flowering process, with the exception of bulbs that emit spectrums of light the plants cannot "see" (green bulbs, etc.).

For indoor farming, flowering begins when the total darkness increases from the vegetative growing phase (of 6-8 hours per day), to the flowering phase (of around 12 hours per day). With indoor farming, the frequency of light also changes, from more of the Blue Spectrum during vegetative growth, to more of the Red Spectrum during flowering.

The duration of flowering until the plants are mature depends entirely on the strains of cannabis being grown, and lasts between 5 weeks and 12 weeks, accordingly.

Only the flowering cannabis plants produce any "usable cannabis", as that term is defined under the M.M.P.A. "Usable cannabis" means the dried, processed, mature female cannabis flowers (excepting mother plants producing seeds, which are not "usable" under the M.M.P.A.).

"Mature" simply means the end of the flowering phase, when the plant is finished producing flowers and is ready to harvest. This is true for all agricultural crops, and is no different with cannabis.

C) Immature. This term is tricky, because it has an agricultural meaning that may differ from its practical meaning under M.C.R.S.A.

For our purposes here, let us assume a Third Term that describes the phase of growth in between "immature" and "mature". Let us call that phase of growth "vegetative". This language is already found within the C.U.A. and the M.M.P.A.

Cannabis plants are considered to be immature throughout the entire processes of sprouting (from seeds) and cloning (from cuttings). All the plants produced in Type IV Nurseries are initially considered to be "immature" (excluding any "mother" and "father" plants used for breeding and propagation purposes), until such time as they enter a vegetative stage of growth. While cannabis plants are in the "immature" stage of growth, they transform energy into root production.

Note: The current outline of Draft Regulations for the Medical Cannabis Cultivation Program should be corrected, in regards to distinctions made in the Track and Trace Program between Immature Plants (requiring Unique Identifiers for Batches of plants) and Vegetative or Flowering Plants (requiring Unique Identifiers for individual plants). The current draft defines this distinction as anything below or above 8 inches in height. This should be changed to the description offered herein. Setting an arbitrary height is completely meaningless, impractical and non-enforceable. Plants are immature until they have established roots and have been placed into vegetative growth. Their size is completely irrelevant, and has nothing to do with their stage of growth, or the purposes for which they can be used.

Immature cannabis plants do not produce any "usable cannabis", as that term is defined under the M.M.P.A. However, the plant waste from freshly culled immature cannabis plants can still be used to process or manufacture certain cannabis plant conversions, as the young plants have unique medicinal properties. This should be allowed to continue under M.C.R.S.A., within the Track and Trace Program (whereby the clones or seedlings can be directly transported to the manufacturers).

"Vegetative" is the phase of growth in between "immature" and "flowering". This term is utilized in the M.M.P.A., for the purpose of determining the number of plants a patient may begin cultivating for his or her own medicinal purposes (12 plants), in contrast to the number of flowering plants that patient may harvest (6 plants).

Vegetative cannabis plants do not produce any "usable" cannabis, as that term is defined under the M.M.P.A. While the plant waste (leaves) produced from vegetative plants can still be used to process or manufacture a variety of cannabis plant conversions, it is those conversions which are measured or weighed to determine dosages, not the plant waste itself. While cannabis plants are in the "vegetative" stage of growth, they transform energy into stem and leaf production, and radial outward growth.

D) Mixed Light Cultivation. This term essentially refers to any structures that allow for a combination of natural light and artificial light to be used in the cultivation of cannabis. This is most commonly achieved by cultivating in greenhouses or hoop-houses, although it can be achieved indoors as well, whenever natural light and artificial light are both in use.

Mixed light cultivation allows farmers to utilize natural sunlight (reducing power consumption tremendously), while increasing influence over the growing environment, through the use of supplemental lighting, temperature and humidity controls, more effective pest management and light depravation techniques.

E) Premises. This word is an elastic and inclusive term, and does not have one definite and fixed meaning.

Apparently, CDFA is grappling with the idea of whether or not to allow more than one licensed operation, per parcel (or "premises"). I think this dilemma can be solved without even grappling with the definition, per say. I suggest the following:

I. In Humboldt County, they've addressed this problem with a unique solution. Parcels of a sufficient size (determined by Local Ordinance), may receive additional Cultivation Permits under the same License. Each of those permits entitles the Licensee to cultivate an additional plot, of the size authorized by the License Type. This could be a good model for the State to adopt, and leave the acreage and zoning details up to local governments.

II. Additionally, CDFA might consider allowing separate Licensees to operate on the same Parcel, so long as such operations are in accordance with local zoning requirements and all Licensees' operations are in good standing with State and Local Licensing Authorities. This would enable properties well suited for cultivation to operate under multiple Licenses, or to lease out space to more than one Licensee, allowing for consolidations where local authorities deem cannabis industry operations to be appropriately located, without being in conflict with M.C.R.S.A. The City of Arcata has done this already, by creating a unique zoning classification for specific neighborhoods where all cannabis Licensees are required to operate.

F) Propagate. While nothing in M.C.R.S.A. prohibits production farms from conducting their own propagation, the plant canopy restrictions contained within each License Category, coupled with the plant canopy requirements for such propagation, provide a cost/benefit disincentive to do so on any large scale. This creates a lucrative marketplace for Type IV

(Nursery) Licensees. The term Propagate refers exclusively to the phase of cannabis farming where new plants are created, and includes the following descriptions and activities:

I. Clone Production. The creation of clones is achieved by cultivating "mother plants" (female plants, each representing specific strains) which are maintained in a vegetative stage of growth at all times. These plants are regularly trimmed back, in order to procure "cuttings" from their branches. The cuttings are then nurtured in special environments that encourage root development. Those that remain alive and develop roots are "immature plants", and can then be placed into the "vegetative" growth cycle, in order to achieve the size desired by the cannabis producer (or dispensary) where they are to be shipped. Mother plants do not produce any "usable cannabis" under the M.M.P.A.

II. Seed Production. The creation of seeds is achieved by cultivating "mother plants" and "father plants", each from a particular strain of cannabis. Once the plants have achieved a sufficient amount of vegetative growth, the strongest plants are retained for breeding purposes and are then allowed to achieve the "flowering" stage of growth, where the pollen from specific fathers is selectively applied to various branches on one or more of the mothers, or a plant pair are simply placed together in a controlled environment, where natural pollination occurs. While mother plants are in the "flowering" stage of growth, they transform energy into seed production. The maturation of mother plants is essentially the same process as the maturation of female plants that produce cannabis, with the exception that the flowers of mother plants are completely full of seeds and are not "usable" under the M.M.P.A.

III. Developing New Strains and Seed Banking. The propagation of cannabis also involves longer cultivation processes, in order to develop new strains. This begins with the normal breeding process, where the male and female genetics from different strains are combined in order to produce new strains. Some of the male and female plants from these new strains are then maintained in vegetative growth, for future breeding purposes. Some of the females are then allowed to flower and mature, in order to determine the cannabinoid, terpene and flavonoid contents of their flowers. Some of the males can also allowed to mature, in order to collect their pollen for breeding purposes. Most importantly, some of the female plants that were maintained in vegetative growth can be selected for flowering purposes, or for cloning purposes, if the testing results prove satisfactory.

Seed Banking is also an essential element of cannabis propagation. This involves the creation of new seeds, whether from new strains or from existing strains, specifically for the purpose of long-term storage, for future propagation or production purposes.

IV. "Sexing" the Plants. Whenever production plants are grown from seed, whether for purposes of propagation or cannabis production, there is an additional phase of growth required in order to identify and separate male plants from female plants. This can occur naturally outdoors, as part of the early flowering stage. However, determining the sex of plants grown from seed is more efficiently done indoors or in a mixed light facility. When the seedlings have achieved some of their vegetative growth, they are artificially placed into a flowering stage of growth for 10-14 days, in order to stimulate their sexual development enough to determine which plants are male and which plants are female. The plants are then placed back into the vegetative stage of growth. If the males are not utilized for breeding purposes, they are normally culled at this point.

V. Flowering Plants in Nurseries. The subjects have recently come up about what it means to have flowering plants in a nursery, and whether or not to allow nurseries to produce any cannabis, for testing purposes. Let me address these questions separately, as follows:

a. When mother plants are used for seed propagation purposes, they legally produce no usable cannabis under the M.M.P.A., for all practical purposes. Such flowers are over 90% seed weight, have reduced cannabinoid contents and are generally frowned upon by the industry (it's unlikely that any dispensary would even consider buying or selling seeded cannabis flowers). However, in order to legally clarify this matter for the purposes of Nursery regulations, CDFA could certainly mandate that flowering plants used for seed production can only be used for that purpose, and that any plant waste materials from mother plants (including the remaining flower components) may only be transported to a Licensed Manufacturer, or to an Authorized Waste Management Facility.

b. The subject has come up, of whether or not to allow Nurseries the ability to grow a small number of plants through the vegetative and flowering stages, for the limited purposes of laboratory testing and free sampling. This would certainly be beneficial on a few fronts, by creating complete laboratory profiles for all strains, allowing market research into every strain (especially new ones), providing quality control mechanisms for the nurseries themselves and improving the effectiveness of cannabis labeling. For all of these reasons, I support the idea. However, in order to reduce the likelihood of Diversion, I suggest that CDFA establish a maximum plant canopy threshold for Flowering Plants at Nurseries, require that such plants must be included within the Track and Trace Program, and require that all cannabis produced by Nurseries can only be used for three purposes: For Laboratory Testing; As free samples to qualified consumers (through Donations to the nursery staff and to any

licensed dispensaries), and; as Donations to any cannabis research projects that are currently approved by the State of California. All such testing and donations should be recorded through the Track and Trace Program.

2) Licensing Application Process and Requirements.

A) Online vs. Paper. I think it's a good idea to provide online applications, provided that you offer the following options:

I. Make sure all of the fields are easy to fill in and the documents are in formats that are commonly accessible;

II. Enable the "Print" option for all applications, so that applicants can maintain their own copies;

III. Do not place time restrictions into the process…rather than being a "live" document, they should all be downloadable, so that applicants can take their time filling them out;

IV. Provide security measures and assurances to applicants, in accordance with the privacy protections enumerated within M.C.R.S.A.

B) Weapons and Firearms Ban. This is a complete non-starter, and should be addressed immediately. The entire premise of this question is completely off-base and without merit. There is absolutely zero risk posed to State enforcement staff by Licensees having legally owned weapons or firearms present at any cultivation site. It defies logic to presume that any person applying for state licensure to cultivate cannabis would pose a physical threat to State enforcement staff, or to anyone else for that matter. All Licensees will have already passed a DOJ criminal background check, as part of their licensing process. And each Licensee will also have a $25,000 Bond, as well as Liability Insurance. So any perceived risk to State enforcement staff (which is baseless and fictional) has already been thoroughly mitigated.

This also brings up the subject of Armed Guards. Would Licensees be prohibited from retaining their services, because the guards are armed? If the answer is "no", then please explain how the presence of Armed Guards (who are privately contracted and work for the Licensee), poses any less of a "risk to State enforcement staff" than the Licensees and their employees being armed themselves? This also begs the question, why should Licensees be indirectly forced to hire private armed security (by virtue of such a weapons ban), if hiring security is not directly required by CDFA or M.C.R.S.A.? Doing so would artificially raise the costs of legal cannabis production, which directly fuels the Prohibition Market.

Any mandate that prevents Licensees from possessing any legal weapons is essentially an invitation for criminals to commit acts of violence against them. In my 20 years of experience as

an Expert Witness, I have personally observed a longstanding practice by local law enforcement agencies throughout California, in routinely denying police protection to qualified farmers who are subjected to robberies, burglaries and threats of violence. Rather than coming to the victim's aid, when such acts of violence do occur the common response from law enforcement is to blame the victims and investigate them for "unlawful cultivation", while letting the perpetrators of violence go completely unscathed. To make matters worse, law enforcement makes it publically known (through local news outlets) that criminal acts against cannabis farmers will essentially not be investigated. Obviously, the possession of legal weapons and firearms is the only way for Licensees to protect their own lives, and the lives of others, from criminal acts of violence. The remote locations of many cannabis farms only increases this risk, as well as adding the element of dangerous wild animals such as Bears, Mountain Lions, Snakes, Boars and anything with Rabies. Licensees may also have pets or livestock, which also need protection from wild animals.

There are currently no Federal or State laws that would prohibit any licensed cannabis farmer from owning and possessing any legal weapons or firearms. The only legal sanction that can be currently applied against patients who farm cannabis applies only to persons convicted of certain drug felonies, and in those situations, the firearm possession is then added as an "enhancement charge". But this requires a conviction first, which is completely unrelated to the firearm possession itself. The possession of a legal firearm by any licensed cannabis farmer or qualified patient is simply not a crime, under current statutes. It goes without saying that Licensees will not be subjected to criminal prosecutions for their licensed cultivation activities (they are exempted under M.C.R.S.A.), so even the idea of an enhancement charge actually becomes moot in regards to Licensees.

Likewise, a recent federal court ruling held that recent administrative rules adopted by the B.A.T.F. regarding firearms dealers can be successfully used to prohibit said dealers from selling guns to anyone who admits to being a "marijuana addict" on their purchase application. This may negatively impact the number of patients willing to apply for State Patient ID Cards, because possession of the card might be cited against an otherwise legal gun purchase. So long as ID Cardholders' identities remain confidential, this probably won't become an issue. But regardless, it has absolutely no legal bearing on patients themselves, or their right to possess legal firearms. The ruling applies to firearms dealers only, and not to patients. It most certainly does not apply to State Licensees, whom are never even mentioned or discussed in the court ruling. Simply put, there are no laws against legal gun ownership by qualified patients or Licensees, in the State or Federal arena.

I've been instructed that this "weapons ban" idea was promulgated by your Legal Department. There is nothing in the language of M.C.R.S.A. that requires such a weapons ban. Please invite your legal team into this conversation, and ask them to cite their reasons for supporting such a ban. Any insertion of a firearms ban into M.C.R.S.A. is akin to a "gun grab" and would likely subject the program to unnecessary litigation for violating the Second Amendment rights of Licensees. Licensees are completely within their rights to possess any legal weapons available in California, including but not limited to legally owned firearms, for any lawful purpose whatsoever.

On the subject of "any weapons", since anything might be construed as a weapon, this language would open up Pandora's Box, enabling local code enforcement and law enforcement agents to routinely troll licensed operations, searching for "weapons". And Licensees would be expected to pay for these inspections. What happens when common household items and farm implements are then misidentified as "weapons"? Who gets to define what a weapon is and isn't?

I strongly encourage you to not drink the anti-cannabis cool aid in this instance, and implore you to opt out of any unconstitutional "weapons and firearm ban at cultivation sites". If M.C.R.S.A. requires any language about firearms, I suggest the following:

- "Illegal use of Firearms" means any use of a firearm that is considered illegal under California Law, whether due to the nature of the firearm itself, or to the legal status of the user of the firearm. It does not mean the otherwise legal use of a firearm by a Licensees or any persons engaged in lawful cannabis related activities, in accordance with the C.U.A., M.M.P.A. and M.C.R.S.A.

C) Non-refundable application processing fees. I plan on submitting applications for 2-3 Cultivation License Types (Type IV, Type III and/or Type II). I'm unsure how many actual locations we'll be looking at…it depends on local conditions and on the regulations you develop here.

3) License Types, License Combinations, Renewal Process and Fees.

A) License Types. CDFA is considering issuing the same applicant several cultivator licenses, as long as the total production canopy does not exceed 4 acres. The way that M.C.R.S.A. actually reads, it reads like the 2 License limitation applies to any two of the ten possible license types. However, your current understanding of that language is that all cultivation license types are actually one type. If you decide to cement this description into the regulations, I think it would make the program run a lot smoother.

There appears to be no statutory limit to the number of local permits that any given Licensee may possess, under the same License. It would seem that Local Licensing Authorities can establishing their own Licensing limits, and nothing in State law seems to prevent any Licensee from establish operations in more than one location or jurisdiction (under the same License), so long as they meet those local requirements. What is your take on this? Can a Licensee use the same license to operate in more than one location or local jurisdiction, so long as they don't exceed the maximum allowable canopy under State and Local regulations?

Regarding the 4 acre limit, I have a few observations and questions:

I. Consider providing Type IV operations with their own total plant canopy rule, separate from the maximum canopy limits of Production Farms. Nurseries do not produce any usable cannabis. The new 1-acre limit on individual Type IV operations is parallel to the I-acre limit for Type III operations, so maybe Nurseries could also have their own 4 acre License limit. That way, Type IV Licensees have a maximum plant canopy, and all Type I, Type II and III Licenses have a maximum plant canopy, but Licensees operating both categories would not be unfairly forced to divide the same total canopy between production and propagation.

II. Humboldt County has already established larger operations that 4 acres. According to Humboldt County Code (Section 55.4.8.2.1.1), a single applicant may obtain additional cultivation area permits , under the same License, allowing upwards of 12 acres of plant canopy to be cultivated (on parcels of sufficient size). So this issue of total plant canopy should probably be addressed…can a Local Licensing Authority or Ordinance authorize more total plant canopy than M.C.R.S.A. (or CDFA) allows?

III. I thought the 4 acre total canopy limit was already part of M.C.R.S.A. This question about whether it's a good number or not, implies that it's negotiable. What is the current legal status of this limit?

IV. Generally speaking, you should not consider setting <u>any</u> artificial limits on supplies, until after you accurately assess the consumer demands. *****

B) <u>What is Manufacturing</u>? There is a legal distinction between Processing and Manufacturing that's rooted in the definitions contained within the statutes against marijuana cultivation and manufacturing, respectively. Here is a brief answer to your questions:

I. Rolling joints is neither processing nor manufacturing. It is a form of cannabis use, and nothing more.

II. Dry sieving (to obtain keif / charas) is merely separating…it does not involve concentration or dilution, and is merely a form of Processing, which is legally defined under the definition of Cultivation (processing is legally classified as cultivation).

Note: For both legal and practical purposes, cannabis production farms are perfectly suited to produce all dry sieved products (otherwise known as "keif" or "charas") and sell it to dispensaries. This creates a niche market for licensed cultivators and is in accordance with California's existing marijuana statutes, including M.C.R.S.A. The dry sieving process does not concentrate any part of the plant and does not meet the legal definition of manufacturing.

III. "Water processing" is a form of Non-Volatile Manufacturing. Non-Volatile Manufacturing includes, but is not limited to: all forms of concentration or solution that utilize extreme temperatures, high pressure, lipids, grain alcohol, vinegar, CO2, isopropyl alcohol, water, or other non-volatile extraction methods. Cannabis Plant Conversions (under the M.M.P.A.) that can be made utilizing non-volatile manufacturing methods include: Edibles, Beverages, Tinctures, Topicals and various forms of Concentrates.

IV. In accordance with *People v. Bergen*, Volatile Manufacturing Licenses should probably be issued to any manufacturers that use any extremely combustible, flammable or toxic solvents to manufacture cannabis plant conversions. Obviously, these operations will require more stringent regulations. However, the technology exists for such operations to safely manufacture cannabis products, and similar operations produce many commonly used products meant for human consumption today. So it's perfectly safe for you to regulate volatile manufacturing, as well as non-volatile manufacturing. I can put you in touch with experts on this subject, to assist you with regulating volatile manufacturers.

C) Cultivation Sizes. I anticipate applying for as many license types and locations as I am legally and financially able to accommodate, between now and 2018. The likelihood of obtaining any such licenses is partly based on how functional (or dysfunctional) this program becomes.

D) License Combinations. There are two discrepancies I would like to point out, in regards to the current language governing the matter of license combinations:

I. It would appear that any Licensee who applies for either a Type IV, or a Type III License, is excluded from holding a license in any other cultivation categories. I recommend this restriction be lifted, so that farmers can choose the best combination of farming licenses to apply for, based on the total allowable plant canopy, local licensing conditions and the existing restriction of holding only 2 license types per applicant. **Note:** If CDFA recognizes that all cultivation license types are in fact one type of License, you've already solved half of this problem. All that remains is to allow Type III and Type IV combinations with some of the other License categories, as part of the general 2-category limit.

II. There is also a loophole in the language of Section 19328. While section (a) stipulates that a licensee may only hold licenses in two categories, section (a) (9) stipulates that a 10A Licensee may apply for a type 6 or 7 License, and hold a combination of Type I, Type II , Type III and Type IV Licenses, so long as the total plant canopy does not exceed 4 acres. This language implies that a 10A might hold more than 2 categories of License (because the first license type is already for up to 3 dispensaries, this language regarding combinations suggests the applicant may hold more than one additional category, so long as the maximum canopy is not exceeded). What is CDFA's position on this subject?

E) Artificial Lighting Restrictions. I strongly recommend that you not establish any artificial limits on supplies, until you accurately assess the consumer demands. *****

F) Type III License Restrictions. I strongly recommend that you not establish any artificial limits on supplies, until you accurately assess the consumer demands. *****

***** I have provided CDFA with an expert analysis of California's likely cannabis production requirements for 2018. Please review this document (see attached), for a detailed explanation regarding the market demands for medical cannabis, including the amounts of cannabis required to manufacture all forms of cannabis plant conversions. Based on my analysis, there may already not be enough supply to meet the legal demands, without any artificial limitations being imposed by the State. Such artificial restrictions will only serve to fuel the prohibition

market, by forcing dispensaries to raise their prices, and by forcing patients to obtain their cannabis from illegal sources.

Any artificial limitations to lighting will directly increase the cost to produce each pound. Likewise, any limitations to the number of Type III Licenses will automatically increase the number of Type I and Type II Licenses required by 4-8 times just to produce the same amounts of cannabis.

4) Possible mitigation requirements re Environmental Health & Public Safety issues.

A) Compliance Agreements to reduce Environmental Impacts. Let's begin this section with an acknowledgement that the impacts of licensed cannabis cultivation have not been demonstrated to have any negative environmental impacts. According to staff with SWRCB, the current rules relating to water uses for cannabis farming have nothing whatsoever to do with actual water conservation or waste discharges, as they relate to the rules governing commercial agriculture in California. Rather, it is merely because the farms are growing cannabis, that they are being subjected to such draconian regulations. Apparently, this aspect of M.C.R.S.A. was lobbied for heavily by groups with financial interests in cannabis prohibition. This probably needs to be addressed further in upcoming clean-up legislation, and I intend on bringing it to the attention of our Legislators. But in the meantime, I wanted to make sure this information was brought to your attention, as a matter of full disclosure and for reasons of professional integrity.

I think the first answer to this question is that Licensees must already obtain a $25,000 Bond, specifically to ensure that any negative environmental impacts requiring remediation are essentially pre-paid, with the cost of every License. This is already one way that Licensees are reducing any negative environmental impacts. Additionally, any assumed negative impacts to environmental health or public safety should be based on verifiable data or research, and should be publically disclosed by State Licensing Authorities now, before such impacts are presumed to exist within the context of this question.

B) Environmental Protocols. Cannabis farmers are often the most environmentally conscious farmers in California, and we're always excited to promote Best Farming Practices and other means of reducing our carbon footprint, protecting the environment and mitigating the environmental damage caused by previous generations. To answer your questions:

I. We often recycle cultivation materials.

II. Water timers are almost always used, whether growing indoors, outdoors or under mixed light. This can be achieved automatically, or by hand.

III. Recycling water to feed the cannabis plants is dependent on whether or not it's been previously used to feed plants with any nutrients, as that would impact the PH and PPM of salts in the water, rendering it unusable for cannabis again, because doing so would lead to root-block. The cannabis water could certainly be recycled

for other uses though (in the rose garden, on the lawn, etc.), as it's completely harmless.

C) Security Features and Protocols. Here is a list of helpful security features and protocols that licensed cannabis operations could benefit from using. I have personally used all of these, at one time or another.

I) Security features for use around sensitive areas of cannabis cultivation, processing, storage, and manufacturing:

- **a.** Use of security fencing, natural barriers and other visual barriers;
- **b.** Use of motion activated lights and noise alarms;
- **c.** Use of structural modifications and security thresholds at key entryways;
- **d.** Use of security gates, security doors and security bars in windows;
- **e.** Use of police emergency alerts and silent alarms ("panic buttons");
- **f.** Use of security alarm systems and services;
- **g.** Use of visible and/or hidden camera systems;
- **h.** Use of safes, vaults and other secured storage devices for the storage of all cannabis, money and any confidential or sensitive information;
- **i.** Use of communications equipment on site (2 way radios, earpieces, etc.);
- **j.** Use of security dogs or other animal security features;
- **k.** Use of non-lethal defensive tools by staff;
- **l.** Use of armed security services or armed security staff.

II) Security Protocols for Licensed cannabis operations:

- **a.** Use of an Operations Manual that includes a section covering security staffing responsibilities and facility security procedures;
- **b.** Insurance requirements for all facilities and staff (liability, fire, theft, etc.), including crop and product coverage, transportation insurance and bonding for delivery drivers;
- **c.** Provide licensed security training for staff members;
- **d.** Require the use of incident logs and incident reporting procedures;
- **e.** Develop secure cannabis intake and transportation procedures;
- **f.** Compliance with OSHA lighting standards for employee safety and security, and;
- **g.** Implement procedures for allowing employees and contracted individuals into high security areas for day to day work, maintenance and repairs, while excluding non-essential and non-authorized personnel.

D) Nurseries. For more information on this topic, please refer back to #3(F)

I. Please note that there is currently only one description of Nurseries, and they are all what would be considered as "wholesale nurseries". There are currently no "retail nurseries", and if there were, they would actually compete with dispensaries and sell plants directly to qualified consumers. Humboldt County has adopted such a model under their Ordinance and Local Licensing Authority.

II. All wholesale nurseries can rightfully sell plants to production farms, as well as to dispensaries. I anticipate there will be more business selling to production farms, based on current guidelines for home cultivation under M.C.R.S.A. (it's very difficult for patients to grow their own, under the new regulations). I anticipate growing primarily for production farms, but would reserve the right to also provide plants to dispensaries.

III. Nursery sites conduct a great deal of research and development (more so than any production farms and even more than Testing Laboratories, in terms of sheer volume).

5) Cultivator Responsibilities for Compliance Inspection.

A) The Program will specify when Licensees must make their site available for inspection, and requires that the cultivation site be "safe for inspection". This question then asks us how we intend to make our sites "safe for inspection". I'm not really sure where you're going here. There is nothing unsafe about cannabis farms that would require any special measures to be undertaken prior to any inspection. Obviously, if an alarm needs to be disarmed or a door or gate unlocked, this can be achieved in a short amount of time, given proper notice. There's also the matter of reasonable business hours, and not expecting Licensees to be "on call" for inspections 24/7. So this really depends on how the Program establishes its inspection protocols. In regards to legally possessed firearms, Licensees could certainly be required to display said firearms (unloaded) for investigations by law enforcement, as part of any compliance inspections authorized by the Program under M.C.R.S.A.

B) There should definitely be protocols that are discussed with the industry before they are adopted, delineating things like what days and times the Track and Trace Program is expected to be in full operation, for the purposes of inspections. I assume that the staff availability and training on the part of the Licensees, as well as the staff availability and system operations on the part of the State, will create their own scheduling requirements for the purposes of any official inspections involving the Track and Trace Program. With the exception of Licensed Transporters and Distributors when they're transporting, Licensees and their staff will have set work schedules, and the staffing requirements of most operations may not require management staff to be available on-site during non-business hours.

C) In regards to Records, I'm prepared to provide whatever records the Program requires. I suggest that the Program take into consideration all Federal and State protections in regards to the dissemination of confidential medical, financial and personal records or information, including such provisions as they are covered under M.C.R.S.A. If any confidential information is required by the Program, it should be secured in ways that protect the confidential data, and should not be held onsite in any way that would risk unsecure disclosures or security breaches. This is especially significant as it relates to interactions with certain law enforcement personnel. Both Licensees, and all State and Local Agencies overseeing the Program, have legal responsibilities to protect confidential information. Some in law enforcement (primarily members of so called drug and gang taskforces) could arguably expose Licensees or Program Agents to civil or criminal liabilities, if any confidential or sensitive information were seized under color of law, outside the parameters of this Program.

D) The subject of "who" conducts the inspections has been raised, and the logical answer is that all inspections should be directly overseen by agents of the three primary State Licensing Agencies, and that inspections may only be conducted by agents having data entry responsibilities for the Track and Trace Program, in accordance with M.C.R.S.A. Their counterparts within the Local Licensing Agencies could certainly be part of this inspection process, so long as the Program is directly overseen by the State Licensing Agencies.

It is imperative that the role of Inspections and oversight of the Track and Trace Program not be diverted to State and Local Law Enforcement Agencies, in general. They are not trained or equipped to participate in the Program, and they certainly do not have the resources needed to divert officers away from their roles in protecting public safety and responding to emergencies. While law enforcement agents could certainly accompany Inspectors, as a matter of protocol, their role should be limited to providing inspection security and legal status verification of any firearms maintained by Licensees on site.

Additionally, the role of many California law enforcement agencies within the Prohibition Industry presents a clear conflict of interest for them to have any direct role with License Inspections or oversight of the Track and Trace Program. Any officers working in so called "drug / gang taskforces" have a financial incentive to thwart this Program and to divert its efforts into fueling their own lucrative "eradication efforts".

E) The cost to oversee Inspections and the Track and Trace Program are already covered within the licensing fee structure and sales tax revenues incorporated within M.C.R.S.A. There should be no additional fees.

6) Track and Trace Requirements.

First, it's important to distinguish which State and Local Licensing Agencies do, and no not, have direct participation in the Track and Trace Program, in strict accordance with M.C.R.S.A. This would appear to only include C.D.C.A., C.D.F.A., and C.D.P.H. (and possibly B.M.C.R.) at the State Agency level. The Local Agricultural Commissioners should also be included on this list, and possibly the Local Public Health Directors.

Next, in order to properly implement the Track and Trace Program, it's important to first identify every stage of data input and verification the system will require, and then assess the hardware and software necessary for Licensees to enter the data, and for Inspectors to verify the data.

The "Chain of Title" for this Track and Trace Program consists of the following individual components:

A) Nurseries (Type IV);

Nurseries are a starting point for the Track and Trace Program, having individual plant tags for all mother plants, and having group plant tags for all flats of cuttings, clones and seedlings. The Chain of Title for all plants emanating from Nurseries may only be Transported to Production Farms, Testing Laboratories, Manufacturers, Dispensaries (*including any Donations*), Authorized Medical and Drug Research Facilities or Authorized Waste Management facilities.

Note: Male cannabis plants contain less than .03% THC, and are therefore legally defined as "Hemp". It is unclear at this time, whether male plants need to be included within the Track and Trace Program. Their ultimate disposition will likely be to Approved Waste Management Facilities, if they are maintained in the system at all.

B) Production Farms (Type I, Type1(A), Type1(B), Type II, Type II(A), Type II(B), Type III, Type III(A) and Type III(B));

Production Farms will most often receive plants from Nurseries. However, nothing in M.C.R.S.A. prevents them from also providing their own plants, even though it might not be cost effective to do so. Therefore, the Track and Trace program should also allow Production farms to be an initial starting point in the system, in the event they chose to produce their own plants.

The Chain of Title for all materials emanating from Production Farms may only be Transported to Testing Laboratories, Manufacturers, Dispensaries (*including any Donations*), Authorized Medical and Drug Research Facilities or Authorized Waste Management facilities.

C) Testing Laboratories (Type 8);

Testing Laboratories will primarily receive cannabis and cannabis plant conversions from Production Farms and Manufacturers, but may also receive cannabis or plant materials from Nurseries. The Chain of Title for all materials being Transported to Testing Laboratories is different from the other links in the chain, because the testing Laboratories do not actually hold the corresponding batches that their samples are derived from. Rather, the laboratory receives samples that correspond to batch numbers, and after those samples have been tested, they are destroyed (on site). The information contained in the test results is then input back into the Track and Trace Program, through the Labeling Process, and can then be used for verification by State and Local Licensing Agencies. This data will also be used by the Production Farms, Nurseries, Manufacturers, Dispensaries and Authorized Medical and Drug Research Facilities from whence the samples originated.

D) Manufacturers (Type 6 and Type 7);

Manufacturers will (purchase or receive) cannabis and plant materials from Nurseries and Production Farms. The Chain of Title for all materials emanating from Manufacturers should only authorize Transportation to Testing Laboratories, Dispensaries (*including any Donations*), Authorized Medical and Drug Research Facilities and Authorized Waste Management Facilities.

E) * Authorized Medical and Drug Research Facilities (No License Type at this time);

Authorized Medical and Drug Research Facilities will receive cannabis, plant conversions and plant materials from Nurseries, Production Farms and Manufacturers. They represent one of three possible end-points in the Track and Trace Program, and any cannabis, plant conversions or plant materials they receive should either be used up completely, or if any waste material remains it may be destroyed on-site, or Transported to an Authorized Waste Management Facility. Authorized Medical and Drug Research Facilities would include any programs specifically authorized under M.C.R.S.A., as well as any other programs authorized by the State of California that require the use of cannabis for laboratory testing purposes, or for animal or human testing purposes. The State Licensing Agencies should consider adding a new category of License for research providers, or provide an application process whereby such research providers can become certified by the State and authorized to participate in the Track and Trace Program.

F) Transporters (Type I2);

Most transportations of cannabis that involve the transition of cannabis products and materials between licensed operations will be conducted by Transporters (and by Distributors with Transporter Licenses). However, the language of M.C.R.S.A. indicates that Production Farms might also transport cannabis directly to Distributors, and that Nurseries might transport cannabis plants directly to Production Farms. I am unclear at this time if those operations may license their own Transporters to do so, or if such transportation does not require a Licensed Transporter, per se. In either case, the Chain of Title requirements for all such cannabis and cannabis plants being transported, should include data entry and verification (through the Packaging and Labeling Process) at the point at which the transportation occurs. Transporters must have Shipping manifests for all cannabis and plants being transported.

G) Distributors (Type 11);

Distributors are responsible for maintaining secured Storage Facilities, where cannabis and cannabis plant conversions may be warehoused for long periods of time, in accordance with the supply and demand needs of the medical cannabis market. Distributors shall maintain Shipping Manifests for all batches of cannabis and cannabis plant conversions being stored.

Distributors are also responsible for providing Secured Transportation services, either themselves or through retaining a Licensed Transporter.

The Chain of Title requirements for all cannabis and cannabis plant conversions should include data entry and verification (through the Packaging and Labeling Process) at every point at which the cannabis changes hands, and during each stage of Transportation. Distributors should have Shipping Manifests for all cannabis and products received, stored, transported and sold.

H) Dispensaries (Type I0 and Type I0(A));

Dispensaries may: purchase cannabis plants from Nurseries; receive donations of cannabis "samples" from Nurseries and Production Farms; purchase cannabis from Production Farms, and; purchase cannabis plant conversions from Manufacturers. Dispensaries represent one of three possible end-points in the Track and Trace Program, and any cannabis, plant conversions or plants they receive must be provided to Qualified Consumers. Any remaining waste materials should be Transported to an Authorized Waste Management Facility.

I) * Authorized Waste Management Facilities (No License Type at this time);

Authorized Waste Management Facilities represent one of three possible end-points in the Track and Trace Program. They should input the dates, varieties and weights / volumes for

every delivery of cannabis, plant conversions, plant materials (and manufacturing waste?) they receive. And they should maintain records verifying the date and manner of all waste they process, which may include hazardous waste transferals to State authorized sites, incineration, composting, recycling (to a Licensed Hemp Producer), and land fill disposals. Authorized Waste Management Facilities include, but are not limited to, composting companies and landfills with compost facilities, incinerators and authorized yard-waste burn facilities, and authorized Hemp Manufacturers. These companies could be certified through the State and Local Licensing Agencies, and should be included as an "end stage" in the Track and Trace Program for all defective cannabis received by Distributors or Dispensaries, and all cannabis plant waste materials produced by Nurseries and Production Farms that are not sent to Manufacturers. And they could also receive waste materials from Licensed Manufacturers, depending on their licensing status in regards to hazardous materials storage and transportation. In regards to authorized Hemp Manufacturers, such operations will become available upon the successful implementation of *CHSC § 11018.5*, and such operations will be the logical choice for the disposal of all cannabis stalks and stems, as they are utilized in the production of Hemp. The State Licensing Agencies should consider adding a new category of License for Authorized Waste Management Facilities, or providing an application process whereby such companies can become certified by the State and authorized to participate in the Track and Trace Program.

J) * Authorized Point of Sale Software Companies (No License Type at this time), and;

These are private companies that only interact with the data system, and do not ever handle cannabis in any way. Point of Sale Software Companies are private sector companies that provide much needed software to the cannabis industry, for the purposes of tracking all inventory and financial transactions (for tax and insurance purposes). In order for these companies to accommodate the Track and Trace Program, the State Licensing Agencies should consider adding a new category of License for such companies, or providing an application process whereby such companies can become certified and authorized by the State to participate in the Track and Trace Program. It's possible that such companies might even be well suited to assist State Licensing Agencies with developing the Track and Trace Program.

K) * Inspection Agents with the Department of Consumer Affairs, the Department of Food and Agriculture, the Bureau of Medical Cannabis Regulation and the Department of Public Health. Once the State and Local Agencies have been identified that will directly participate in the Track and Trace Program, it is essential that the Software and Hardwar providers be contracted by the participating Licensing Agencies. Then, the systems must be distributed and installed throughout the state, so that staff training and Beta Testing can occur, well before the 2018 roll out.

***** The term **"**Donations" in 6(A), 6(B), 6(D) and 6(H) refers to: All donations made from Licensed Nurseries that produce cannabis flowers under section 1(F)(V)(b), to their own staff and to Licensed Dispensaries, for the exclusive purpose of providing free samples to qualified consumers; All donations made from Licensed Production Farms to their own staff and to Licensed Dispensaries, for the exclusive purpose of providing free samples to qualified consumers, and; All donations made from Licensed Manufacturers to their own staff and to Licensed Dispensaries, for the exclusive purpose of providing free samples to qualified consumers.

There are several purposes for allowing limited donations. It provides all cannabis producers the ability to conduct market research into every strain of cannabis and every variety of cannabis product (especially new ones). It provides additional quality control mechanisms for cannabis producers, manufacturers and providers. It improves the effectiveness of cannabis labeling, with the inclusion of flavor and potency ratings. It also provides a mechanism to promote new strains and products. And most importantly, it allows the cannabis industry to continue offering limited supplies free cannabis to qualified patients who simply cannot afford to meet their medical needs at retail prices.

All Donations would be entered into the Track and Trace Program, and could also be used for accounting and tax purposes.

If donations are not allowed by C.D.F.A., then the term "Donations" should be removed from all four sections.

L) The Track and Trace Program needs to maintain uniformity between all State and Local Licensing agencies, contracting with one approved software system (with accompanying hardware), that is capable of comprehensively tracking all of this data. The software and hardware should meet the approval of these four State Licensing Agencies, and should also be vetted by cannabis industry experts, before being offered for use. Local Licensing Agencies should be provided with this software and hardware package, once the State has negotiated the contracts, in order to begin testing the system before 2018.

Note: Some Local Cities and Counties may already be reviewing contracts with software companies, for their own tracking purposes. It is imperative that no local jurisdictions enter into any contractual obligations regarding the Track and Trace Program until after the State Licensing Agencies have developed it, in order to prevent confusion and incompatibility between local jurisdictions and the Program.

M) The term "Unique Identifier" essentially refers to bar-coded labeling, with data entry and verification capabilities at every stage of transition between each link of the Chain of Title (A-J). This process should be clarified within the scope of all Packaging and Labeling Requirements under M.C.R.S.A., so that the Track and Trace Program is incorporated within the industry's packaging and labeling process. These Unique Identifiers should be applied to all individual plants, as well as to batches of immature plants and to batches of all packaged cannabis and plant conversions. All Unique Identifiers should correspond directly with Samples received by Testing Laboratories, and should be subject to verification through the Track and Trace Program at every stage of a transaction.

N) Batch Numbers. Batch numbers are simply unique identifiers used for groups of things. They should be issued for all **Nursery Flats** (to be defined) grown at Nurseries and Production Farms. Batch numbers should also be issued for all **units of cannabis** (to be defined) harvested by Production farms, and for all **units of cannabis plant conversions** (to be defined) produced by Manufacturers. These respective Batch Numbers should be maintained throughout the Chain of Title process, until the end points at which the cannabis is either provided to the consumer, used for research purposes or destroyed / recycled.

O) In accordance with **1-C**, the current outline of Draft Regulations for the Medical Cannabis Cultivation Program should be corrected, in regards to distinctions made in the Track and Trace Program between Immature Plants (requiring Unique Identifiers for Batches of plants) and Vegetative or Flowering Plants (requiring Unique Identifiers for individual plants). The current draft defines this distinction as anything below or above 8 inches in height. This should be changed to the description offered herein. Setting an arbitrary height is completely meaningless, impractical and an enforcement nightmare. Plants meant for outdoor planting are naturally grown larger, at every stage of growth, than their indoor counterparts. An immature plant is immature, regardless of its height. Plants are immature until they have established roots and have been placed into vegetative growth. Their size is completely irrelevant, and has nothing to do with their stage of growth, or the purposes for which they can be used.

7) State License Violations and Appropriate Penalties.

A) Timelines for Transition from M.M.P.A. to M.C.R.S.A. It has become clear from attending these recent public meetings that the cities and counties with local cannabis bans in effect, together with various state and local law enforcement agencies, are preemptively attempting to misrepresent the laws as they relate to this state-wide legal transition. Nothing in M.C.R.S.A. circumvents anything contained within the Compassionate Use Act (and if there were, it would be voided by the Courts). Furthermore, only one small section of the Medical Marijuana Program Act is being redacted as a result of M.C.R.S.A. The rest of it remains quite intact, including the provisions that apply to individual patients and primary caregivers. The redacted section contains language which has been used to justify the formation of the Collectives and Cooperatives that we are familiar with today. Interestingly, removing this section does not prevent any existing Collectives and Cooperatives from applying for Licenses under M.C.R.S.A., and in fact, every Applicant who registers for Priority Status is most certainly a Collective or a Cooperative now. But even more importantly, the legal protections afforded to Collectives and Cooperatives under the M.M.P.A. do not expire until 1 year after the first State Licenses are issued in 2018. This literally means that there is no urgency for State interventions to shut down existing dispensaries and delivery services. Their operations will either transition into Licenses by 2018, or they will face local nuisance abatement actions if they do not. State law literally maintains criminal and civil legal protections for such operations until sometime in 2019!

It is imperative that C.D.F.A. instruct all M.C.R.S.A. Inspection Agents that under C.H.S.C. Section 11362.775(b), the rules governing patient Collectives and Cooperatives are still in effect, until one year after the B.M.M.R. posts a notice on its Internet Website that the licensing authorities have commenced issuing licenses pursuant to the M.C.R.S.A., and that those protections are not legally repealed until then

B) Misuse of State Resources in Banned Jurisdictions. In every banned jurisdiction (cities and counties with actual or de-facto bans on cannabis cultivation and dispensation), the primary focus of Local representatives at M.C.R.S.A. Regulatory Workshops, has been to inquire about how resources developed by this Program can be siphoned off, to ostensibly target any remaining medical cannabis farms in their jurisdictions with Program licensing violations prior to 2018. These requests present a stark reminder of how public resources are routinely being squandered under the guise of cannabis prohibition, with no regard for the public interest or the rights of landowners, business owners or patients.

It seems clear that the prohibition industry desires to misappropriate the new, pubic funds generated through M.C.R.S.A., and to misapply the law, in order to “enforce” provisions of

M.C.R.S.A. that do not yet exist, or that simply do not apply to their jurisdictions. If local cities or counties opt to pursue nuisance abatement actions against local patients and farmers, they have their own code enforcement budgets to pay for it, and should not be allowed to appropriate state agents and funding from this Program to do so. In the interests of preventing this waste of public resources, and in preventing enforcement actions that run counter to what M.C.R.S.A. actually states, I suggest that C.D.F.A. Instruct all Licensing agents that your mission and funding only includes assisting in the enforcement of local ordinances within jurisdictions that choose to participate in the Program (or that abdicate to State jurisdiction in this matter). I strongly suggest that you consider withholding all M.C.R.S.A. funding that State and Local Licensing Agencies receive, from being applied in any jurisdictions having effective or de-facto cultivation bans on the books. There are no license applicants in these jurisdictions, by virtue of their opting out of the regulatory framework of M.C.R.S.A. For legal purposes, banned communities have literally outlawed all medical cannabis production within their jurisdictions, placing 100% of their cannabis enforcement budgets outside the purview of State Licensing Agencies. Their own local code enforcement and law enforcement budgets should pay for the enforcement of their bans. The funds from this Program are legally designated for use by State and Local Licensing Agencies, and there are no licensing related enforcement obligations in any city or county where such operations are banned. Doing so places an undue burden on every Licensee, and is effectively a government taking of property (being forced to pay for programs that do not apply to the applicants);

C) Enforcement Protocols. The current language seems more insinuative than instructive.

I. License Violations. Under the current draft regulations, "CDFA will have up to 2 years from the date of any violation within which to bring an administrative action (to suspend or revoke licensure, or any other disciplinary action) for a violation".

This does not indicate whether or not the act of being investigated itself leads to any sanctions against the Licensee. Is a Licensee expected to halt operations for upwards of two years, any time CDFA is investigating possible violations?

II. Administrative Hold Procedure. This paragraph makes no sense, either by itself, or in combination with the following and preceding sections. It states "to prevent the destruction of evidence, diversion and threats to public safety, cannabis and cannabis products may be placed under a hold. Licensees shall segregate the items on hold so that they are secure."

There is no mention of when an Administrative Hold Procedure should be initiated. Is it after an investigation has been concluded, and administrative action is taken to discipline the Licensee, or to Suspend or revoke the License? Or, is it during the "up to 2 year investigation" process? And what about the Appeal Process? Once an Appeal has been filed, this should preserve a Licensee's / Applicant's rights until a final judgement is rendered.

Once a Hold is initiated, Applicants / Licensees are being asked to "segregate" the items on hold, taking them out of production. This is completely unnecessary, considering that all cannabis plants, processed cannabis and cannabis products have Unique Identifiers. This enables CDFA and the other State and Local Licensing Agencies the ability to effectively place a "digital hold" on any products, immediately after they are found to be in violation. This effectively removes such items from the marketplace, without taking them out of the cultivation, processing or manufacturing processes prior to the completion of an investigation.

Holds should only be issued after CDFA has completed an investigation and found a violation.

III. Voluntary Surrender of Cannabis. Here, CDFA contemplates a "procedure allowing Licensee to surrender cannabis or cannabis products prior to the completion of an investigation. The cannabis or cannabis products will be destroyed. Does not waive a Licensee's right to a hearing." This language suggests that such surrenders would be 100% voluntary, yet it also does nothing to explain why any cannabis should be surrendered in the first place. Destroying merchandise before the results of a hearing seems to circumvent the hearing process. Additionally, if a Licensee triumphs at the hearing, or at the appeal, and the merchandise was destroyed already, the Licensing Authority that destroyed the property would be civilly liable. And regardless of the "immunity" that Licensing Agencies are bestowed under M.C.R.S.A., this only applies against Licensees. It does not apply against Insurance Companies, and all cannabis plants and cannabis products will undoubtedly be insured.

Voluntary surrender of cannabis should only occur after a Licensee has received a Notice of Violation and either lost or waived an appeal.

IV. Completed Investigations. I suggest that this would be a more appropriate place to require a Hold Order (rather than at the beginning of an investigation). If CDFA has found a violation and assesses the penalty at this stage, it makes more sense to place a Hold on any suspected merchandise at this time.

V. Minor, Moderate and Serious Violations. In order to determine the level of seriousness to attribute to violations, it's important to consider things like: whether or not the violation was done intentionally; whether or not the violation involves criminal diversion; whether or not the violation constitutes a crime against any person, property or breach of contract; whether or not the violation can be corrected; whether or not the violation caused environmental damage and determining the costs to remediate said damage, etc.

a. It's also important to distinguish between Applicants and Licensees, and to not confuse them. A Licensee has already established legal privileges under M.C.R.S.A., whereas an Applicant is in the process of securing those legal privileges. When describing both categories of person, the language should read "Applicants or Licensees". This leaves room for language that identifies situations where their options might end up being be different, even though they are the same right now. It's also just better language, because each word identifies a different category of person.

b. Minor Violations should include those that occur through no fault of an Applicant or Licensee, and are not the result of willful disregard for the laws. Minor violations should also include those that are the result of potential flaws in The Program, contradictions between State and Local Licensing Authorities, or contradictions between M.C.R.S.A. and the C.U.A., M.M.P.A., or any other Local, State or Federal laws. Minor Violations should result in a Notice of Corrective Action, containing a reasonable timeframe for Applicant / Licensee to correct the problem, and an inspection date for Licensing Agencies to verify the correction. The only fees for a Minor Violation should be to cover the administrative and inspection costs, and should not be punitive in nature.

c. Moderate violations should only result from Applicant's / Licensee's willful disregard for the laws. Moderate Violations include any minor violations that are repeated by Applicant / Licensee, after having already concluded an investigation process regarding the same program violation and/or the same plants or merchandise. The investigation process must include: the investigation itself; the initial notice of violation, and; the conclusion or waiver of the appeal. It should be made clear that Local and State Licensing Agencies cannot charge the same activities repeatedly, while an investigation process is taking place, as "separate violations". Moderate Violations also include any violations that would prevent an Applicant from Obtaining a License, under the statutory requirements contained within the actual language of M.C.R.S.A.

Penalties for Moderate Violations may include punitive fines, in addition to fees levied by Licensing Agencies to cover their administrative and inspection costs.

d. Serious Violations should only result from Applicant's / Licensee's willful disregard for the laws. Serious Violations include any major violations that are repeated by Applicant / Licensee, after having already concluded an investigation process regarding the same program violation and/or the same plants or merchandise. The investigation process must include: the investigation itself; the initial notice of violation, and; the conclusion or waiver of the appeal. Serious Violations should also include: Convictions in Criminal or Civil Court for any legal violations enumerated in Business and Professions Code Section 19323(b)(5) (i.e. violations that would prevent an Applicant from being able to obtain a License in the first place); Convictions in Criminal or Civil Court relating to diversions of cannabis from or to the criminal market, and; Any findings of environmental damage caused by Applicant / Licensee, which are not remediated in accordance with the timeframes and processes enumerated within M.C.R.S.A.

Penalties for Serious Violations shall include punitive fines, in addition to fees levied by Licensing Agencies to cover their administrative and inspection costs, and may also include Suspension or Revocation of License. CDFA should develop policies and procedures regarding License Suspensions and License Revocations.

VI. Appeal Process. Because Licensees have 30 days to appeal any violation findings, and CDFA has an additional 14 days after an appeal to issue a decision, it's important to include a 45 day exemption to any surrender or destruction orders, from the date of the completion of any investigation and issuance of any violation. No surrender or destruction order should be final until the appeal process is exhausted.

D) Catch 22 for all Pre-2018 Applicants. It's important that you read Section 19323 (b) (8) of the Business and Professions Code, as it relates to the question of license violations and penalties. I suggest that you develop a Transition Protocol and Timeline, and instruct all State and Local Licensing Agencies to follow it. Based on my professional experience, I can predict that many existing ("priority status") applicants, as well as all "new" applicants, who attempt to put plants in the ground in 2017 will be subject to all manner of scrutiny from various law enforcement, code enforcement and licensing agencies. Many of these agencies may not even be part of the state or local licensing process. Yet, any administrative, civil or criminal sanctions undertaken against an applicant, by any of these agencies, could effectively cause that applicant to be found in violation of Section 19323 (b), and this would allow any Local or State Licensing Authority to deny their application. To restate this problem, any local law enforcement agent or code enforcement agent, or any agent of the numerous state and local licensing authorities, can effectively ruin any applicant's chances for obtaining a license in 2018, by merely sanctioning that applicant in any way, for the activities they are currently engaged in before

their license is issued. This includes any so-called “investigations”. There is no language contained within MCRSA to prevent this from happening. I therefore suggest that CDFA develop Transition Protocols and Timelines including provisions that:

I) Establish which specific state and local agencies may sanction an Applicant, within this Section, and in accordance with M.C.R.S.A.;

II) Determine what constitutes a Minor Violation, a Moderate Violation and a Serious Violation, and what different sanctions, resolutions and penalties apply to each;

III) Establish a reasonable timeframe to conduct hearings for violations;

IV) Mandate that any sanction must attach to a specific, stated violation of M.C.R.S.A.;

V) Require that every sanction be recorded, noticed and arbitrated in accordance with the provisions of M.C.R.S.A.;

VI) Require that any agent issuing a sanction against an Applicant or Licensee must provide the remedies and timeline that Local or State Licensing Authority requires from applicant / licensee, in order to resolve the violation.

New Items:

8) Carbon Credits for Outdoor Farms.

Cannabis plants sequester measurable amounts of carbon, and they're also really great Nitrogen fixators. Are there any State or Private programs or partnerships that would allow Licensees to apply and qualify for carbon offset credits or soil remediation funds, now that cannabis farms will finally be able to provide a significant positive impact on carbon sequestration and improving local soil conditions?

9) Renewable Energy Programs for Indoor and Mixed Light Farms.

Many cannabis farmers would like to operate using 100% renewable energies. In fact, at least one Local Licensing Authority (Humboldt County) is actually requiring Licensees to develop such operations. Are there any State or Private programs or partnerships that would allow Licensees to receive any grants, loans, matching funds or tax credits in order to install renewable energy systems?

Conclusion:

This concludes my Public Comments to the California Department of Food and Agriculture. Please review this document, along with the attached "Cannabis Production Requirements for 2018", as part of your ongoing deliberations, and include them within your Workshop Survey, in regards to the development and implementation of all Cultivation Licensing Regulations under M.C.R.S.A.

I intend on coordinating any important or unresolved matters between State and Local Licensing Agencies, and then taking up such matters as must be addressed through clean-up legislation with the appropriate State Senators and Assemblymen.

I thank you for your time and consideration in these matters. I am available to discuss this all in more detail, in either a voluntary or professional capacity.

Sincerely,
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