LAW OFFICES OF
OMAR FIGUEROA

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Amanda Brown, Regulations Coordinator
California Department of Food and Agriculture
CalCannabis Cultivation Licensing Division
P.O. Box 942871
Sacramento, CA 94271
CalCannabisRegs@cdfa.ca.gov

Re: Proposed Cannabis Cultivation Regulations, § 8202(g)

Dear CalCannabis Cultivation Licensing:

I am a citizen of California, and I am writing regarding the changes to the proposed permanent regulations pertaining to cannabis cultivation promulgated by the Department of Food and Agriculture.

In particular, I am writing regarding the issue of light deprivation in the proposed permanent regulations. Specifically, § 8202(g) of the amended proposed permanent regulations contains a blanket prohibition on light deprivation by outdoor cultivators who do not use artificial lighting. "Outdoor licensees are prohibited from using light deprivation." This proposed prohibition fails to meet the consistency requirement of Government Code § 11349(d) because it is contrary to the licensing categories set forth in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

The regulations define light deprivation as "the use of any technique to eliminate natural light in order to induce flowering." § 8000(q). Critically, the definition of "outdoor cultivation" set forth in subdivision (x) of the definitional section, § 8000, makes clear that any use of light deprivation (artificial darkness) without any supplemental artificial light whatsoever, is expressly excluded from the definition of outdoor cultivation. "'Outdoor cultivation' means the cultivation of mature cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants outside the canopy area" § 8000(x).

Similarly, the definition of mixed-light cultivation set forth in proposed § 8000(t)(1)(A) makes clear that light deprivation without the use of any artificial light whatsoever is classified as mixed light cultivation:

> **"Mixed-light cultivation" means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of**:
>
> (1) **Natural light and light deprivation and** one of the artificial lighting models listed below:

> (A) "Mixed-light Tier 1" **without the use of artificial light** or the use of artificial light at a rate above zero, but no more than six watts per square foot;
>
> (B) "Mixed-light Tier 2" the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot.

According to the proposed regulations, "the cultivation of mature cannabis plants" without the use of artificial light, using only "natural light and light deprivation" is classified as "Mixed-light Tier 1."

Yet, the plain language of Business and Professions Code § 26061, the statute defining mixed-light cultivation and setting forth the state cultivator license types to be issued by the Department of Food and Agriculture, repeatedly defines mixed-light cultivation as a combination of natural sunlight and supplemental artificial light:

> **§ 26061**
>
> a) The state cultivator license types to be issued by the Department of Food and Agriculture under this division shall include all of the following: [...](3) Type 1B, or "specialty **mixed-light**," for cultivation using a **combination of natural and supplemental artificial lighting** at a maximum threshold to be determined by the licensing authority, of between 2,501 and 5,000 square feet of total canopy size on one premises.(4) Type 1C, or "specialty cottage," for cultivation using a **combination of natural and supplemental artificial lighting** at a maximum threshold to be determined by the licensing authority, of 2,500 square feet or less of total canopy size for **mixed-light cultivation**, up to 25 mature plants for outdoor cultivation, or 500 square feet or less of total canopy size for indoor cultivation, on one premises. [...](7) Type 2B, or "small **mixed-light**," for cultivation using a **combination of natural and supplemental artificial lighting** at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises. [...]
>
> (10) Type 3B, or "**mixed-light**," for cultivation using a **combination of natural and supplemental artificial lighting** at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(Emphasis added). In other words, the proposed permanent regulations would amend Business & Professions Code § 26061 so that "mixed-light" no longer means a combination of natural and supplemental artificial lighting, but also means natural sunlight without supplemental artificial lighting so long as there is at any point in time "the use of any technique to eliminate natural light in order to induce flowering." § 8000(q).

The Department of Food and Agriculture does not have the power to rewrite California

law; that is the purview of the Legislature. The proposed permanent regulations pertaining to "light deprivation" would in effect amend Business & Professions Code § 26061 so that "mixed-light" no longer means a combination of natural and supplemental artificial lighting, but also light deprivation without supplemental artificial lighting. In other words, the "light deprivation" regulations, as written, would be void if approved because they are inconsistent and in conflict with the statute in violation of Government Code Section 11342.2.

Moreover, there is simply no necessity for defining light deprivation without artificial lighting as "mixed light cultivation." According to the Initial Statement of Reasons, at page 7, there is a potential for multiple harvests per year and this therefore requires that resources be made available to ensure compliance at sites with the potential for multiple harvests and that licensing fees be scaled appropriately:

> Light deprivation is included in the proposed definition of mixed-light cultivation because light deprivation is an artificial means of manipulating the natural growing cycle of cannabis resulting in the potential of multiple harvests annually. This differentiation is important in establishing appropriately scaled licensing fees and for the Department to ensure appropriate resources are available to ensure compliance at sites with potential for multiple harvests.

This circular speculation falls far short of the substantial evidence needed to establish necessity. First, there is no citation to any evidence in the form of facts, studies, expert opinion, or otherwise, as required by Government Code Section 11349(a). Second, it is hardly self-evident that the mere possibility of more than one harvest per year requires that light deprivation without artificial lighting be redefined as "mixed-light cultivation."

There are other, reasonable ways to ensure that licensing fees are appropriately scaled. A simple solution would be to create an "Outdoor Light Deprivation Tier", which would be allocated appropriate resources to ensure compliance at sites with the potential for multiple harvests. (A similar, but less elegant proposal would create a "Mixed-Light Tier 1 Reduced" tier with reduced licensing fees for light deprivation with no artificial lighting.)

In sum, the proposed permanent regulations should clarify that sungrown cultivation using no artificial lighting (even if light deprivation is used) should be classified as outdoor cultivation, not mixed-light cultivation, and § 8202(g) of the amended proposed permanent regulations should be stricken.

Please let me know if you have any questions.

Dated: November 5, 2017

Respectfully submitted,

Omar Figueroa

7770 Healdsburg Avenue, Sebastopol, CA 95472
T: (707) 829-0215 | F: (707) 861-9187
omarfigueroa.com | info@omarfigueroa.com