



September 20, 2021

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RE: DCC Emergency Commercial Cannabis Regulations

To Whom It May Concern:

On behalf of the California Cannabis Industry Association (CCIA) and our over 400 cannabis businesses across the state, we respectfully submit public comments on the emergency commercial cannabis regulations developed by the Department of Cannabis Control under consideration by the Office of Administrative Law (OAL).

While we applaud the recent consolidation of the three regulatory agencies (Bureau of Cannabis Control, California Department of Food and Agriculture, and California Department of Public Health) into the Department of Cannabis Control (DCC), we have significant concerns with the timing and format of the regulations and supportive documentation as presented for public review. Additionally, we fail to see how these proposed changes meet the primary objectives of agency consolidation set forth by the Administration to improve access to licensure, reduce regulatory barriers, simplify regulatory oversight, and support commercial cannabis businesses.

With respect to timing and process, we are disappointed to see a large regulatory package (391 pages), the findings (197 pages) and amended disciplinary guidelines (35) along with updated forms (a total of 600+ pages) released with such a limited time to review, digest, and provide feedback. It is not only the beginning of the harvest season for outdoor cultivators, but it's the tail end of an extremely busy first half of the 2021-22 legislative session. CCIA has been consumed with advancing legislation crucial to the legal cannabis industry. Additionally, the Jewish high holiday of Yom Kippur falls during the five day public comment period, which is quite unfortunate.

Legal cannabis businesses are exhausted. They are heavily regulated and taxed and face extreme pressure competing with an ever-growing illicit market. The situation is untenable for many of our members, and the compliant market will continue to suffer if we do not address the fundamental issues causing difficulty.

Cannabis businesses are a valuable source of information regarding the realities the regulated industry faces. CCIA has many stakeholders who are more than willing to engage with the DCC to help better shape the landscape of regulatory reform. These expert perspectives seem to be lacking in many of the proposed emergency regulations - an unfortunate missed opportunity to engage with the very stakeholders that will be most affected by these proposed regulations. It is imperative that the newly formed DCC work closely with California's regulated industry and create transparent and collaborative processes going forward.

Despite the extremely abbreviated timeline to digest and respond to this significant regulatory package, we have highlighted below a number of concerns and areas in need of improvement, which were developed with input from our members. Our understanding prior to the release of this emergency package was that most of the proposed regulations would simply consolidate, clarify, and make consistent licensing and enforcement requirements previously developed by the cannabis licensing entities. However, as demonstrated below, we perceive some of the recommended changes to be substantial in nature, and potentially very onerous, which should have necessitated a much longer timeline for public review and comment.

Despite our disappointment and frustration with this process, CCIA is committed to working in partnership with the DCC on the development of future regulatory packages that meet the spirit and intent of agency consolidation. With that in mind, we hope the DCC will take the time to review our concerns and recommended changes, as well as engage stakeholders in a more thoughtful way in the future.

The survival and success of the regulated industry depends on legal businesses being able to navigate the existing framework. We cannot afford to add regulations making it harder to operate or delay the ability of legal cannabis businesses to obtain annual licenses. We welcome the opportunity to partner with the DCC to provide on-the-ground experience and input as the industry stabilizes and matures.

We look forward to working with the DCC during the regular rule making process and request your utmost consideration of our comments and concerns.

Respectfully,

A handwritten signature in cursive script that reads "Lindsay Robinson".

LINDSAY ROBINSON
Executive Director

CCIA Public Comment

Department of Cannabis Control Emergency Regulations

As submitted to the Office of Administrative Law on September 15, 2021

Definitions

- **§15000(qqq) - Definition of “Tincture.”**
Subsection (qqq) establishes a new definition for “tincture,” defined as “a solution of cannabis extract, derived either directly from the cannabis plant or from a manufactured cannabis extract, dissolved in alcohol, glycerin, or vegetable oils.”
Concern: This definition does not adequately capture alternative solutions used in tinctures such as vinegar or coconut oil, which do not pose any additional risk to consumer health or safety than the dissolving solutions permitted under this definition.
Recommendation: Expand the definition under §15000(qqq) to accommodate commonly used, safe alternative tincture solutions.

General Requirements

- **§15000.5. Licensee’s Responsibility for Acts of Employees and Agents.**
This section makes applicable to manufacturers and cultivators an existing BCC regulation providing that, in construing and enforcing the provisions of the Act and regulations, the acts, omissions or failures of persons acting on behalf of the licensee within the scope of their employment, are deemed to be an act, omission or failure of the licensee.
Concern: This increased liability may be especially onerous for cultivation licensees, particularly outdoor cultivators, who often hire seasonal employees. Making the licensee responsible for all potential acts, omissions and failures of any employee or contractor imposes unreasonable liability on cultivation licensees who cannot realistically oversee the actions of all employees and contractors.
Recommendation: Option 1: Make clear that it is only through intentional action, or due to gross negligence, that a licensee shall be held liable for the acts, omissions or failures of persons acting on behalf of the licensee.
Option 2: Add clarifying language that the acts, omissions or failures of persons acting on behalf of the licensee be intentional or due to gross negligence. As an alternative, limit this provision to an employee that is authorized to make command or control decisions regarding the operations and management of the licensed cannabis activity or the property where the activity is taking place.

Owners and Financial Interest Holders

- **§15003. Owners of Commercial Cannabis Businesses.**
Subsection (a)(2)(F) provides that anyone who holds the position of “chief executive officer, president or their equivalent, or an officer, director, vice president, general manager or

their equivalent” or “an individual with the authority to execute contracts on behalf of the commercial cannabis business” is an owner for Department purposes. Subsection (c) further provides that the Department may, upon request, require a licensee to provide additional information related to persons that may be deemed owners during the licensing review process.

Concern: While the new section does strike previous language that was considered particularly onerous, the new subsections are equally problematic for cannabis licensees and would add a range of individuals who would need to be listed as owners. Specifically, the term “director” is undefined in the draft and could potentially capture board members, as well as any individual that includes “director” in his or her title. Additionally, the requirement that individuals with the authority to execute contracts be deemed an owner is overly-broad and could ultimately force account managers, compliance officers or legal counsel to be listed as “owners,” despite having no authority to direct or oversee operations of the business itself.

Additionally, the Department’s ability to determine additional owners “on a case-by-case basis” is concerning, and places unreasonable onus on the licensee to prove otherwise should the Department request additional disclosure.

Lastly, we would note that §15001 related to provisional licensing provides that provisional licensees must actively and diligently pursue requirements for an annual license to continue to hold a provisional license and that provisional licensees must respond to an information request within 30 calendar days of the date the Department sends the information request to the provisional licensee if the Department does not specify a response date. When that requirement is layered on top of the ownership changes discussed above, it could create a challenging situation for provisional licensees, as well the Department tasked with processing annual licenses.

Recommendations:

- Strike or amend the added language to ensure individuals that have no control or oversight of the cannabis business are not considered owners.
- Set forth specific criteria that the Department must utilize to determine additional owners, rather than on a carte-blanche “case-by-case basis.”
- Require that, in the notification described in §15003(c), the Department detail specific reason(s) why a particular individual is requested to be disclosed as an owner.

Licensing Fees

- **§15014 - Fees.**

This section sets forth a number of application fees for cannabis licensees, including a “Physical Modification of Premises” fee of \$500.

Concern: It is unclear, as drafted, whether this fee is intended to also apply to cannabis cultivators. Cultivators often must make quick changes that would be deemed a physical

modification under law, such as the use of emergency generators in a power outage or alternative water sources in the case of a broken pipe. Subjecting these licensees to a \$500 fee for each of these minor, necessary modifications would be untenable.

Recommendation: Clarify the applicability of the Physical Modification of Premises fee in a manner that confirms the exclusion of cultivators from this fee.

Licensed Activities Applicable to All License Types

- **§15027 - Physical Modification of Premises.**

This section details requirements, permissions and prohibitions related to physical modifications of a licensee's premises.

Concern: It is unclear whether this section now applies only to retailers or to all licensees. The section language suggests it applies to all licensees, but the header was deleted, so it's technically a misnumbered paragraph under §15025.

Recommendation: Resolve the drafting error related to §15027 to make clear who the section impacts, or otherwise re-categorize requirements detailed in §15027 under another section.

- **§15041.1 - Branded Merchandise.**

This section details what constitutes "branded merchandise" by a cannabis licensee, and imposes certain requirements, including subsection (b) which requires a licensee to permanently affix their license number and that the number be clearly visible from the outside of the branded merchandise.

Concern: Requiring that a licensee's branded merchandise include the license number in the manner prescribed is unreasonable. Cannabis license numbers are often 20 or more digits in length, creating major cost pressures for licensees who must legibly print the full license number. This also creates confusion for cannabis brands who may not hold a cannabis license themselves, but instead contract with "white label" cannabis licensees. Additionally, it is unclear how a consumer or other individual would reasonably benefit from such an addition, as most will not search - or even retain - a full cannabis license number at glance. In fact, permanently affixing the licensed number onto a piece of branded merchandise may ultimately serve as a visual deterrent, discouraging consumers from purchasing merchandise from a licensed operator, undercutting a legitimate revenue opportunity.

Recommendation: Revert to previous BCC guidance which allowed licensees to disclose their license number on a sticker, tag or other form of attached notification to the branded merchandise.

Trade Samples

- **§15041.5 - Requirements for Trade Samples.**

This section sets forth various requirements related to the issuance and consumption of

cannabis trade samples. Subsection (d) specifies that the transportation of trade samples must be conducted in accordance with existing cannabis transportation requirements.

Concern: Under a typical cannabis transportation process, the licensee of origin must log where the cannabis products are being transported prior to departure. This is not practical for trade samples, particularly for purposes of marketing cannabis goods to new retail partners. As written, licensees could only engage in trade samples with retailers that they have a prior, established relationship with and cannabis employees would be prohibited from distributing trade samples to unmet retailers for purposes of establishing new business partnerships under this model.

Recommendation: Establish a pathway for trade samples to be provided to retailers without a need to log the transfer prior to departure, so long as the originating licensee still captures the final destination of the distributed trade sample(s) in the track and trace system within a certain timeframe.

- **§15041.6. - Consumption of Trade Samples.**

This section details restrictions around employee consumption of cannabis trade samples and sets forth requirements around the disposal of non-consumed trade samples. Specifically, subsection (c) details that, “Cannabis trade samples provided to licensee employees that are not consumed by the employee must be destroyed in accordance with the requirements of the Act and the Department’s regulations.”

Concern: It is unclear how licensees can reasonably and practically enforce such a provision, particularly when cannabis trade samples are not permitted to be consumed by an employee during working hours.

Recommendation: Strike §15041.6(c) from the regulations.

§15041.7 Trade Sample Limits.

This section sets limits on the amount of cannabis trade samples that can be issued by a licensee in a calendar month. For instance, subsection (a)(2) states that licensees are limited to an aggregate amount of 900 individual units of manufactured and nonmanufactured cannabis products per calendar month.

Concern: While the proposed limits may be appropriate for a smaller operator with limited products, it is grossly inadequate for larger operators. For instance, CannaCraft, Inc., offers over 200 products, servicing 450 stores. To put it in perspective, 900 units per month would limit CannaCraft to two sample units per store, per month; and, with 200 different products offered, it would take over eight years to provide each store with a single sample of every product in its catalog.

Recommendation: Strike §15041.7(a)(2). As an alternative, the Department should consider modifying the limits in a manner that contemplates a larger catalog of products. This could be accomplished by scaling limits based on monthly or annual revenue or limiting the number of samples to no more than 5% of any given batch.

Track and Trace

- **§15049.1. Additional Requirements for Recording Cultivation Activities.**

Subsection (b)(1) requires the net weight of each harvested plant or a portion of the harvested plant be recorded in track and trace.

Concern: The requirement to enter each and every plant is costly and inefficient.

Recommendation: Allow harvested plants to be weighed in groups, with the aggregate weight divided in METRC across part or all of the harvest batch.

- **§15049.2. Recording Transfers of Cannabis and Cannabis Products.**

This section details requirements licensees must follow related to track-and-trace as it relates to the transfer of goods. Specifically, subsection (d) provides that, “if there are any discrepancies in type or quantity of cannabis or cannabis products specified in the shipping manifest and the type or quantity received by the licensee, the licensee shall reject the shipment.”

Concern: Under previous regulations, retailers could accept partial shipments and reject those parts of an order that were wrong, damaged during transportation or defective. However, under this proposed language, retailers would be required to reject the entirety of an order if there is a single unit damaged or if there is any discrepancy compared to the shipping manifest, regardless of the severity. Approximately 10% of orders contain minor discrepancies. Thus, this change would pose serious and costly operational challenges on distributors and retailers alike.

Recommendation: Amend or otherwise clarify this section to conform to previous BCC law, allowing retailers to reject portions of a shipment due to discrepancies on the shipping manifest, without rejecting the entire shipment. As an alternative, the Department should consider postponing this substantive change and engage with industry stakeholders to collaborate on potential mitigating measures.

Cultivators

- **§16201 - Cultivation License Types.**

Subsection (a)(1) defines “Specialty Cottage Outdoor” as an outdoor cultivation site with up to 25 mature plants.

Concern: This definition of “Specialty Cottage Outdoor” is not aligned with [§26061](#) of the Business and Professions Code, which defines specialty cottage outdoor as 2,500 sq. ft. or less total canopy size or up to 25 mature plants. Moreover, Type 1C licensees have been expressly allowed by the CDFA to cultivate according to this revised definition, which was enacted as part of AB 858 (Levine, 2019), and would be left out of compliance under this new definition.

Recommendation: Conform the definition for “Specialty Cottage Outdoor” in §16201(a)(1) to existing statute found under Business and Professions Code §26061(a)(4).

- **§16308 - Canopy Requirements.**

This section describes compliance requirements for licensed cultivators related to canopy area(s), including a requirement that the canopy be marked with clearly identifiable physical boundaries that capture mature plants, that the canopy area be sufficient to accommodate the entire mature plant at any point in time and that no portion of the mature plant is permitted to hang over the established boundary.

Concern: As written, the requirement that mature plants not be permitted to hang over the established canopy boundary is problematic. This requirement was not included under previous CDFA regulations. Cultivators commonly use garden beds and shelves and other like methods to establish a canopy boundary. This proposed requirement will lead cultivators to estimate their boundary size based on unknown mature plant sizes, inevitably leading to greater miscalculation of total canopy size. The standard as written also seems untenable for the DCC to enforce.

Recommendation: Strike §16308(b) to allow cultivators to more accurately measure and establish canopy boundaries. Alternatively, develop a standard approved method of calculating additional square footage of plant overhang that cultivators may utilize when establishing canopy boundaries.

Provisional Licensure

- **§15001.1 - Issuance of Provisional License.**

This section specifies certain conditions that must be met by an applicant in order for the Department to issue a provisional license, including the condition set forth in subsection (b)(3) that the commercial cannabis business is not applying for a cultivation license for a premises that exceeds 20,000 sq. ft. of total canopy for outdoor cultivation.

Concern: This regulation is incompatible with existing license types. As previously described in comments pertaining to §16201, existing law defines Type 1 “specialty outdoor” licenses as less than 5,000 sq. ft, Type 2 “small outdoor” between 5,001 and 10,000 sq. ft and Type 3 “outdoor” between 10,001 sq. ft and one acre. By limiting the issuance of a single outdoor provisional license to those less than 20,000 feet, this regulation would instead force licensees intending to apply as Type 3 licensees to instead apply for multiple Type 1 licenses, Type 2 licenses or a combination of the two. This is not only inconsistent with existing license types, as defined in existing law, but would impose unreasonable and costly requirements on outdoor cultivators.

Recommendation: Amend this regulation to align with the current Type 1, Type 2 and Type 3 cultivation license types already established under §26061(a)(4) of the Business and Professions Code.

CCIA was pleased to present the licensing entities and Administration with a list of comprehensive recommendations aimed at improving the State’s licensing and regulatory framework for cannabis on August 17, 2020. These recommendations were the product of several months of discussions with CCIA’s Board of Directors, including critical input from CCIA’s seven policy committees and over 400 members.

As the DCC contemplates future regulatory packages, we respectfully request your thoughtful consideration of these recommendations, which will reduce excessively high operational costs for licensees and barriers to entry for those operators seeking to participate in the legal cannabis marketplace.

We look forward to working collaboratively with you and your Administration to advance key policy objectives that support a thriving legal cannabis industry while protecting the health and safety of our consumers, patients, and employees.

TABLE OF CONTENTS

Tax Reform

1. Cannabis Tax Rate Adjustments
2. Tax Category for Biomass

Agency Consolidation

3. Cannabis Appellations Program - ACHIEVED
4. CEQA and Provisional Licenses - ACHIEVED
5. Duplicative Cultivation Application Requirements - ACHIEVED
6. Definitions and Commonly Used Terms
7. Orally-Consumed Products Containing Alcohol - ACHIEVED
8. Clarification of Nonmanufactured Products - ACHIEVED
9. Common Application Requirements - ACHIEVED
10. Common Licensing Platform - PARTIALLY ACHIEVED
11. Ownership Transfers - ADDITIONS
12. Defining and Modifying Licensed Premises
13. Cultivation License Pricing System
14. CDPH and BCC License Pricing System
15. Delivery Case Limit Threshold
16. Curbside Pickup
17. Drive-Thru Windows
18. Transportation Vehicle Registration Requirements
19. Transportation Vehicle Requirements
20. Trade Samples - ACHIEVED

Licensing Restrictions

21. Contiguous Premises and Premises Sharing Restrictions
22. Cannabis Processing Activities
23. Outdoor and Mixed-light Tier 1 License Types

Testing Standards and Certificate of Analysis (COA)

24. Testing Standards

- 25. [Pre-roll Weight Variance](#)
- 26. [Distributor to Distributor Transfers of Bulk Flower and Trim- ACHIEVED](#)
- 27. [Printed COA During the Transport of Cannabis](#)
- 28. [Definition of “Final Form” for Purposes of QA Testing - NEW](#)
- 29. [Required Proficiency Testing - NEW](#)

[California Track and Trace Program](#)

- 30. [Product Transfer During Loss of Connectivity with METRC](#)
- 31. [METRC Package Tags](#)

TAX REFORM

1. CANNABIS TAX RATE ADJUSTMENTS

Existing law authorizes the California Department of Tax and Fee Administration (CDTFA) to biannually adjust the mark-up rate for purposes of calculating the State excise tax on cannabis. Existing law also requires the CDTFA to annually adjust the cultivation tax rate for inflation.

Concern: California’s legal cannabis industry has faced considerable challenges since the regulatory framework for cannabis took effect, including a lack of access to capital, regulatory burdens, competition with a much larger unlicensed market, and high taxes. While these institutional challenges pre-date COVID-19, this pandemic has transformed them into existential obstacles. Simply put, the legal industry cannot sustain another tax increase.

Recommendation: Temporarily suspend the CDTFA’s authority to increase the wholesale mark-up rate for purposes of calculating the excise tax and the inflation rate for the cultivation tax.

2. TAX CATEGORY FOR BIOMASS

The CDTFA currently offers two tax rates for dry cannabis material, which are adjusted annually for inflation, as follows:

Effective Date	Cannabis Flower	Cannabis Leaves/Trim
January 1, 2018-December 31, 2019	\$9.25 per dry-weight ounce	\$2.75 per dry-weight ounce
January 1, 2020-Present	\$9.65 per dry-weight ounce	\$2.87 per dry-weight ounce

Concern: What is not contemplated when developing these tax rates, is the high demand for lower quality dry flower material, such as smalls or littles,¹ and untrimmed flower. These byproducts are often sold to manufacturers in the biomass market for extraction into cannabis oil or for use in cannabis pre-rolls.

This material is valued at an average of \$500 a pound, and when taxed at a dry flower rate, is subject to a 33% tax rate. When faced with two options: a) either calculate dry material as flower at the higher tax rate, or b) grind the flower and sell it as leaves or trim, license holders may opt for the lower and more feasible tax rate.

¹ ICFA, [Grading and Sorting Rubric & Guidance Doc](#), 2018, Small & Littles: Inflorescence that are smaller than a dime [...], pages 5 & 6.

Recommendation: Establish a new plant material category for 'dry biomass' that allows low quality dry flower and untrimmed dry flower to be sold for extraction, infusion, and/or to make pre-rolls, and tax this category at the same rate as trim.

AGENCY CONSOLIDATION

The Governor's January Budget Proposal for the 2020-21 fiscal year included a plan to consolidate the three cannabis licensing authorities, the California Department of Food and Agriculture (CDFA), California Department of Public Health (CDPH), and the Bureau of Cannabis Control (BCC) into a single Department of Cannabis Control. The Governor's May Revise postponed this effort until the 2021-22 fiscal year as a result of the pandemic.

As the Administration continues to develop its consolidation plan, we encourage the incorporation of strategies that ensure consistency, improve efficiency, and, most importantly, reduce costs. Additionally, faced with current economic uncertainties, regulatory and agency delays, and sporadic closures of local and state offices, we are concerned that local jurisdictions and licensees could be significantly challenged in meeting upcoming statutory timelines. To alleviate financial stresses on the legal cannabis industry, protect against unnecessary lapses in licensure, and further the shared goals of reducing barriers to entry, we offer the following comments and recommendations.

3. CANNABIS APPELLATIONS PROGRAM

Existing law requires the CDFA to establish the State's Cannabis Appellations Program by January 1, 2021. The CDFA released its proposed regulations for the program in February, initiating a 45-day public comment period, which concluded on May 6, 2020.

Concern: The draft regulations propose a structure that is advantageous to applicants who file first. This could encourage a "rush to file" once the Cannabis Appellations Program is implemented. Faced with ongoing economic challenges, the current unforeseen economic downturn, and a lack of access to capital, there is concern that California's legacy farmers will be unable to raise the funds - currently estimated at \$68,920² - to develop a cannabis appellation or to be designated with a cannabis appellation, by January 1, 2021.

These combined factors have the potential to create an unfair advantage for well-capitalized businesses to file first, setting the parameters for the development of cannabis appellation regions without input from, or the consensus of, the State's legacy farmers.

Recommendation: Extend the implementation date of the State's Cannabis Appellations Program for one year, so that the program takes effect on January 1, 2022. This will preserve the integrity of the program by ensuring adequate public engagement by all interested parties, including legacy cannabis farmers that may otherwise be precluded from receiving a cannabis appellation designation.

4. CEQA AND PROVISIONAL LICENSES

Both state and local jurisdictions are required to develop a Programmatic Environmental Impact Report (PEIR) to proceed with providing a pathway to the licensing and permitting of new cannabis businesses.

² Cannabis Appellations Program Regulations, Economic and Fiscal Impact Analysis, Table 9. CAO Regulation Costs per Appellation, page 24.

In addition to meeting CEQA compliance, applicants seeking a cultivation license must also comply with environmental programs set forth by the California Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB). The timelines and expense associated with achieving compliance with multiple state agencies is significant.

Concern: Due to the COVID-19 pandemic, agency field inspections and public meetings have been temporarily suspended and/or delayed. The seasonal timing of such delays threatens to shorten the approved environmental “work season” available to applicants who are required to conduct land-use upgrades to achieve compliance.

Additionally, local jurisdictions have experienced delays impacting the agendas and timing of city councils and county supervisors. Such delays challenge local jurisdictions engaged in achieving CEQA compliance and may postpone the development and adoption of PEIRs.

We have significant concerns that the provisional licensing program will sunset before local jurisdictions, agencies, and applicants can achieve full CEQA compliance.

Recommendation: Extend the existing timelines associated with the provisional licensing program. This will allow local jurisdictions the ability to move forward with discretionary permits as compliance with these programs is achieved. At the same time, it will allow additional time for provisional license holders to operate legally while working with their local jurisdictions on meeting the requirements outlined by the PEIR. Lastly, it will ensure the State does not experience a backlog or loss in licensing, as experienced in the first quarter of 2019.

5. DUPLICATIVE CULTIVATION APPLICATION REQUIREMENTS

Applicants seeking a cultivation license are required to obtain and submit a Lake and Streambed Alteration Agreement (LSAA) or notice of exemption from DFW, as well as a permit or notice of exemption from SWRCB, as a condition of receiving a State cultivation license.

The process associated with obtaining an LSAA requires extensive mapping and agency inspection of all roads, culverts, and waterways on properties where cultivation will be occurring. All water sources, water storage containers, water distribution systems, and reasons for water use must be identified, mapped, and inspected by the SWRCB for the applicant to obtain a permit under the SWRCB program. These permits, or exemptions from permits, must be submitted to CDFA as part of the license application process. CDFA also requires all application materials produced to achieve compliance with the DFW and SWRCB programs be kept on the licensed premises and made available for inspection upon request.

Existing law requires cultivation applicants to remap all DFW and SWRCB features on the premises and property diagrams as a condition of licensure by CDFA. Existing law also clarifies that the features to be remapped include those related to the cannabis operations as well as those that have no relationship to the cannabis operations.

Concern: These mapping requirements are not only expensive and duplicative for the applicant, but costly for CDFA as the licensing review team must verify features that extend beyond the scope of the applicant’s cannabis operation(s).

Recommendation: Reduce the expense associated with licensing, both for the applicant and the licensing authority, by allowing CDFA to eliminate duplicative environmental requirements that are not directly related to the commercial cannabis operation. This recommendation is also a core priority for the International Cannabis Farmers Association, which circulated recommended language as part of its comprehensive report presented to the Administration in April³.

6. DEFINITIONS AND COMMONLY USED TERMS

³ ICFA, [Response to the Governor’s 2020-2021 Fiscal Year Budget Proposal](#), pages 8 & 9.

Each of the three licensing authorities have issued permanent regulations that include definitions pertaining to each authority's scope of licensure. Additionally, the state mandated track and trace provider METRC has developed a list of its own strictly defined terms.

Concern: In some instances, the three licensing authorities define and use basic operating terms in a different manner or interchangeably. In some cases, commonly used operational terms, are left undefined. This creates confusion for applicants and licensees whose activities are regulated by multiple licensing authorities. Adding to the confusion, METRC terminology often differs in meaning from that of the licensing authorities.

Recommendation: Align definitions and the commonly used operational terms when regulating and tracking licensees, establish definitions for commonly used terms not yet defined, and apply definitions established by a single authority to all licensing authorities including METRC where appropriate.

- a. Commonly used terms requiring consistency.
 - i. Applicant - Owner - Person;
 - ii. Employee - Direct Employee - Contractor;
 - iii. Designated Responsible Party - Primary Contact - Delegated Contact;
 - iv. Unique Identifier (UID) - Batch Number - Harvest Batch - Cannabis Goods Batch;
 - v. Nonmanufactured Cannabis Product - Harvest Batch; and
 - vi. Leaf - Shake - Trim
- b. Terms that need to be uniformly defined.
 - i. Cannabis Goods Batch;
 - ii. Package;
 - iii. Bud, Leaf, Shake, and/or Trim⁴; and
 - iv. Limited Access Area.

7. ORALLY-CONSUMED PRODUCTS CONTAINING ALCOHOL

Both the BCC and CDPH play roles in regulating orally-consumed products that contain alcohol. The CDPH regulates the manufacturing, packaging, and labeling of the product, while the BCC regulates the final form testing of the product.

CDPH regulations allow products that contain more than 0.5 percent alcohol by volume as an ingredient, such as tinctures and sublingual sprays, to be packaged in a container no larger than two (2) fluid ounces so long as the package “...includes a calibrated dropper or **other similar device capable of accurately measuring servings.**”⁵

The BCC defines, “orally-consumed product containing alcohol,” [as] meaning a liquid solution that contains more than 0.5 percent alcohol by volume as an ingredient, is not otherwise an alcoholic beverage as defined in Business and Profession Code (BPC) § 23004, is packaged in a container no larger than two (2) fluid ounces, and includes a capped calibrated dropper capable of accurately measuring servings.⁶

Concern: The BCC definition for “orally-consumed product[s] containing alcohol” does not currently include language allowing the packaged product to include a device capable of accurately measuring servings, and instead solely references the inclusion of a “...capped calibrated dropper capable of accurately measuring servings.” As such, manufacturers of orally-consumed products

⁴ None of these terms are defined, yet bud is used interchangeably to refer to cannabis flower. Leaf, shake, and trim are used interchangeably by the licensing authorities and METRC.

⁵ CDPH Permanent Regulations, SUBCHAPTER 4. PRODUCTS, Article 1. Cannabis Product Standards, § 40308. Orally-Consumed Products Containing Alcohol.

⁶ BCC Permanent Regulations, Chapter 6. Testing Laboratories., Article 1. Chapter Definitions., § 5700. Definitions., (uu).

containing alcohol are required to include a calibrated dropper cap in products final form packaging simply to obtain access to laboratory testing. The inclusion of a calibrated dropper in products that already include a device capable of accurately measuring servings, just to ensure legal testing, is expensive for manufacturers.

Recommendation: Align the BCC's definition of orally-consumed product containing alcohol with the definition found in CDPH regulations.

8. CLARIFICATION OF NONMANUFACTURED PRODUCTS

The CDFA, defines nonmanufactured products to include flower, shake, leaf, pre-rolls, and kief⁷. However, shake, leaf, and kief, are not currently referenced in the CDPH labeling requirements⁸, nor are they clearly referenced in the BCC testing requirements⁹.

Concern: Shake, leaf, and kief are byproducts of processing activities and prior to regulations, enjoyed a significant customer base, due to their affordability. The ability to use these nonmanufactured byproducts would support the diversification of nonmanufactured product lines and allow licensees to use all aspects of the harvest plant materials beyond just packaged flower and pre-rolls.

Recommendation: Establish a clear pathway for the testing, labeling, and sale of final form leaf, shake, and kief nonmanufactured products.

9. COMMON APPLICATION REQUIREMENTS

Each of the licensing authorities have established different protocols for applicants to fulfill common requirements, including, but not limited to, ownership and financial interest disclosure, as well as Live Scan, lease agreement, and modification requirements.

Concern: These variations in processes are duplicative and time consuming for applicants and licensees. For instance, Live Scans are required by each licensing authority. Additionally, process variations create confusion for applicants seeking licensure and for licensees who must navigate the renewal process and ongoing compliance requirements.

Recommendation: Streamline and standardize all common application requirements, including, but not limited to the following:

- a. Owner declaration form,
- b. Final financial interest form,
- c. Landowner consent form,
- d. Modification form and filing process,
- e. Live Scan requirement and form,
- f. Lease agreement requirements and review process, and
- g. License renewal process and late processing fees.

10. COMMON LICENSING PLATFORM

The new regulations establish a common licensing platform for all cannabis licensees in California. However, it is unclear whether this platform can also be utilized by other agencies that administer cannabis licensees in addition to the DCC.

⁷ CDFA Permanent Regulations, Article 1. Definitions, § 8000. Definitions., (v).

⁸ CDPH Permanent Regulations, SUBCHAPTER 5. LABELING AND PACKAGING REQUIREMENTS, Article 2. Labeling Requirements, § 40404. Labeling requirements: Pre-rolls and Packaged Flower.

⁹ BCC Permanent Regulations, Article 3. Sampling Cannabis and Cannabis Products., § 5708 Cannabis Product Batch and Pre-roll Sampling.

Concern: The variations amongst the licensing platforms creates confusion and increases the amount of time associated with applying for, and maintaining compliance with, multiple regulatory agencies.

Recommendation: Ensure that the online licensing system established by the DCC may also be utilized by other agencies, as appropriate, including, but not limited to the:

- a. California Department of Fish and Wildlife (CDFW),
- b. State Water Resources Control Board (SWRCB),
- c. California Department of Tax and Fee Administration (CDTFA), and
- d. Local jurisdictions to support standing-up and operating local permitting programs.

Implementing this recommendation will reduce confusion and compliance costs for applicants and licensees. It will also bolster efforts to address unlicensed activities, save significant time, and provide cost saving opportunities to local jurisdictions, local and state agencies, law enforcement, and the public when attempting to discern between licensed and unlicensed cannabis businesses and cannabis goods.

11. OWNERSHIP TRANSFERS

Each licensing authority outlines a process for a licensed cannabis business to transfer ownership. As part of that process, and in order for the business to remain active, at least one owner must remain on the license under the new ownership structure while the appropriate licensing authority reviews the qualifications of the new owner(s) to determine eligibility.

A licensed business is prohibited from maintaining operations in instances where all existing owners transfer their ownership interest, until such time as a new license application is submitted, approved, and the license fee is paid. Additionally, licensed businesses needing or wishing to change the entities' structure, such as from a limited liability company to a corporation, are required to cease operation until a new application is filed and approved, even if there is no change in ownership. [Finally, under the consolidated Department and subsequent emergency regulations, there are disclosure requirements for existing cultivation and manufacturing licensees, particularly under § 15003\(c\), that are incongruent with regulations previously promulgated by CalCannabis or the MCSB.](#)

Concern: While we recognize the need to ensure that owners meet eligibility requirements to receive a license, as outlined in existing law, the approval process is often lengthy and cumbersome. Licensees simply cannot afford to close down while a new application is reviewed.

There are also liability concerns for existing licensees attempting to acquire distressed licensed cannabis businesses that may not have the ability to meet their financial obligations while the ownership transfer is pending.

Recommendation:

- a. Establish an expedited process for existing cannabis licensees that acquire other licensed cannabis businesses.
- b. Allow cannabis businesses to remain operational while new owners are evaluated.
- c. [Ensure that licensees previously administered by CalCannabis and/or the MCSB are given a grace period to meet new ownership disclosure requirements by the Department.](#)

12. DEFINING AND MODIFYING LICENSED PREMISES

Common amongst the three licensing authorities is a requirement that licensees disclose in their premises diagram, which operational activities will occur, and where such activities will occur within the licensed premises. Examples include identifying where processing and/or packaging will occur or where infusion versus extraction will occur.

For a licensee to change where an activity will occur, he/she must file a modification of the premises, even if the change of activity does not require a physical modification, or is temporary.

Concern: In a post COVID-19 world, licensees need flexibility to re-work operations and premises layouts to incorporate physical distancing and other safety measures not contemplated when the premises was initially mapped for licensure. As licensees adjust to the operational changes associated with physical distancing and other safety protocols, flexibility is crucial to the efficiency of operations and the safety of employees.

Additionally, time is of the essence, and requirements such as obtaining prior approval to move operational activities to a different location in the premises are burdensome, challenge operational efficiency, and undermine the health and safety of workers.

Recommendation:

- a. Eliminate the requirement for advance approval of modifications in relationship to the specific location on the premises where an operational activity may occur. This will allow licensees to utilize the full capacity of the licensed premises and simplify and streamline the implementation of necessary health and safety requirements associated with COVID-19 pandemic response.
- b. Adjust the modification process for substantial physical changes to the premises, such as those that require a local building permit, to instead require disclosure of the modification within 15 days of completing the change.

13. CULTIVATION LICENSE PRICING SYSTEM

CalCannabis cultivation licenses are tiered in cost, based on the assumed production rate associated with each license type. License types are differentiated by the method of cultivation used to flower the mature plant canopy, the square footage of mature plant canopy area, and the number of harvests each method might achieve.

In developing the pricing structure for cultivation licenses, CalCannabis assumes that each license holder will harvest the maximum square footage allowed under the license type, and will achieve the prescribed number of harvests assumed for each license type.

However, many cultivators are limited by local land use restrictions and CEQA compliance which prohibits them from expanding their cultivation sites, essentially eliminating their ability to cultivate the maximum square footage allowed under their state license. Furthermore, cultivators consistently report an inability to achieve the number of harvests assumed for their license type¹⁰.

Concern: The current pricing structure significantly increases the cost of licensing for cultivators who cannot legally cultivate the full square footage offered by state licensure, and/or cannot achieve the number of harvests assumed by CalCannabis. At the same time, this structure provides tremendous cost savings to cultivators who can exceed the number of assumed harvests associated with their license type, essentially establishing an inequitable license pricing structure.

Recommendation: Reassess and restructure the pricing system for cultivation licenses and create a system that ensures cultivators pay for what they cultivate, instead of what they might cultivate. This will result in tremendous cost savings to the agricultural sector of the supply chain and establish a tiered pricing system that will more equitably address the on-ramping of Type 5 licenses in 2023, should they be authorized¹¹.

¹⁰ ICFA, Response to the Governor's 2020-2021 Fiscal Year Budget Proposal, pages 12 & 13.

¹¹ ICFA, Response to the Governor's 2020-2021 Fiscal Year Budget Proposal, page 13.

14. CDPH AND BCC LICENSE PRICING SYSTEM

Commercial cannabis licenses are valid for a period of 12-months. Licensees may apply to renew the license no earlier than sixty (60) days before the license is set to expire. It commonly takes the licensing authority thirty (30) to sixty (60) days to process the renewal. Both the BCC and CDPH offer a tiered licensing fee structure based on the annual gross revenue of the applicant or licensee.

New applicants are allowed to estimate the anticipated annual gross revenue when applying for a license. Licensees, however, are required to provide proof of annual gross revenue for the previous 12-months when applying to renew a license. To assist applicants and licensees with this process, the CDPH offers detailed regulations outlining exactly what should be included in the annual gross revenue calculation. The BCC regulations do not include such guidance.

To verify annual gross revenue, both licensing authorities require licensees to furnish evidence of CDTFA tax returns for the previous 12-months. Both authorities prohibit reimbursement of application and licensing fees.

Furthermore, the BCC reserves the right to assess a penalty of up to 50 percent of the cost of the proper licensing fee should an applicant or licensee underestimate the gross revenue of the business.

Concern: Both the BCC and CDPH accept applications and issue licenses on a rolling basis. Licensees, however, remit tax payments to the CDTFA on a quarterly basis. This timeline discrepancy creates challenges for some first-year licensees during the renewal process, as they may be unable to furnish the full 12-months of tax payment documentation.

The BCC does not provide guidance regarding how to calculate annual gross revenue. For entities with a BCC license as well as other licenses, this lack of clarification has led to an inability for BCC reviewers to determine the annual gross revenue associated with only the license subject to renewal. Instead, the BCC takes into consideration the entirety of an entity's annual gross revenue, often subjecting the licensee to a higher licensing tier than appropriate for that particular license.

There are numerous reasons an applicant or licensee might overestimate annual gross receipts, or see a loss in annual gross revenue over the course of a licensed year. Yet neither licensing authority provides a pathway for reimbursement, or credit, in instances when the applicant or licensee fails to meet the minimum annual gross revenue projected for the 12-month license period. Additionally, subjecting licensees to a 50 percent penalty without providing a pathway for scaling down or scaling up further exacerbates the economic challenges facing legal cannabis businesses.

Recommendation: Align the license fee structure to reduce the economic burden on applicants and licensees, and streamline the application and license renewal process, as follows:

- a. Clarify that local tax audit records and/or internal track and trace records are acceptable substitutes for verification of CDTFA quarterly tax returns.
- b. Consider only the annual gross revenue associated with the license subject to renewal, and not the revenue generated by the business entity that holds the license.
- c. Provide a mechanism whereby no penalty is assessed to those licensees who underestimate their gross revenue. Instead, permit the licensee to remit payment upon notification of the need to scale up a license tier.
- d. Develop a mechanism for those who overestimate annual gross receipts and need to scale down a license tier to "bank" the difference and provide a credit to be applied when the license is renewed in the subsequent 12-months.

15. DELIVERY CASE LIMIT THRESHOLD

BCC regulations specify that a delivery employee cannot carry more than \$5,000 worth of cannabis goods at any given time¹².

Concern: The initial version of the permanent regulations for cannabis set the delivery case limit at \$10,000. The permanent regulations, adopted in January 2019, reduced the case limit to \$5,000 in response to concerns that the larger amount would impact public safety. To date, no data supports this claim. To the contrary, data shows delivery to be a safe and consistent mechanism for patients and consumers to buy legal cannabis.

In response to the COVID-19 pandemic, the cannabis industry has seen a significant increase in demand for delivery in every region of the state -- especially among seniors and vulnerable individuals.

Recommendation: Increase cannabis delivery case limits from \$5,000 to \$10,000 in retail value. This will protect consumers by increasing access to safe, legal cannabis goods via delivery, rather than forcing them to risk their health by leaving home or buying from the unlicensed market.

The increased value threshold will also protect cannabis employees by reducing exposure opportunities to other employees. Lastly, increasing the value threshold will encourage licensees to expand their service delivery areas to cannabis deserts, where access to legal cannabis is severely limited.

16. CURBSIDE PICKUP

BCC regulations currently restrict a retail licensee from conducting any sales outside of the licensed retail premises¹³. In response to the COVID-19 pandemic, licensed cannabis retailers have been subject to restrictions on how many customers may be inside the retail location at any given time.

Concern: To ensure that patients and consumers continue to have adequate access to legal cannabis goods, and to reduce the risk to essential employees, many licensed retailers now offer curbside pickup services. However, not every retail location has a suitable area within the licensed premises to accommodate this activity. To assist with this emerging need, the BCC authorizes curbside pickups for 30 days at a time. However, as COVID-19 continues to have long-standing impacts on public health, requiring licensees to continually request a 30-day extension from the BCC has become increasingly onerous, for both the licensee and the licensing authority.

Recommendation: Establish a regulation that permanently allows curbside pickup. This will eliminate licensees having to continually request a 30-day extension and reduce staff hours devoted to evaluating and authorizing this extension by the licensing authority.

17. DRIVE-THRU WINDOWS

BCC regulations initially allowed, and then limited, drive-in or drive-thru windows to only those licensees who received local approval prior to June 1, 2018.

Concern: As described above in item 15. DELIVERY CASE LIMIT THRESHOLD, licensees should be given the flexibility to implement measures that reduce potential exposure to COVID-19.

Recommendation: Remove the current limitations on drive-thru windows, and instead allow drive thru windows, and drive-in or drive-thru sales, upon approval from the local jurisdiction.

18. TRANSPORTATION VEHICLE REGISTRATION REQUIREMENTS

¹² BCC Permanent Regulations, Chapter 3. RETAILERS., § 5418. Cannabis Goods Carried During Delivery.

¹³ BCC Permanent Regulations, Chapter 1. ALL BUREAU LICENSEES, Article 3. Licensing., § 5025. Premises.

The BCC currently regulates the transportation of cannabis and cannabis goods by licensed distributors. The regulations require that the licensed distributor be the registered owner of each vehicle and trailer used to transport cannabis and/or cannabis goods¹⁴.

Concern: This requirement prohibits licensed distributors from using a rented, or otherwise temporary vehicle, even if that vehicle meets all other requirements. Additionally, this requirement, when applied to transport only self-distribution licenses, can pose significant challenges to small business owners who need to use a personal vehicle, not owned by the business entity, to transport cannabis and cannabis goods.

Recommendation: Provide a pathway that allows licensed distributors to use rented vehicles or vehicles not owned by the licensee, so long as all other vehicle and driver requirements (caging, locks, GPS, alarm, driver age, etc.) are met. Additionally, exempt transport only self-distribution licensees from this requirement.

19. TRANSPORTATION VEHICLE REQUIREMENTS

BCC regulations require all cannabis and cannabis goods to be locked in a fully enclosed box, container, or cage that is secured to the inside of the vehicle or trailer. The regulations further provide that no portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer¹⁵.

Concern: Installing separate and distinct enclosed boxes is extremely expensive for licensees and does not enhance the safety of the driver or security of the products.

Recommendation: Modify this requirement to only require that a locked cage or similar safety feature be installed in vehicles where licensees and their employees access cannabis or cannabis products.

20. TRADE SAMPLES

The BPC currently prohibits licensees from giving away any amount of cannabis, cannabis products, or cannabis accessories, as part of a business promotion or other commercial activity¹⁶.

Concern: In cannabis, there is no substitute for sensory analysis when trying to determine the quality of a cannabis product. As such, business to business (B2B) and business to employee (B2E) trade samples are routinely provided to enhance product knowledge and encourage sales. Trade samples are especially important for small and emerging businesses trying to break into the market, and for retailers seeking a better understanding of the cannabis goods they are selling.

However, due to the restrictions set forth in the BPC, licensees must remit both the cultivation and excise tax on all trade samples, as well as charge a fee for each trade sample distributed. In turn, this restriction makes offering trade samples an expensive endeavor for licensees.

Recommendation:

- a. Authorize licensees to designate cannabis or cannabis products as a trade sample at any time while the cannabis or cannabis product is in the possession of the licensee, provided it has received a Certificate of Analysis from a licensed testing laboratory.
- b. Maintain the prohibition in existing law that the distribution of trade samples to customers is prohibited.
- c. Authorize the BCC to establish a limit on the quantity of cannabis and cannabis goods designated by a licensee as trade samples.

¹⁴ BCC Permanent Regulations, Chapter 2. DISTRIBUTORS., § 5312. Required Transport Vehicle Information.

¹⁵ BCC Permanent Regulations, Chapter 2. DISTRIBUTORS., § 5311. Requirements for the Transportation of Cannabis Goods., and Chapter 3. RETAILERS., § 5417, Delivery Vehicle Requirements.

¹⁶ Business and Professions Code, CHAPTER 15. Advertising and Marketing Restrictions, § 26153.

- d. Exempt trade samples from all state and local taxes including excise taxes, cultivation taxes, sales and use taxes, and taxes on gross receipts from the sale, storage, use, or other consumption of cannabis or a cannabis good.

LICENSING RESTRICTIONS

21. CONTIGUOUS PREMISES AND PREMISES SHARING RESTRICTIONS

Existing law requires the operating premises of each licensed activity to be a single, fully adjoined contiguous area, and only occupied by one licensee¹⁷ with limited exceptions.

The application for each licensed activity must:

- Include a detailed map of the licensed premises, also known as a premises diagram, where said activities are proposed to take place; and
- Clearly label, within the licensed premises, where key operational activities will occur.

Each licensing authority oversees different types of licensed activities, as follows:

- CDFA oversees nursery, cultivation, and processing licenses;
- CDPH oversees manufacturing licenses; and
- BCC oversees distribution, retail, microbusiness, and laboratory testing licenses.

Each of these licensing authorities have implemented a slightly different interpretation of what qualifies as a contiguous premises and, in most instances, prohibit a licensee from consolidating certain identical operational activities on the same premises. Examples include the following:

- The CDFA allows a cultivation licensee, who holds multiple contiguous cultivation licenses, to share pesticide storage areas, and secured waste, and/or secured compost areas. However, these same cultivation licensees are prohibited from sharing a propagation area, or processing area in the same manner.
- The BCC and CDPH do not allow a licensee holding multiple BCC licenses or multiple CDPH licenses the ability to share secured waste, and/or secured compost areas.
- Licensees holding multiple licenses issued by different licensing authorities are prohibited from sharing any areas of the licensed premises, even if the licensee is authorized to conduct the same operational activities associated with the licenses that entity holds.
- The CDFA and the CDPH created new license types in the regulations that were not previously established and defined in statute. While the BCC recognizes CDPH's new shared manufacturing license as a qualifier for a microbusiness license, it does not recognize the processing license established by CDFA as a qualifier.¹⁸

Concern: The stringent interpretation of contiguous premises, combined with the inconsistent and fragmented nature of licensing, forces licensees to obtain multiple licenses and establish separate premises for each. This dramatically increases compliance and operational costs for licensees. Additionally, the fragmented nature of licensing exacerbates the already complicated issues associated with premises usage for licensees managing facilities that are regulated by multiple licensing authorities.

Recommendation:

- a. Permit cultivation licensees, with more than one cultivation license, to share propagation and processing areas without dividing these areas into separate premises, and without

¹⁷ Business and Professions Code, CHAPTER 1. General Provisions and Definitions, § 26001.

¹⁸ BCC Permanent Regulations, Chapter 4: MICROBUSINESS, § 5500. Microbusiness.,(a)

requiring the purchase of additional licenses, so long as the shared propagation and/or processing area(s) are not providing services, seeds, or propagated plant material to other licensees.

- b. Permit licensees with multiple licenses, issued by the various licensing authorities, to share areas to conduct common authorized activities.

22. CANNABIS PROCESSING ACTIVITIES

The CDFA is responsible for regulating post-harvest activities which include the drying, curing, grading, sorting, trimming, and packaging of nonmanufactured products. The term nonmanufactured products refers to packaged flower and pre-rolls that may include flower, leaf, and/or kief. Currently, cultivators, processors, manufacturers, and distributors may also qualify to create nonmanufactured products.

However, the licensing authorities only allow licensed cultivators and processors to engage in the drying, curing, and trimming of cannabis flower. Furthermore, processing is not currently a recognized qualifying activity, nor is it an allowed activity, for microbusiness licensees.

As mentioned in the previous section¹⁹, licensees holding multiple cultivation licenses are required to either establish a separate processing area for each of the cultivation licenses, or must obtain a central processing license to manage the drying, curing, and trimming of the post-harvest material. At the same time, licensed cultivators may be locally prohibited from, or may choose not to, establish a processing area. This essentially creates a significant need for processing services amongst licensed cultivators.

Concern: While it may appear that there is ample access to licensed processing services, many of the processing licenses issued to date are associated with licensees holding multiple cultivation licenses. This does not guarantee that processing services are available to cultivators in that community.

At the same time, the incredible limitations placed on which licensee can conduct processing activities may deter interested parties from obtaining yet another license to provide these much needed services. The cost associated with the license, in addition to the cost of establishing a new and independent premises, can easily become prohibitive.

Recommendation: Expand the ability for license holders to provide processing services to licensed cultivators.

- a. Permit licensed manufacturing facilities to process cannabis, including drying, curing, and trimming activities, without also obtaining a processing license.
- b. Permit licensed distribution facilities to process cannabis, including drying, curing, and trimming activities, without also obtaining a processing license.
- c. Permit processing to be a recognized activity that establishes eligibility for a microbusiness.

23. OUTDOOR AND MIXED-LIGHT TIER 1 LICENSE TYPES

Per CDFA's regulations, outdoor cultivation licensees are prohibited from conducting light deprivation²⁰ activities while mixed-light cultivators are prohibited from cultivating cannabis without the use of light deprivation and/or supplemental lighting in the mature flower area.

¹⁹ CCIA; 2020 Regulatory Document, 21. CONTIGUOUS PREMISES AND PREMISES SHARING RESTRICTIONS, pages 16 & 17.

²⁰ Light deprivation is a well-established farming technique used by farmers to force flower crops, which in turn allows the farmer the ability to schedule when the crop will be harvested. Farmers, using light deprivation techniques, manually shorten the natural daylight hours by covering the crop in a material that does not allow natural sunlight to reach the crop. Light deprivation triggers the crop to flower by mimicking the shortening of natural daylight hours, which is the mechanism that tells cannabis that the growing season is coming to an end and it's time to produce flowers.

Concern: The current prohibition on light deprivation by outdoor license holders, coupled with the requirement for light deprivation by mixed-light tier 1 license holders (when lighting is not used in the flower area), has forced numerous cultivators to obtain multiple cultivation licenses to achieve compliance, which can greatly increase the cost associated with operating a legal cultivation facility²¹.

Recommendation: Per the ICFA recommendations²², amend the definitions for the outdoor and mixed-light tier 1 license type to allow light deprivation in the outdoor license type, and to allow full-term cultivation in the mixed-light tier 1 license type without the use of artificial lighting.

²¹ ICFA; Response to the Governor's 2020-2021 Fiscal Year Budget Proposal; b. Proposed Amendments to CDFA Regulations, § 8000., page 11.

²² ICFA; Response to the Governor's 2020-2021 Fiscal Year Budget Proposal; b. Proposed Amendments to CDFA Regulations, § 8000., pages 11 & 12.

TESTING STANDARDS AND CERTIFICATE OF ANALYSIS (COA)

24. ACTION LEVELS

All cannabis and cannabis products sold in California must be tested by a licensed cannabis testing laboratory. Testing requirements serve to determine cannabinoid levels and other important chemical information, and ensures there are no pesticides, foreign materials, or other contaminants of concern in the cannabis good.

Concern: There is a lack of uniformity in regulations concerning how to test for various pesticides and other contaminants in cannabis. For instance, the regulations assign action levels for testing certain compounds and contaminants. However, Category 1 pesticides do not have such action levels, making it difficult for laboratories to uniformly test the cannabis batches. Instead, testing laboratories evaluate Category 1 pesticides based on a detect/non-detect standard, which is often determined based on the sophistication of the testing equipment or subjectively by the laboratory technician. In light of last fall's VAPI crisis, it is imperative that the State ensure its cannabis testing standards are uniformly applied.

Recommendation: Establish specific action levels for all compounds and contaminants that are required to be tested under law, including Category 1 pesticides. This will lead to greater standardization and less variation among licensed testing labs.

25. PRE-ROLL WEIGHT VARIANCE

Pre-rolls are primarily made of ground flower. The ground material is not always perfectly sealed into the rolling paper and during development and subsequent storage, small amounts of the ground material may escape the rolling paper. Additionally, the ground materials may be subject to changes in moisture level, particularly moisture loss.

Concern: Pre-roll products are mainly one (1) gram each or smaller, and a 3 percent variance of one (1) gram or less is both too small to be practically produced in volume and too small to matter to the consumer. Requiring pre-rolls to be within 3 percent of stated weight is far too narrow a tolerance to achieve, and is impractical to enforce.

Recommendation: Adjust the weight variance associated with pre-rolls, of any size, to allow for a 10 percent variance of the individual weight presented on the package.

26. DISTRIBUTOR TO DISTRIBUTOR TRANSFERS OF BULK FLOWER AND TRIM

Distributors are currently allowed to transact and transport bulk flower and bulk leaf material prior to COA testing. Distributors are additionally allowed to develop final form non-manufactured products including packaged flower and pre-rolls.

Testing the incoming bulk material in fifty (50) pound increments creates a significant cost savings to distributors, and provides reassurance that the material is of suitable quality for developing a packaged flower product and conducting future transactions. However, once a COA is applied to a batch of bulk flower or leaf material, the distributor is prohibited from transferring any portion of the bulk material to another distributor, unless the bulk material has been packaged into a final form product.

Concern: R&D testing and COA testing are expensive endeavors. The application of either R&D testing or COA testing is an industry standard to verify the quality of bulk flower and/or leaf material before it is moved forward in the supply chain. By prohibiting the ability of the distributor to transact COA tested bulk material, the licensing authority unnecessarily restricts the distributor's ability to sell a portion of the tested material should the opportunity arise. This forces distributors to either conduct multiple tests on a single fifty (50) pound batch of bulk material, or to risk the possibility of over packaging and overstocking perishable products.

Recommendation: Update the testing regulations to allow the transaction of COA tested bulk flower, and or leaf material, so long as the receiving distributor obtains a new COA test in accordance with all applicable state and local regulations.

27. PRINTED COA DURING THE TRANSPORT OF CANNABIS

BCC regulations require that a copy of the COA accompany cannabis goods during transportation and be provided to the licensee receiving the cannabis goods²³.

Concern: Printed COAs are an enormous expense and are unnecessary, particularly as licensees already have access to COAs in METRC. For example, a distributor may fill approximately one hundred (100) orders per day, each containing forty (40) individual SKUs, resulting in the printing of four thousand (4,000) COAs per day. Assuming each COA is two pages, that amounts to three million pages per year. Moreover, most retailers order weekly, which means that a distributor is often providing the same COA for the same batch multiple times.

Recommendation: Eliminate the requirement that licensed distributors provide licensed retailers with a printed copy of the COA.

28. DEFINITION OF “FINAL FORM” FOR PURPOSES OF QUALITY ASSURANCE TESTING

Per Business and Professions Code § 26100, all cannabis and cannabis products must be tested for compliance by a licensed testing laboratory in the product’s final form. DCC Regulations § 17401 further defines “final form” for purposes of quality assurance testing as the product is to be sold at retail, including identical packaging and branding of the manufactured cannabis goods as they will appear to consumers.

CONCERN: Due to the current definition of “final form”, manufacturers must seal cannabis products in full, child-resistant packaging with all layers and labels as sold at retail for purposes of compliance testing, only for testing laboratories to open and discard said packaging to properly test the product. This not only adds additional cost burdens to cannabis manufacturers, and increased labor time for laboratories, but contributes to unnecessary waste production in the cannabis supply chain. In the case of inhaled manufactured products (i.e. vape cartridges), sending lab samples enclosed within outer retail packaging layers does not provide additional testing or health protections since the packaging does not actually touch the product being consumed.

RECOMMENDATION: Amend § 17401 to mean an unpackaged cannabis product, excluding inhalables, as it will be consumed, thus allowing manufacturers to conduct cannabis quality assurance testing on products without needing to wastefully package them, while assuring quality for the customer. Inhalable products can be tested with primary packaging only (e.g. vape products are tested in the pod/cartridge but cartridge packaging is excluded, flower is tested in the jar it is sold in without labeling and other outer boxes that might be included at the point of sale). This will reduce cost burdens on the manufacturing process, bring greater sustainability to the cannabis supply chain, and align California’s cannabis industry with other consumer industries in the state.

- Moreover, we recommend that all manufacturers ensure that packaging components that come in direct contact with an edible cannabis product be FDA compliant for a relevant food type (e.g., low moisture oil and fats for oil-based tinctures, Non-alcoholic beverages for THC infused beverages) and condition of use.

29. REQUIRED PROFICIENCY TESTING

²³ BCC Permanent Regulations, Chapter 2. DISTRIBUTORS., § 5306. Laboratory Testing Results.

Per DCC Regulations § 15733, licensed cannabis testing laboratories are required to participate in a proficiency testing program in conformance with ISO 17043 and includes pesticides as one of the required categories.

CONCERN: One interpretation of the proficiency test requirement that licensed testing laboratories have encountered is, in order to satisfy the requirement for pesticides, the test must include all 66 banned compounds under state law. This burdensome approach to proficiency testing does not reflect the normal, real-world quality assurance process for the cannabis industry. No cannabis sample contains all 66 banned compounds; in most cases, samples may only contain a few, if any, banned analytes. Therefore, establishing a process for the proficiency test wherein the test design scheme MAY include any of the 66 banned compounds more accurately reflects day-to-day operations and forces the lab to navigate the uncertainty of null results which are common in practice.

Moreover, requiring all 66 compounds to be included in proficiency tests is costly for cannabis testing laboratories. The average cost to produce a proficiency test with all 66 analytes is roughly 5 times that of producing a sample where only 12 of the 66 analytes are randomly selected for inclusion.

RECOMMENDATION For purposes of satisfying the pesticide proficiency test requirements under § 15733, the Department should develop a representative-based approach for proficiency tests for testing laboratories to utilize. This will not only ease unnecessary operational burdens on cannabis testing laboratories, but will also produce a more pragmatic outcome based on known realities in the cannabis supply chain.

CALIFORNIA TRACK AND TRACE PROGRAM

All licensees are required to participate in California's Track and Trace Program provided by METRC. As mentioned earlier in this document²⁴, METRC has established a set of terms and definitions that do not always match common terms and definitions utilized by the licensing authorities. For licensees inputting data into the METRC platform, such variations in terms and definitions cause confusion. In some instances, the requirements set forth by METRC add additional regulatory requirements not established by the licensing authorities that dictate the operational processes of a licensee.

The challenges associated with METRC and the platform's impact on operational activities are many, and to properly articulate the range of challenges, CCIA is working on a recommendation document specific to METRC. However, the following two METRC issues merit highlighting as they have been expressed by our membership to be of high priority and are relevant to all license types.

30. PRODUCT TRANSFER DURING LOSS OF CONNECTIVITY WITH METRC

Licensees are prohibited from transporting, receiving, or delivering cannabis goods during a loss of connectivity with the METRC track and trace system.

Concern: Loss of connectivity could occur for any number of legitimate and unforeseen circumstances, including the recently instituted Public Safety Power Shutoffs by PG&E and any technical difficulty METRC may experience.

²⁴ CCIA, 2020 Regulatory Document, 5. DEFINITIONS AND COMMONLY USED TERMS, pages 7.

Recommendation: To ensure economic activity is not halted during a technological failure resulting in the loss of connectivity with METRC, licensing authorities should develop a regulation to prepare for this inevitability, in lieu of prohibiting the transportation of consumer goods for the duration of the failure.

31. METRC PACKAGE TAGS

To meet the State's compliance requirements, a licensee must integrate into the track and trace system managed by METRC. This includes using plant and package tags, which licensees must order through METRC. The cost of each licensee's METRC tags is calculated into the price of the license tier.

Concern: The current process for allocating METRC package tags is inefficient and requires the State to determine how many package tags a licensee may access, as the licensing authorities currently pay for the package tags through funds collected by license fees. As such, some licensees have reported operational challenges related to an inability to obtain the number of package tags necessary for operations.

Recommendation: Modify the existing process for licensees to obtain plant and package tags in a manner that better takes into account the operational decisions of that licensee.