



September 14, 2022

DCC Legal Affairs Division
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova CA 95670

Submitted via Electronic Mail: publiccomment@cannabis.ca.gov

RE: Comments regarding notice of proposed rulemaking to adopt regulations for standard cannabinoids test method and standardized operating procedures, and notice of proposed rulemaking to adopt regulations for large cultivation licenses and conversion to large and medium licenses

To Whom it May Concern:

The California Cannabis Industry Association (“CCIA”) is one of the state’s largest cannabis trade organizations, representing over 400 operators and ancillary business members. CCIA respectfully submits these public comments to the Department of Cannabis Control (“DCC” or the “Department”).

- Section 1 summarizes CCIA member feedback on the *Proposal to adopt regulations for standard cannabinoids test method and standardized operating procedures* released on June 17, 2022 and updated on August 31, 2022.
- Section 2 summarizes member feedback on the *Proposal to adopt regulations for large cultivation licenses and conversion to large and medium licenses*, also released on June 17, 2022 and updated on August 31, 2022.

Before we address our specific recommendations, we want to reiterate the need for the legal industry to be more productively engaged in the rulemaking process. While the opportunity to give public comment is important, we believe that we can have a more meaningful collaboration if the DCC solicits industry input before regulations are proposed. We are experts in our fields, and our feedback and input is vital to crafting sensible regulations that not only work for our businesses, but prioritize the health and

safety of our consumers and all Californians.

Section 1: Proposal to adopt regulations for standard cannabinoids test method and standardized operating procedures

CCIA submitted in-depth comments on August 2, 2022, in response to the proposed regulations that were released on June 17, 2022. We have attached those comments for reference as most of them are still relevant concerns.¹

We would like to thank the DCC for your efforts in improving the regulatory language and the associated SOPs. Specifically, we think adding flexibility in the homogenization techniques, allowing for other methods to be utilized outside of compliance purposes, allowing for laboratories to report additional cannabinoids, and allowing for a greater calibration range were greatly beneficial changes.

While we appreciate the small changes that were noted above, the real crux of the issue has not been addressed. The proposed regulation requires adoption of a singular method to be used to test all product types. This regulatory limitation will result in the **underreporting of THC potency** for some products, like gummies, hard candies, fruit chews, and beverages, an outcome we know the Department and industry both wish to avoid.

Historically, licensed cannabis testing labs have developed specialized extraction techniques to accurately measure the cannabinoid content of different types of products. For example, gummies require a different extraction method than what is used for soft gel as it is more difficult to extract from the sugary material in gummies. This is especially true when the cannabinoid content is nano encapsulated as is popular with gummies. The proposed rules will eliminate this flexibility and will result in inaccurate test results that grossly underestimate the THC potency of edibles in particular. In layperson terms, this will produce inaccurate test results on many manufactured goods. This means that a gummy which tests at .5mg of THC, could actually contain up to 10 times that amount.

If the state demands that laboratories use this singular method for testing all products, it will result in massive public health and safety issues across the state. The backbone of the regulated industry relies on accurate testing and labeling of compliant products. This proposed methodology will undermine the legitimacy of the entire legal industry.

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<https://members.cacannabisindustry.org/legislative-resources/Details/ccia-s-public-comments-on-dcc-6-17-proposed-regulations-package-123168>

The accuracy of cannabinoid potency test results has been a major concern for the industry for quite some time. The absence of a standard methodology has allowed unsavory practices like potency inflation and lab shopping to occur, which also undermines the regulated market and disadvantages good actors. These issues are most prevalent with cannabis flower (which currently makes up 37% of the legal industry), not manufactured goods. So while the DCC's proposed methodology would address potency inflation for flower, it will actually exacerbate the issue for manufactured goods.

CCIA has also consulted with some of the largest insurance carriers working to underwrite cannabis businesses in the state. They have expressed serious concern about their ability to properly provide coverage if companies are forced by the DCC to label products that under/misrepresent THC potency. Inaccurate product testing and labeling will result in the likely invalidation of insurance coverage under product liability and product withdrawal/recall insurance policies. Without proper insurance, many companies will not be able to operate legally.

It is clear that the authorizing language in **SB 544 (Laird, 2021)** affords the **Department the flexibility to establish more than one method for testing**. We implore the DCC to consider multiple methodologies depending on the types of products being tested.

Test Method for Cannabinoids

- **§ 15712.1. Test Method for Cannabinoids.**

- (a) *Notwithstanding section 15712, a licensed laboratory shall utilize the cannabinoids test method required by this section and shall not utilize any other cannabinoid test method for the purpose of regulatory compliance testing and reporting.*

- **COMMENT:** The Department should allow laboratories to use methods which are equivalent to this method. This should be allowed due to the numerous previously and currently commented shortcomings with the method.

Section 2: Proposal to adopt regulations for large cultivation licenses and conversion to large and medium licenses

On August 2, CCIA submitted comments on behalf of our members in response to the proposed regulations regarding Large and Medium cultivation licenses. The bulk of these comments asked for greater transparency and clarity from the Department in regards to the implementation of these proposed regulations. The Department's lack of proactive communication leaves many struggling operators in a state of uncertainty and sends a

bad signal to investors. Forcing operators to rely on their best guess when it comes to compliance with new regulations leaves the industry with uncertainty at best, and causes investors to flee to other states at worst. Many of our members have reached out to the DCC with questions and have received responses that simply direct the licensee to make the change and wait until the DCC can review it to decide whether it is compliant. Answers of this nature are confusing and challenging for many reasons. This lack of communication causes frustration on the part of licensees as they can be penalized even if a good faith effort is made to comply. We ask that at the very least the DCC allow CCIA to submit a list of FAQs for which the DCC will provide answers. Our members are experts in their respective fields, having their questions answered will be helpful for the entire industry.

In addition to the concern for transparency and clarity, CCIA also submits the following comments on the modifications to the proposed regulations:

License Limitations

Concern: In the previous public comment period, CCIA noted opposition to the prohibition on owners of Type 5 licenses from holding a Type 11 distributor license. While we recognize this provision exists in statute, and thus requires a legislative fix, we were disappointed to see the DCC make this prohibition even more restrictive in its modifications by expanding it to capture both owners and financial interest holders. Preventing Type 5 licensees from operating in other areas of the cannabis industry limits reasonable business practices, like vertical integration. Legal cannabis operators are running on extremely small margins, and cultivators rely on the ability to transport and COA test/ label cannabinoids after testing on their own products in order to save on costs.

Concern: We respectfully disagree with the Department's explanation for widening the scope of this prohibition. It is far from obvious that the legislation intends to capture both owners and financial interest holders. Financial interest holders do not exercise direction or control over a business, and thus cannot be responsible for the "monopolistic behavior" described in the DCC's notice. The DCC should use the ambiguity in the legislation to help the struggling cannabis industry, not harm it.

Concern: This restriction will further dampen investment opportunity and freedom for investors to diversify among the various license types (excluding Type 8). Investment opportunities are already dwindling in California in favor of less restrictive or turbulent states which is directly affected by the Department's inclusion of financial interest holders to the Type 5 regs.

Concern: This restriction is counterproductive to the DCC’s goals of helping the legal market compete against the illicit. If the DCC wishes to combat the issue of illicit cultivation it should consider making legal operations more efficient and profitable, given that the illicit market bears no restrictions on what operations a single business can or cannot do.

Recommendation: Strike “or financial interest holders” from prohibition on holding a Type 5 and Type 8, 11, or 12 license.

Metric Tags

Concern: DCC has not previously required that licensees going through a license transition process re-tag all of their plants in the middle of a harvest cycle. Removing tags and adding new ones on tens of thousands of plants is an unreasonable burden, especially considering plants will get harvested after 8 weeks.

Recommendation: Metric should integrate both the new and old licenses into the system so that both tags work until the current batch is harvested, and allow licensees to start using tags with the new Type 5 license number when plants are transitioned out of the nursery and into the greenhouses to flower.

In closing, we value our relationship with the Department and appreciate the effort you have dedicated to developing a functional and adaptive, regulated cannabis market. We look forward to building more robust engagement so that we can continue to provide on-the-ground experience in furtherance of a safe and thriving industry.

Respectfully,



LINDSAY ROBINSON
Executive Director