

April 19, 2022

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
publiccomment@cannabis.ca.gov

Comments on Proposed Consolidated Medicinal and Adult-Use Cannabis Regulations

Dear DCC Legal Affairs Division,

The Law Offices of Omar Figueroa, one of California's leading cannabis law firms, respectfully submits the following comments for consideration with regards to the proposed regulations published on March 4, 2022.

§15000(zz)

The word "person" is sometimes used to refer to an individual, whereas other times it is used to refer to entities or groups acting as a unit. This can lead to confusion.

- *Suggestion* – Use the word "individual" throughout the regulations when referring to an individual.

§15000(ccc)

Grammatical error: the singular of "premises" is "premise."

- *Suggestion* – Amend to define the singular use of the term "premise" instead of the plural premises."

§15000(ppp)

The technical name for the compound with CAS number 1972-08-3 is delta-9-tetrahydrocannabinol. THC has different analogs, so the DCC should be specific that all references to THC will mean delta-9-THC unless explicitly specified.

- *Suggestion* – Amend subsection (ppp) to replace "tetrahydrocannabinol" with "delta-9-tetrahydrocannabinol."

§15000.3(f)

The restriction against structures not permanently affixed to the property is unnecessary and would create an undue burden on licensees, particularly smaller businesses. Modular buildings, trailers, and even shipping containers are frequently used for offices, storage space, and other legitimate uses; they cost less than erecting a structure and do less harm to the land as they can be removed when no longer in use. Whether or not such structures are allowed on a cannabis premise ought to be left to local planning and building authorities.

- *Suggestion* – Strike subsection (f) in its entirety.

§15000.3(g)

This subsection would prohibit personal cannabis cultivation from taking place on a licensed premises, which is a problem in cases where an entire property comprises the licensed premises. This is not uncommon for cultivators in the North Coast, for example, who might also live in a house on the property and therefore should have the right to cultivate personal cannabis plants there. Rather than prohibiting personal cultivation on licensed premises outright, the DCC could require that any personal cultivation area be outside the designated licensed canopy area and be clearly designated on the premises diagram.

- *Suggestion* – Amend subsection (g) to specify that personal cultivation may take place on the licensed premises, but not in the designated canopy area, provided that the personal cultivation area is clearly designated on the premises diagram.

§15000.4

The restriction on subletting a licensed premises is not required by statute, and is not necessary if the DCC's ultimate goal is disclosure of Owners and Financial Interest Holders. Furthermore, some licensed premises comprise an entire property where the canopy area and other areas where licensed activity occurs only takes up a small portion, but the proposed regulation would prohibit a tenant from subleasing even the non-cannabis areas for non-cannabis uses. Instead of prohibiting subletting, such should be allowed at the DCC's discretion if the master lease and sublease agreements are both provided during the application process along with landowner authorization. This was CDFA's position prior to agency consolidation, and numerous cultivators (including one of our clients) relied on this interpretation and structured their operations accordingly. For disclosure purposes, the DCC could require that the sublessee be added as an Owner or Financial Interest Holder on the license.

- *Suggestion* – Add the following sentence: “Notwithstanding the foregoing, a licensee may sublet an area designated as the licensed premises if landowner authorization for the sublease is provided, along with a copy of the master lease and sublease agreements, and if the sublessee is disclosed as an Owner or Financial Interest Holder of the license.”

§15000.7(c)

The requirement for employee break rooms, changing areas and bathrooms to be separated from storage areas by solid walls that extend from the floor to the ceiling could be impractical in certain circumstances, such as in a cavernous warehouse that is being leased by the licensee. This would particularly impact smaller businesses who cannot afford the expense of obtaining building permits and hiring construction crews to make these structural modifications; furthermore in instances where the licensee is only renting the space, the landlord might not want to permanently modify the building. The other security requirements ought to be sufficient, and walls that extend partially to the ceiling should be allowed in circumstances where full walls would be impossible or impractical.

- *Suggestion* – Add the following sentence to subsection (c): “Notwithstanding the foregoing, walls that extend partially but not fully to the ceiling may be allowed on a case-by-case basis where full walls would be impractical.”

§15000.7(d)

Shipping containers should be allowed for regular storage (not just temporary storage) as long as this is allowed by the local jurisdiction.

- *Suggestion* – Strike subsection (d) in its entirety.

§§ 15000.8, 15000.9, 15000.10

These provisions deal with appellations of origin, which are regulated primarily by CDFA. The DCC needs to work together with CDFA on issues related to appellations.

- *Suggestion* – Ensure that the collaborates with CDFA in verifying proper usage of appellations by licensees.

§15001

Although provisional licensees must comply with all laws and regulations applicable to annual licensees, and although provisional licensees have in most cases invested just as much time and money into their businesses as annual licensees, the proposed regulations do not take this into account and once again would deny provisional licensees the right to a hearing to appeal any proposed license denial. To treat provisional and annual licensees differently in this way raises constitutional questions related to Equal Protection, Judicial Review, and Due Process.

- *Suggestion* – Amend subsection (e) to provide for hearing rights for provisional licensees.

#### §15002.1

For clarity, subsection (10) should be broken down into two subsections – one about licensees and one about non-cannabis vendors. The current subsection (11) would become subsection (12).

- *Suggestion* – Subsection (10) should be broken down into two subsections, one about licensees and one about non-cannabis vendors. The current subsection (11) would become subsection (12).

#### §15004.1

While we recognize and appreciate the importance of independent testing laboratories, some of the proposed regulations are unnecessarily restrictive.

- *Suggestion* – Strike subsection (c) in its entirety, and amend subsection (e) to allow testing laboratories to offer discounted services to equity businesses, medical cannabis licensees, and nonprofits. The DCC could choose to require any such discounts to be reported.

#### §15014

While other license types have scaled application and annual license fees based on a business' size, such is not the case for Nursery or Processor licenses. Adding a tiered application and annual license fee structure for these license types will benefit small businesses.

- *Suggestion* – Add tiered application and annual license fees for Nursery and Processor license types.

#### §15023

According to the DCC's current interpretation, which the proposed regulations do not appear to address, if someone holds a cannabis license as a sole proprietor and wishes to form a single-person entity for legal protection, they would have to apply for a new license and pay a new license fee to have the new entity hold the license, even if no new individuals will be added as "owners" on the license. The DCC should explicitly allow changes from sole proprietorships to single-person entities owned by the same owner as the sole proprietor without requiring a new license application and fee.

- *Suggestion* – Add the following subsection (c)(1)(C): A change in ownership does not occur when a licensee requests to change their entity type from a sole proprietor to a single-member entity owned by that sole proprietor.

- *Suggestion* – Establish a clear process for changes in ownership that is consistent across license types. So far, this has not been the case.

### §15025

The prohibition in subsection (a)(2) against cannabis being sold out of a drive-through window is neither required by statute nor supported by data. The COVID-19 pandemic provided an opportunity for some licensed retailers in California to conduct sales via drive-through window on a temporary emergency basis, demonstrating that this model could work. Other states allow drive-through cannabis retail sales. Especially in light of the DCC's proposal to allow curbside delivery on a permanent basis – which is riskier in terms of potential diversion of product as well as injury as staff members bring products out into a busy parking lot, compared to the customer being handed their product directly from the store window into their car – there is no valid argument for disallowing drive-through sales if such is allowed by local zoning and building codes. The carveout in subsection (e) is too narrow, with only one qualifying jurisdiction to our knowledge, and is not necessary if the overall ban on selling cannabis to customers in a motor vehicle is lifted with curbside delivery.

- *Suggestion* – Strike subsections (a)(2) and (e) in their entirety.
- *Suggestion* – Amend §15402, which also mentions drive-up/drive-through sales, accordingly.

### §15027

The DCC should not have to pre-approve every change that requires a “building permit, zoning change, or other approval from the applicable local jurisdiction.” Such changes should only need to be pre-approved by the DCC if they would modify the premises in other ways that are already covered by the other subsections.

Proposed subsection (f) states that cultivators will follow a different process than other licensees to request premises modification, namely online versus in writing; however, the DCC should be moving towards all requests being made online and also towards having a unified process for all licensee types.

Additionally, the DCC should provide an exemption to the 3-day notification period for changes that do not require prior approval for instances where notifying the DCC within 3 days would be impractical.

- *Suggestion* – Strike subsection (b)(4) in its entirety.
- *Suggestion* – Add the following sentence to subsection (h): “Notwithstanding the foregoing, this window can be extended on a case-by-case basis.”

- *Suggestion* – Allow all licensees to request premises modifications online.

#### §15040.2

“Business promotion” is not defined anywhere. Furthermore, there is no clear reason to prohibit raffles and sweepstakes, which are not addressed in MAUCRSA.

- *Suggestion* – Include a definition of “business promotion.”
- *Suggestion* – Strike subsection (b) in its entirety.

#### §15041.1

The proposed requirement that the license number be “permanently affixed” to the merchandise and be “clearly visible from the outside of the merchandise” is unnecessary and would pose an undue burden on businesses. Additionally, it is not wise from a marketing perspective as most consumers won’t want to wear something with a license number on it. Instead, the DCC could require that the license number be attached to a product until the point of sale, which would allow it to be printed on hang tags; or, if the DCC insists that the license number be permanently affixed to the merchandise, at least allow it to be located on the back or bottom of the merchandise.

- *Suggestion* – Update subsection (b) to only require license numbers to be affixed to branded merchandise until the point of sale, or to allow license numbers to be affixed to the inside or bottom of the branded merchandise.

#### 15041.4

Licensed cannabis event organizers should be able to receive trade samples, as this will help the licensed cannabis event organizer decide which licensees to invite to participate in their cannabis event(s). Additionally, licensed nurseries should be able to provide trade samples to their employees, who might have their own cultivation license (though that shouldn’t matter – any licensee authorized to designate and provide trade samples should be allowed to provide them to their employees).

- *Suggestion* – Strike “licensed cannabis event organizers” from subsection (a).
- *Suggestion* – Strike subsection (c) in its entirety.

#### 15041.7

This section would impose arbitrary limits on the amount of trade samples that licensees are authorized to provide. Instead, the limits should be based on a percentage of a licensee’s batch

size. Additionally, the phrase “cannabis products line” in (d) is not defined, and the language in that subsection is not clear.

- *Suggestion* – Amend this section to set the limit for all trade samples to be 5% of each batch produced.
- *Suggestion* – Provide a definition for “cannabis products line.” Clarify whether licensees can provide one product from a single product line, or an unlimited number of products from a single product line, to recipient employees each month.

#### §15306

Consumers and other members of the public ought to have access to the COAs for products they purchase. Such a requirement would benefit public health and the broader public interest.

- *Suggestion* – Include a requirement that copies of certificates of analysis for regulatory compliance testing be made available to the public, either physically or in electronic form.

#### §15411

The proposed amendments to this section would greatly increase the barriers to providing free cannabis to medical patients, imposing an undue burden on retailers and medical patients that is not supported by statute.

- *Suggestion* – Strike subsections (b)(2), (b)(3), and the second sentence of (b)(9) of the proposed amendments.

#### §17300

Subsection (l) states that “[a]ny cannabis good that the Department determines, on a case-by-case basis, is easily confused with commercially available foods that do not contain cannabis” cannot be sold as cannabis goods. This is overly-broad, and could result in the prohibition of most of the edible cannabis products currently on the market, which include but are not limited to cookies, gummies, lozenges, and sodas. As long as the packaging clearly indicates that an item is a cannabis product and its packaging does not appear visually similar to a commercially available food, the risk of confusion is low.

- *Suggestion* – Strike subsection (l) in its entirety.

#### §17808

Subsection (e) is confusing and unnecessary.

- *Suggestion* – Strike subsection (e) in its entirety.

### Disciplinary Guidelines

The list “factors to be considered in determining penalties” on pages 3-4 should be amended to include record clearance procedures created by Proposition 64, as well as allow evidence of reductions (i.e., a conviction being modified from a felony to a misdemeanor).

- *Suggestion* – Amend list item #11 so it reads: “If applicable, evidence of reduction and/or dismissal pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42; Health and Safety Code section 11361.8; or similar statute(s).”

### General Comments

#### Fallowing

We support allowing cultivators to fallow (i.e., not grow commercial cannabis) for one or more years without having to apply for a new license when they are ready to plant again. This will help small farmers survive through market fluctuations.

- *Suggestion* – Add language allowing cultivators to fallow their license for up to a set period of time with notification to the DCC.

#### Pathway to enter new genetics into METRC

We also support creation of a process that would allow new genetics to be entered into METRC. Genetic diversity is important for protection against disease, as well as for creation of new strains (and consumers are always looking for something new).

- *Suggestion* – Create a pathway to legally enter new genetics into METRC.

Respectfully,

Omar Figueroa, Esq.  
[omar@omarfigueroa.com](mailto:omar@omarfigueroa.com)

Lauren Mendelsohn, Esq.  
[lauren@omarfigueroa.com](mailto:lauren@omarfigueroa.com)

Andrew Kingsdale, Esq.  
[andrew@omarfigueroa.com](mailto:andrew@omarfigueroa.com)