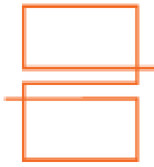


HUMBOLDT COUNTY
GROWERS ALLIANCE

September 20, 2021

The Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
staff@oal.ca.gov

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

On behalf of over 275 licensed cannabis businesses in Humboldt County, HCGA is pleased to offer formal comments and suggested revisions to strengthen and clarify the Department of Cannabis Control's (DCC) proposed emergency regulations released on September 8, 2021.

Our comments fall into three categories:

- Proposed regulatory changes that we request the Office of Administrative Law (OAL) prioritize for legal review for clarity and consistency with statute.

- A response to specific substantive issues raised in September 8, 2021 proposed emergency regulations, including trade samples, financial interest definitions, and premises change application fees. This section also includes comments and recommendations for the temporary fallowing of cultivation licenses, which our members have identified as a critical and urgent need ahead of the 2022 growing season.

- Recommendations for subsequent regulatory promulgation not specifically related to proposed changes in current rulemaking. HCGA originally provided these recommendations to regulators in early 2021, and they are resubmitted here as part of the official record as the DCC considers additional changes over the coming months.

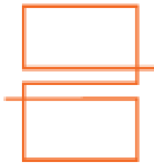
As the DCC and OAL review these comments, we want to emphasize the urgent and unprecedented crisis currently facing small cultivators in Humboldt County and elsewhere in California. Over the past several months, statewide overproduction has led to dramatic decreases in wholesale cannabis prices, in many cases decreasing prices well below the cost of production.

Absent action from the state, current market conditions are not sustainable for most Humboldt cultivators, many of whom have invested their life's savings in meeting state and local regulatory, operational, and environmental requirements. While we believe the medium-term

outlook for craft Humboldt cannabis is strong due to potential federal legalization, interstate commerce, appellations, and the maturation of a market for craft cannabis, we anticipate major challenges over the next two or three years.

We believe that building a legal cannabis market grounded in the legacy and equity operators that represent California's cannabis history and culture should be a priority not just for Humboldt businesses, but for all of California. We hope the DCC will take advantage of current and subsequent periods for regulatory promulgation to address the many challenges faced by small and independent businesses, and to help bring that vision to fruition.

Sincerely,
Ross Gordon
Policy Director
Humboldt County Growers Alliance



Response to Proposed Emergency Regulations: Comments for Legal Review

ISSUE 1. Regulations should clarify that trade samples may be transported via a distribution transport-only license to a retailer, consistent with SB 160 (2021).

In discussions with the legislature leading to the passage of SB 160, we believe the clear intent of the legislature was to enable cultivators and manufacturers to transport trade samples to retail via a distribution transport-only license. Given that obtaining a full distribution license is financially and operationally impractical for nearly all small producers, the ability for producers to represent their own products to retailers by utilizing a distribution transport-only license for transportation is critical for small and independent businesses to have equitable access to trade samples.

The legislature's intent was primarily expressed in 26153.1(g), which states that trade samples "may be transported between any two licensees by… a distribution transport-only licensee."

> (g) Cannabis or cannabis products designated as trade samples may be transported between any two licensees by an employee of a licensed distributor or microbusiness authorized to engage in distribution, or by a licensee authorized to engage in transportation of cannabis, including a distributor transport-only licensee as established by the department in regulation.

26153.1(g) is also the only point at which the distribution transport-only license is explicitly mentioned in the MAUCRSA and other cannabis statutes, further underlining the legislature's intent to make this license type available specifically for the purpose of trade samples.

We read two sections of the proposed emergency regulations as inconsistent with 26153.1(g).

- §15041.4 (a) and (c) explicitly state that a distribution transport-only license may not "provide," or be "provided with," trade samples. "Provide" is not clearly defined in regulation, and so it is unclear whether the prohibition on "providing" includes a prohibition on the transportation of trade samples.

  We request either that the prohibition on "providing" by a distribution transport-only licensee be removed, or that "provide" be further clarified to not include transportation.

- §15041.5(d) and §15315, read in conjunction, appear to prohibit a distribution transport-only licensee from transporting trade samples to retail. §15041.5(d) states that trade sample transportation must be conducted in accordance with DCC regulations, and §15315(a) states that a distribution transport-only licensee may not transport products to retail except for immature plants and seeds.

> §15041.5(d) Transportation of cannabis goods designated as trade samples must be conducted in accordance with the cannabis transportation requirements in the Act and the Department's regulations.
>
> §15315(a) A licensed distributor transport only licensee may transport cannabis and cannabis products between licensees; however, they shall not transport any cannabis or cannabis products except for immature cannabis plants and seeds to a licensed retailer or licensed microbusiness authorized to engage in retail sales.

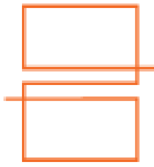
For consistency with 26153.1(g), we request that §15315 be amended to read:

> §15315(a) A licensed distributor transport only licensee may transport cannabis and cannabis products between licensees; however, they shall not transport any cannabis or cannabis products except for **trade samples,** immature cannabis plants and seeds to a licensed retailer or licensed microbusiness authorized to engage in retail sales.

Following the release of the proposed emergency cannabis regulations, we spoke with legislative representatives who confirmed that the intent of SB 160 was to enable trade samples to be transported to retail via a distribution transport-only licensee, and who shared concerns that proposed DCC regulations may not be consistent with this intent and with the plain reading of 26153.1(g).

ISSUE 2: The clear intent of the legislature in SB 160 was to prevent "stacking" of new provisional licenses over one acre after January 1, 2022. To implement this, the definition of "contiguous" in §15001.1(b)(4) should include premises that are next to each other, regardless of whether those premises are physically touching. This is the only interpretation which is consistent with the intent of SB 160 and the plain dictionary definition of "contiguous."

26050.2(a)(2) of SB 160 prohibits the "stacking" of new provisional cultivation licenses on contiguous premises for applications submitted after January 1, 2022.



> If an application for a cultivation license is submitted on or after January 1, 2022, the department shall not issue a provisional license pursuant to this section if issuing the provisional license would cause a licensee to hold multiple cultivation licenses on contiguous premises to exceed one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation.

Proposed regulation §15001.1(b)(4) proposes to further define "contiguous" premises as premises that are "connected, touching, or adjoining."

The further definition proposed in §15001.1(b)(4) suggests that this section may seek to limit "contiguity" only to those premises that are physically touching. If "contiguity" is interpreted in this way, it would enable a single cultivation licensee to stack an unlimited number of licenses on the same parcel with a very small physical gap between each license. This would be inconsistent with the clear intent of SB 160, which was to phase out the issuance of new provisional licenses to large cultivators prior to smaller cultivators and equity businesses.

The dictionary definition of "contiguous" does not equate to "touching," and also includes proximity or nearness. Dictionary.com defines contiguous as either *"touching; in contact,"* or alternately as *"in close proximity without actually touching; near.* Collins English Dictionary offers: *"things that are contiguous are next to each other or touch each other."* Vocabulary.com suggests *"Use the adjective contiguous when you want to describe one thing touching another thing, or next to it but not actually touching."*

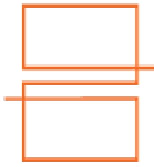
We request that §15001.1(b)(4) be amended to incorporate the dictionary definition of "contiguous":

> (4) Issuance of the license would not cause the commercial cannabis business to hold multiple cultivation licenses on contiguous~~, connecting~~ premises to exceed one acre of total canopy for outdoor cultivation, or 22,000 square feet for mixed-light or indoor cultivation, if the application is received on or after January 1, 2022. For the purposes of this section, premises will be considered contiguous if they are ~~connected, touching, or adjoining.~~ **either touching or in close proximity without touching.**

ISSUE 3. The definition of a "specialty cottage outdoor" license should be amended consistent with statute to allow up to 2,500 square feet of cultivation area.

Proposed subsection §16201(a)(1) reads:

> "Specialty Cottage Outdoor" is an outdoor cultivation site with up to 25 mature plants.

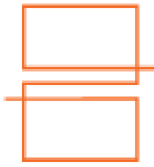


This definition does not conform to statute. Business and Professions Code 26061(a)(4) stipulates that:

> Type 1C, or "specialty cottage," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the department, of 2,500 square feet or less of total canopy size for mixed-light cultivation, 2,500 square feet or less of total canopy size for outdoor cultivation with the option to meet an alternative maximum threshold to be determined by the department of up to 25 mature plants for outdoor cultivation, or 500 square feet or less of total canopy size for indoor cultivation, on one premises."

We recommend that §16201(1) be amended to read:

> "Specialty Cottage Outdoor" is an outdoor cultivation site ~~with up to 25 mature plants.~~ with less than or equal to 2,500 square feet of total canopy, or up to 25 mature plants on noncontiguous plots.



Response to Proposed Emergency Regulations: Substantive Comments

ISSUE 1. We urgently request that the DCC establish a process to designate cultivation licenses as inactive ("fallowing") on a year-to-year basis, prior to the 2022 growing season.

In recent months, plummeting wholesale prices for cannabis have led to crisis conditions for small cannabis cultivators in Humboldt and elsewhere. In other sectors of agriculture, farmers commonly adjust their production in response to market conditions, cutting back during periods of oversupply ("fallowing") and expanding in periods of undersupply. Fallowing is also a common response to environmental conditions, such as the current California drought.

Under current state regulatory procedures, however, fallowing is not possible for cannabis farmers. Current procedures require cannabis farmers to either renew their state license each year and pay an annual licensing fee, or to forfeit their license and reapply from square one at a future date. The effect of this process is to effectively require farmers to grow their full square footage each year, or permanently forfeit their license – regardless of market or environmental conditions that would otherwise lead farmers to cut back.

We request that the DCC provide a mechanism that enables cannabis cultivators to fallow their crops year-to-year by choosing to mark one or more licenses as inactive prior to a growing season, without forfeiting their licenses for future years. This would parallel Humboldt County's existing fallowing program for cannabis cultivation outlined here:
https://humboldtgov.org/DocumentCenter/View/92481/Cannabis-Cultivation-Declaration-Form-2021?bidId=

If such a program is implemented, we request that it be implemented as far in advance as possible of the 2022 growing season to enable cultivators to adequately plan for the coming season.

ISSUE 2. The new premises change fee in §15014 should either be removed for nursery, cultivation, and processing licensees; or, annual licensing fees for these licenses should be proportionately reduced to compensate for new premises change fees.

Prior to the proposed emergency regulations, a $500 premises change fee was required for BCC licensees. However, no premises change fee was required for CDFA licensees. Proposed §15014

now requires all licensees, including cultivation licensees, to pay a $500 fee for any premises changes.

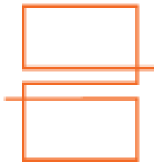
Our understanding is that the purpose of state fees is to cover the cost of regulation, and to our knowledge, the cost of regulation for cultivation has not changed. Presumably, the cost for staff time for a premises modification was previously factored into the annual licensing fees paid by CDFA licensees. For this reason, we request that cultivators continue to be exempt from premises change fees. If a premises change fee is deemed to be necessary across all license types, we request that DCC reduce annual cultivation licensing fees proportionately so that the overall fee structure is revenue neutral, rather than placing additional financial burden specifically on cultivators, but not other license types.

ISSUE 3. Restrictions on how many trade samples may be designated should be calculated proportionally per batch, rather than as a flat quantity.

An evaluation of proposed sample limits should be conducted to determine what is reasonable and feasible for accomplishing the needs of brands, cultivators, and distributors in the current market. Section §15041.7 prescribes universal quantities of trade sample limits: for example, a maximum of two pounds of flower per month may be designated as a trade sample per licensee, which is inadequate for many operators. We suggest that the DCC revise the trade sample limits so that they are relative to the batch size, with applicable capped limits (if needed). There should be no limitations as to how many of those trade samples can be designated in the production/harvest months, but rather only limitations based on each batch as well as related to how much should be given to each recipient licensee.

ISSUE 4: Trade sample regulations should protect privacy through the use of employee IDs as opposed to names.

We are concerned with the proposed requirements to include the employee name in the CCTT Metrc system when recording the final trade sample designation. Privacy is important, regardless of whether or not it is a licensed employee or public patron of a retail establishment. Under the point-of-sale systems, consumer names are protected. The same should apply to employees receiving samples. Instead of the employee name, we propose that the trade sample package adjustment note only include the unique employee identifier number. This would fulfill the intent of ensuring that the trade samples are not going to only one employee, while also protecting consumer privacy.



We suggest the following revisions to §15041.4(g):

> (g) Cannabis goods provided to employees as trade samples must be properly recorded in the track and trace system. The transaction shall be recorded as a package adjustment when provided to the employee. The adjustment note must include the name of the employee ID and the date and time the cannabis goods were provided to the employee.

ISSUE 5. Contract work is not a "financial interest," as proposed in §15004(a)(3).

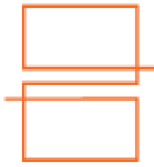
§15004(a)(3) is proposed to require contract cultivation, manufacturing, packaging, and labeling relationships to be disclosed as a financial interest holder on the application of the licensee performing the contract work. We support financial interest disclosures for true financial interest relationships. However, much of the contract work contemplated by §15004(a)(3) is performed as a normal business activity between two licensees whose financial interests are already disclosed to the state, and should not universally trigger additional financial interest disclosures and paperwork.

For example, a cultivation licensee might contract with a distribution licensee to package their product on a temporary or ongoing basis. This arrangement is a normal business practice between licensees, not a "financial interest" arrangement, and is already fully transparent and disclosed to the state through METRC. Additional paperwork and approvals should not be required for this type of arrangement.

ISSUE 6. New restrictions on branded merchandise are impractical and should be amended, with consideration given to existing merchandise that would be rendered non-compliant by new rules.

§15041.1.(b) proposes new restrictions and requirements on branded merchandise. If adopted, existing inventory of branded merchandise will be immediately noncompliant, causing significant financial harm to operators with inventory, and unnecessary additional requirements for operators wishing to create and sell branded merchandise.

The current overproduction and oversupply issue in California makes this a particularly critical tool for small businesses who need to leverage brand recognition in order to secure shelf space and penetrate consumer awareness.



HUMBOLDT COUNTY
GROWERS ALLIANCE

The previous regulatory fact sheet on this topic was more broad in its definition of what qualifies as Branded Merchandise. For consistency, we recommend the following clarifications to §15041.1:

> (a) "Branded merchandise" means non-consumable consumer goods utilized by a licensee for advertising and marketing purposes. Examples of branded merchandise include clothing, bags, pens, keychains, mugs, water bottles, lanyards, stickers, pins~~, and~~ posters, **vape pen chargers, and other cannabis accessories.** "Branded merchandise" does not include items containing cannabis or any items that are considered food as defined by Health and Safety Code section 109935.
>
> (b) Branded merchandise shall identify the licensee responsible for its content by displaying the licensee's license number ~~in a manner that is permanently affixed to~~ **on the exterior packaging or price tag label** of the merchandise, legible, and clearly visible from the outside of the merchandise.

Branded merchandise can include small items, such as vape pen chargers, key chains, and lighters. The proposed requirement to affix a 15 character license number to very small items defeats the purpose of the branded merchandise as a marketing tool. The size of the license number would clutter marketing designs and marketable content. At times, the license number would likely be shrunk down to a font size too small to meet any intent to market only legal cannabis goods.

ISSUE 7. Cultivation licensees should continue to be exempt from the prohibition on locating a licensed premises within a private residence.

15000.3(c) prohibits licensed premises from being located within a private residence. The provision is a mirror image to current section 5026 promulgated by BCC concerning the licenses it issued. The regulations that were promulgated by CDFA for the licenses it issued did not have this prohibition.

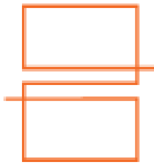
In the years since cannabis licensing began in California, the regulations applicable to cultivators were intentionally designed to recognize the existence of homestead locations for cannabis license holders. There would be insufficient time for existing cultivator licensees to come into compliance if this change were applicable during the emergency regulation adoption period. Furthermore, the immediate increase in the development of new structures would not be environmentally conscientious. Finally, the added cost of the resulting need to hire transportation and processing companies to transport and trim dried cannabis, would be an unnecessary

financial burden on homestead farmers who are currently experiencing a substantial increase in costs and a decrease in market prices.

Just as the Department has exempted cultivation licensees from certain other premises (permanently affixing all structures to the land) and security requirements (the need for security cameras), we request that cultivation licenses are exempted from this restriction.

ISSUE 8. We support several proposed amendments to regulation.

We support the proposed amendments to immature plant UID tagging (§15048.4) and aggregate surety bonds (§15002(c)(22)), and appreciate the DCC's attention to these issues.



Recommendations for Subsequent Regulatory Promulgation

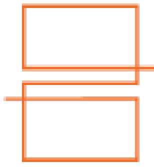
Early in 2021, HCGA submitted comprehensive recommendations on state regulatory reform to CDFA, BCC, and CDPH representatives, in anticipation of potential agency consolidation and regulatory promulgation. These recommendations are reprinted below, with minor modifications to account for changes made in the proposed emergency regulations. We request that the DCC consider these comments in subsequent regulatory promulgation periods.

Summary of Track and Trace Recommendations

1. Remove the requirement to tag and track each plant individually for wet weight and dry weight
2. Remove the requirement to record wet weight.
3. Extend the three day time limit to enter CCTT data.
4. Don't require physically attaching the tag to the base of each mature plant.
5. Pre-punch holes on CCTT.
6. Address technical issues, including rural connectivity issues.
7. Improve communication and mutual understanding between METRC staff and rural cultivators.
8. Modify CCTT to allow for variety packs.
9. Enable more streamlined correction of data entry errors.
10. Establish time limits in business days, rather than hours.

Summary of Cultivation Recommendations

1. Amend §8106 to enable single farmers with multiple cultivation licenses to share collective processing, immature plant, and storage space.
2. Amend §8300(c) and §8301 to allow cultivators to sell and share seeds and immature plants.
3. Introduce compositing regulations for testing.
4. Define cultivation occurring without the use of artificial light as "outdoor," and allow ML1 licenses to utilize outdoor methods.
5. Allow changes to the premises by notification, rather than pre-approval.
6. Remove the operational hours requirement in §8102(f) and provide 24-hour notice for inspections.
7. Increase coordination between CDFW, the Water Board, local government, and the DCC.



HUMBOLDT COUNTY
GROWERS ALLIANCE

Summary of Distribution Recommendations

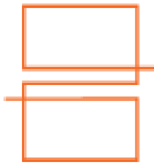
1. Allow pre-rolls to be COA tested after they're rolled, but before they're placed in final packaging.
2. Amend §5307.2 to allow distribution-to-distribution transfers of COA-tested bulk, unpackaged flower.
3. Amend §5052(1)(a) to allow rejection of partial shipments of cannabis goods.
4. Amend §5306(b) to allow electronic COAs. Clarify that shipping manifests may also be electronic.
5. Remove BCC §5311(f), requiring a separate locked box within a transportation vehicle.
6. Accept an APN for distribution transport-only licenses.

Summary of Testing Lab Recommendations

1. Establish specific action levels for category 1 pesticides.
2. Label a range of potency for THC and CBD content, rather than an exact number.

Summary of Retail Recommendations

1. Maintain the option to utilize curbside pick-up without requesting continuous re-approval.
2. Adopt regulations and programs that encourage sustainable packaging, including removing the requirement for cannabis flower to be packaged in CRP.



HUMBOLDT COUNTY
GROWERS ALLIANCE

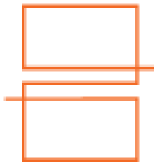
Track and Trace Recommendations

There are a range of METRC issues that have caused major operational challenges for businesses throughout the industry. Many of these challenges are a particular burden for small, rural cultivators who have few or no additional employees, and cannot hire separate staff for CCTT compliance tasks.

In February 2021, HCGA submitted the following list of METRC issues and potential solutions to state regulators as part of a state CCTT working group. We request that the DCC consider substantial changes to the METRC system based on industry input in subsequent regulatory comment period.

	ISSUE NAME	DESCRIPTION	ASK	BENEFITS
CCTT ISSUES LIST				
1	Tagging and tracking each plant individually for wet weight and dry weight	CCTT regulations require each mature plant to be individually tagged and tracked for both wet and dry weight after harvest. Following harvest, the plants are then "batched" and tracked collectively, rather than by plant. Tracking each individual plant requires tremendous effort on the part of the cultivator. For example, for a 21,000 square foot farm, we estimate it typically requires a crew of five people 3-4 days to tag all plants within a licensed cultivation area. This is only one aspect of a multi-step intensive process to tag and track data for each plant. For example: ● During harvest – which is often highly time-pressured and chaotic, particularly	Track mature plants by batches of 100, as is currently allowed for immature plants, rather than tagging each individual plant.	Removes barriers to compliance for small farms who do not employ separate compliance staff. Substantial reduction in plastic waste. Improved integrity of data collection. Improved compliance.

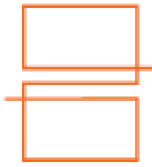
		during rains - wet weight must be recorded for each individual plant. ● Many farmers do not harvest their full plants at once, instead harvesting certain parts of each plant at certain times. For example, the top buds of the plant may finish before side branches, and would be harvested at different times. This complicates tracking the weight of harvest material by plant. ● The harvest material from each plant must be weighed again when dried. ● Data entry must be performed for all of the above functions. Due to connectivity and IT issues, particularly in rural areas, data entry is often slow or impossible. Tagging each plant also generates tremendous amounts of plastic waste. We estimate that a 10,000 square foot ML1 license utilizing light deprivation will generate about 30 pounds of plastic tag waste per year. Projected over Humboldt's 1,486 cultivation licenses, we estimate that approximately 14.5 tons of plastic tag waste are generated in Humboldt annually; projected over the state's 5,884 cultivation licenses, we estimate statewide plastic waste at 71 tons per year.		



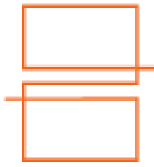
		After performing the aforementioned steps to track by plant, the CCTT system then consolidates the plants into separate batches and tracks by batch. Given that the ultimate end of the system is to track by batch, it is unclear to us why so many labor and plastic-intensive intermediate steps to track by plant are required.		
2	Requirement to record wet weight	Recording wet weight is labor-intensive and impractical during time-pressured harvests. The wet weight requirement has been justified by the notion that moisture loss is expected to total between 65%-85%, and that moisture loss outside this range may indicate diversion. We view this approach as flawed: most wet weight of cannabis is lost as moisture during drying and processing, and there is no consistent ratio between wet and dry weight. Climatic conditions, including rainfall, can heavily influence the ratio between wet and dry weight. Current regulations require this expensive and time-consuming work to be done during harvest, at the same time as farms have the least margin for error. We estimate that conducting wet weight for each individual plant approximately triples the time for harvest.	Track wet weight by batch, rather than by plant.	Removes barriers to compliance for small farms who do not employ separate compliance staff. Improved integrity of data collection. Improved compliance.
3	Three day time limit to enter CCTT	Once wet weight data is collected at time of harvest, CDFA 8405(c) requires that it must be uploaded to	Extend time to enter CCTT data to 14 days	Removes barriers to compliance for small and rural farms.

	data	CCTT within three days. We understand the rationale for time-sensitive upload requirements when cannabis is physically transferred to another licensee. However, when cannabis changes its state on the same premises (for example, when cannabis is harvested), we do not see the same urgency. Additionally, when the same plant is harvested over multiple days, the same plant is assumed to be in a separate "batch" if it is not recorded in three days.	for cultivation activities that occur within the same license on the same premises. Transactions that result in a change of custody would still need to be recorded within three business days.	Improved integrity of data collection. Improved compliance.
4	Physically attaching the tag to the base of each mature plant	Physically attaching a tag to the base of each plant, as required by CDFA 8403(b)(4), is not overly challenging in the context of outdoor cultivation. In greenhouse cultivation, however - where physical room to maneuver is limited, and plants are densely packed - attaching a tag to the base of a plant can be very challenging. For both outdoor and greenhouse plants, it is often difficult to keep the tag securely attached as the plant grows. Tags can easily become buried in the dirt if they're placed too low, sun-bleached if they're too high, or become insecure if the zip-tie is not large enough. Additionally, the required tamper-evident zip ties are non-recyclable, further adding to issues with plastic waste.	Allow tags to be physically attached somewhere in the vicinity of the plant, to the side of a greenhouse or other support structure, rather than on the base of the plant.	Improved compliance. Improved ease of inspection. Especially in greenhouse environments with densely-packed plants, inspecting each individual tag at the base of the plant can be difficult. Reduced plastic waste.

5	Holes on CCTT tags are not pre-punched	CCTT tags contain "chads" that must be manually punched out by the cultivator upon receipt of the tags. When there are many chads to punch out, this can add up to a labor-intensive task.	Pre-punch tags before distributing to licensees.	Removes barriers to compliance. Increases licensee resources to devote to more meaningful compliance tasks.
6	Technical issues, including rural connectivity issues	Farmers, particularly in more remote rural areas, frequently report either intermittent connectivity or total loss of connectivity to CCTT. Our members who operate manufacturing and distribution businesses in town also report frequent CCTT slowdowns and outages. In either case, connectivity issues cause significant frustration. Small farmers cannot hire separate CCTT staff and must set aside specific time in their day to upload CCTT data. As a result, when the interface is slow or not operational, it is not straightforward to simply upload data at a different time when other farm tasks need to be completed.	Review and address the technical performance of the METRC system Enable offline uploads in METRC, without the use of a third-party application	Removes barriers to compliance. Increases timely regulator access to information.

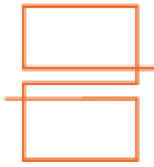


7	Lack of communication and mutual understanding between METRC staff and rural cultivators	As of November 24, 2020, according to CDFA data, 1,780 of California's 2,578 independent cannabis farms (61%) were based in the counties of Humboldt, Mendocino, or Trinity. The small and independent farmers in these remote areas of Northern California comprise, by far, the greatest concentration of legal cannabis cultivation in the world. At the same time, however, the practical aspects of cultivation in this region - carried out on a small scale, outdoors, often by owner-operators, in regions with limited internet connectivity - are not comparable to cannabis cultivation in any other region in the U.S. As a nationwide service provider, we are concerned that METRC staff have not had sufficient exposure to the unique conditions on the North Coast to develop a workable system for the unique conditions in our region. We encourage additional in-person interaction with METRC staff on the North Coast so that the unique conditions of our region can be better understood.	Facilitate a two-way, in-person, educational process between small and legacy farmers, including North Coast farmers, and track-and-trace management and staff.	Improved understanding between businesses and regulators, leading to improved compliance, data collection, and functioning of the CCTT system.



HUMBOLDT COUNTY
GROWERS ALLIANCE

8	Variety packs	By helping consumers to better understand the nuances of different cultivars and product types, variety packs can be an important marketing tool for businesses selling small-batch craft products. For example, a variety pack could contain a range of cannabis cultivars with different terpene and cannabinoid profiles, or a range of edible and topical products with a common theme. As far as we understand, variety packs are not prevented by any existing regulation, but METRC currently has limited functionality to enable multiple test results to track with a single package.	Develop functionality for tracking multiple test results on a single package.	Align METRC functionality with regulatory framework. Reduce barriers to compliance.
9	Correction of data entry errors	Across the supply chain, METRC makes it difficult to correct data entry errors. Correcting these errors often requires either manual workarounds, or direct communication with regulators. For example, from a cultivation perspective, harvest batch errors, such as inputting incorrect wet weight, can only be corrected within 48 hours. Outside of this window, the process to correct errors is extremely time-consuming. Our understanding is that other states do not maintain this 48 hour restriction.	Extend the correction window to three business days Streamline data entry corrections outside this window by enabling CCTT staff to waste out harvest batches to correct errors.	Improved data collection. Reduction of customer service calls and staff time.
10	Time limits measured in hours	Time limits on performing CCTT tasks are currently measured in hours. On weekends, and during holidays, these time limits can be impractical. Many farmers have	Establish time limits based on business days, rather than hours.	Removes barriers to compliance. Improved data collection.



		families and other obligations, and would appreciate the ability to take a weekend or holiday off without risking violation of state rules.		

Cultivation Recommendations

1. **Amend §8106 to enable single farmers with multiple cultivation licenses to share collective processing, immature plant, and storage space.**

Many small farms in Humboldt County have obtained multiple CDFA licenses in order to cultivate using distinct methods (e.g. 5,000 square feet of "outdoor" space, and 5,000 square feet of "mixed-light" space). However, these farmers are unable to utilize common ancillary spaces among these licenses due to Section 8106 of CDFA regulation, which disallows processing, packaging, immature plant, and harvest storage space from being shared among multiple cultivation licenses on the same parcel. This differs from CDFA's treatment of pesticide storage, compost, and waste areas, which are explicitly allowed to be shared among multiple licenses.

For small farmers with two or three licenses, the requirement to obtain separate accessory spaces ranges from inefficient to impossible. Although CDFA allows the physical subdivision of single ancillary spaces to serve multiple licenses – such as dividing a single drying shed into "side A" and "side B" for two different licenses – our members have not found this arrangement practical. Separating a single building into separate, discrete spaces, and ensuring that the proper license is connected to the activity in each space, is logistically difficult and practically not possible when full use of the space is needed during harvest.

Harvest is often chaotic and time-pressured, and farmers are frequently under tight timelines with little margin for error. It is not an exaggeration to say that a farmer's entire livelihood can be based on the ability to quickly and efficiently conduct processing activities during harvest, especially during wet conditions that threaten mold and mildew.

While large farms can obtain a fully separate processing or nursery license to use collectively for all cultivation licenses, small farmers do not have access to the same economies of scale. Revisiting Section 8106 would help to level the playing field and enable equal access to processing for small and large farms.

2. **Amend §8300(c) and §8301 to allow cultivators to sell and share seeds and immature plants.**

CDFA regulations §8300(c) and §8301 prohibit cultivators from selling seeds and immature plants unless they also hold a Type 4 Nursery license. Many cultivators hold specialty genetics that would be valuable to sell to other cultivators; many others find themselves with extra immature plants that they were unable to get in the ground during planting season, and others hold multiple cultivation licenses and seek flexibility to transfer plants between licensees. Perhaps most importantly, on a cultural level, sharing plants and seeds is deeply rooted in legacy cannabis cultivating communities. We see no reason why these transfers, appropriately logged in track-and-trace, should be prohibited.

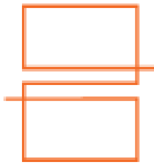
3. **Introduce compositing regulations for testing.**

In general, we are strongly supportive of existing state testing standards. However, certain aspects of the testing system can be streamlined to level the playing field for small farmers. Because the maximum batch size for testing under state regulation is fifty pounds, cultivators who grow multiple strains under fifty pounds - typical for small cultivators - are required to conduct multiple tests at higher cost. "Compositing" rules would allow farmers to test multiple strains collectively for contaminants up to the fifty-pound maximum batch size limit, and significantly decrease testing costs without affecting quality standards. These rules have already been adopted in Oregon and are explained in detail on pages 2-4 of the OLCC's "Sampling and Testing Metrc Guide."
(https://www.oregon.gov/olcc/marijuana/Documents/CTS/SamplingandTestingGuide.pdf).

4. **Define cultivation occurring without the use of artificial light as "outdoor," and allow ML1 licenses to utilize outdoor methods.**

Many small Humboldt cultivators have obtained multiple licenses to enable use of both light deprivation and full-term outdoor techniques. Requiring separate licenses for these production methods increases administrative burden, cost, and logistical complexity, and decreases flexibility which can be important in several different instances.

Regulations currently use the presence or absence of a structure to determine the boundary between ML1 and outdoor licenses, regardless of whether the licensee utilizes supplemental lighting. Regulations prohibit outdoor licenses from utilizing structures, while requiring that ML1 licenses utilize structures.



HUMBOLDT COUNTY
GROWERS ALLIANCE

Several recent developments have highlighted the importance of flexibility in the use of structures. As a result of increasingly severe fire seasons, more cultivators are hedging outdoor cultivation with the use of structures which can provide some protection against smoke and ash.

Additionally, SB 67, signed by Governor Newsom in September 2020, limits appellations to plants that are grown in the ground, without the use of artificial light or structures. Appellation development incentivizes producers that currently utilize light-deprivation techniques to plant a portion of their crop in the ground, without the use of structures. Under current rules, farmers holding an ML1 licenses would be prohibited from participating in appellations unless they also apply for an outdoor license. If outdoor production were allowed under an ML1 license type, cultivators would be able to produce a percentage of appellation cannabis, and a percentage of light-deprivation cannabis, without applying for multiple licenses.

Allowing ML1 licenses to produce without the use of a structure, and classifying all cultivation that does not use supplemental lighting as "outdoor," is in line with state law and would streamline the process for small cultivators.

5. **Amend §8205(b) to allow changes to the premises by notification, rather than pre-approval.**

Cultivators often have reason to change the layout of their premises in response to rapidly-changing farm or market conditions. Currently, any such changes require agency pre-approval and can consequently be delayed by weeks.

While we understand regulators' interest in an accurate premises diagram for purpose of inspections and accountability, we recommend that this process proceed by notification rather than pre-approval. This is comparable to how other regulations are currently enforced: for example, pre-approval is not required for packaging and labeling, which are far a more direct threat to public health and safety than minor changes to the organization of a farm's premises. Licensees can be held accountable for violations of regulation without requiring pre-approval for each independent decision.

6. **Remove the operational hours requirement in §8102(f) and provide 24-hour notice for inspections.**

Section 8102(f) of CDFA regulation currently requires licensees to specify daily operational hours, Monday through Friday, for a minimum of two hours per day. Licensees are then expected to be present on the premises during these hours to accommodate no-notice or short-notice inspections.

The notion of "operational hours" is at odds with the reality of owner-operators who run what are often seasonal farms in remote areas. In some cases, operators may live off farm - up to several hours away - and are not present on the farm each day. In other cases, operators may live on-farm, but may need to leave the farm - or even the county - for a range of reasons. Many farms are also seasonal and more-or-less inaccessible during winter months at high elevations, and many small farms are owner-operated and do not employ separate staff who can provide back-up.

For these reasons, "hours of operation" seems to us to be a concept developed with consumer-facing businesses or large industrial operations in mind rather than owner-operated small farms. Removing these requirements, and providing reasonable notice for inspections, would better recognize the dynamics of cultivation in rural areas.

7. **Increase coordination between CDFW, the Water Board, local government, and the DCC.**

One rationale for agency consolidation is to increase the efficiency of the cannabis regulatory system by consolidating three separate agencies into a single structure. From a cultivation perspective, however, farmers will still be required to deal with three agencies post-consolidation: the cannabis regulatory agency, CDFW, and the Water Board.

For example, reporting requirements for water usage are currently split between CDFW and the Water Board. For cultivators with a water right, there are additional reporting requirements with the Water Rights Division. Cultivators are responsible for reporting the same substantive information each of these agencies independently, with separate online portals and separate timelines. Several steps would help to improve this coordination, including:

- Combining CDFW and Water Board reporting into a single portal, ideally the same online portal used by the consolidated licensing agency.
- Coordinating project completion deadlines between CDFW and the Water Board.
- Implementing automated reminder emails for approaching deadlines.

- Eliminating other redundancies between the cannabis regulatory agency and CDFW/Water Board.

Distribution Recommendations

1. Allow pre-rolls to be COA tested after they're rolled, but before they're placed in final packaging.

Currently, pre-rolls must be in final packaging before they can be COA-tested. Enabling testing to occur prior to packaging would have several benefits:

- Consistent potency in branding – many brands prefer pre-rolls with either higher or lower THC content. Requiring packaging prior to testing makes it difficult to brand under a consistent potency.
- Variety packs – allowing packaging after COA testing would make it possible for several pre-rolls to be combined into a single variety pack for sale. Variety packs are popular with consumers and can help patients and adult-use consumers better understand which strains are most appropriate for them.
- Waste reduction – minimizing the amount of packaging prior to testing will prevent the generation of packaging waste from pre-rolls that ultimately fail testing.

Given that loose cannabis flower can currently be tested in bulk, we think it's sensible that similar policies would be applied to pre-rolls.

2. Amend §5307.2 to allow distribution-to-distribution transfers of COA-tested bulk, unpackaged flower.

Flower is often transferred through several different distributors before it reaches the end retailer. Normally, distributors would prefer a COA-test flower at the first distributor to mitigate the potential for a failed test further down the line; because bulk COA-tested flower cannot be transferred, however, distributors are incentivized to test as close to the last distributor as possible. Due to lack of visibility backwards into the supply chain, the end distributor may not know the original cultivator that produced the product, creating liability issues across the supply chain in the case of a failed test.

3. Amend §5052(1)(a) to allow rejection of partial shipments of cannabis goods.

Licensees may choose to reject partial shipments of cannabis goods for several reasons, some of which are acknowledged in §5052 itself. However, there are reasons for rejection not acknowledged in §5052, such as miscommunication about what items were requested or in what quantity. Additional flexibility for rejection of partial shipments would be helpful and could be noted in METRC, as is currently allowed for specified reasons.

4. §Amend 5306(b) to allow electronic COAs. Clarify that that shipping manifests may also be electronic.

BCC §5306(b) currently requires that "a *printed* copy of the certificate of analysis for regulatory compliance testing shall accompany the batch and be provided to the licensee receiving the cannabis goods."

Compared with paper COAs, electronic COAs are more efficient, less costly, and help to reduce paper waste. With METRC in effect, we do not see the rationale for requiring paper COAs.

Similarly, licensees have received inconsistent regulatory guidance on whether shipping manifests may be electronic. We recommend clarifying that electronic shipping manifests are acceptable.

5. Remove BCC §5311(f), requiring a separate locked box within a transportation vehicle.

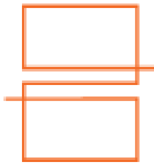
This requirement increases cost and complexity to licensees in multiple ways, without increasing the security of transportation vehicles.

- The additional box adds weight and takes away space, decreasing fuel efficiency and the quantity of cannabis goods that can be transported on each trip.
- Vehicles often need to be custom-designed to accommodate the requirements in §5311(f). Because vehicles are heavily used, they need to be replaced relatively frequently, further increasing costs.
- Licensees are strongly incentivized to adopt best practices for the security of cannabis goods and are better equipped to determine their own security needs.

6. Accept an APN for distribution transport-only licenses.

Currently, the BCC requires a street address in order to process license applications, including for distribution transport-only licenses. In rural areas, some licensees do not have registered

street addresses and have applied for CDFA licenses through an APN. While street addresses can be registered, the process can take over a year, substantially slowing the process of applying for transport licenses.



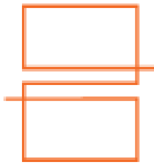
Testing Lab Recommendations

1. **Establish specific action levels for category 1 pesticides.**

Current regulations don't provide specific action levels for category 1 pesticides, but instead require a "non-detect" result. Without a specific quantitative threshold, non-detect levels vary based on the sensitivity of each labs' equipment. As a result, labs with less sensitive equipment are able to pass a greater proportion of product, creating an incentive for lab-shopping. Equalizing pesticide thresholds among all laboratory licensees will increase the integrity of the testing system.

2. **Label a range of potency for THC and CBD content, rather than an exact number.**

THC potency is currently the single greatest factor driving consumer purchasing decisions. However, THC measurements contain an inherent margin of error, and it's common for cultivators to receive different THC testing results from different laboratories. Small differences in THC content can produce large differences in marketability: in particular, whether cannabis tests above or below 20% THC can heavily affect its perceived quality. Accounting for this margin of error in labeling would provide consumers with more accurate testing results than labeling potency with a single percentage.



HUMBOLDT COUNTY
GROWERS ALLIANCE

Retail Recommendations

1. **Maintain the option to utilize curbside pick-up without requesting continuous re-approval.**

In response to the COVID pandemic, the BCC has authorized retailers to utilize curbside pick-up. Currently, retailers must specifically request, and periodically renew, this authorization. The flexibility to utilize curbside pick-up has been crucial over the course of the pandemic, and should be considered as a permanent policy without the need to continually request regulatory approval, particularly as the "end" of the pandemic continues to be elusive.

2. **Adopt regulations and programs that encourage sustainable packaging, including removing the requirement for cannabis flower to be packaged in CRP.**

Regulatory requirements, particularly requirements for CRP, currently incentivize cannabis businesses to utilize single-use disposable packaging. We strongly encourage consideration of programs, such as incentives for multiple-use packaging, to reduce the impact of plastic waste in the cannabis industry.

Additionally, while we support CRP for edible products, cannabis flower is not psychoactive unless intentionally smoked, and so is effectively "child-resistant" in itself without a need for additional packaging. For comparison, alcohol - which is far more accessible for small children - is not required to utilize CRP. Clones and seeds are already not required to utilize CRP under BCC §5413(d). A similar policy for flower would substantially decrease plastic waste in the industry without compromising consumer safety.