Recommendations for DCC Regulatory Promulgation

February 18th, 2022

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4. Clarify that an applicant/licensee may avail themselves of the provisions in 15010 (b)(2) at any time.

Summary of Trade Sample Recommendations

1. Implement a METRC process for trade samples.
2. Amend §15041.7 to allow licensees to provide up to one ounce of flower for up to six different strains (six ounces total) per month, per brand, per recipient licensee.
3. Amend §15041.7 to limit trade sample designations as a proportion of each batch, rather than a universal amount. We recommend up to 5% of a batch may be designated as trade samples.
4. Consider releasing a fact sheet to clarify the process for trade samples.

FULL RECOMMENDATIONS

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.

	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 during rains - wet weight must be recorded for each individual plant. ● Many farmers do not harvest their full plants at once,	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.

		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 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	Recording wet weight is labor-intensive and impractical	Track wet weight by	Removes barriers to compliance for small

	wet weight	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.	batch, rather than by plant.	farms who do not employ separate compliance staff. Improved integrity of data collection. Improved compliance.
3	Three day time limit to enter CCTT data	Once wet weight data is collected at time of harvest, CDFA 8405(c) requires that it must be uploaded to 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	Extend time to enter CCTT data to 14 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.	Removes barriers to compliance for small and rural farms. Improved integrity of data collection. Improved compliance.

		in three days.		
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	Review and address the technical performance of the METRC system Enable offline	Removes barriers to compliance. Increases timely regulator access to information.

		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.	uploads in METRC, without the use of a third-party application	
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.

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 families and other obligations, and would appreciate the ability to take a weekend or holiday off without	Establish time limits based on business days, rather than hours.	Removes barriers to compliance. Improved data collection.

		risking violation of state rules.		

Cultivation Recommendations

1. **Amend §15006(i) to enable single farmers with multiple cultivation licenses to share collective processing, immature plant, and storage space.**

Many small farms in California have obtained multiple cultivation 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 §15006(i), which disallows processing, packaging, immature plant, and harvest storage space from being shared among multiple cultivation licenses on the same parcel. This differs from the DCC'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 DCC 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 §15006 would help to level the playing field and enable equal access to processing for small and large farms.

2. **Amend §16300 to allow cultivators to transfer seeds, immature plants, and tissue cultures; and to allow limited no-source entry of genetic material by cultivators and nurseries.**

DCC regulation §16300 currently prohibits cultivators from transferring seeds and immature plants unless they also hold a Type 4 Nursery license. Many cultivators hold specialty genetics that they would like to share with other farmers. Others find themselves with extra immature plants that they were unable to get in the ground during planting season, while others hold multiple cultivation licenses and seek flexibility to transfer plants between licensees.

On a cultural level, sharing plants and seeds is deeply rooted in legacy cannabis cultivating communities. And practically speaking, the ability for seeds and clones to be openly shared among farmers is critical to maintaining and expanding genetic diversity within the cannabis supply chain, with impacts for consumers in general and medicinal patients in particular.

Last year, we shared the following recommendations with the DCC, which seek to provide licensees with flexibility to source and maintain their legacy genetics, while establishing clear lines between commercial nursery activities and activities intended to maintain and expand genetic diversity.

- **Transfer of Plants, Clones, and Tissue Culture Between Existing Licensees -** we recommend authorizing the non-sale transfer between cultivators and/or nurseries of up to 150 specimens of any combination of plants, clones and/or tissue culture samples to be received by any given business entity per year. These transfers would be logged in CCTT.

- **One-Time No Source Entry for New Cultivation and/or Nursery Licensees** - for new cultivation and nursery license holders, we recommend authorizing a one-time ability to enter up to 150 personal use cannabis plants, clones and/or distinct tissue culture samples into the CCTT system.

- **No-Source Entry of Personal Use Plants, Clones and/or Tissue Culture Specimens For Existing Licensees -** for cultivation and nursery licenses, we recommend authorizing the non-sale transfer of up to 6 personal use plants, clones and/or distinct tissue culture samples per day into CCTT, with an annual limit of 150 of any combination of specimens per business entity.

- **No-Source Entry of Seeds by New and Existing Licensees -** For cultivation and nursery license holders, we recommend exempting seeds from the no-source entry restrictions and allowing for an unlimited amount to be entered daily into CCTT. California laws do not place any limitation on the personal possession of seeds, making a commercial limitation on seeds unnecessary. Additionally, the United Nations 1961 Single Convention on Narcotic Drugs denotes that seeds are non-regulated entities:

1. Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:
b) "Cannabis" means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.

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. Allow ML1 licenses to utilize outdoor methods.

Many small 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.

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.

5. **Streamline the ability to switch cultivation license types, including changing production method under the same cultivation area, or decreasing cultivation area under the same production method.**

Many cultivators are interested in changing their cultivation production method from year-to-year: for example, from mixed-light 1 (light deprivation) to outdoor cultivation, or vice-versa. When this change of production method is occurring on the same premises, it should generally include minimal changes from the existing information the DCC already has on-file. We request that the DCC establish a process to make this change under a streamlined process, rather than requiring a fully new application. Similarly, we request that a reduction in cultivation size - such as from 10,000 square feet to 5,000 square feet - can be accomplished under a streamlined modification process when requested on the same premises as an existing license.

6. **Amend §15027 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.

7. **Remove the operational hours requirement in §15011(a)(1), provide 24-hour notice for inspections, and establish a notification process for seasonal inactivity.**

Section §15011(a)(1) of DCC 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 operate 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.

Removing these requirements, providing reasonable notice for inspections, and enabling cultivators to provide notice of seasonal inactivity, would better recognize the dynamics of cultivation in rural areas.

8. **Amend §15006(i)(5)(D) to clarify that processing spaces on a cultivation premises diagram may be specified as including one or more of the following activities: drying, curing, grading, trimming, rolling, storing, packaging, or labeling. Additionally, clarify that any of these activities may be specified as occurring off-site.**

The existing DCC definition of "processing" includes a number of distinct activities, including drying, curing, grading, trimming, rolling, storing, packaging, and labeling. Cultivators are likely to carry out some of these activities on-site, while contracting to carry out other activities off-site. However, existing language in §15006(i)(5)(D) suggests that processing areas on a premises should be specified collectively, which we have found can cause confusion for both applicants and DCC staff when only some processing activities are carried out on-site. Clarifying that cultivators may specify a combination of processing activities as occurring either on-site or off-site would help avoid this confusion in the application process.

9. **Amend §15000(yy) to clarify that "packaging" in regulation refers to final-form retail packaging, and not containers or wrappers used for wholesale transactions.**

In discussions between licensees and regulatory staff, we have sometimes encountered confusion on whether wholesale packaging on a farm - such as turkey bags or containers - requires specification on a premises diagram.

Although (yy) is currently worded to exclude "shipping containers or outer wrapping" from the definition of packaging, in practice we have seen confusion about what is included or excluded from the packaging definition. We recommend further clarifying that "packaging" in regulation does not refer to wholesale packaging via the following amendment:

> *"Package" does not include wholesale packaging, such as a shipping container or outer wrapping, used solely for the transport of cannabis or cannabis products in bulk quantity to a licensed premises.*

10. Clarify the definition of "contiguous" in §15001.1(b)(4) for purposes of restrictions on the stacking of provisional licenses over one acre.

The clear intent of the legislature in SB/AB 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/AB 160 and the plain dictionary definition of "contiguous."

26050.2(a)(2) of SB/AB 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.*

Currently, DCC §15001.1(b)(4) further defines "contiguous" premises as premises that are "connected, touching, or adjoining."

The further definition 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 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.***

11. Clarify a process by which individuals and licensees may possess personal use quantities of cannabis at licensed cannabis events which are displayed, but not sold to, consumers.

At this year's Emerald Cup, there was significant confusion over rules regarding personal use displays of product by farmers at cannabis events. Farmers participating in the Emerald Cup's Small Farmer Initiative sought to connect directly consumers at booths at where they displayed small, personal-use quantities of cannabis that were representative of commercially-available cannabis products. Farmers did not sell or give away this cannabis, but rather directed interested consumers to a partnered licensed retail outlets which were equipped to sell compliant product through the METRC system.

Despite the intent to comply with state cannabis laws and regulations, these dynamics triggered a DCC enforcement action which led to considerable confusion over the boundaries of compliance at these events. In the short term, we request that the DCC develop a fact sheet that clarifies that these activities are allowed so long as individuals do not possess product in excess of personal use restrictions, and do not sell product directly to consumers (except through a licensed, partnered, and disclosed retailer). In regulatory promulgation, we request that the DCC amend any regulations necessary to clarify that such display of personal use quantities of cannabis products are lawful, including any process necessary to notify the DCC that such an activity is taking place at a cannabis event.

Additionally, Origins Council intends to pursue statutory changes through the California legislature that would allow small producers to obtain temporary retail licenses to sell directly to consumers at licensed cannabis events. If such legislation passes, we hope to follow up with additional recommendations for regulatory promulgation to support these statutory changes.

12. Re-promulgate appellation regulations which were struck in the June 3, 2021 iteration of proposed appellation regulations.

The first several iterations of appellation regulations proposed by CDFA included regulations related to topics including labeling standards for appellation cannabis, enforcement provisions, and provisions related to the relationship between trademarks and appellation designations. On June 3, 2021, these regulations were struck from CDFA regulation due to impending agency consolidation, with the intent to later re-promulgate these regulations under the DCC.

As originally expressed in our comments to CDFA, we support the original wording of the regulations which were struck on June 3, many of which are essential to the integrity of the appellation program. We request that these regulations are re-promulgated in full in the next available DCC rulemaking period.

13. Prohibit the marketing, advertising, or labeling of a non-existent appellation.

Appellation regulations previously proposed for adoption under CDFA would have clearly restricted the fraudulent labeling of appellation cannabis in cases where cannabis is incorrectly claimed to be produced under a specific, approved appellation.

In addition to these restrictions, we request further clarity from the DCC that cannabis may not be marketed, advertised, or labeled as "appellation" cannabis for an appellation which does not exist. For example, we have become aware of some marketing materials that suggest certain cannabis is produced under a "Humboldt appellation," an appellation which does not exist and cannot exist under proposed appellation regulations.

We also anticipate that cannabis may be marketed generically as "appellation" cannabis even if it does not meet the requirements for any specific appellation approved by CDFA.

We recommend the addition of the following language in regulation to clarify that non-existent appellations may not be marketed:

> *Cannabis shall not be advertised, marketed, or labeled as containing any statement, design, device, or representation which tends to create the impression that the cannabis originated from an appellation of origin unless (1) the cannabis was produced in an appellation of origin established by the California Department of Food and Agriculture, (2) the cannabis was produced in the geographical area of the appellation of origin, and (3) the cannabis was produced according to all standard, practice, and cultivar requirements of the appellation of origin.*

14. Establish a fallowing program for cannabis cultivation.

In 2021, plummeting wholesale prices for cannabis have led to crisis conditions for small cannabis cultivators in the regions we represent. At the same time, drought and fire emergencies have created situations where farmers are either incentivized or required to cut back on their cultivation.

In other sectors of agriculture, farmers commonly adjust their production in response to market and environmental conditions, cutting back during periods of oversupply ("fallowing") and expanding in periods of undersupply. Under current state regulatory procedures, however, fallowing is currently 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.

For this reason, 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.

Position Paper: 2.10.22 OC_ 2022 Fallowing Policy for Cannabis Farms

15. Allow equity cultivators to apply for fee waivers for multiple cultivation licenses, so long as the cumulative size of the licenses qualifying for waivers are 10,000 square feet or less.

§ 15014.1(b) DCC proposed regulations limits fee waivers to one license per applicant.

> *"(b) Commercial cannabis businesses with at least one qualified equity applicant or licensee shall be eligible for one license fee waiver from the Department per 12-month licensure period…"*

Current cultivation regulations require cannabis farmers to hold multiple licenses if they wish to cultivate using different methods. For example, many farmers hold a 5,000 square foot "outdoor" license to cultivate cannabis outdoors without the use of a structure, and also a 5,000 square foot "mixed-light 1" license to cultivate using light deprivation in a hoophouse.

These farmers hold multiple licenses not to increase the total size of their operations, but rather to provide more variability in cultivation methods. We believe these farmers with multiple

smaller licenses should have the same opportunity to apply for fee waivers as farmers who hold a single larger license.

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 §15052(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 §15052 itself. However, there are reasons for rejection not acknowledged in §15052, 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.

3. **Amend §15306(b) to allow electronic COAs. Clarify that that shipping manifests may also be electronic.**

§15306(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.

4. **Remove §15311(g), requiring a separate locked box within a transportation vehicle, and allow cannabis goods to be transported directly in a locked portion of a vehicle such as a trunk.**

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 sometimes 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.

If this section is retained, we recommend exempting nursery licensees who are transporting immature plants under a self-distribution transport-only license, and/or exempting this requirement for the transportation of live plants, which will be suffocated by transportation in a locked box.

5. **Streamline access to storage services and cross-docking for distributors.**

Cross-docking is a common practice in many industries which enables distributors (e.g. from Northern California) to temporarily store product at a partner distribution company (e.g. in Southern California) in order to make last-mile deliveries in the following day or days. This practice is particularly important for rural licensees which are distant from major consumer markets. We understand the Cannabis Distribution Association (CDA) has requested additional clarity from the DCC that cross-docking is compliant under existing regulation, and agree with their request.

6. **Streamline access to distribution transport-only licenses.**

a. **<u>Allow transportation-only licenses to share a premises with another licensed activity, and remove the requirement for a transport-only premises to be "permanently affixed to the ground."</u>**

For small cultivators, transport-only licenses are necessary for a variety of critical tasks which are not practical or appropriate to handle through a third-party distributor, including:

- Transporting product (e.g. clones) between different licenses on the same site held by the same licensee.
- Transporting product to or from processing or distribution facility.
- Transporting trade samples for a small farmer's brand.

Many cultivators, however, have struggled with state land-use and building requirements for transport-only licenses. Since the transportation-only license has no land use impact and does not authorize cannabis storage, it should be clarified that the license does not have any state land use requirements other than the requirement to have a premises of some sort.

Requiring the designation of a separate structure for a transport-only license, particularly one which is required to be "permanently affixed to the ground" (§15000.3) imposes significant costs on businesses for no regulatory benefit, especially in light of building code issues in rural areas.

One simple solution for most licensees would be to allow a transport-only license to be issued at premises already permitted for another activity. If the DCC believes this solution is not possible under statute, an alternative would be to allow a small, separate premises to be designated for recordkeeping only, such as a locked drawer with a fixed location. This premises would not be subject to any additional state requirements, such as those mandating security procedures, separate entrances, or permanent affixation to the ground.

b. <u>Exempt distribution transport-only self-distribution licensees from general liability insurance requirements.</u>

§15308 currently requires all distributor licensees, regardless of type or size, to carry at least $2,000,000 in general liability insurance. We recommend that these insurance requirements are waived for distribution transport-only self-distribution licensees, who are generally carrying nominal amounts of product, and who are definitionally limited only to carrying their own products. Insurance requirements for these licensees are not necessary and constitute a significant barrier to licensure.

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.

3. **Allow appeal of a COA based on laboratory error.**

It is not uncommon for product batches to fail a test based on a laboratory error, rather than contamination of product batches. When such failures occur, they can have substantial financial impacts on a licensee. If a test failure can be demonstrated to be the result of a specific laboratory error, limiting re-testing should be allowed to ensure that test results are accurate.

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 §15413(d). A similar policy for flower would substantially decrease plastic waste in the industry without compromising consumer safety.

3. **Amend §15408(a) to remove the requirement that immature plants sold at retail must be less than 18 inches of height.**

In nearly all contexts, the DCC defines "immature plants" as plants which are not flowering. At retail, however, a different definition is applied that requires immature plants to be less than eighteen inches in height. Compliance with this requirement requires plants to be continuously cut when at retail when they exceed the height requirement. Given that immature plant growth can exceed an inch per day, this can be a significant task, and cutting plants in this fashion can also compromise the health of the plant.

Additionally, non-flowering seed plants frequently do not show their sex until they are larger that 18 inches. Producers are not inclined to purchase seed plants that have not yet sexed. Seed

plants are a critical component of any healthy and bio-diverse agricultural supply chain, but especially so for an annual plant within a burgeoning commercial agricultural industry.

We recommend amending the definition of "immature plants" at retail to be consistent with the definition in all other contexts

4. Amend regulations regarding branded merchandise.

Emergency regulation §15041.1.(b) establishes new restrictions and requirements on branded 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.

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.

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.

Alternatively, the DCC could remove the requirement that license number be visible on the "front" of branded merchandise, and instead require that it be placed at another location on the merchandise.

Finally, these new restrictions raise questions on how advertising restrictions apply to unlicensed brands, brands that are not yet licensed, or brands that are a collaboration between more than one licensee. We request additional clarification on these topics.

Recommendations for Manufacturing Regulations

1. **Amend §17304(c) and (d) to allow up to 8 grams of THC in topical cannabis products and cannabis concentrates.**

§17304(c) and (d) currently restrict the maximum concentration of THC in topical cannabis products and cannabis concentrates to 1,000 mg for adult-use cannabis and 2,000 mg for medicinal cannabis. This is considerably lower than the 8g (8,000mg) personal possession limit for concentrated cannabis in Proposition 64.

While we believe it is sensible to limit total THC concentration in edible products, we do not believe the same logic applies to concentrates and topical products, which are consumed/smoked incrementally and do not risk consumers inadvertently consuming a large dose.

Existing limits in §17304(c) and (d) significantly increase the amount of packaging needed for many concentrates - requiring concentrates to be packaged in 1,000mg rather than 8,000mg increments - resulting in a substantial increase in environmental impact and product costs.

For comparison, DCC regulations do not restrict the amount of cannabis flower in a single package, so long as the amount is under the one ounce possession limits in Proposition 64. The total amount of THC in an ounce of cannabis flower is comparable to the 8g possession limits for concentrate: for example, an ounce of cannabis flower testing at 25% THC contains 7,125mg THC, while 8g of cannabis concentrate testing at 75% THC would contain 6,000mg THC.

2. **Amend §17407(c) to allow more flexibility in labeling negligible amounts of CBD in inhalable cannabis concentrates.**

Section §17407(c) of existing regulations address labeling for cannabis goods that contain a negligible amount of THC or CBD. Specifically, this section allows cannabis goods to be labeled as containing “less than 2mg” THC or CBD rather than a precise number, if the cannabis goods contain less than 2mg THC/CBD.

This provision creates important flexibility for manufacturers seeking to label products before COA testing. When the amount of CBD or THC in a product is negligible, it is difficult to predict the concentration of cannabinoid within 10% of testing results, as required by §15307.1 of DCC regulations. If a manufacturer cannot predict cannabinoid content within the 10% margin of error - for example, they label a product at 1.5mg CBD and it actually contains 1.7mg CBD - it requires an onerous re-labeling of the manufactured product after testing, and doubles the amount of labeling work required.

§17407(c) as written, however, only addresses situations where there is a negligible amount of CBD in edible products. For cannabis concentrates, products may contain significantly more than 2mg CBD and still contain a negligible amount of CBD. For example, a concentrate with 1,000mg THC and 5mg CBD would still be required to label CBD content within 10% of the labeled value - meaning a test result of 6mg CBD would require relabeling.

To address these situations, we recommend allowing cannabis concentrates to be labeled as containing "less than 5% CBD" if they contain negligible amounts of CBD. By extending the concept of a "negligible amount of CBD" from edibles to also include concentrates, this language would be consistent with goals in existing regulation.

We recommend amending §17407(c) to read the following:

Cannabis goods labeled prior to testing must include the items specified in subsection (b), as appropriate to the product. For THC or CBD concentration that is less than two (2) milligrams per serving or per package, the THC or CBD concentration may be stated as "<2 mg per serving" or "<2 mg per package." **For a CBD concentration which is less than 1% in a cannabis concentrate which is an inhaled product, the CBD concentration may be stated as "<5% per package."**

Recommendations for Provisional Licensing

1. **Amend §15001.3 to establish due process rights for provisional license holders.**

Statute currently does not authorize denial of provisional licensee vested rights, or due process rights for renewals of provisional licenses. We urgently request that the Department formally acknowledge and support these constitutional rights.

Section 15001(b) asserts that there is no vested right in a provisional license renewal or issuance of an annual license, and section (e) asserts that no hearing or appeal procedures afforded annual license holders will be afforded to provisional license applicants or holders for the issuance or renewal of a provisional license.

CA B&P Code Section 26050.2 (m) states that the refusal to issue, revoke or suspend a provisional license does not allow the applicant or license holder right to an appeal. However, it is silent on the issue of hearing rights for renewals and does not refute any vested rights. Above all else, the statute does not prohibit due process rights from being applied to provisional license holders.

Despite these attempts to curtail the constitutional rights of this category of license holder, the proposed regulations require a provisional license holder to follow all rules and regulations "applicable to a licensee holding an annual license of the same type." Section 15001 (a). Likewise, the annual fees for a provisional license are the same as for the same category of annual license. The proposed regulations attempt to give all of the responsibilities but none of the benefits of an annual license to the provisional licensee.

Section 15001.3. proposes to ameliorate this by suggesting that the Department MAY issue a notice if it is considering suspension, revocation, or denial of renewal and by offering the provisional license holder an ability to provide a statement and request an informal meeting. However, the proposed regulations do not require the notice, do not provide substantive or procedural due process, and do not even require that the Department grant the request for the informal meeting. Many provisional license holders are likely to be subject to the full responsibilities, including making substantial economic investments to meet the specialized requirements of an annual license, and paying yearly license fees in the same amounts as an annual license for many years before being granted an annual license due to factors unrelated to their own diligence. Affording due process is the right thing to do and should be provided.

2. **Lengthen the amount of time allocated to provide information to the Department under the provisions of 15001(d)(2).**

Section 15001 (d) (2) potentially reduces the amount of time for a licensee to provide all information after a request from the Department, from 90 days to potentially only 30 days (See current section 8112) or possibly some other period of time stated by the Department in its request, which could be even less time.

Subsection (2) does provide a mechanism for what might be an extension if the licensee can demonstrate that the information cannot be provided within that greatly reduced time frame due

to circumstances beyond its control. The recognition that there may be circumstances beyond the licensee's control that impact the licensee's ability to provide all information requested in the limited timeframe is greatly appreciated. However, there remains substantial concern regarding the cutting, by two-thirds, the overall time allowed for responses. Additionally, by including language that the Department could specify some other response date, the concern becomes heightened that the Department could request a much shorter response date even for a matter that does not threaten health or safety, which could form the basis of a determination that the licensee was not actively and diligently pursuing the annual license.

3. **Amend 150001(d)(1) to authorize the Department to grant a deferral of fee payment date.**

In addition to the more substantive topics addressed above, please consider the following technical change to 150001(d)(1): Please add "unless a deferral is granted" to the requirement that fees be paid within 60 days. Whether pandemic related or other disaster relief or grant programs, there may be times where a deferral is granted and as such, it should not operate to degrade the licensee's good standing with respect to actively and diligently pursuing the requirements of annual licensure.

4. **Clarify that an applicant/licensee may avail themselves of the provisions in 15010 (b)(2) at any time.**

In addition to laying out the specific document type that the applicant must provide to demonstrate compliance with or an exemption from compliance with CEQA when such compliance or exemption has been determined by a local jurisdiction, this section appears to provide an alternative method of establishing compliance or applicability of an exemption directly to the Department on prescribed forms with the specific details enunciated as proposed in 15010 (b)(2).

The specification of the items to be evaluated by the Department and to be included in its forms is appreciated. However, the combination of lack of specificity regarding whether an applicant may avail itself of (b)(2) and submit CEQA documents (on the prescribed form) directly to the Department prior to having concluded any local CEQA process, together with the proposed changes made in Section 15001.2 related to provisional licensing with respect to benchmarks required local jurisdictions' CEQA progress and the removal of the state as the "lead agency", create confusion about whether (b)(1) is prerequisite to (b)(2) or not.

We request clarification from the Department that an applicant/licensee may avail itself of 15010 (b)(2) at any time.

It is fully understood that an applicant/licensee has an independent obligation to satisfy the local jurisdiction's local permitting and licensing requirements, including any CEQA requirements necessary for obtaining the local permit or license. However, the requirements for obtaining a state license are separate from the local requirements and the applicant/licensee should be allowed to submit evidence of CEQA compliance or exemption from it without having to be dependent on the local jurisdiction.

Recommendations for Trade Sample Regulations

1. **Implement a METRC process for trade samples.**

While emergency regulations released in September 2021 established a process for trade samples, our understanding is that this functionality is not yet enabled in METRC. As cultivators finish the fall harvest and have more time to market their products, we encourage the DCC to work with METRC to implement this process in a timely fashion.

2. **Amend §15041.7 to allow licensees to provide up to one ounce of flower for up to six different strains (six ounces total) per month, per brand, per recipient licensee.**

§15041.7 currently limits licensees to provide no more than five grams or six different strains to each recipient licensee per month. Conceptually, we support some limit on the number of trade samples which can be given to each recipient licensee, and appreciate the DCC's inclusion of limits in emergency regulations. Absent some form of limitation, we are concerned that well-financed companies will be able to offer large amounts of samples to employees as in-kind inducements to promote their specific product, rather than for their intended purpose in SB 160 to provide "targeted advertising to licensees about new or existing cannabis or cannabis products."

However, we view the current five gram limitation as too small for licensees to be able to provide adequate trade samples to dispensaries with multiple budtenders, and recommend allowing licensees to provide up to one ounce of six different strains per month to each recipient licensee. This would allow licensees to provide trade samples (e.g. one-eighth packages of flower) to up to eight different budtenders, rather than one budtender as allowed under current regulations. The alternative (under current regulations) of providing up to five one-gram trade samples is not practical for many small producers who do not currently have one-gram SKUs, and would need to undergo a costly process to develop them.

Many distributors also represent multiple brands, and would not be able to effectively represent their full brand portfolio under current regulations. To address this, we recommend placing limits on trade samples per brand, which would allow distributors to offer samples for an appropriate quantity of each independent brand that they carry.

Additionally, regardless of what limits the DCC ultimately decides on, we recommend that limits should be apportioned in one-eighth increments for flower. The existing five gram limitation is impractical for many licensees who primarily sell packaged eighths (or other increments of an

eighth, such as a quarter or half ounce). If flower limits are not increased to one ounce, we recommend that they are increased to either a quarter ounce or a half ounce.

3. **Amend §15041.7 to limit trade sample designations as a proportion of each batch, rather than a universal amount. We recommend up to 5% of a batch may be designated as trade samples.**

§15041.7 currently limits licensees to designate up to two pounds of cannabis flower per month as a trade sample. For distributors who move larger amounts of product, two pounds of trade samples per month is not adequate. Even for smaller producers, two pounds per month is potentially a limiting number, especially if the amount of flower that can be given to each recipient licensee is increased (as we recommend above).

We recommend that limitations on trade samples should be designated per batch, rather than by weight. A limitation of 5% of a total batch would allow a maximum-size fifty pound batch to designate up to 2.5 pounds of flower as trade samples. If the maximum trade sample receipt per licensee is increased to one ounce of flower, as we recommend, that would enable a small producer to give up to forty different one-ounce trade samples of a particular strain to up to forty different retailers - a scale that could justify a trip from Humboldt to Los Angeles to distribute trade samples.

4. **Consider releasing a fact sheet to clarify the process for trade samples.**

Following the implementation of DCC emergency regulations for trade samples, we have seen significant confusion among licensees on what is possible and not possible under emergency trade sample regulations. DCC fact sheets often provide helpful guidance to licensees on complex regulatory issues, and would be welcome in this case.