Origins Council Comments on Proposed DCC Regulations

April 19, 2022

DCC Legal Affairs Division
2920 Kilgore Road
Rancho Cordova, CA 95670
Sent via email to: publiccomment@cannabis.ca.gov

Dear DCC Legal Affairs Division,

On behalf of Origins Council (OC), representing nearly 900 small and independent cannabis businesses in partnership with regional trade associations in Trinity, Mendocino, Sonoma, Humboldt, Nevada County, and Big Sur, we appreciate the opportunity to offer comments on proposed DCC regulations released on March 4.

The current crisis affecting small and independent cannabis businesses in California is well-documented. For small and independent legacy farmers in particular, a combination of collapsing wholesale prices due to statewide oversupply, a lack of direct market access to differentiate a market for craft cannabis products, and significant overtaxation

and overregulation has contributed to a substantial exodus from the regulated market among small farmers in 2021 and 2022.

In 2018, one of our predecessor organizations, the California Growers Association, published a report titled "An Emerging Crisis: Barriers To Entry In California Cannabis." Published just one month after the initiation of the statewide regulatory framework, the report documented a variety of statutory, regulatory, and cultural barriers to success for small cannabis farmers seeking to make the transition from the legacy cannabis market into the newly-regulated framework.

The *Emerging Crisis* report expressed both optimism in the opportunity for California to lead the world in establishing a small farm-centered, craft cannabis industry and, at the same time, fear that this opportunity would quickly turn to crisis for California's legacy cultivating communities if barriers to entry and operation within the legal framework were not addressed.

The *Emerging Crisis* report specifically pushed back against the notion that consolidation would be an inevitable result of operation under a legal framework, noting that an attrition of small farms was as likely to result from regulatory overreach as market forces:

> *"We've all heard the talking points from businesspeople looking to make their way in cannabis: 'Consolidation is inevitable. You may as well just get out of the way. You won't be able to compete'... [yet] many farmers who are being pushed out of the market and off the land are responding to regulatory challenges, not folding because of operational inefficiencies. To the contrary, the disturbing trend is that many of the best growers – the most dedicated and passionate artisans who can add tremendous value to the state marketplace – are the ones being left behind."*

Today, many of the predictions and fears expressed in the *Emerging Crisis* report have been realized. The emerging crisis is now present, and the time for regulatory reforms to enable an equitable framework for small cannabis operators is now. Considering how infrequently DCC regulations are reconsidered in their entirety, we view the present rulemaking process as the opportunity for DCC to promulgate regulations that are consistent with a small, independent, craft cannabis industry.

With this in mind, rather than addressing our comments one by one, we have organized our comments conceptually under the header of the major challenges facing small and independent cannabis businesses. We encourage the DCC to consider these

comments in the spirit of how these interconnected challenges can be addressed for small and independent cannabis businesses as a whole, rather than separating out individual regulatory issues which are in fact closely intertwined.

The major issue areas we identify in the following comments include:

1. Working farms need flexibility to make premises and operational changes.
2. For craft production to be successful, small producers need access to opportunities for craft differentiation and specialty product batches.
3. Small farms lack access to vertical integration and product marketing opportunities.
4. Many regulations create substantial compliance burdens for owner-operated farms with no access to separate compliance staff.
5. Barriers to licensing, including provisional licensing.
6. Comments on other regulatory issues.
7. Clarifications and technical comments.

In addition to these subject areas, we have submitted an additional, separate comment regarding DCC regulations for the Cannabis Appellations Program (CAP). CAP regulations have been subject to a multi-year, intensive, and stakeholder-driven process for promulgation under the CDFA. When agency consolidation was effectuated under the DCC, many of these CDFA regulations were eliminated pending implementation by the DCC.

Unfortunately, proposed DCC regulations for the CAP do not incorporate much of the substantial stakeholder input which informed CDFA promulgation. For this reason, and given the importance and technical nature of the CAP program, we have submitted extensive comment on CAP regulations under a separate addendum:

ADDENDUM: OC Comments re DCC Proposed Designations of Origin Regulations

Our other comments on proposed DCC regulations begin below.

Issue Area 1: Working Farms Need Flexibility to Make Premises and Operational Changes

Since 2018, cultivators have faced significant compliance challenges in the ability to make premises and operational changes with the speed and flexibility needed to operate a working farm.

Many regulations proposed in the current comment period would compound these existing challenges due to the application of former BCC standards, applicable primarily to urban businesses in commercial zones, to working farms in rural areas.

Below, we identify a number of regulatory sections that fall under this category. In general, the following overarching considerations apply to each of these regulatory sections:

- Many newly-proposed regulations would pull the rug out from under farmers who have spent more than four years complying with the previous regulatory framework under CDFA. It is unreasonable to expect farmers to make additional, expensive changes after four+ years seeking to comply with local, CDFA, and CDFW regulation.
- Changes to DCC compliance have complex interrelationships with local regulations and CDFW regulation, which have slowly sought to accommodate each other over the previous four years.
- Premises and land use issues should primarily be deferred to local control and individual compliance agreements, rather than a one-size-fits-all solution from the DCC which may be incompatible with local conditions.

➢ §15000.3(c): Prohibition on Premises Inside a Residence

In December's emergency regulations, the DCC proposed a prohibition locating a premises inside a private residence on a cultivation site. This prohibition was removed after public comment, and we are disappointed to see it once again proposed here.

In 2021, after a tremendous amount of feedback from small farmers, the Humboldt County Planning Department issued a policy statement allowing on-farm trimming in a residence under certain conditions. This allowance is essential to enable farmers to retain value on-farm while remaining in compliance with building code standards that would otherwise render on-farm trimming inaccessible. Similar to the "estate bottling" paradigm in wine, retaining processing on farm is also critical to differentiating craft products and maintaining high quality standards. These quality standards are necessary

to differentiate craft cannabis in a commodity market that would otherwise strongly favor large, multi-acre farms.

Beyond on-farm trimming, the DCC's proposed prohibition would also have a range of additional negative effects. In response to this proposed change, one homestead farmer cultivating 5,000 square feet of outdoor space writes: *"this is a big issue for my personal farm plans. I want to build a yurt for the farm, which is one of the least expensive buildings/sq foot, for use as a multipurpose space. As a homestead farmer, everything on the farm needs to be multipurpose - we can't afford specialized building just for cannabis, which is just one part of what we do on a homestead."*

Another farmer writes: *"Our entire homestead is within the premises and is shared multi use. Everything is entwined from the water, power, buildings and land. It would be impossible to separate this. Bathrooms are shared."*

The proposed exemption in DCC regulations - *"A licensed premises shall not include the living areas of a private residence… unless such areas are required to be included in the licensed premises"* - does not provide meaningful relief, as most (possibly all) necessary uses of a residence are not required under local or state regulation.

OC Recommendation: Maintain the DCC's existing exemption for locating a premises inside a residence on a cultivation site.

- **15027: Pre-approval of Premises Changes**

In addition to changes to the location/dimensions of areas for licensed activities within the premises, which have always required DCC pre-approval before changes can be made, the DCC now proposes to require pre-approval for *"any increase or decrease in the capacity of the licensed premises"* and *"Any physical change that would require a building permit, zoning change, or other approval from the applicable local jurisdiction."*

In nearly all cases, requiring pre-approval for premises changes is out of step with the practical realities of running a working farm, particularly given that scientific amendments typically take months for the DCC to review and approve. Additionally, premises changes are often necessary in order to comply with CDFW or local regulatory directives which operate on their own independent timelines.

Allowing premises changes by notification rather than pre-approval is comparable to how other regulations are currently enforced: for example, pre-approval is not required

for packaging and labeling decisions, which are far a more direct threat to public health and safety than minor changes to the organization of a farm's premises.

If licensees notify the DCC of a change that violates regulations, or if a licensee fails to notify the DCC of a change, the licensee can be held accountable without requiring pre-approval for each independent decision. This approach would both reduce DCC workload, and encourage compliance by aligning DCC requirements with practical realities.

Our concerns are inclusive of all proposed premises changes that require pre-notification; however, the DCC's current proposal to expand the scope of changes that would require pre-notification is especially concerning. Requiring pre-notification for any building permit or approval by local government will place farmers in a difficult position of complying with conflicting timelines and directives from the DCC, local regulators, and CDFW, and is likely to be practically not possible in many cases. Local requirements are matters of local control and should not require the approval of the DCC.

OC Recommendation: Allow all premises changes by notification rather than pre-approval.

- **§15000.3(g): Prohibition on Personal Use Cultivation on a Premises**

After four years of allowing personal use cultivation on a licensed premises, we are disappointed to see this new prohibition proposed.

All Californians under Proposition 215 and Proposition 64, including licensed cannabis farmers, have a right to cultivate cannabis for personal use. Ironically, cannabis cultivated within the licensed mature canopy area cannot be consumed by the farmer for their own personal use. As a result, licensed farmers who wish to utilize their 215/64 rights must find another location to cultivate personal use plants.

Typically, a licensed premises is chosen because it is the most ecologically-sound and low-impact area to grow cannabis on a given site. For this reason, the licensed premises (outside of the cultivation area designated for cannabis that will enter the licensed market) is often the most appropriate area for personal-use cultivation.

Additionally, the requirement for a premises to be contiguous often means that large portions of a property are included within the licensed premises, making it difficult to demarcate an area outside the licensed premises for personal use cultivation.

The ISOR states that the rationale for the proposed prohibition is to "readily identify plants that are being cultivated," and "ensure that there is distinct separation of plants." These goals can be accomplished through simple notification and demarcation requirements, rather than a blanket prohibition.

OC Recommendation: Allow personal use cultivation on a licensed premises. Require areas used for personal use cultivation to be clearly marked on the premises diagram, and if necessary, on the cultivation site itself.

- **§15000.3(f): Structures Required to be "Permanently Affixed to the Ground" on a Cultivation Premises**

This requirement previously did not apply to cultivation premises, and is incompatible with many aspects of running a compliant farm. If enacted and enforced, this provision would potentially drive many farmers out of business.

Although there appears to be an attempt to further specify what is included in a "permanently affixed structure" by specifying that these structures *"include, but are not limited to, structures that rest on wheels, or any structure that can be readily moved,*" this language is not necessarily clarifying. Specifically, what is the standard by which the determination that a structure is "readily moveable" or not, and what other structures are included under the phrase "included, but not limited to?"

The following structures are commonly used in connection with cultivation and may be affected by this provision.

- Many farms utilize shipping containers for processing and storage. One farmer writes: *"This severely limits rural options for structures. I read this as disallowing shipping containers. This would put us out of business. We have nowhere else to dry and cure."*
- Hoop-house structures are, in many cases, not permanently affixed to the ground.
- Many cultivators are seeking to install water storage which would become significantly more difficult or expensive if required to be permanently affixed.
- Some farms are located in a floodplain and are required by local regulation to remove structures during the winter.
- In fire-prone areas, it's important to have flexibility to move product storage or water storage structures in response to fire danger.

- ➔ Many cultivators utilize removable lock boxes for agricultural chemical storage which would be rendered non-compliant by this provision.

Our specific concerns regarding shipping containers are not resolved by §15000.7(d), which states that *"licensees may use shipping containers as temporary storage space on their licensed premises when their storage needs exceed the capacity of their storage space."* The typical use of shipping containers includes drying and other processing uses and is not limited to storage. Additionally, the need for shipping containers is not necessarily "temporary."

We recommend that the DCC track modifications to a premises by requiring notification of changes, rather than by requiring structures to be permanently affixed to the ground.

OC Recommendation: Exempt cultivators from the requirement for structures to be permanently affixed to the ground. Additionally, exempt distribution transport-only licenses located on cultivation sites from this requirement, in the same way that these licenses are currently exempted from security requirements under 15315(g).

- ➢ **§15000.7(d): Shipping Containers**

As discussed in the above section, while we strongly support the ability for licensees to utilize shipping containers on their premises, this section appears to limit the use of shipping containers to *"temporary storage space on their licensed premises when their storage needs exceed the capacity of their storage space."* The typical use of shipping containers includes drying and other processing uses and is not limited to storage. Restriction of the use of shipping containers to temporary storage is a de-facto ban of shipping containers in most instances.

OC Recommendation: Allow the use of shipping containers on a premises for any compliant purpose.

- ➢ **§15000.3 (h): Six Months to Comply With Requirements**

As stated above, we strongly object to the proposed sections §15000.3(c) and (f). If these provisions are enacted, however, the six-month timeframe to implement any changes pursuant to those new requirements is unreasonable. In addition to cost and time constraints, often local building permits take longer to obtain and issue and the assistance of any professionals needed to assist often have a long lead-time. Transitions of any kind should be ample to promote successful compliance, but if

physical changes and financial investments in new infrastructure are being required, a much longer lead-time is necessary.

OC Recommendation: Remove the requirements of §15000.3(c) and (f), and in the alternative, and to the extent any physical changes are required of licensees, establish a 2-3 year phase in approach.

- **§15042: Premises Access Requirements**

This section, for the first time, would prohibit access to the premises by any person other than "individuals conducting business that requires access to the licensed premises" and require such individuals to be escorted by an employee at all times.

This section would also remove the specific reference to “limited access areas,” and would instead apply access requirements to the entirety of a license premises - a much broader scope than previous definitions.

As discussed previously, cultivation premises often span large portions of properties which often also contain residences and areas used in connection with residential activities. §15042 as written would apply to family members, friends, contractors, and any other visitor for any reason, rendering this section essentially impossible to comply with for homestead farmers. This section would also eliminate the ability for farmers to facilitate on-farm tourism.

The ISOR suggests that the reason for this new requirement is consistency with regulations on other licensees, but does not establish any concrete concern with the prior exemption for cultivators from this provision. Cultivators have existing incentives to protect their premises from theft, and additional state-imposed access restrictions will not add any material security to a cultivation premises.

OC Recommendation: Continue to exempt cultivators from premises access requirements. If cultivators are not fully exempted, restrictions should be narrowed only to regions of the premises where cannabis is stored, consistent with prior wording regarding “limited-access” areas.

- **§16306: Generators**

As written, §16306 would prohibit the use of a generator under 50hp for more than 80 hours per year for non-emergency purposes starting in 2023. If implemented in its

current form, this regulation will cause tremendous harm specifically to small and legacy cultivators.

Many off-grid small farmers are currently seeking to transition from generator usage to PG&E or solar power. In many cases, this transition is embedded in local compliance agreements as a condition of approval to be implemented over time. However, many farmers will require several additional years to complete this transition, due to either delays in PG&E's capacity to provide service, or due to a reliance on forthcoming grant funding (such as equity funds) to be able to install on-farm solar.

The balance between facilitating a transition away from generators, while doing do so under a timeline that is practically achievable for farmers, is best managed under local compliance agreements that can evaluate each case independently.

While we understand that §16306 was originally established in CDFA regulation in 2018, and is not a new regulation, it is urgent that this rule be re-evaluated in light of factors on the ground which have delayed the ability for farmers to transition towards grid or solar power. Specifically, we encourage the DCC to reach out to PG&E to confirm the inability to transition to grid power for many cultivators by the current 2023 deadline.

California also has existing statewide rules that apply to generator usage by all individuals and businesses. AB 1346, passed in 2021, would phase out the sale of gas-powered generators beginning in 2028. This timeline was developed specifically to attempt to strike a balance between a transition away from generators, and the practical constraints on that transition for many individuals and businesses. According to Asm. Mark Berman, the author of AB 1346 (https://www.kcra.com/article/sale-portable-gas-powered-generators-banned-2028-new-california-law/37954497#):

"AB 1346 does not affect stationary generators, and does not phase out the sale of gas-powered small portable generators until 2028… This extension is designed to provide adequate time for manufacturers to develop cost-effective zero-emission portable generators that meet consumer needs during outages. Regulators must first determine technical feasibility and availability of zero-emission portable generators, and can adjust timelines for implementation based on those factors."

In this context, we do not understand why cannabis cultivators are subject to special generator restrictions which are not applicable to all other California businesses.

It should be noted that the primary purpose of generators in small legacy producing regions is not to power artificial lighting for cultivation of licensed canopy, but rather to provide general access to power for those who live off-grid, and to provide temporary power for ancillary activities such as drying. In this context, we strongly oppose seeking to regulate generator usage through what would amount to an outright prohibition (i.e. a cap at 80 hours per year), rather than a more nuanced approach.

OC Recommendation: Strike §16306(c), and defer regulation of generators under 50hp to local compliance agreements and general state laws applicable to all activities in California. If §16306(c) is retained, its implementation should be delayed until at least 2025, and its technical details should be reworked to reflect a balance between emissions reduction and the practical necessity of transition.

- **§15006(h): Shared Processing, Immature Plant, and Storage Space**

Small farms seeking to utilize multiple cultivation methods - a common and important practice to maintain competitiveness in the market - are required to obtain multiple licenses under existing regulations (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(h), 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 – farmers 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.

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.

OC Recommendation: Amend §15006(h) to enable single farmers with multiple cultivation licenses to share collective processing, immature plant, and storage space.

- **§15000: Outdoor Cultivation by Mixed-Light Licensees**

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/light deprivation techniques. Regulations prohibit outdoor licenses from utilizing structures in the mature plant canopy area, while requiring that ML1 licenses utilize structures in these areas.

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 license 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.

Finally, under current rules for no-source entry, a cultivator who switches license types from outdoor to ML 1 (or vice versa) is prohibited from carrying nursery stock through to the new license. Establishing additional flexibility between ML 1 and outdoor licenses would help to avoid these outcomes.

OC Recommendation: Allow mixed-light 1 cultivators to utilize outdoor cultivation methods.

- **§15020(c): Cultivation License Fallowing**

In 2021, plummeting wholesale prices for cannabis have led to crisis conditions for small cannabis cultivators. 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.

OC Recommendation: As we enter another year of severe drought, we urgently 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. Origins Council has provided the DCC with detailed recommendations for a fallowing program in previous communications, e.g. Position Paper: 2.10.22 OC_ 2022 Fallowing Policy for Cannabis Farms

- **Flexibility in Production Methods**

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.

OC Recommendation: 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.

- **§15011(a)(1): Operational Hours**

We support the revision to this section to allow operational hours to be provided for "each day of the week the commercial cannabis business will have staff on the licensed premises," rather than requiring operational hours to be provided on each weekday. This flexibility is consistent with the practical realities associated with small homestead farms and seasonal operators.

OC Recommendation: Origins Council supports the proposed changes.

- **§15052. Returns**

We strongly support the allowance for product returns to all licensees. Historically, there has been a lack of clarity regarding whether a product may be returned from a distributor to a cultivator, even in cases where the cultivator continues to hold title to the product and the product has not yet been COA-tested.

OC Recommendation: Origins Council supports the proposed changes, with several amendments.

First, §15052(a) should be amended to remove the requirement for product which is in its final packaged form to be re-tested following a return, since these products are unaltered and have already passed through the COA-testing and quality assurance process with their mandated tamper evident seals intact.

Second, the "consent" requirements in 15052(c) may create complications in the (common) case where a cultivator continues to hold title to a product which is in the physical possession of a distributor, or in cases where product held by a retailer is returned to the physical possession of a distributor. In these cases, the presumption should be that the cultivator or distributor is entitled to retake possession of the product that they hold title to. We recommend the addition of the following language:

> "Cannabis and cannabis products shall not be transported pursuant to a return unless the licensee returning the cannabis and cannabis products and the licensee receiving the cannabis and cannabis products have both consented to the return. Such consent shall not be unreasonably withheld by either party."

Issue Area 2: Craft Differentiation and Specialty Batches

Since well before the implementation of Proposition 64, small cultivators have understood that the legalization and commercialization of cannabis was likely to ultimately result in the collapse of the "bulk" commodity cannabis market. As a result,

small farmers and their associations have historically prioritized policy which provides opportunity for small producers to market craft products which are differentiated by origin, quality, and genetic diversity.

Currently, substantial statewide overproduction of cannabis has resulted in a collapse of the bulk market, with wholesale prices falling to $300 or less. The collapse of the bulk market further emphasizes the need for small cultivators to differentiate small-batch craft products to survive within a competitive marketplace. The following regulatory recommendations are intended to address barriers to craft differentiation within existing and proposed DCC regulations.

- **Compositing Regulations for Testing**

Many small farmers cultivate small batches of specialty cannabis whose net size is well under the fifty pound batch size limit for testing. In these cases, the cost of a COA for a small test batch, which does not benefit from the economies of scale associated with a larger test batch, can often eliminate any profit that would be realized by selling the product.

“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). Each strain would still need to be tested independently for potency.

A compositing program would be consistent with changes to state law. SB 160, passed in 2021 to effectuate agency consolidation, changed the definition of “harvest batch” in Business and Professions Code 26001(d) to remove the requirement that a harvest batch must be of a “uniform strain,” suggesting that a single “harvest batch” may be comprised of multiple strains.

OC Recommendation: Consistent with SB 160, adopt compositing regulations to clarify that a single harvest batch may be comprised of multiple strains, and may be tested collectively for pesticides, heavy metals, and other contaminants, but must be tested independently for potency.

- **§16300(c): Genetic Transfers and No-Source Entry**

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. 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. Regulatory restrictions on the ability to share genetics incentivize a commoditized market with limited differentiation, will undermine the rollout of the cannabis appellations program, and will prevent farmers from preserving genetics through crop failure, fire damage, or change in license or ownership type.

Additionally, since the closure of no-source entry for new genetics last year, there is now no opportunity for genetics which are not currently part of the licensed market to be entered into METRC. Over time, such a closed loop will cause a tremendous erosion of genetic diversity within the licensed market.

Recent federal rulings should further push the DCC to adopt a more liberal view towards cannabis genetics. In early April, the Drug Enforcement Administration (DEA) clarified that cannabis seeds and genetics with less than 0.3% THC are considered “hemp” and are not controlled substances under federal law. Under these circumstances, and given the DCC’s current directive to formulate rules for the entry of hemp products into the licensed cannabis market, the current no tolerance approach to genetic transfers should be reconsidered.

OC Recommendations: 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.*

➢ **<u>§16308(b): Nursery Trade Samples</u>**

Proposed DCC regulations would establish a new process for nursery trade samples to be transferred to cultivators. Under this proposed process, cultivators would be required to update their cultivation plan to reflect areas of the premises used for trade samples, requiring DCC pre-approval, and these trade samples would count towards the cultivator's licensed cultivation area.

While we have no concern with this proposed process, we do not see it as resolving any of the problems associated with current restrictions on genetic transfers and no-source entry. Nurseries already have the ability to transport seeds and immature plants to cultivators, and cultivators already have the ability to cultivate this genetic stock to maturity.

The proposed nursery trade sample process would replicate this already-existing pathway, but add additional restrictions that require amendments to the cultivation plan, as well as restrictions on the ability to bring cultivated trade samples to market.

OC Recommendation: The proposed nursery trade sample process does not resolve issues related to transfer of genetic material, and should not be used as an alternative to directly addressing these concerns.

- **§15041: Cultivator Trade Samples**

Last year, Origins Council and our partner organizations worked to establish a legal pathway for trade samples in AB 141, which was ultimately signed by the governor on July 12, 2021. Most crucially, our advocacy on AB 141 focused on ensuring that small cultivators and manufacturers would be able to effectively utilize trade samples to represent their own products to potential distribution and retail buyers. The ability for craft producers to represent their own products is central to a trade samples framework that can provide marketing opportunities for craft brands.

The ability for small producers in rural areas to access this pathway depends on two subsections in the enabling statute: Business and Professions Code 26153.1(c), which enables trade samples to be returned to cultivators and manufacturers after testing; and Business and Professions Code 26153.1(g), which enables trade samples to be transported to retail via a distribution transport-only license.

While these provisions provide a statutory basis for trade samples, further regulatory promulgation, and cooperation from METRC, is necessary to effectively implement the statutory intent of AB 141.

OC Recommendations: The following four changes to the trade sample process are critical to establish a process which is attainable for small producers.

- *Implement a METRC process for trade samples, including the ability to return trade samples to cultivators and manufacturers after testing, as required by Business and Professions Code 26153.1(c).*

While emergency regulations released in September 2021 established a formal process for trade samples, our understanding is that METRC has not been fully reconciled to accommodate these changes. Specifically, we understand that there are challenges in returning trade samples to producers in METRC following quality assurance and testing.

Allowing these transfers is required under Business and Professions Code 26153.1(c), and should be enabled in METRC to comply with state law.

- *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.

Similar to the "per brand" approach, newly-proposed §15041.7(d) would introduce the similar idea of a "product line." However, a "product line" is not clearly defined in the proposed regulations - for example, does a "single product line" include multiple strains sold under the same brand? Additionally, the limitation to a single product line under §15041.7(d) is far too small, particularly when the purpose of trade samples is largely to expose retail employees to a diversity of (craft) product types.

The ISOR suggests that the reason for the proposed limitations in §15041.7 is to prevent diversion. Rather than placing limits on "product lines" per recipient licensee, we believe this can be addressed by simply placing personal possession limits per employee that mirror overall personal possession limits. Individuals in California have a legal right to possess up to an ounce of cannabis flower and eight grams of cannabis concentrate. As long as employees are subject to these same possession limits, any risk of diversion from trade samples is equivalent to the inherent risk of diversion under current California law.

Finally, 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.

- *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 the North Coast to Los Angeles to distribute trade samples.

- *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.

- **§15603.1.Non-Retailer Participation in Cannabis Events**

We strongly support the clarification and allowance for non-retailer participation in cannabis events.

OC Recommendation: Support most proposed changes. However, we do not support the proposal to restrict possession of cannabis seeds to a quantity of 21 or fewer. Seeds are exempted from personal possession limits under California state law, and the DEA recently ruled that cannabis seeds under 0.3% are not a controlled substance. For these reasons, we believe possession of seeds should not be limited in this or other contexts.

- **DCC Reference Laboratory and Potency Validation**

Several investigative reports have documented concerns with "lab shopping" and inaccurate laboratory results that significantly inflate THC values (see, for example: https://fivethirtyeight.com/features/americas-pot-labs-have-a-thc-problem/). Potency inflation undermines consumer confidence in test results and undermines the ability for small farms to differentiate based on accurate lab results.

OC Recommendation: We encourage the DCC to utilize the state's reference laboratory to conduct off-shelf validation of laboratory testing results for cannabis and cannabis products, with a particular focus on flower strains labeled at greater than 30% THC, to determine whether these products are accurately labeled.

Issue Area 3: Access to On-Farm Vertical Integration

Discussions regarding on-farm vertical integration for small cannabis cultivators have a long history. In the run-up to Proposition 64, significant concerns were raised on how the establishment of a regulated cannabis framework would affect small-scale legacy cannabis producers. In response, the "microbusiness" license type - alongside restrictions on large-scale cultivation licenses and cannabis appellations - were offered as solutions within the Proposition 64 framework. Specifically, the microbusiness license was established within Proposition 64 in an attempt to establish exclusive access to on-farm vertical interaction specifically for small producers. In an August 2016 article in the Lost Coast Outpost, the author encapsulated the issue and quoted knowledgeable sources regarding this intent:

(https://lostcoastoutpost.com/2016/aug/9/high-powered-sacramento-lobbyist-dropped-tell-us-a/)

> *…there are several provisions [in Proposition 64) that specifically speak to concerns expressed locally. For example, the measure would prevent large-scale, corporate production and sales for five years in order to deter monopolies and encourage the growth of small-timers. And with licenses granted based on supply-and-demand, large-scale corporate grows may never be approved, Kinney said. Plus the measure establishes a wine-industry-style appellation designation specifically for the Emerald Triangle counties of Humboldt, Mendocino and Trinity.*
>
> *"Some people involved in drafting our measure had real understanding of the culture and history of this [industry] and wanted to protect that," Kinney said, "and [they] envisioned the Emerald Triangle counties being what Napa and Sonoma are to wine today."*
>
> *A wide variety of different licenses would be available under Prop. 64, including one for "micro-businesses," which Kinney said would be akin to craft breweries. These small-scale operators would be the only ones allowed to "vertically integrate," meaning own the whole chain of operations, from cultivation to sales.*

Since Proposition 64's implementation, however, the microbusiness license has failed to achieve its intended purposes. Overwhelmingly, microbusiness licenses have been utilized to facilitate vertical integration by medium and large-scale businesses in urban areas, while only a handful of microbusiness licenses have been granted to small farmers based in rural areas.

While we support the ability for larger urban businesses to access licensing which streamlines their compliance, the fact remains that the stated purpose of the microbusiness license - to facilitate on-farm vertical integration by small cannabis producers - has not been realized.

Proposed DCC regulations contain several reforms which would facilitate access to vertical integration for small cannabis farmers, if combined with further measures to address remaining barriers to entry. In particular, the ability for a distribution transport-only license to qualify for microbusiness license opens the opportunity to obtain a microbusiness license with the qualifying activities of either 1) cultivation, non-volatile manufacturing, and distribution transport-only, or 2) cultivation, distribution-transport only, and non-storefront retail.

Establishing small producer access to vertical integration, however, requires reforms to many regulations simultaneously - due to the number of barriers in state regulations, a piece-by-piece approach will not pass a threshold for viability for most small farmers. Amendments to the following regulations, if pursued collectively, would ensure that access to vertical integration passes the threshold for viability for small farmers.

- **§15044: Security Requirements for Microbusiness Licensure**

Proposed DCC regulations would continue CDFA's policy in exempting cultivation premises from certain security requirements applicable to other licensed operations, including requirements for video surveillance, alarm systems, and locks.

However, proposed regulations would not exempt the non-cultivation areas of a microbusiness premises from these security requirements, effectively locking small farmers out of access to microbusiness licensure.

The ISOR correctly states security exemptions for cultivation under §15044, §15046, and §15047 are necessary to make licensing attainable for outdoor and rural areas:

> *The Department has determined that requiring the same level of video surveillance for cultivation locations that may be very large, outdoors, and located in rural areas where it may be difficult to access internet or electricity, would be unreasonably onerous and in some cases not possible. Therefore, the Department has determined that the video surveillance requirements that are appropriate for non-cultivation activities would not be appropriate for cultivation activities.*

The logic in the ISOR extends equally to non-cultivation areas of a microbusiness premises located in an outdoor, rural area. Because it is "unreasonably onerous and in some cases not possible" to install compliant video surveillance and alarm systems in these areas, microbusiness licensure will not be attainable if licensees are required to install these systems as a condition of licensure.

OC Recommendation: Exempt all areas of a microbusiness premises from video surveillance, lock, and alarm requirements in §15044, §15046, and §15047, if the premises is located on the same site as an outdoor or mixed-light 1 cultivation license.

- **§15500(j) Microbusiness Premises**

This section would require a wall to separate retail and non-retail areas of a microbusiness premises.

While we can understand this requirement in the context of a storefront retail premise which is open to the public, we do not see the applicability to a non-storefront retail premises. For a microbusiness located on a homestead farm in particular, this section may require the construction of an unnecessary wall, and in some cases may render microbusiness licensure impractical.

OC Recommendation: Don't require a wall to separate non-storefront retail areas from the non-retail areas of a microbusiness.

- **§15014 Micro-Nursery and Micro-Processing License**

All nursery licenses currently pay an annual $4,685 licensing fee regardless of size, and all processing licenses currently pay $9,370 regardless of size. This is distinct from cultivation licenses, which pay tiered annual licensing fees based on size, and non-cultivation licenses, which pay tiered annual licensing fees based on gross annual revenue.

The lack of fee tiering for cultivation-adjacent licenses creates an ironic situation where small cultivators - and only small cultivators - are denied access to affordable licensure in ways that do not affect any other license type.

Affordable access to nursery and processing licenses would be game-changing for many small cultivators. Due to existing restrictions on genetic transfers by cultivators, access to nursery licenses are essential to access specialty and legacy genetics; and streamlined access to collective processing facilities would make a major difference in terms of quality control for post-processing activities.

OC Recommendation: Establish size-based tiering of licensing fees for nursery and processing that reflect the existing tiered structure for other license types.

- **§15315: Distribution Transport-Only License**

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 to provide for records storage of the shipping manifests..

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.

OC Recommendation: Allow transportation-only licenses to share a premises with another licensed activity. If the DCC believes this solution is not possible under statute, an alternative would be to remove the requirements for a transport-only premises to be "permanently affixed to the ground" and not located in a residence, which would establish more flexibility for 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.

➢ **§15308: Distribution Transport-Only License Insurance**

§15308 currently requires all distributor licensees, regardless of type or size, to carry at least $2,000,000 in general liability insurance.

OC Recommendation: 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.

➢ **§15049.2 and §15311(b) Requirements for the Recording and Transportation of Cannabis Products and Goods**

In other contexts, the DCC has made changes to facilitate a “dynamic delivery” model in which a delivery vehicle may carry up to $10,000 of product without having received pre-orders from customers for that inventory (see §15418).

Similarly, distributors should have access to flexibility to leave a distribution premises with a completed invoice to a specific licensee, while retaining flexibility to complete fulfillment to additional licensees.

OC Recommendation: Apply language currently in §15418 regarding inventory ledgers for delivery to §15311 and §15049.2 for distribution. Specifically, clarify that a distributor may initiate transportation based on a single sales invoice, and add additional B2B transactions while in the process of transport.

§15418(e) currently establishes an “inventory ledger” for delivery that can be updated as additional delivery stops are made. A similar process could be created in addition to existing shipping manifests to ensure that all goods carried within the distribution vehicle are accounted for.

- **§ 15311(g): Transportation Security Requirements**

We support the proposed changes to this section to provide additional flexibility

OC Recommendation: Support proposed changes.

- **§ 15311(a): Vehicle Ownership**

We appreciate the addition of language clarifying that “the licensee is not required to be the sole owner or lessor of the vehicle or trailer and all owners and lessors may use the vehicle for non-commercial cannabis activity.”

OC Recommendation: Support proposed changes.

- **§15500(a): Distribution Transport-Only as Qualifying Microbusiness Activity**

We support the addition of distribution transport-only as a qualifying activity for microbusiness licensure, which, in combination with other changes, would make microbusiness licenses significantly more accessible for small farmers.

OC Recommendation: Support proposed changes.

Issue Area 4: Barriers to Effective Compliance

- **§15049.1(b): Collective Wet Weight Reporting**

We strongly support this proposed change to track wet weight collectively, rather than per plant. Recording wet weight for each plant is labor-intensive and impractical during time-pressured harvests. Further, 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.

OC Recommendation: Support proposed change.

- **15048.4(b): Tagging Mature Plant Cannabis Plants**

In light of the proposed changes to track wet weight by batch, it is unclear to us why labor and plastic-intensive intermediate steps to track by plant are still proposed to be required, particularly in light of proposed changes to allow wet weight to be tracked by batch.

The current requirement to tag each individual plant requires tremendous effort on the part of the cultivator. For a half-acre farm, we estimate it typically requires a crew of five people 3-4 days to tag all plants within a licensed cultivation area.

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.

OC Recommendation: Track mature plants by batches of 100, as is currently allowed for immature plants, rather than tagging each individual plant.

- **§15049.1(a)(2): Reporting Immature Plant Flowering**

This section requires the "flowering of an individual plant" to be logged in track-in-trace within three days. Reporting should be required when moving plants from the immature

plant area to the mature plant area; however, each individual plant should not need to be reported as “flowering” once it has been moved to the mature plant canopy area.

OC Recommendation: Remove the reference to “flowering of an individual plant” in this section.

- **17801: Notice to Comply**

Proposed regulations would remove the requirement for the DCC to mail a notice to comply within 15 days of the discovery of a violation, and provide no alternative timeframe for the DCC to provide this notification. However, this section retains the requirement for a licensee to respond to a Notice to Comply within 30 days.

Ensuring that the department provides the licensee with the inspection, audit, or test report quickly will help the licensee begin to understand the issues, allow for rapid correction, and would likely cut down on the need for extensions of time to comply for items that are limited to those indicated as problematic in the report.

OC Recommendation: While it is reasonable for the Department to, in some instances, need more time to prepare the Notice to Comply, it should not be excepted from providing the licensee with the Inspection Report within 15 calendar days of the inspection, audit or test conducted.

- **§17808(e): Additional Grounds for Discipline**

This section would make the following grounds for disciplinary action, and apply it to all licensees, including cultivators: *“If the licensee has employed or permitted any person to solicit or encourage others, directly or indirectly, to buy that person’s cannabis goods in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.”*

We are confused about what this section is seeking to accomplish, and assume it is not the intent of the DCC to prevent normal B2B sales meetings and business transactions on a licensed premises.

OC Recommendation: Clarify this section to make it clear that normal B2B sales meetings and business transactions on a licensed premises are not prohibited.

Issue Area 5: Barriers to Licensing and Provisional Licenses

- **15020(c): Late Fees for Renewals**

Prior to agency consolidation, cultivation late fees for renewal were set at 50% of application fees, rather than 50% of licensing fees. This effectively increases the penalty associated with a late renewal by 10x.

The most common reason for small farmers to be late on renewal payments is the lack of ability to pay and delays in grant fund distribution. Increasing late fees is punitive towards these farmers who are already struggling financially.

OC Recommendation: Assess late fees as one-half of application fees, rather than licensing fees.

- **§15001: Due process rights for provisional license holders**

We urgently request that the Department formally acknowledge and support the constitutional rights conferred by the U.S. and California Constitutions.

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. Notably, it is silent on the issue of hearing rights for renewals. The constitutionality of a statute purporting to deny due process procedures is suspect where it is subject to the same responsibilities as the annual license. Nevertheless, the statute itself does not refute the constitutional protection of vested rights. Additionally, Courts have recognized property rights in “entitlements” that “are created and … defined by existing rules or understandings that stem from an independent source such as state law.” (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577). The Provisional licensing system created those entitlements, particularly since what once was a very temporary bridge to annual licensure has become a longer-term annualized process with full responsibilities. Above all else, the statute does not prohibit due process rights from being applied to provisional license holders.

Despite the 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 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.

OC Recommendation: Amend §15001.3 to establish due process rights for provisional license holders.

- **15001(d)(2): Response to Request for Information**

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 former CDFA 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.

It should be noted that Section 15012(b) allows for up to 180 days to provide the information necessary to complete the application, so providing a 90-day window to provide information pursuant to requests for other information is comparably reasonable.

OC Recommendation: Lengthen the amount of time to provide information to 90 days.

- **15001(d)(1): Deferral of Fee Payments**

OC Recommendation: 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.

- 15010(b)(2): CEQA Documentation

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.

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

Issue Area 6: Other Regulatory Comments

- §17407(c): CBD Labeling 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.

OC Recommendation: Allow 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 5% in a cannabis concentrate which is an inhaled product, the CBD concentration may be stated as "<5% per package."

- **§17304(c) and (d): THC Caps for Concentrates and Topicals**

§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 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.

OC Recommendation: Allow up to 8 grams of THC in topical cannabis products and cannabis concentrates.

- **§16302: Nursery Research and Development Donations**

Nurseries are currently authorized to cultivate mature cannabis plants in "research and development" areas, but cannabis derived from these plants are prohibited from "entering the commercial distribution chain or being transferred off the licensed premises."

OC Recommendation: While we support this restriction specifically for commercial activity, we recommend allowing cannabis derived from a nursery R+D area to be designated for donation to medical cannabis patients under the existing compassion framework in METRC.

- **§15411: Free Cannabis Goods for Medicinal Consumers**

Proposed regulations would add considerable additional barriers to compassion programs authorized under SB 34, adding to existing difficulties in administering these essential programs.

OC Recommendation: Work with compassion advocates and administrators of compassion programs to remove additional barriers to compassionate use donations.

- **§15306(c): Electronic COAs**

OC Recommendation: We strongly support the proposed change to allow electronic COAs.

- **§15418(a): Delivery Vehicle Carry Limits**

OC Recommendation: We support the proposed change to increase delivery vehicle carry limits to $10,000.

- **§15402(d): Curbside Pickup**

OC Recommendation: We support the proposed change to grant retailers permanent access to curbside pickup.

- **15301(e): Cross-Docking**

OC Recommendation: We support the proposed change to enable distributors to utilize cross-docking.

- **§15052(1)(a): Rejection of Shipments**

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.

OC Recommendation: Allow rejection of partial shipments for any reason.

- **§15719: 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.

OC Recommendation: Equalize pesticide thresholds among all laboratory licensees by establishing specific action levels for category 1 pesticides.

- **THC and CBD Potency Labeling**

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.

OC Recommendation: Label a range of potency for THC and CBD content, rather than an exact number.

- **Appeal of Laboratory COA**

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.

OC Recommendation: Allow licensees to appeal COA results based on demonstrated laboratory error.

- **Child-Resistant Packaging For Flower**

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.

OC Recommendation: Remove the requirement for child-resistant packaging on flower.

- **15000(bb): Immature Plants at Retail**

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.

OC Recommendation: Amend the definition of “immature plant” at retail to be consistent with the definition in all other contexts

- **§15041.1(b): Branded Merchandise**

§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.

OC Recommendation: 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.

Issue Area 7: Clarifications and Technical Comments

- **§17225 Product Complaints and §17226 Voluntary Recalls**

These sections apply existing product complaint and recall requirements to all licensees, including cultivators who were not previously subject to these sections.

If a cannabis product is found to be misbranded or adulterated, the cause may be for a number of reasons, and responsibility may lie with a producer, distributor, laboratory, or retailer. Once cannabis leaves the physical custody of a cultivator, it is no longer possible for the cultivator to fully control the storage or quality assurance practices of a distributor. Additionally, the majority of cannabis cultivated farmers is sold under a distributor's brand, or co-branded with a distributor.

As written, §17225 and §17226 do not clearly differentiate which licensee in the supply chain has responsibility for addressing product complaints and recalls

OC Recommendation:. As the licensee with responsibility for quality assurance and with the infrastructure to initiate recalls, we recommend that the distributor hold primary responsibility for addressing recalls and product complaints.

- **§17800(a)(4): DCC Access to Records**

This section currently enables DCC access to any "materials, books, or records, of any licensee or their agents and employees."

OC Recommendation: For purposes of protecting agent and employee privacy, we recommend this provision is narrowed to "any materials books, or records of any licensee or their agents and employees *which are relevant to commercial cannabis activity.*"

- **§15020(e): Energy Reporting**

In some cases, energy sources may be split between commercial cannabis uses and domestic or other non-commercial uses.

OC Recommendation: Clarify how this section applies to situations where power is shared between commercial cannabis and other uses.

- **15002(c)(5): Physical Address**

This section would currently require a physical address for a premises. Some rural farms do not have addresses, and have historically provided APN information rather than a physical address. This restriction has historically been challenging for farmers seeking to obtain a distribution transport-only license under the BCC, and would now become a challenge for all farms seeking any license type under the DCC.

OC Recommendation: Allow an APN rather than a physical address.

- **§15037. General Record Retention Requirements.**

This section requires that "records must be stored in a secured area where the records are protected from debris, moisture, contamination, hazardous waste, and theft."

OC Recommendation: The goal of this section should be ensure that records are made appropriately available DCC in legible form, not to regulate how records are stored. Records should not be required to be stored in a "secured' area so long as they are legible and can be made adequately available on request.

- **§15048.3: Ordering Tags**

This section references a "a request for a license designation change pursuant to section 15020(e)." This appears to be an errant reference, as 15020(e) speaks to energy reporting requirements.

OC Recommendation: Reference the appropriate section in §15048.3.

- **§15049.2(a): Responsibility for Shipping Manifests**

§15049.2(a) requires "a licensee" to prepare a shipping manifest prior to transfer; however, §15314 specifies that "a licensed distributor" must perform this same task. It is unclear whether a non-distributor licensee, such as a cultivator, must prepare a shipping manifest when cannabis is transferred off their premises through a licensed distributor.

OC Recommendation: Amend §15049.2(a) to clarify that the distributor is the licensee responsible for preparing a shipping manifest.

- **§15049.1(b)(2): Cannabis Waste**

This section references “the weight of cannabis waste associated with each harvest plan.” We assume the intended reference is to a “harvest batch,” not a “harvest plan.”

OC Recommendation: Amend this section to reference a “harvest batch.”

Thank you for your consideration,

Genine Coleman
Executive Director
Origins Council

Diana Gamzon
Executive Director
Nevada County Cannabis Alliance

Joanna Cedar
Board Member & Policy Chair
Sonoma County Growers Alliance

Natalynne DeLapp
Executive Director
Humboldt County Growers Alliance

Oliver Bates
President
Big Sur Farmers Association

Michael Katz
Executive Director
Mendocino Cannabis Alliance

Adrien Keys
President
Trinity County Agricultural Alliance