July 22, 2022

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

Re: July 6th, 2022 Notice of Modifications to Consolidated DCC Cannabis Regulations

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 the modified proposed DCC regulations released on July 6th.

Our comments are divided into three sections:

- Comments on new sections proposed as part of this 15-day comment period, which were not proposed in previous regulations.
- Comments on sections which were proposed as part of the initial DCC regulations released on March 4, which Origins Council has previously commented on, and which have been proposed for revision in the present 15-day comment period.
- Comments on priority sections which were originally proposed in March 4 regulations, and which were not addressed in the present 15-day comment period.

Comments on Sections Not Proposed in Previous Regulation

➢ **§15000(ss) and §16202(b): Definition of Mixed-Light Cultivation**

We strongly support proposed changes in §15000(xx) and §16202 that enable cultivators who utilize light deprivation, but no artificial light, to qualify as "outdoor" rather than "mixed-light 1" licensees.

However, we are concerned that §15000(ss) - the section defining mixed-light cultivation in DCC regulations - is not consistent with this proposed change. §15000(ss) retains language that suggests mixed-light cultivation may occur "without the use of artificial light."

(ss) "Mixed-light cultivation" means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:
(1) Natural light and either of the models listed below:
(A) "Mixed-light Tier 1," without the use of artificial light or the use of artificial light at a rate above zero, but no more than six watts per square foot;
(B) "Mixed-light Tier 2," the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot;

Under this definition, a cultivator who utilizes light deprivation within a hoop-house, but who does not utilize artificial light, would appear to qualify as a mixed-light 1 cultivator. Confusingly, this cultivator would *also* meet the currently-proposed definition for outdoor cultivation:

"Outdoor cultivation" means the cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time.

OC Recommendations:
1. Strongly support proposed changes to classify light deprivation without use of artificial lighting as "outdoor" cultivation.
2. Clarify that a cultivator must utilize artificial lighting at a rate above zero in order to qualify as mixed-light 1. This could be accomplished by deleting the phrase "without the use of artificial light or" from §15000(ss)(1)(A).
3. For cultivators formerly classified as "mixed-light 1" who are reclassified as "outdoor" under this regulation, ensure that the transition between license types is streamlined and does not require a new license application.

- **§15700(rrr): Addition of delta 8 THC to definition of total THC.**
- **§15000(ppp): Definition of "terpene."**
- **§17303.1: Non-botanical (synthetic) terpenes.**

Read both individually and collectively, we are concerned that revisions to these proposed sections could be read to enable the incorporation of chemically synthesized hemp-derived delta-8 THC and delta-9 THC into the cannabis supply chain, a policy which we strongly oppose.

While we are unsure if this policy is the DCC's intent in promulgating these regulations, we believe that, at the very least, clarification is necessary given the potential for these sections to be misinterpreted.

The comments that immediately follow concern the collective impact of changes to these three regulations; further below, we will also comment on each regulation independently.

A. Background on Intoxicating Cannabinoids Manufactured via Chemical Synthesis

In recent years, the sale of intoxicating cannabinoid products classified as "hemp" has been well-documented.[12] In many states, ineffective regulation of hemp and cannabis has led to the establishment of a parallel, unregulated "hemp" market that sells products with similar intoxicating effects to cannabis.

Substantial oversupply within the hemp-derived CBD market has led a significant number of hemp producers to pursue the manufacturing of hemp-derived CBD into intoxicating cannabinoids such as delta-8, delta-9, and delta-10 THC, through chemical synthesis. While delta-8 THC in particular is found naturally at trace levels within the cannabis and hemp plants, producing any meaningful quantity of delta-8 THC requires a manufacturing process using chemical synthesis, most commonly using hemp-derived CBD as the source material.[3] Further, while delta-8 THC may be slightly less potent than delta-9 THC, its intoxicating effects are substantially similar, as well as dose-dependent.[4]

In addition to the rise of delta-8 THC, there have also been attempts to incorporate chemically synthesized hemp-derived delta-9 THC into regulated cannabis markets. In Washington state, for example, there has been significant opposition to the inversion of chemically synthesized hemp-derived

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[1] https://www.forbes.com/sites/chrisroberts/2022/04/28/study-legal-hemp-derived-delta-9-thc-edibles-are-mislabeled-way-too-strong/?sh=7b841cfd3f89

[2] https://www.nytimes.com/2021/02/27/health/marijuana-hemp-delta-8-thc.html

[3] https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc

[4] https://www.nytimes.com/2022/07/01/well/mind/delta-8-thc-marijuana.html

delta-9 THC into regulated cannabis products at the manufacturing level, leading Washington's Liquor and Cannabis Board to prohibit this practice.[5][6]

Partially in response to this significant controversy, AB 45, legislation which was signed into law in 2021 to regulate industrial hemp products in California, included a provision which requires the DCC to issue a report by July 1, 2022 regarding the incorporation of hemp products into the cannabis supply chain.

> Business and Professions Code 26013.2(a): *On or before July 1, 2022, the department shall prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. The report shall include, but not be limited to, the incorporation of hemp cannabinoids into manufactured cannabis products and the sale of hemp products at cannabis retailers.*

On June 1, Origins Council submitted extensive comments[7] to the DCC regarding the July 1 DCC hemp report, with a specific focus on the question of incorporating chemically synthesized hemp-derived cannabinoids into the cannabis supply chain. As of July 22, the date of submission of these comments, the DCC hemp report has yet to be made publicly available.

B. Read in Conjunction, Proposed Changes to §15000(ppp), §17303.1, and §15700(rrr) Create Ambiguity on the Allowability of Chemically Synthesized Delta-8 and Delta-9 THC into the Cannabis Supply Chain

- Proposed changes to §17303.1 would remove the requirement for terpenes in inhalable products to be "botanically-derived," thereby allowing synthetically-derived terpenes to be included in inhalable cannabis products. Additionally, §17301 is already worded to allow "terpenes" - whether botanically or naturally-derived - as an ingredient in edible products, regardless of whether the FDA has approved those ingredients.
- Proposed new provision §15000(ppp) would define a "terpene" to include "terpenes, terpenoids, flavonoids, polyphenols, and other naturally occurring phytochemicals and secondary metabolites contributing to the aroma or flavor of cannabis." <u>This section could be interpreted to include both delta-8 and delta-9 THC as a "terpene."</u>
    - Both delta-8 THC and delta-9 THC are "phytochemicals and secondary metabolites" of cannabis.
    - Both delta-8 THC and delta-9 THC are "naturally occurring" in the cannabis plant, though delta-8 THC is only found at trace levels.
    - While pure delta-8 and delta-9 THC are often reported to have little or no taste or aroma, we are not aware of authoritative sources on this point, and a plain reading of

[5] https://www.usnews.com/news/best-states/washington/articles/2022-02-25/washington-lawmakers-urge-halt-to-hemp-derived-thc-in-state
[6] https://www.nytimes.com/2021/02/27/health/marijuana-hemp-delta-8-thc.html
[7] https://drive.google.com/file/d/1MpZC1TspUSiR-FQ6dFSGjefJjY33IWx1/view

the phrase "contributing to the aroma or flavor" suggests that any level of aroma or flavor could be sufficient to trigger the inclusion of delta-8 and delta-9 THC in this provision.

- Proposed changes to §15700(rrr) would add delta-8 THC to the definition of "Total THC" alongside the existing definition which includes both THC and THCA. While we are not opposed to laboratory testing for delta 8 THC for purposes of protecting consumer safety or detecting non-compliant product, we are concerned that this subsection may be misread as implicitly authorizing the production and sale of products with significant delta 8 THC manufactured through the chemical synthesis of hemp.

  The Notice of Modifications adds to the difficulty in interpreting this section, stating that "this change is necessary to address products that have delta 8 THC… as the euphorigenic effects of cannabis are increased as the amount of total THC increases." Levels of delta 8 in cannabis products should not be anywhere near adequate to produce "euphorigenic effects," unless the origin of the delta 8 THC in question is manufactured, chemically synthesized hemp-derived CBD, again raising the question of whether DCC intends to allow or prohibit such chemically synthesized ingredients.

C. Allowing Chemically Synthesized Delta-8 and Delta-9 THC into the Regulated Cannabis Market Would Harm Consumer Safety, Undermine the Integrity of the Regulated Market, and Devastate Licensed Cannabis Producers

Origins Council strongly opposes the inversion of manufactured THC originating from chemically synthesized hemp-derived CBD, including delta-8, delta-9, and delta-10 THC, into the cannabis supply chain at any point, including manufacturing or retail, for several reasons.

Consumer Safety

Although there is limited published literature on the chemistry and pharmacology of manufactured, chemically synthesized delta-9 THC, our understanding is that manufactured and naturally-derived delta-9 THC are not equivalent substances due to the inherent presence of impurities and by-products in chemically synthesized substances.

In the case of chemically synthesized delta-8 THC, it has been well documented that the process of chemical synthesis typically results in impurities and unknown chromatographic peaks.[8]

In a 2021 statement, the US Pharmacopeia (USP) indicated that these impurities may have unknown effects on human health:[9]

> *" A common way that ∆8-THC is being obtained is through synthetic or semi-synthetic conversion from hemp-derived cannabidiol (CBD). This process normally involves use of strong acids and*

[8] https://cen.acs.org/biological-chemistry/natural-products/Delta-8-THC-craze-concerns/99/i31
[9] https://www.usp.org/sites/default/files/usp/document/our-science/usp-delta-8-final-12-2-21.pdf

catalysts, which tend to be harsh reaction conditions conducive to the formation of other reaction by-products and impurities. Depending on the reaction conditions and purification processes, synthetic ∆8-THC may be associated with unknown impurities, different degradants, and synthetic cannabinoid analogs that are not naturally produced in cannabis/hemp plant material, and for which there may be little or no safety or toxicity data. This raises safety and product quality concerns for consumers – given the unknown and untested nature of ∆8-THC, other synthetic analogs, and any other impurities present."

Our understanding is that these concerns apply similarly to other chemical synthesis processes, including the process for manufacturing delta-9 THC.

While naturally-derived cannabis benefits from a long history of human use that demonstrates general safety, chemically synthesized delta-8 and delta-9 THC have no substantial history of human use, and the effects of impurities resulting from chemical synthesis on human health are not yet clear.

Parity Between Cannabis and Hemp Agriculture

From an agricultural and environmental perspective, cannabinoid hemp and cannabis cultivation are functionally identical. As a consequence of federal cannabis prohibition, however, as well as continued stigma against cannabis, there are vast differences between the local, state, and federal regulation on hemp and cannabis cultivation. These include:

- **Regulatory requirements -** none of the hundreds of pages of DCC regulation addressing cannabis cultivation are applicable to hemp cultivation, including restrictions on licensing, operations, reporting, and track-and-trace. Cannabis farmers are also subject to additional rules through CDFW and state and regional Water Boards, such as the annual forbearance period, which are not applicable to hemp cultivators.
- **Classification as agriculture -** unlike hemp, cannabis cultivation is not treated as agriculture, resulting in an immensely heavier regulatory burden and lack of access to many resources that benefit traditional agricultural producers. Perhaps most significantly, cannabis farmers cannot achieve CEQA compliance through conformance with agriculture zoning pursuant to a local jurisdiction's general plan, and must achieve CEQA compliance through a laborious and complex process for site-specific CEQA review.
- **Federal status -** As a federally legal crop under the Farm Bill, hemp farmers have access to federal programs such as federally-subsidized crop insurance and access to the COVID Paycheck Protection Program. By contrast, cannabis farmers continue to lack access to all federal programs and support, must navigate a discriminatory tax system under IRS Section 280E, and face additional discrimination from banks, insurance companies, and other ancillary service providers due to cannabis' federal status.
- **Licensing fees -** most hemp cultivators are subject to a $900 annual registration fee regardless of size. By contrast, a 10,000 square foot mixed-light 1 cannabis cultivator pays an annual state licensing fee of $11,800.

- **Local control -** While both cannabis and hemp farmers are formally subject to local control, practically speaking, cannabis cultivators face exponentially more significant regulatory scrutiny at the local level. Additionally, many cannabis farmers are subject to additional local cannabis cultivation taxes which are not applicable to hemp farmers.

Until such time as cannabis and hemp agriculture are regulated at parity, it is critical that a clear firewall is maintained between the cultivation of cannabis for intoxicating products, and the cultivation of hemp for non-intoxicating products.

If manufactured THC that is chemically synthesized from hemp-derived CBD is permitted to enter the regulated cannabis supply chain, it will not be possible for permitted cannabis farmers to compete with hemp farmers operating under exponentially less onerous regulatory burden. In turn, all of the expected benefits of environmental and operational regulation on cannabis farmers will disappear if it becomes possible to participate in the market for intoxicating cannabis products without following the rules and regulations applicable to that market.

OC Recommendation: Clarify that chemically synthesized delta 8 and delta 9 THC, and other intoxicating hemp-derived or chemically synthesized cannabinoids, are not a permissible ingredient in regulated cannabis products.

➢ **§15000(ppp): Definition of "terpene."**

This section would redefine a "terpene" to include "terpenes, terpenoids, flavonoids, polyphenols, and other naturally occurring phytochemicals and secondary metabolites contributing to the aroma or flavor of cannabis."

We support the DCC adding language to the regulations to define terpenes and flavonoids. These chemical compounds are two distinct classes of active, naturally occuring chemical constituents that are prolifically produced by cannabis, second only to cannabinoids.

However, based on well established scientific nomenclature, this proposed definition of "terpene" is categorically incorrect. Terpenes are a class of chemical compounds with the number and structural organization of carbons being the definitive characteristic. Terpenes belong to the larger category of volatile organic compounds that have a high vapor pressure and low water solubility. Terpenes are highly aromatic and have strong anti-microbial utility. Terpenoids are modified terpenes.

Flavonoids are a class of water soluble polyphenolic compounds, and are not classified as terpenes by the scientific community. Rather, flavonoids are classified as a type of polyphenol. Flavonoids contribute to scent, flavor and pigment expression within plants. Flavonoids have strong antioxidant and anti-inflammatory properties and help to regulate metabolism.

OC Recommendation: Add two new definitions to the regulations, one for terpenes inclusive of terpenoids and one for polyphenols, inclusive flavonoids. Secondary metabolites and phytochemicals are a broader category of compounds that include terpenes and flavonoids, and should not be included in the definitions of either terpenes or flavonoids.

- **17303.1: Botanically-derived terpenes.**

This section would allow for synthetically-derived terpenes in inhalable products by removing the requirement for terpenes to be botanically derived.

In addition to the concerns raised above regarding the potential impacts of this change on delta-8 and delta-9 THC, we are concerned more broadly with the impacts of this revision. Unlike terpenes found naturally in the cannabis plant, synthetically-derived terpenes do not have an established history of human use and have an unclear safety profile, particularly at higher concentrations which may be found in synthetic products. Some products with high levels of synthetic terpenes have been documented to have negative health effects.[10]

OC Recommendation: Retain the existing requirement for terpenes to be botanically-derived.

- **§15700(rrr): Addition of delta 8 THC to definition of total THC.**

The addition of delta 8 THC to the "total THC" definition raises a logical question of how DCC intends to regulate, prohibit, or restrict delta 8 THC.

If the definition of "terpenes" is clarified to exclude delta-8 and delta-9 THC, as recommended above, we read other sections of regulation, including §17301, §17302., §17303.1, as prohibiting the addition of hemp-derived delta 8 THC to cannabis and cannabis products. These sections limit ingredients in cannabis products to cannabis (defined in Business and Professions Code 26001 as exclusive with industrial hemp), terpenes, articles such as rolling papers, and other ingredients explicitly approved by FDA. Hemp-derived chemically synthesized c delta 8 or delta 9 THC does not meet any of these standards, assuming it does not meet the new definition of "terpene."

That said, we believe this section will create substantial confusion unless clarified further.

OC Recommendation: Clarify that chemically synthesized delta 8 and delta 9 THC, and other intoxicating hemp-derived or synthetic cannabinoids, are not a permissible ingredient in regulated cannabis products.

- **§15000(y): Definition of Final Form**

This section would change the definition of final form to encapsulate the final form in which a product is used, rather than final packaging and labeling. By allowing manufactured products to be tested in their final form prior to packaging, which would increase efficiency and reduce packaging waste.

OC Recommendation: Support proposed change.

[10] https://cen.acs.org/biological-chemistry/natural-products/Cannabis-industry-crafty-terpenes/97/i29

Comments on Changes to Sections Identified in Previous OC Comments

- **15000.3(c): Licensed premises in a residence**

We appreciate the further clarification in this section that garages, offices, sheds, and barns on a residence may be included within a licensed premises. However, we continue to be concerned about the more general prohibition on cannabis operations in the living areas of a residence.

As stated in our previous comments, 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.

Further restricting allowable premises areas, more than four years after the establishment of the state regulatory framework , will place additional burden on cultivators who locate activities in these areas.

Additionally, there may be confusion about whether the phrase "and other areas regularly used for commercial cannabis activity" would allow a cultivator that under previous rules had used an area now prohibited to continue to use those areas.

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

- **15000.3(f): Permanent Structures**

We appreciate the clarification that this section refers to "permanent structures," rather than structures that are "permanently affixed to the ground." This change addresses some of the concerns motivating our original comment on this section. However, we believe there are still several cases where proposed regulations would inappropriately prohibit structures with legitimate operational or environmental purposes, including the following:

- Temporary shipping containers as defined under proposed §15000.7(d) should be exempt from the requirements of this section. Inherently, as a temporary structure specifically authorized by regulation, these structures are not permanent. Additionally, as a practical matter, and to avoid unnecessary environmental impact, removal of the "wheels" that the temporary storage container was delivered to the premises on is likely to result in additional costs, unnecessary transportation/vehicle trips, and/or unnecessary disturbance of ground which may have environmental impacts.
- A number of farms in several areas of Humboldt County, including Holmes Flat, Stafford, and parts of the Mattole, are located on floodplains and are required to either remove cultivation infrastructure such as hoophouses during the winter, or to meet expensive engineering standards for these structures.
- Other structures that do not contain cannabis, such as solar trailers and movable agricultural chemical storage containers, would be prohibited by this provision.

OC Recommendation: Amend this section to 1) limit restrictions only to structures that contain cannabis, 2) explicitly exempt temporary shipping containers, and 3) eliminate the requirement for "permanence," which is inconsistent with local regulations regarding floodplains, and instead establish a standard based on whether structures are on wheels or are readily movable.

Specifically, we propose replacing 15000.3(f) with the following language: *"With the exception of temporary shipping containers as defined under §15000.7(d), structures included as part of the licensed premises that contain cannabis shall not rest on wheels or be readily movable. Structures that may contain cannabis under this section include but are not limited to buildings, barns, sheds, shipping containers, and modular buildings."*

- **15000.3(g): Personal cultivation**

We continue to oppose further restrictions on personal use cultivation on licensed premises. While new proposed regulations would allow personal use cultivation on a premises if "the local jurisdiction requires that all areas of the land parcel be included in the premises," this is not the case in any of our member regions, and does not materially affect the substance of the prohibition.

As stated in our previous comments, 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 clearly-marked personal cultivation area on a premises provided it is separated and clearly marked as distinct and separate from the commercial cultivation.

- **15000.7(c): Storage of Inventory - Floor to Ceiling Walls**

We appreciate the removal of break areas from the requirement of floor to ceiling solid walls and continue to request that all physical separations required under the regulations be allowed to be implemented in the most cost-effective and least environmentally impactful means. Cannabis storage areas are already restricted access areas for which security measures are undertaken. Requiring installation of solid walls adds considerable time (building permitting), cost, and overall environmental impact for small farms, particularly in rural locations.

OC Recommendation: Exempt floor to ceiling solid wall requirements where the applicant can demonstrate that inventory storage areas and any bathrooms or changing areas are accessed only by the same personnel and have a means of non-solid wall separation.

- **§16306: Generators**

In our previous comments, we expressed concerns based on an understanding that this section would prohibit the use of a generator under 50hp for more than 80 hours per year for non-emergency purposes starting in 2023. After further review and clarifying proposed revisions, we understand that this section would in fact only be applicable to diesel generators based on the definition of a "compression ignition engine" in Title 17.

Limiting the restrictions in this section to diesel generators significantly reduces the scope of the restriction in §16306. Even with this reduced scope, however, a total restriction on diesel generators beginning in 2023 would still impose substantial burdens on some cultivators, and is inconsistent with the practical reality of transition timelines for farmers who are dealing with extremely challenging market conditions.

On July 8th, following the release of revised regulations, Origins Council conducted a survey to better understand the utilization of generators by farmers in commercial cannabis activity, and received responses from 64 cultivators. Survey results found that while nearly all cultivators utilize some form of generator for some purpose, just 14% of farmers indicate that generators are their exclusive power source, with 70% indicating usage of solar power, and 21% indicating usage of grid power.

Additionally, 77% of farmers expressed an intent to install additional solar or PG&E in the coming years. Cultivators identified the primary barriers to installing solar/PG&E as the availability of funds - many are waiting on the dispersal of equity or other grand funding - as well as lead times of 1-5 years to secure funding, complete installation, and/or receive PG&E service.

In reviewing CARB regulations applicable to other agriculture, we were unable to find any comparable regulation for diesel generators under 50 hp in a non-cannabis context. While we understand the trajectory of state policy broadly is to regulate and restrict generator use over time, applying a 2023 timeline specifically to cannabis operators is out of step with our understanding of generator restrictions in other contexts, as well as the practical realities of transition for operators who are struggling with extremely challenging market conditions and awaiting the availability of grant funding for renewable energy projects.

OC Recommendation: Extend the timeline for restrictions on generators under 50 hp to at least 2025 to provide time for transition to solar energy or PG&E.

- **15000.7(d): Storage of Inventory- Shipping Containers**

We appreciate the clarification that this section allows additional temporary shipping containers, rather than limiting shipping containers in other contexts.

Unless additional modifications are made to other subsections, the assistance of this addition is negligible. Specifically, if these structures are still subjected to the prohibition of "resting on wheels" under §15007.3(f) and the prior approval after notification under §15027, the benefits may be indistinguishable. Specifically, additional costs and environmental impacts of removing the wheels (i.e., flatbed/chassis & wheels) are significant for a "temporary" use. The vehicle trips of the company that is leasing it to the licensee, the additional ground disturbance of placing the entire container directly on the ground, and the time and effort involved to accomplish the more "permanent" placement of the storage container for such a temporary use may be infeasible.

Additionally, the prior approval requirements of noticing the temporary use, may render the use of this provision impracticable. Small cultivators, who are most likely to try to avail themselves of this use, would often not incur the extra cost and effort for additional storage unless absolutely necessary. Unfortunately, it is often not until the last moments of harvest that such a determination may be made. Currently, the delay in Scientific Amendment review for approvals, especially if not related to a renewal of a license, are taking many months, and in some instances over a year.

OC Recommendation: Support clarification and request modification of §15007.3(f) to explicitly allow that temporary shipping containers pursuant to this section be exempt from the prohibition of resting on wheels. Additionally, exempt temporary storage in additional shipping containers from having to obtain prior approval after notification under §15027.

- **§15002.(c)(5): Assessor Parcel Number**

This section allows an APN to be listed as an alternative to a physical address.

OC Recommendation: Support

- **§15006(e) Premises Diagram- To Scale Requirement Limited**

We greatly appreciate the clarification that the requirement that Premises Diagrams be drawn to scale need not be precise and is limited to only the scale which is needed to clearly determine the bounds of the premises.

OC Recommendation: Support.

- **§15011(a)(1): Annual Closures**

This section allows an applicant to list a seasonal closure for their site.

OC Recommendation: Support.

- **§15027- Physical Modification of Premises**

As noted in our comments dated April 19, 2022, the prior approval requirements are inconsistent with the practical realities of working farms. As stated above, the current backlog of Scientific Amendment applications is quite substantial, especially for those that are not associated with a license renewal.

The proposed modifications seek to expand the methods of submittal for modifications that require approval for non-cultivation licensees and for modifications that do not require prior approval by adding online and email options respectively. While we support those changes, we also request additional modification to expand the types of changes that do not require prior approval. In additional to generally requesting a broader list of modifications that do not require prior approval for cultivation licensees, we specifically request that notifications pursuant to proposed §15000.7(d) (temporary storage containers for additional storage of inventory) be exempt from the prior approval requirements and that simple notification be sufficient for this temporary use.

OC Recommendation: Support and at a minimum exempt modifications pursuant to §15000.7(d) from prior approval requirements.

- **§15035- Notification of Local License, Permit, or Other Authorization**

This proposed modification expands to all owners, the reporting requirements if convicted of a crime, subjected to civil judgments, fines, administrative order and fines for labor violations, and revocation of a "local license, permit, or other authorization." While we have no objection to clarify that the licensee is subject to report those things for the licensee and each Owner, we respectfully request further modification to this section to clarify that the reporting is only required for items specific to the commercial cannabis activities that are licensed or related to the licensed premises. So, for example, if an Owner is fined for a violation of the local building requirements for a structure on their residential property that is wholly distinct and unrelated to any commercial cannabis activity or business, or has a restaurant license revoked that is in no way related to their ownership of or involvement in the commercial cannabis or it's activities, it seems that the requirement as proposed, would require disclosure and therefore would require Department resource to review.

OC Recommendation: Support and further modify the section to only require disclosure of local license, permit, or other authorization if related to the licensed premises or any commercial cannabis activities conducted by the or any owner at any location.

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

Subsection (b) was modified to correct a typo. We continue to request modification of this section to remove the word "permanently" and to remove the words "from the outside of" and replace that phrase with the word with "on" when referring to the requirement that the licensee's license number be affixed to and that it be visible from the outside of the branded merchandise. Placing the information on the inside of a baseball cap or on a tag on a smaller piece of branded merchandise would provide the public with the information required.

OC Recommendation: Strike the words “permanently” and the words “from the outside of” and replace that last phrase with the word “on” at the end of subsection (b).

- **§15041.3- Designating Trade Samples**

Proposed subsection (c) allows an original designee to change the trade sample designation to medical donation. We appreciate the allowance.

OC Recommendation: Support.

Priority OC Regulatory Recommendations Not Taken

A number of priority comments submitted by Origins Council during the previous comment period were not addressed in the current 15-day public comment period. We have highlighted some of these priority issues below, and hope that the DCC will consider addressing these issues in the future.

- **§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 outside of case-by-case disaster relief provisions. 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.

OC Recommendation: We request that the DCC provide a formal mechanism through regulation 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.

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

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.

- **§15041: Cultivator Trade Samples**

Despite the passage of enabling trade sample legislation in 2021, current DCC regulations render trade samples impractical for most small producers.

OC Recommendation: 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, and 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.

- **§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.

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.

➢ **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.

➢ **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.

- **Appellation of Origin; County of Origin; City of Origin; City and County of Origin**

We are very concerned to find that the revised DCC regulations do not address any of our concerns, which are significant, regarding cannabis designation of origin provisions, as articulated in our comment submission to the DCC on April 19th, 2022.

All of our concerns pertain to provisions which are essential to the basic function and integrity of the CDFA Cannabis Appellations Program, as well as California's County of Origin, CIty of Origin and County and City of Origin designations for regional cannabis products.

The DCC proposed regulation ignores entirely the issue of conflicts between geographic trademarks and appellations. By allowing trademarks that conflict with an appellation of origin, we are concerned that the DCC proposed regulations conflict with statutory requirements. If left unaddressed, It will lead to a rush to use and register geographic trademarks before CDFA proceeds with the review and determination on a given appellation petition. Those trademark registrations would then authorize the misdescriptive and misleading use of those geographic trademarks after the appellation is established. The resulting confusion between appellations and trademarks, occuring at the earliest and most sensitive time in the appellation program, would threaten to prevent the program from getting off the ground and potentially undermine the integrity of appellations permanently.

The proposed DCC regulations abandoned entirely CDFA's proposed provision regarding record retention as the sole regulatory mechanism to verify compliance with the statutory appellation of origin production requirements. These requirements mandate that the crop be cultivated within the boundaries of the designated geographic area from the time of plant immaturity forward, and that all cultivation activities occurred within the geographic boundaries, inclusive of planting, growing, harvesting, drying, curing, grading, and trimming of cannabis.

CDFA's proposal that the misuse of an appellation of origin designations in advertising, marketing, labeling and packaging be classified as a serious violation have been omitted from the DCC draft regulations. As written, the DCC draft regulations would classify these appellation violations, as well as comparable violations of city, county or city and county of origin designation requirements as minor violations, carrying a $100 - $500 fine. This invites abuse and undermines the integrity of the program.

OC Recommendation: We continue to urgently request that the DCC coordinate closely with the CDFA regarding these outstanding regulatory issues for the Cannabis Appellations Program, as well as coordinating on the launch and implementation of the program. Specific, detailed policy recommendations regarding the issues outlined above can be found in the Designation of Origin Addendum to our April 19th, 2022 comment submission to the DCC.

* * *

Thank you for your consideration,



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