



## **Origins Council Public Comment on Discussion Draft Cultivation Regulations**

Date: September 18, 2024

On behalf of Origins Council, representing 800 small and independent cannabis businesses in rural legacy producing counties throughout California, we appreciate the opportunity to comment on the discussion draft of cultivation regulations made available by DCC ahead of the September 19th Cannabis Advisory Committee hearing.

We appreciate the DCC's decision to make these regulations available as a discussion draft prior to formal regulatory promulgation, and hope this can facilitate a detailed and substantive discussion on the proposal. We also look forward to hearing from the DCC at Cannabis Advisory Committee hearing to better understand the rationale for the proposed regulations, and we may further consider some comments in this letter in light of those explanations.

Overall, we believe the proposed regulations offer several meaningful improvements to current regulation, as well as several proposals that are cause for concern. Beyond what's included in the discussion draft, however, we also believe that there are a number of critical regulatory issues that are not addressed in the discussion draft that we strongly urge DCC to incorporate prior to formally noticing these regulations.

### **Discussion Draft Regulations Miss an Opportunity to Comprehensively Address Barriers Facing Small Cultivators**

The DCC has never before considered a cultivation-specific rulemaking package, and with the present rulemaking now on the table, there is an exceptional and unique opportunity for DCC to

address a range of high-priority issues which cultivators and others have identified as problematic as far back as 2017.

These issues include, but are not limited to:

- Enacting the intent of SB 622 to remove the requirement to individually tag each cannabis plant in METRC.
- Re-evaluating and reducing cultivation licensing fees in light of the collapse in wholesale market prices for cannabis.
- Tiering licensing fees for nursery and processing licenses based on size, as is currently the case for all other DCC license types.
- Implementing comprehensive solutions to ensure the reliability of laboratory testing.
- Facilitating the ability for small cultivators to transport product by waiving the \$2,000,000 general liability insurance requirement for distribution transport-only self-distribution licenses.
- Issuing appellation regulations regarding trademarks and enforcement.
- Allowing limited no-source entry of cannabis genetics into METRC.
- Allowing COA testing of pre-rolls prior to packaging.
- Waiving 24/7 surveillance and alarm system requirements for vertical integration connected with an outdoor cultivation site, including (but not limited to) microbusiness licenses.
- Implementing improvements to DCC's administrative processes.

Small cultivators have been waiting for seven years for action on many of these issues, and the present rulemaking is a critical opportunity to address them. We strongly urge the DCC to address these issues when regulations are formally noticed, and discuss each issue in more detail at the end of this letter.

### **Comments on Proposed Discussion Draft Regulations**

Below, we offer initial comments on several of the issues addressed in the discussion draft regulations.

Due to the short notice provided to provide comment on these regulations, we may further expand on these comments in the future following additional deliberation with our membership.

#### **➤ §15049.1(b)(5): Requirement to Log Pesticide Use in METRC**

Recent reporting from the Los Angeles Times and other sources has cast significant doubt on the reliability of existing lab testing practices for the presence of pesticides, herbicides, and other contaminants - as well as labeled potency - within legal cannabis products.

For the sake of public health and safety, and for the integrity of the legal cannabis market, we believe it is urgent and critical that DCC adopt comprehensive reforms to address these

concerns and ensure the accuracy of laboratory testing. At the minimum, this should include off-the-shelf testing of cannabis products at retail to verify the laboratory COA, as well as additional measures to prevent laboratory fraud and ensure reliable laboratory testing.

It is unclear to us, however, how the proposed regulations would address this issue. Ultimately, mandatory third-party lab testing for each cannabis batch - assuming that these tests are accurate - is the critical mechanism that ensures the safety and accurate labeling of legal cannabis products. By contrast, it is not obvious to us how METRC reporting of pesticide use by cultivators advances these goals. Presumably, a cultivator using a prohibited pesticide would not report this use in METRC; and under a functional laboratory testing system, use of prohibited pesticides would be detected by laboratories regardless of whether that pesticide is reported in METRC.

While failing to address the underlying issues with California laboratory testing system, the proposed regulations would add onerous and time-consuming data entry tasks for cultivators who are already overwhelmed with excessive METRC work.

Although we're concerned by the proposed regulations, we look forward to a more comprehensive explanation at the Cannabis Advisory Committee hearing as to why the Department believes these regulations are necessary, and hope to work with the DCC on effective measures to restore confidence in California's lab testing system.

**OC Recommendation:** Oppose proposed regulations.

**OC Recommendation:** Adopt comprehensive reforms to ensure reliable laboratory testing, including off-the-shelf testing of cannabis products at retail to verify the laboratory COA, as well as additional measures to prevent laboratory fraud and ensure reliable testing.

**Further questions:** We request further clarification on the rationale for proposed regulations, and whether and how they fit into more comprehensive efforts to address laboratory testing issues.

➤ **§15006(5)(A): Mature Plants Utilized for R+D and Seed Production**

Proposed regulations would require mature plants utilized for R+D and seed production to be marked as part of the canopy area, and included in calculations for maximum allowable plant canopy.

For plants which are not intended to, and will not, enter the commercial market, we don't believe it's necessary to include these plants as part of the mature plant canopy. R+D and seed production allowances are critical to support a diverse craft and medicinal cannabis market, and should be encouraged rather than discouraged.

**OC Recommendation:** Oppose proposed regulation.

**OC Recommendation:** Allow mature plants to be grown for R+D and seed production purposes outside the canopy area, so long as they're marked on the premises diagram and do not enter the commercial market.

- **§16300(c): Immature Plants and Seeds May be Transported from a Cultivator to a Nursery via a Distribution License**
- **§16300(e): Immature Plants, Seeds, and Harvested Cannabis May be Transported Between Multiple Licensed Cultivation Premises Held by the Same Licensee via a Distribution License**

We strongly support these proposed regulations to enable more flexibility in the transportation of immature plants, seeds, and harvested cannabis to and from licensed cultivation sites.

However, these proposed regulations point to the critical importance of further action to decrease barriers to obtaining a distribution transport-only self-distribution license. Currently, many cultivators are unable to obtain distribution transport-only self-distribution licenses due to the requirement in §15308 of DCC regulation for all distribution licensees, regardless of type or size, to carry at least \$2,000,000 in general liability insurance.

This is clearly unnecessary for licensees who are definitionally limited to carrying their own product. In the context of the proposed regulations - that is, to transport immature plants and seeds between licenses - it's especially evident that a \$2,000,000 insurance policy is unnecessary.

**OC Recommendation:** Support proposed regulations.

**OC Recommendation:** Take further action to waive insurance requirements for distribution transport-only self-distribution licensees (§15308).

- **§15601(c): Extend Maximum Event Duration From 4 Days to 30 Days**

We support this proposed regulation, which provides additional flexibility for events of longer duration. This year's California State Fair was licensed for 17 days of event sales, but under current regulations, was required to obtain five separate event licenses to authorize these sales.

At the same time, however, these proposed changes highlight existing issues with the structure of licensing fees for event organizers. Currently, the DCC's fee for each cannabis event is \$1,000, regardless of the size or duration of the event. Additionally, DCC's fee structure charges event organizers an annual fee solely on the basis of the *number* of events they hold each year; again, regardless of the size or duration of the event. This fee structure puts small events at a disadvantage compared to larger events, and fails to correlate licensing fees to the actual regulatory resources required to enforce compliance at each event.

**OC Recommendation:** Support proposed regulation.

**OC Recommendation:** Restructure event licensing fees so that small events (by size and/or duration) and small-scale event organizers pay significantly lower licensing fees.

➤ **§16306: Strike Existing DCC Regulations on Generators**

We support the proposed regulations. Generator use is already regulated under state law, the Air Resources Board, and oftentimes under local cannabis ordinances, and additional DCC regulation is not necessary.

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 cultivators who live off-grid, and to provide temporary power for ancillary seasonal activities such as drying. Further, many cultivators are under conditions of approval in their local jurisdiction that require them to obtain grid power, but have been delayed in this transition due to PG&E delays. Given these nuances, regulations on generator use are more appropriate at the local level rather than a one-size-fits all requirement from DCC.

**OC Recommendation:** Support proposed regulations.

➤ **§15061: Sanitation Requirements**

We are not opposed to common-sense standards for sanitation, but need additional time to review the details of the proposed regulations, including the times at which sanitation would be required; the requirement that containers must be entirely "free of visual dust, dirt, debris, cannabis residue, and food residue"; the proposed methods approved for sanitation; and how proposed regulations compare to sanitation regulations in comparable industries.

**OC Recommendation:** Need more time to review details.

**Further Questions:** Does the DCC intend to propose similar regulations for harvest batches held by manufacturers and distributors?

**Priority Issues for Small Cultivators Not Addressed in Discussion Draft**

As discussed above, we are concerned that proposed regulations would miss an opportunity to address high-priority issues that establish unnecessary barriers for small cultivators. These issues include, but are not limited to, the following:

➤ **Allow for Batch Tagging Mature Plant Cannabis Plants in METRC**

The current requirement to physically tag each individual plant in METRC requires tremendous effort on the part of the cultivator, with no clear corresponding regulatory benefit. 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 large 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.

In 2022, the DCC enacted new regulations that allow wet harvest weight for cannabis to be tracked collectively by batch, rather than individually by plant, further calling into question why it is necessary for cultivators to tag each plant independently. Further, in 2023, the California legislature passed SB 622, clearly granting DCC the authority to tag plants by batch rather than tagging each plant individually.

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

➤ **Re-Evaluate and Reduce Cultivation Licensing Fees**

Licensing fees for cultivation have not been re-evaluated since the legal cannabis framework was first implemented in 2018, nearly seven years ago. Since that time, wholesale prices for cannabis have collapsed by two-thirds or more - often at or below cost of production - making thousands of dollars of annual fees entirely unsustainable for most small farmers.

Licensing fees for unlimited-scale Type 5 cultivation licenses, implemented in 2023, have created additional inequities in the licensing fee framework. Type 5 licenses pay an additional fee for each 2,000 square feet of licensed cultivation, at a rate which is lower than the average rate of fees for small cultivation license types. These fees should be at the very least equalized, so that small cultivators pay the same amount or less per square foot as compared with larger cultivators.

**OC Recommendation:** Re-evaluate and reduce cultivation licensing fees to better align with market conditions.

➤ **Implement Comprehensive Solutions to Ensure the Reliability of Laboratory testing**

As discussed above, we believe there is an urgent need to restore public trust in the integrity of California's laboratory testing system, and urge the DCC to adopt comprehensive reforms to the laboratory testing system to ensure accuracy and reliability.

**OC Recommendation:** Adopt comprehensive reforms to ensure reliable laboratory testing, including off-the-shelf testing of cannabis products at retail to verify the laboratory COA, as well as additional measures to prevent laboratory fraud and ensure reliable testing.

➤ **Tier licensing fees for nursery and processing licenses based on size.**

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 reflects the existing tiered structure for other license types.

➤ **Waive Insurance Requirements for Distribution Transport-Only Self-Distribution Licenses**

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, such as transporting product between different licenses on the same site held by the same licensee, or transporting product to or from a processing, nursery, manufacturing, or distribution facility.

As discussed above, §15308 of DCC regulation currently requires all distributor licensees, regardless of type or size, to carry at least \$2,000,000 in general liability insurance. These unnecessary insurance requirements have led many cultivators to either not apply for this license type, or surrender the license in order to save on insurance costs.

**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.

➤ **Allow COA Testing of Pre-Rolls Prior to Packaging**

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

- Consistent potency in branding – many brands prefer pre-rolls with either higher or lower

THC content. Requiring packaging prior to testing makes it difficult to brand under a consistent potency.

- Variety packs – allowing packaging after COA testing would make it possible for several pre-rolls to be combined into a single variety pack for sale. Variety packs are popular with consumers and can help patients and adult-use consumers better understand which strains are most appropriate for them.
- Waste reduction – minimizing the amount of packaging prior to testing will prevent the generation of packaging waste from pre-rolls that ultimately fail testing.

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

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

➤ **Issue Appellation Regulations Regarding Trademarks and Enforcement.**

In anticipation of agency consolidation and the establishment of the DCC in 2021, and the resulting statutory shift of cultivation licensing and regulatory authority to DCC, a number of key provisions within the proposed CDFA regulatory package for the Cannabis Appellations Program were removed from DCC regulations. Specifically, we are extremely concerned at the removal of trademark and enforcement provisions from proposed DCC regulations, and urgently request that DCC or CDFA address these issues prior to the opening of the appellations program.

**OC Recommendation:** We urgently request that either the CDFA or the DCC promulgate regulations for "Effective Dates" that allow for a one year sunset period only for geographic brands that were in use before February 21, 2020, when the first Notice of Proposed Rulemaking for the appellations program was published. The one year sunset of the geographic trademark would begin when an appellation with the same or similar geographic name is established.

**OC Recommendation:** We urge the DCC to change the categorization of violation severity from minor to serious for violations of advertising, marketing, labeling and packaging requirements for all cannabis designations of origin, including appellation of origin, city, county & city and county of origin, while also providing for a one time, first-offense moderate violation in order to appropriately support sufficient licensee education regarding these requirements.

➤ **Allow Limited No-Source Entry of Cannabis Genetics into METRC.**

Currently, state regulations provide no opportunity for diverse cannabis genetics to enter the licensed supply chain if they are not either currently within the supply chain, or derived from plants within the supply chain. Many diverse and novel cannabis genetics are currently not part



of the licensed market, and this closed loop system already has - and over time, will continue to - result in a tremendous erosion of genetic diversity within the licensed market.

**OC Recommendation:** 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 METRC system.

**OC Recommendation:** For existing 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 METRC, with an annual limit of 150 of any combination of specimens per business entity

**OC Recommendation:** For new and existing cultivation and nursery license holders, we recommend exempting seeds from no-source entry restrictions and allowing for an unlimited amount to be entered daily into METRC.

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.*

➤ **Waive 24/7 video surveillance and alarm system requirements for vertical integration located the same site as an outdoor cultivation license.**

Since the inception of the regulated cannabis framework, state regulators have exempted cannabis cultivators from the video surveillance, lock, and alarm requirements applicable to all other license types.

The DCC provided this exemption out of a recognition that extensive security requirements are impractical in remote rural areas, stating in their Initial Statement of Reasons that: *"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."*

Because the security exemptions applied to rural cultivators are not applied to applicants for a microbusiness, manufacturing, distribution, or retail licenses on a rural farm - these impractical

security restrictions become applicable as soon as a rural cultivator seeks to vertically integrate on-farm, and are either expensive or impossible to comply with for many farmers.

In turn, these regulations practically prevent small farmers from pursuing on-farm vertical integration which is critical for their ability to access market as craft producers.

**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. Apply the same exemption to manufacturing, distribution, or retail licenses located on the same site as an outdoor or mixed-light 1 cultivation license.

➤ **Address DCC processing times for licenses and scientific amendments.**

We consistently receive feedback regarding months-long delays in processing for DCC license applications and scientific amendment requests, some of which are requests for extremely minor changes.

**OC Recommendation:** We encourage DCC to consider improvements to their administrative processes to decrease processing times.

Thank you for your consideration,



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