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On behalf of the Cannabis Distribution Association (CDA) and our members, representing a significant portion of regulated cannabis distributed throughout California, we are pleased to offer formal comments and suggested revisions to strengthen and clarify the Department of Cannabis Control's proposed emergency regulations released on September 8, 2021. Our organization has identified several major issues that we believe should be addressed or further clarified within this regulatory package.

§15041.2 - §15041.7, and §15315 RE: TRADE SAMPLES

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

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

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



CANNABIS
DISTRIBUTION
ASSOCIATION

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

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

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

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

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

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

§15041.5(d) Transportation of cannabis goods designated as trade samples must be conducted in accordance with the cannabis transportation requirements in the Act and the Department’s regulations.

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



CANNABIS
DISTRIBUTION
ASSOCIATION

For consistency with 26153.1(g), we request that §15315 be amended to read: "...they shall not transport any cannabis or cannabis products except for trade samples, immature cannabis plants and seeds to a licensed retailer..."

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

Regulations should base Trade Sample Limits on a Per-Batch Basis, Not Per License Basis

An evaluation of proposed sample limits should be conducted to determine what is reasonable and feasible for accomplishing the needs of Brands and Distributors in the current market. As proposed, Section §15041.7 prescribes universal quantities of trade sample limits that are effective for small batch cultivators and manufacturers, but are not equally beneficial or useful for moderate to larger batches. We suggest that the DCC revise the trade sample limits so that they are relative to the batch size, with applicable capped limits (if needed). From anecdotal data and discussion among distributors, as much as 5% of a batch could be ideally issued in the form of trade samples. Trade sample limitations should be based on each batch, not each licensee.

Example 1:

For a 50 pound cannabis flower batch, 5% would equate to 323 eighth units (the common packaged unit for cannabis flower).

- With an average of 10 Sales Representatives across the state, each Sales Representative could be issued 32 Trade Samples per batch, which is an appropriate amount considering a Sales Representative could manage a territory with 30-50 Retail accounts.

Example 2:

For a 5,000 unit cannabis products batch, 5% would equate to 250 Trade Samples Units.

- With an average of 10 Sales Representatives across the state, each Sales Representative could be issued 250 Trade Samples per batch, which is an appropriate amount considering a Sales Representative could manage a territory with 30-50 Retail accounts.



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- A look at the average batch size for cannabis products batches may indicate that batch sizes are typically 3,000-10,000 units. However, to address concerns with allocating large amounts of trade samples from much larger batches, we suggest “not to exceed” caps to the trade sample limits provided to recipient licensees.

Distributors who carry multiple product lines should be able to have each product line represented equally, and the producers of those product lines should not be disadvantaged due to the distributor having a limit of trade samples per their distributor license.

We suggest the following revisions to Section §15041.7:

- (a) A licensee is limited to designating 5% of the total cannabis or cannabis goods batch ~~the following aggregate amounts of cannabis goods as trade samples in a calendar month period.~~
 - (1) For cannabis in the form of dried flower, a total of two pounds; and
 - (2) For manufactured and nonmanufactured cannabis products, a total of 900 individual units.
- (b) Licensees authorized to provide trade samples may provide trade samples to multiple recipient licensees.
- (c) A licensee is limited to providing up to 10% of the total trade samples per cannabis or cannabis goods batch ~~the following aggregate amounts of cannabis goods as trade samples to each recipient licensee; not to exceed the following aggregate amounts~~ in a calendar month period:
 - (1) For cannabis in the form of dried flower, 355 grams per strain~~and no more than 6 strains~~ to each recipient licensee; and
 - (2) For manufactured and non-manufactured cannabis products, 105 individual units, as packaged for retail sale, per cannabis product line~~and no more than 6 individual cannabis product lines~~ to each recipient licensee.
- (d) The limits provided in subsection (c) of this section apply to the transfer of cannabis trade samples from one licensee to each recipient licensee and do not limit the total amount of cannabis trade samples that a licensed distributor may transport.



CANNABIS
DISTRIBUTION
ASSOCIATION

- (e) Live plants and seeds cannot be designated as a trade samples or provided to licensees as a trade sample.

Regulations should clarify at what point in the supply chain Trade Samples shall be designated

When reviewing Section §15041.3, it is unclear at what point trade samples should be designated in the supply chain workflow. If a Distributor is completing the quality assurance testing for the trade samples, are they the licensee responsible for designating the units as trade samples in the CCTT-Metrc system? If a Distributor is the designating licensee, the current proposed monthly limits per licensee will not be accurately tracked in the CCTT-system (i.e., the Distributor would be making the designation on behalf of the cultivator or manufacturer). Our suggested revisions to Section §15041.7, to make trade samples a function of the batch size, would alleviate this ambiguity. We request that DCC make clear which licensee is responsible for making the trade sample designation, and if it can be any licensee in the supply chain, an acknowledgement that trade sample limits will likely need to be audited off of internal record keeping, as CCTT-Metrc will link many trade sample designations to Distributor licenses who do not own title of the product they are running quality assurance testing for.

Regulations should protect privacy through the use of employee IDs as opposed to names

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

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

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



CANNABIS
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§15306 RE: LABORATORY TEST RESULTS

As of February 29, 2020, all testing laboratories have been required to upload the certificate of analysis (COA), and associate it to all previously recorded test results, directly into the CCTT Metrc system (Bulletin Number CA_IB_2020_006). Given that this requirement has been in effect for over a year, there should no longer be any active, legal cannabis or cannabis products without electronically accessible COAs. The industry has been asking to move away from printing the COA with each delivery for well over a year, and previous conversations with state regulators indicated that we were on track to remove this requirement by now. However, Section §15306(b) of the emergency regulations still includes the antiquated requirement for a printed COA to accompany every item in a transfer.

A typical certificate of analysis (COA) is 3-6 pages (double-sided printing), multiplied per cannabis goods batch, per transfer, this amounts to reams of paper printed each month for distribution. Printing this amount of records per transfer is expensive and impacts large and small (e.g., equity) distributors alike. Requiring printed COAs is not in line with the State's environmental protection and reduced waste policies. We suggest the following revisions to §15306(b):

(b) When a batch from a manufactured or harvest batch passes, the cannabis or cannabis products may be transported to one or more licensed retailers, licensed distributors, or licensed microbusinesses. A printed or electronic copy of the certificate of analysis for regulatory compliance testing shall ~~accompany the batch and~~ be provided to the licensee receiving the cannabis or cannabis products by the time of delivery. A valid certificate of analysis uploaded to the track and trace system by the testing laboratory fulfills this requirement.

§15003 RE: OWNERS OF COMMERCIAL CANNABIS BUSINESSES

The proposed revisions to the definition of "Owners" is too broad, specifically in Section §15003(E).

(E) An individual with the authority to provide strategic direction and oversight for the overall operations of the commercial cannabis business, such as the chief executive officer, president or their equivalent, or an officer, director, vice president, general manager or their equivalent.

Vice presidents, general managers, "or their equivalent" should not be considered owners. Owners should either be those with 20% or more equity, or officers of the corporation holding the license.



CANNABIS
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§15004 RE: FINANCIAL INTEREST DISCLOSURES

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

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

The following clarification would ensure that unlicensed persons with financial interests are disclosed to state regulators, while limiting unnecessary paperwork for licensees who have already disclosed their financial interests:

§15004(a)(3): An unlicensed person that contracts with the cannabis business to cultivate, manufacture, package, or label cannabis or cannabis products under that person’s brand name.

§17407 RE: CANNABINOID CONTENT LABELING

Under the California Code of Regulations 4 CCR 15307.1, the “total THC, and/or Total CBD claimed to be present on a label shall not be considered inaccurate if the difference in percentage on the certificate of analysis is plus or minus 10.0%”. Section §17407(2) of the proposed emergency regulations stipulates that the “labeled cannabinoid content shall reflect the amount indicated on the Certificate of Analysis”. Clarification is needed to respond to operators who wish to label cannabis and cannabis goods within a 10.0% variance of the amount reflected on the COA. We recommend adding specific language in the regulations that clarifies 4 CCR 15037.1 as an allowable variance for accuracy of the lab results, and not the product labeling.



CANNABIS
DISTRIBUTION
ASSOCIATION

§15041.1 RE: BRANDED MERCHANDISE

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

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

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

§15301 RE: STORAGE SERVICES

The practice of cross-docking is widely used in distribution, and is how industries operate efficiently across the vast state of California. Cannabis distribution licenses are costly to acquire and maintain. As such, partnerships between distributors for the purpose of providing storage services and cross-docking is essential. Many small, regional, social equity distributors, as well as larger ones, use other distributors' licensed facilities to "lay over" deliveries when serving areas far from their licensed distribution premises.

Here is a common example of how storage services is used by distributors:

1. Distributor Facility A is a central warehouse where orders are picked-and-packed



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2. Products are shipped on a long-haul transfer (Transfer #1) from Distributor Facility A (ex: NorCal) to Distributor Facility B (ex: SoCal) where goods are received and sorted for their final route (cross-docking).
3. From Distribution Facility B, several vans load up for deliveries to retailers in their respective territories, each van on a separate route.
 1. Van X to retailers in San Diego (Transfer #2)
 2. Van Y to retailers in Palm Desert (Transfer #3)
 3. Van X to retailers in Hollywood (Transfer #4)

In the example provided above, Distributor B provides Storage Services to Distributor A. Interpretations of §15301 by cannabis attorneys, compliance consultants and operators have consistently been that this example is permissible, as long as the products are packaged for retail.

We seek clarification on this point and suggest that §15301 add the following subsection:

(e) Storage services may include short-term storage, such as in the event of a stopover between a licensed distributor and a licensed retailer, as long as two transfers are generated whereby the licensee providing the storage services is the receiver or final licensee on the initial transfer and is the shipper or originating licensee on the secondary transfer.

§15015 RE: PAYMENT OF FEES

Cannabis distributors provide a vital role in the cannabis supply chain -- including tax collection, quality assurance and of course transportation and warehousing -- and do all of these on the smallest margins of any license type. Distributors shouldn't have to choose between overpaying fees or risk 50% penalties. We suggest that the Bureau implement a mechanism that allows licensees to recoup overpayments of licensing fees the same way that federal and state taxpayers are able to apply overpayments to future periods. Similarly, should revenues exceed expectations, then licensees should have the ability to "pay the difference" during the term so as to avoid penalties.

We seek clarification on this point and suggest that §15015 be amended as follows:



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(c) Failure to pay the appropriate licensing fee is grounds for discipline. If the Department determines that the licensee paid an amount less than the appropriate licensing fee under section 15014 of this division, the licensee will be required to pay the balance of the appropriate fee within 90 days of exceeding the gross revenue threshold, or otherwise be required to pay the balance as well as and a penalty fee of 50 percent of the appropriate licensing fee. The Department in its discretion may waive the penalty fee.

(d) Overpayments of licensing fees may be applied to the following year's license fee, upon approval by the Department.

§15050 RE: LOSS OF ACCESS

Distribution activities are the only part of the supply chain that are not permitted to continue in the event of a loss of access to the track and trace system. Stopping all planned transportation activities for an undetermined amount of time will lead to a substantial loss of revenue for distributors, while other license types are authorized to continue normal business activities. We seek that the Department establish parity between all license types in the event of a loss of access, by striking the subsection below:

~~(b) The licensee shall not initiate transport for, receive, or deliver any cannabis or cannabis products until such time as access is restored.~~

§15709 RE: LABORATORY TRANSPORTATION OF CANNABIS AND CANNABIS PRODUCTS SAMPLES

This section related to a fully enclosed box, container, or cage comprised of part of the body of the vehicle or trailer should be amended as follows:

(a)(1) While transporting cannabis goods or cannabis products samples, a licensed testing laboratory employee shall ensure the cannabis goods or cannabis products are not visible to the public. Cannabis goods or cannabis products shall be locked in a fully enclosed box, container, or cage that is secured to the inside of the vehicle or trailer. ~~No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer.~~ For the purposes of this section, the inside of the vehicle includes the trunk.



CANNABIS
DISTRIBUTION
ASSOCIATION

Furthermore, these same requirements should apply to all cannabis and cannabis goods transported, not only transportation of samples by a licensed testing laboratory.

Licensed operators have an economic incentive to protect inventory from theft and we believe the provision that has been stricken above does not provide any such protection and in fact put employees at additional risk as they have to unlock containers with their backs to the outside environment.

The leadership of the Cannabis Distribution Association appreciates the opportunity to provide formal comments to the DCC's most recent emergency regulatory package and are happy to discuss these items further with you as necessary to further implement this regulatory package. Please consider us a resource on these issues moving forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Gallerani".

Jennifer Gallerani

Chair of the Board