CANNABIS DISTRIBUTION ASSOCIATION

August 27, 2018

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RE: CDA COMMENT LETTER ON PROPOSED PERMANENT RULEMAKING ACTION

Dear Regulators:

The Cannabis Distribution Association represents several dozen licensed cannabis distributors who have contributed to our collective comments enclosed. On behalf of our members, we appreciate your commitment to the successful implementation of cannabis licensing and regulation and to your consideration of our recommendations to overcome supply chain constraints and improve broad understanding and adoption of commercial cannabis regulatory policies.

Enclosed please find a summary of our feedback categorized into sections - Quality Assurance and Testing, Packaging and Labeling, Tax Collection and Remittance, Security, Administrative and Other - and more detailed discussion on each comment in the pages to follow.

Thank you for your consideration. Please feel free to contact us with any questions.

Respectfully,

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Quality Assurance and Testing

1. **Support and recommendations for distributor-to-distributor transfers post-testing. (§ 5307)**

2. **Require testing labs to clearly display the reason for lab test failure and to clearly display whether the test is an official certified test vs a non-certified test. (§ 5726)**

3. **Need for composite testing. (§ 5305)**

4. **Allow appeal process for initial test results; ability to request a secondary test. (§ 5306)**

5. **Increase cannabinoid variance from 10% to 20%, especially for cannabis flower and non-infused prerolls. (§ 5724)**

6. **Upon a product recall, each receiving party must notify the party from whom they received the cannabis goods. (§ 5053)**

Packaging and Labeling

7. **Support and recommendation for adjustments to labeling requirements. (§ 5724)**

8. **Remove the requirement for potency to be listed on the interior container for multilevel packaging. (BPC § 40403(1)).**

9. **Allow distributors to relabel manufactured products. (§ 5303(b))**

10. **Allow distributors to assemble non-infused prerolls from tested harvest batches. (§ 5303)**

11. **Support for weight variance for dried flower, recommend increased variance. (§ 5303.1)**

12. **Support for CR exit packaging *or* individual child-resistant packaging (CRP). (§ 5413)**

13. **Clarify that goods in compliance at the time of packaging will satisfy requirements, despite new labeling compliance changes. (BPC § 26120)**

Tax Collection and Remittance

14. **Need for regulatory recourse for distributors upon failure to collect cultivation or excise taxes from producers or retailers, respectively. (CDTFA)**

15. **Clarify excise tax requirements for microbusinesses. (CDTFA)**

Security

16. **Exempt transport-only distributors from premises-based security requirements and allow a transport-only premises to be shared with another licensed premises. (§ 5315)**

17. **Support for revised holding period for security recordings from 180 to 90 days. (§ 5305(c))**

18. **Increase security requirement for non-storefront retail delivery vehicles. (§5417)**

19. **Clarify and consider amendment to certain motor carrier permit requirements. (§ 5311)**

Administrative and Other

20. **Allow retailers to reject partial shipments of cannabis goods. (§ 5052.1)**

21. **Allow distributor access to licensee database for verification of licensed addresses.**

22. **Streamline administration for Licensed Distributors with multiple premises. (§ 5023, 5025)**

23. **Need for more detailed regulations for distribution supporting licensed events. (§ 5601)**

24. **Need for enforcement against businesses that facilitate non-licensed activity, particularly to the extent that the activities directly impedes upon the regulated marketplace.**

25. **Clarify regulations regarding products containing hemp-derived CBD.**

26. **Clarify the definition of "cannabis products" in each agency's regulation text. (§5000)**

27. **Allow expired cannabis goods to be disposed at any storefront retail location. (§5410(a))**

28. **Grant regulators discretion to allow normal commercial cannabis activity in the event of an extended track and trace system outage. (§5050(d))**

To expand on the summary points listed above, the following pages provide detailed discussion on each.

Quality Assurance and Testing

1. **Support and recommendations for distributor-to-distributor transfers post-testing. (§ 5307)**

   CDA supports the clarification provided in § 5307 allowing a certificate of analysis to transfer from one distributor to another, to facilitate post-testing transfers between distributors.

   Recommend the following clarification to Bureau Regulations § 5307:

   When a licensed distributor receives a certificate of analysis from the licensed testing laboratory or upon transfer from another licensed distributor stating that the sample meets specifications required by law, the distributor shall ensure the following before transporting the cannabis goods, packaged as they will be sold at final sale, to one or more licensed distributors, licensed retailers or licensed microbusinesses...

   Recommend the following new clarifications be provided in CDTFA Regulations:

   The distributor who arranges the testing for the cannabis or cannabis product batch and who performs the quality assurance review is responsible for collection and remittance of the cultivation tax. The distributor who transfers or sells the cannabis or cannabis product to the retailer is responsible for the collection and remittance of the excise tax.

   Should the agency determine that a reasonable cap be placed on the number of times a single tested cannabis good may be transferred, we would ask the agency to consider the following:

   Packaged, tested cannabis goods from a single test batch may be distributed to multiple licensed distribution premises, in which case each receiving distributor shall be responsible for conducting a Quality Assurance Review in accordance with section 5307. After the certified test is conducted, the same cannabis good may only be transferred to up to X [three to five] licensed distribution premises, except for transfers between licensed distribution premises that are owned by the same licensee which may be transferred an unlimited number of times between premises with the exact same ownership structure.

   [For example, a 50-pound batch of cannabis may be tested, packaged, and distributed to many different distributors (for example, 10 pounds in final packaged form to each of 5 distributors). Each receiving distributor may transfer the cannabis goods to other licensed distribution premises it owns an unlimited number of times. However to distribution premises that are not owned by the receiving distributor, each tested cannabis good may be relocated between *X [three to five]* or fewer distribution licensees without triggering the need for a new certified test. Note the distinction between the number of entities not number of transfers, and distinction that the chain of custody is on the individual good / item, not the batch as a whole which may be widely distributed.]

   Prior to certified testing, cannabis goods may be transferred without limitation to the number of transfers between licensees. Once a cannabis good is packaged in its final, packaged form it may not be transferred backwards in the supply chain, except for remediation provided in § 5306(d).

2. **Require testing labs to clearly display the reason for lab test failure and to clearly display whether the test is an official certified test vs a non-certified test. (§ 5726)**

   There is great inconsistency with how lab testing results are displayed on the Certificate of Analysis. Into August, there are still multiple labs that are not reporting cannabinoid label results, as mandated in section 5724(b). To ease confusion and ensure all parties are working off the same information, we suggest requiring consistent language and uniform formatting for official COA results, and encouraging labs to report R&D results with a statement similar to "This test is for research and development purposes only, and does not meet the requirements for certified commercial cannabis under Business and Professions Code 26100(a)".

   Currently, the distributor is required to verify that the weight is correct, the packaging and labeling requirements are met, and the COA corresponds with the batch. However, in lieu of accurate reporting by some labs, distributors are often additionally required to act as second validator of results. For example, when the testing lab does not follow proper reporting standards on the COA it places the responsibility on distributors to determine if the pesticide or residual solvent action levels are considered passing or failing. The lab should be required to provide clear guidance that the batch passes or fails and for which compounds. Whatever information is to be provided to the Bureau should also be provided to the distributor and producer, with notifications to all parties within a 24-hour window of one another or at the same time.

   Regarding incorrect reporting by the lab or testing for the incorrect phase:

   - If product moves to retail sale due to an error on COA, the fault should lie with the lab, but it currently falls on the producer or manufacturer, with civil action as their only recourse. The impact can be detrimental or near fatal for the producer's business; labs with repeat offences should be fined, with possible revocation or suspension of their licenses, and we suggest the Bureau actively communicate issues like this. Currently the industry is left to rumour and piecing news accounts together of what really went wrong, which is not an effective method of making business decisions.
   - When a distributor requests a Phase 1, 2, or 3 testing panel, and the lab tests for a phase higher than what is required, a retest should be available at the expense of the lab and the initial test should be able to be disregarded due to the mistake by the lab.

3. **Need for composite testing. (§ 5305)**

   In light of escalating testing costs and bottlenecks, regulations that allow for compositing are a high priority. Compositing is a set of testing rules that allow multiple strains to be tested together for pesticides and other contaminants, so long as they were harvested at the same premises at the same time, and the consolidated batch falls under the total maximum batch size of fifty pounds. These rules have already been adopted in Oregon and are explained in detail on pages 2-4 of the Oregona Liquor Control Commission "Sampling and Testing Metrc Guide." (https://www.oregon.gov/olcc/marijuana/Documents/CTS/SamplingandTestingGuide.pdf)

   Under the current system, a cultivator growing three strains – each of which produce fifteen pounds – must pass three independent tests for pesticides, solvents, microbial impurities, foreign material, mycotoxins, and heavy metals, even if all three strains were harvested from the same premises at the same time.

Adopting compositing rules would have major and positive impacts for both businesses and consumers. In addition to reducing costs for cultivators, compositing would reverse artificial incentives towards monoculture, encouraging the production of diverse cannabis strains and allowing for more medically-targeted strains and greater consumer choice in the regulated market. It would also decrease the overall burden on testing labs, alleviating the bottlenecks which affect everyone.

The Bureau has broad authority to implement regulations that manage testing costs. Sections 26100(b) and 26104(b)(2) of the Business and Professions Code direct the Bureau to "develop criteria to determine which batches shall be tested" and "specify how often licensees shall test cannabis and cannabis products," respectively. As the industry as a whole struggles under limited testing capacity and increasingly demanding Phase 2 testing requirements, we believe compositing is a commonsense way for the BCC to manage testing costs without compromising consumer safety.

4. **Allow appeal process for initial test results; ability to request a secondary test. (§ 5306)**

In the event of a failed test result, producer should have the right to appeal the result and request a retest at the cost of the producer. Until the rate of false-positives by testing laboratories is proven to be negligible, producers should not be punished by having to remediate or potentially destroy an entire batch. The retest would be required to be completed at the same lab. Should the lab come back with a different (passing) result the second time, the retest and the COA will be reflected with the new information. This is the only instance allowing the COA to be amended. The testing lab must provide a report as to the reasons for the false positive on the initial test. Furthermore, the agencies should work to develop an audit and evaluation process for the labs to test for false positive scenarios.

5. **Increase cannabinoid variance from 10% to 20%, especially for cannabis flower and non-infused prerolls. (§ 5724)**

As our members have gone through multiple rounds of harvests and testing, we've seen significant variance in potency results, even when sampling is randomized, and tests are conducted by the same lab. The 10% variance is regularly achievable for a manufactured product, where cannabinoids are distilled and carefully measured, but flower has significant variance in potency within parts of the plant. Additionally, as most methods of consumption are self-titrating, in practice, expanding the variance allowed versus labeled content does not present a significant health and safety risk.

Additionally, the action levels should be reconsidered for various pesticides and residual solvents. The wide variety of cannabis products on the market should be reflected in the action levels, and the different action levels should reflect actual harm to health and safety. In particular, we would like to see a distinction for action levels between consumable and topical goods. Many products designed for external use only contain ingredients that would be harmful if consumed, and providing relaxed standards for topical goods that accurately reflect the risk to the consumer would give an avenue for cannabis that is unsafe for inhalation or consumption to be sold rather than destroyed. We recommend aligning topical standards with those of the cosmetic industry.

6. **Upon a product recall, each receiving party must notify the party from whom they received the cannabis goods. (§ 5053)**

   In the event of a recall initiated by the Bureau or other licensing authority, all licensees at one time in the chain of custody of the cannabis goods from the recalled batch should be notified of the recall. For example, if a licensed retailer has a product pulled off of the shelf for a compliance reason, the retailer should be responsible for notifying the distributor from whom it received the product, and the distributor should be responsible for notifying the producer from who it received the goods as well as all retailers to whom the goods were provided. Required notification will ensure that all parties have an opportunity to become aware of the issue and to reduce the likelihood of these issues reoccuring.

Packaging and Labeling

7. **Support and recommendation for adjustments to labeling requirements. (§ 5724)**

   CDA supports the clarification provided in § 5724 (d) to reduce lab test failures for cannabinoid potencies under 5%. The following additional clarification is necessary:

   > *The sample shall be deemed to have passed the cannabinoid testing if the concentration of any one cannabinoid, claimed to be present at 5% or greater ~~of the total cannabinoid profile,~~ does not exceed the labeled content of the cannabinoid."*

   CDA supports the clarification provided in § 5724 (d)(1-3) to increase the allowable variances for low-dose edible products.

   Recommend the following clarification to § 5724 (c):

   If the labeled content of any one cannabinoid is expressed as a total concentration of the cannabinoid, the laboratory shall calculate the total cannabinoid concentration as follows:
   (1) For concentration expressed in weight:
   - *(a) For cannabis flower: Total cannabinoid concentration (percentage) = (cannabinoid acid form concentration (percentage) x 0.877) + cannabinoid concentration (percentage)*
   - *(b) For cannabis products: Total cannabinoid concentration (mg/g) = (cannabinoid acid form concentration (mg/g) x 0.877) + cannabinoid concentration (mg/g)*

   Recommend the following clarification to § 5724 (e):

   If the sample fails cannabinoid testing, the batch from which the sample was collected fails cannabinoid testing and shall not be released for retail sale until the goods within that batch are re-labeled with the cannabinoid content matching the COA.

   Recommend adding the following new language in sub-section § 5724 (f):

   Failed lab results whereby the failure is strictly due to the cannabinoid testing portion of the COA may be remediated by the distributor re-labeling the batch with the appropriate cannabinoid content, after which the batch would not require additional review by the agency or testing

laboratory. The COA should specify "Cannabinoid Claim Failure - Remediation Method: Relabel." The distributor responsible for remediation shall sign off on the COA, taking responsibility for having completed the necessary remediation action.

This should expedite the turn around time from failed COA to completed remediation, by not needing to wait for agency approval of the remediation plan (often 3-17 business days) as well as indicate to the retailer that the failure is not for a contaminant, and encourage the retailer to look for the adjusted label to confidently accept the cannabis goods. (Currently retailers are rejecting products that have already been remediated, because they take one look at the "Failed" COA and determine the product is not fit for sale.)

8. **Remove the requirement for potency to be listed on the interior container for multilevel packaging. (BPC § 40403(1)).**

   Recommend to strike the requirement in § 40403(1) that requires potency to be on the interior container for multi level packaging. With the significant variance in testing results, distributors are forced to relabel a very large proportion of products, and requiring the potency on the interior presents an onerous burden on the distributor.

   Additionally, this requirement is in direct conflict with BCC § 5303(b), which prohibits re-packaging manufactured products by a distributor (which we recommend changing below). Many manufactured products have the tamper evident seal on the exterior of the packaging, or exterior packaging that is single-use, in which case relabeling the interior tube or jar would require violating the integrity of that seal, and in many cases, destroy the usability of the exterior packaging. We support the intent of ensuring consumers have accurate information about dosing and potency, but the current variability in testing results and product integrity requirements do not allow for an efficient or cost-effective method of relabeling potency on the interior packaging.

9. **Allow distributors to relabel manufactured products. (§ 5303(b))**

   Recommend to amend § 5303(b) to allow distributors to relabel manufactured products, in order to conduct clerical label corrections for manufactured products to ensure the they meet all compliance requirements. Often, products arrive with minor labeling errors (ex: missing a required datapoint, weight listed in the wrong denomination, requiring an additional warning, etc). Distributors must be able to make these relabeling adjustments, at the discretion of the producer, in order to ease supply chain bottlenecks and so as not to send product backwards once transferred to the distributor.

10. **Allow distributors to assemble non-infused prerolls from tested harvest batches. (§5303)**

    CDA supports the new definition for "preroll" in § 5000 (o) and the clarification provided in §5303(a) authorizing a licensed distributor to package, re-package, label, and re-label cannabis, including prerolls, for retail sale. Additionally, it is essential for distributors to be able to assemble prerolls from an unpackaged harvest batch after testing, just as they would assemble flower grams, eighths, or other sized flower product for the following reasons. We seek revision to the proposed regulations that would clarify that Distributors are allowed to roll (non-infused) prerolls. Please consider the following rationale, based on statute and current regulatory definitions, and

supply chain and public policy considerations:

- A preroll is by definition a non-manufactured product. Indeed a non-infused preroll is no more than ground or collected dried cannabis flowers enclosed and rolled in paper. No other treatment, processing, alteration, or manipulation of the dried flower is involved in creating a preroll.

- "Rolling" is no different than "Packaging," and there is no public safety or other reason to create a distinction. There is physically, practically and functionally no difference between the act of "rolling" a preroll [rolling dried cannabis in paper] and "packaging" [placing cannabis goods into "any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale]."

- Packaging of Cannabis (but not Manufactured Cannabis) by Distributors is Allowed: The Bureau has allowed, since the first inception of the Emergency Regulations and continuing through to the Proposed Permanent Regulations, distributors to "package, re-package, label, and re-label cannabis, including prerolls," but not manufactured cannabis products. In fact, most readers of the proposed permanent regulations believe there is no distinction and that this already has been addressed by the Bureau's ISOR that states "Subsection (o) defines "preroll" as any combination of the following in paper: flower, shake, leaf, or kief that is obtained from accumulation in containers or sifted from loose, dry cannabis flower or leaf with a mesh screen or sieve. Licensed distributors have the ability to package, re-package, label, and re-label cannabis, including prerolls; this definition is necessary because it provides added clarity regarding what a preroll may be comprised of."

- Allowing Distributors to Roll Prerolls Serves Supply Chain Efficiency and Cultivators' Bottom Line: When Distributors weigh, portion, and package bulk flower, a substantial amount of loose dried cannabis collects in the process. As this product is not allowed to go back to Cultivators or Processors for additional packaging (as the Bureau notes as support for allowing distributors to package flower in the first place), 6 prohibiting Distributors from collecting this perfectly usable cannabis to use in prerolls is wasteful and costly. And Cultivators must bear the entire cost of this loss, which is only further exacerbated by a rule that does not allow distributors to roll prerolls. Anecdotally in discussions with clients and industry groups, Cultivators who send dried flower to be packaged can expect to see on average only 90-95% of that dried flower actually go to market. With the tight margins Cultivators are already operating on slim margins; this five to ten percent is significant. Allowing Distributors to make prerolls can mitigate this loss.

- Proposed section 5303 prohibits a distributor from packaging, re-packaging, labeling, or re- labeling cannabis products, with certain exceptions. Subsection (a) allows distributors to package and label cannabis, including prerolls, so that, after a batch has gone through laboratory testing, the cannabis need not return to the cultivator for packaging and labeling, as prohibited by the Department of Food and Agriculture regulations.

11. Support for weight variance for dried flower, recommend increased variance. (§ 5303.1)

We support the addition of section 5303.1 to allow for a weight variance for packaged dried flower. This definition should additionally extend to prerolls.

Given such small sized increments for packaged flower products (typically from 1 gram to 3.5 grams), a 2.5% variance is negligible and does not factor into account the potential variance as moisture leaves the plant over time. We recommend increasing the allowable variance to 5-10% for product in its final packaging (5% for increments of 3.5 grams or larger, 10% for increments below 3.5 grams), and does not apply to unpacked harvest batches. While this would be legally allowed to satisfy regulatory requirements, the market (consumer) may take issue to packages that are below the expected weight they expect to receive, and they may take this up with as a complaint to the business. Most licensees will intentionally over-pack the product, to account for moisture loss over-time, and should not be penalized for this.

12. Support for CR exit packaging *or* individual child-resistant packaging (CRP). (§ 5413)

We support the BCC and DPH's new standards regarding child-resistant packaging (CRP), which would remove requirements for CRP on cannabis goods, and instead require retailers to place all cannabis goods in child-resistant and resealable exit bags. Requiring CRP on each package produces large amounts of waste and is significantly more expensive than CR exit bags. Some producers have made large investments in developing and purchasing child-resistant packaging under current regulations and should have the flexibility to use this packaging rather than exit bags. Additionally, some producers may prefer to place CRP on the product itself, with which an exit package would be redundant and unnecessary.

Recommend the following amendment to § 5413:

Cannabis goods purchased by a customer shall not leave the licensed retailer's premises unless the goods are in individual child-resistant packaging or placed in a resealable child-resistant opaque exit package.

We have heard the arguments for requiring certain products, namely edibles, to be placed in resealable childproof packaging. Should the agencies determine it necessary to require certain products to be in resealable childproof packaging, we would recommend that this requirement not apply to cannabis goods that are non-decarboxylated (such as flower and concentrates) where the cannabis good cannot cause someone to become intoxicated from accidental ingestion, rather only if applied to heat and inhaled.

We would additionally like to recommend the following:

- By 2020 all exit bags should be required to be durable, intended for multiple uses, and made of compostable materials. While most current CR exit bags contain mylar and are not environmentally sustainable, it's essential that sustainable exit bags be developed and adopted universally as soon as possible. Standardizing design in exit bags - rather than in thousands of different packages for individual products - provides an opportunity for sustainable design at scale. If the market does not provide this solution, the state should require it.

- Customers may re-use their exit bags. Re-use, even more than recycling, is crucial to environmental sustainability. Single-use exit bags will produce enormous amounts of unnecessary waste.
- Retailers should be required to make exit bags available on request. Retailers may charge a fee for exit bags as part of a program to encourage reuse. Customers should have the opportunity to request exit bags if they prefer. Additionally, the ability for retailers to charge a fee for exit bags is important to encourage customers to re-use exit bags.

13. Clarify that goods in compliance at the time of packaging will satisfy requirements, despite new labeling compliance changes. (BPC § 26120)

The changes to labeling requirements do not specify what happens to goods that are currently in compliance, but will go out of compliance once the permanent regulations are in effect. As an example, BPC § 26120 does not require the universal symbol for cannabis flower, but the new MCSB regulations require it to be placed on the primary panel. Consider language that clarifies that all cannabis goods are subject to the labeling requirements in place at the time of packaging. This will allow items in various parts of the supply chain that are currently compliant to be sold and transferred without unnecessary relabeling or destruction as a result of new regulation. Additionally, agencies should seek to unify packaging and labeling requirements defined in each set of regulations, for example clarifying on which goods the the universal symbol is required.

Tax Collection and Remittance

14. Need for regulatory recourse for distributors upon failure to collect cultivation or excise taxes from producers or retailers, respectively. (CDTFA)

Without the authority to enforce penalties on producers or retailers for failure to pay harvest and excise taxes respectively, distributors are held liable for the tax obligations of others with whom they have no recourse for failure to pay. The complicated nature of the tax law makes it such that the logistics of receiving payment (typically in cash) would more easily occur prior to the tax actually becoming due, placing cash flow constraints on producers and retailers who thereby resist paying for as long as possible. Please consider the following amendments to ease the financial burden on distributors:

Licensed distributors are required to report any uncollectable harvest tax amounts due from licensed cultivators and manufacturers and any uncollectable excise tax amounts due from licensed retailers within 30 days of the calendar quarter end for the quarter in which the tax obligations become due. Upon notification by the agency, the past-due licensee shall have thirty days to reconcile the past-due amount or will otherwise be subject to an investigation by licensing authorities. The agency (CDTFA) may impose penalties on the past-due licensees, where upon failure to pay amounts past due could lead to penalty fees, suspension or possible failure to renew the annual license for the applicants.

Licensed distributors are responsible for remitting to the department all harvest and excise tax amounts collected during the period. Harvest and Excise taxes due but not collected by the distributor shall not be required to be remitted by the distributor until the collection is complete.

15. **Clarify excise tax requirements for microbusinesses. (CDTFA)**

    Recommend the following new clarifications be provided in CDTFA Regulations:

    When transferring or selling product to a microbusiness, the transferring distributor is responsible for collecting excise tax unless the transfer is designated on the manifest as being transferred to the distribution portion of the microbusiness, in which case the microbusiness assumes the liability to remit the excise tax and releases the transferring distributor of that liability.

Security

16. **Exempt transport-only distributors from premises-based security requirements and allow a transport-only premises to be shared with another licensed premises. (§ 5315)**

    We appreciate the addition of §5315(g) in the last round of emergency regulations, which exempts transport-only self-distributors from Article 5 security requirements, including video surveillance and alarm systems. However, we think it's clear that this exemption should be expanded to all transport-only distributors, as formally recommended by the Cannabis Advisory Committee at their March meeting, and consistent with the transport-only license's total lack of land use impact. To be clear, we support security requirements on vehicles themselves under §5311, and our requested change is limited to security requirements applied to the premises itself. The current security exemption for self-distribution is not sufficient for rural communities which may have dozens of licensed cultivation sites located hours from a major roadway. In these cases, centralizing transport in a single licensee will often be more efficient than each business obtaining its own self-distribution transport-only license.

    Additionally, since the transportation-only license has no land use impact and does not authorize cannabis storage, it should be clarified that the license does not have any state land use requirements other than the requirement to have a premises of some sort. Requiring the designation of a separate structure for a transport-only license imposes significant costs on businesses for no regulatory benefit, especially when considering high real estate costs in urban areas and building code issues in rural areas. The simplest solution for most licensees would be to allow a transport-only license to be issued at a premises already permitted for another activity by that licensee, and require records to be kept at this premises. This would follow established legal precedent in the original emergency regulations, which allowed multiple licenses to be issued at a single premises for adult-use and medicinal activity conducted by the same licensee.

17. **Support for revised holding period for security recordings from 180 to 90 days. (§ 5305(c))**

    We support the change from 180 days to 90 days for maintaining video recordings of the sampling procedure; 90 days is a reasonable amount of time to ensure sampling procedures were accurately followed.

18. Increase security requirement for non-storefront retail delivery vehicles. (§5417)

With the changes in non-storefront retail colloquially referred to the "ice cream truck" model, and the increase in allowable product from $3,000 to $10,000, we encourage the Bureau to re-examine the security requirements for non-storefront delivery vehicles. Proposed regulations allow fulfillment and packaging of orders while on the road, but also require goods to be stored in a locked box, container, or cage. In practice, this can result packing of order bags while on the side of the road, which is not a secure location, and presents significant safety concerns.

19. Clarify and consider amendment to certain motor carrier permit requirements. (§ 5311)

Three points below are addressed relative to motor carrier permits: A) who is required to obtain, B) how to obtain, and C) security concerns related to certain MCP requirements.

A. There is some confusion among industry operators as to which licensees are and are not required to obtain a motor carrier permit. §5311 references motor carriers for hire as those required to obtain the MCP.

- Recommend the following clarification to §5311 (c):

  All vehicles transporting cannabis goods for hire shall be required to have a motor carrier permit pursuant to Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code, whereby "for hire" refers to the transporting of cannabis goods that are not owned or titled to the Distributor conducting the transportation service.

B. In addition to clarifying which businesses are required to obtain the MCP, operators should understand that they are required to register their CA# with the DMV, as required by Vehicle Code § 34620. Operators have been confused about whether or not a U.S. DOT Number is additionally required, however this should not be required given these operators are strictly intra-state and not operating outside California borders. This informational would be useful to include on the cannabis portal site cannabis.ca.gov/motor-carrier-permits/.

C. Lastly, a major concern from industry is Vehicle Code § 27900 (a) which requires motor carriers to have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles the name or trademark of the person under whose authority the vehicle or combination of vehicles is being operated. This requirement poses security risks to cannabis businesses, specifically at the point of retail delivery where targeted threats are commonplace and delivery drivers are often followed back to their vehicles, or followed all the way to the distribution facility. California Highway Patrol will ticket motor carriers without this name or trademark designation on the vehicle, with potential fines and/or revocation of the permit as penalty for non-compliance. However, currently several licensed cannabis distributors are concerned to place the name or trademark on the vehicles for the reasons mentioned above.

Administrative and Other

20. Allow retailers to reject partial shipments of cannabis goods. (§ 5052.1)

While administratively easier to manage in some regards, distributors will incur tremendous costs for re-stocking and re-delivery and potential lost business if retailers are not allowed to reject partial shipments at the time of delivery. Often times, a retailer will be satisfied with the majority of the items they are receiving but may want to reject a portion of the shipment because the specific items were not exactly what they were expecting, or there are differing opinions regarding packaging and labeling compliance. Without the ability to receive the portion of the order that they do wish to receive, the retailer, distributor, and producer all suffer the loss of sending back the entire shipment.

- Recommend to strike §5052.1 entirely or strike (b) and replace (a) with the following:

  (a) If a licensee receives a shipment containing cannabis goods that differ from those listed on the sales invoice or receipt, the licensee shall reject the portion of the shipment that is not accurately reflected on the sales invoice or receipt.

21. Allow distributor access to licensee database for verification of licensed addresses.

On the BCC website bcc.ca.gov/clear/license_search.html, the previous database allowed for operators to sort by license type and export licensee information. The recent change to the site converted this easy-to-use tool into a PDF table of licensee information, excluding information such as the physical address of the licensee. While for safety reasons it is good that this information is no longer publicly available, the downside is that licensees such as distributors can no longer verify the licensed premise address for the operators they delivering to. Licensed facility addresses, for all license types, should be privately (but not publically) accessible to licensed distributors who are responsible for ensuring transfers are conducted only to/from licensed facility locations. Agency-provided information is the source of truth for verified, licensed premises.

- Recommend to provide private access to distributors to a verified database (for licensees of all three licensing agencies) with physical addresses for each licensee, also including expiration dates for licenses

22. Streamline administration for Licensed Distributors with multiple premises. (§ 5023, 5025)

There are several issues to unpack as it relates to a single distribution business with multiple distribution facilities throughout the state: 1) internal transfers between owned facilities, 2) streamlined application process and one annual application fee, 3) remitting consolidated tax payments, and 4) streamlining change of ownership and other administrative updates.

The ideal scenario would be for a business entity or licensee to be assigned one single license number for it's distribution business, registering each locally authorized premise location under the one license number. When transferring cannabis goods between its own facilities, the manifest would recognize this as an internal transfer (same license number as shipper and receiver), a single application and renewal package would be submitted to the state with a single

application fee, all tax collections would be submitted by the business under one license number, all updates to the ownership or other licensee information would be submitted under one license instead of multiple.

Recommend the following adjustment to §5025 (a):

Each license shall have a designated licensed premises, with a distinct street address and suite number if applicable, for the licensee's commercial cannabis activity. Each licensed premises shall be subject to inspection by the Bureau. A licensee with multiple licensed premises of the same license type may consolidate the application process for the licensed premises under a single license number, so long as each premise is individually licensed by the Bureau and has obtained required local approval.

Alternatively, if this method of streamlining is not easily accommodated with the existing track-and-trace system infrastructure, the agency might consider developing a streamlined application process for distributors who have a primary licensed premise and seek to add additional licensed premises conducting the same use-type (Type 11 Distribution). This streamlined application process would allow for records submitted on the primary application to be referenced in the follow-on applications, and for a single application fee to be applied to the licensee or business entity. The Bureau would also inform CDTFA of the consolidated business license numbers for the purposes of collecting tax from a single business license. Any material changes to the business which must be submitted to the Bureau can be submitted once under the primary license number, and referencing the other license numbers associated.

Additionally, please note CDA is supportive of the clarification in § 5023 which allows for the business to continue to operate under the active license while the Bureau reviews the application for change of ownership if at least one owner is not transferring his or her ownership interest and will remain as an owner under the new license and ownership structure.

23. Need for more detailed regulations for distribution supporting licensed events. (§ 5602(g))

Regulation text in § 5602(g) reads: "The cannabis goods sold onsite at a temporary cannabis event shall be transported by a licensed distributor or licensed microbusiness in compliance with the Act and this division." It should be further clarified where the cannabis goods may originate from and where they must be returned to after the event.

Recommend the following clarifications:

Cannabis goods intended for sale at a temporary cannabis event may be transported either directly from a licensed distributor or directly from a licensed retail location of a retailer holding the temporary event permit. Any unsold inventory at the end of the temporary cannabis event may be transported back to the premise of the licensed retailer to whom the cannabis goods are titled, or to a licensed distributor for temporary storage until ultimately being transferred to the licensed retailer to whom the cannabis goods are titled.

Additionally, we suggest mandating hours of secured vehicle access into the licensed temporary event location. Event organizers of past events early this year have required distribution vehicles to park in remote parking lots and transport product by hand or push-cart, which presents a

significant safety concern. We are in full support fo the addition of 5602(h), which clarifies secure storage requirements during the event and suggest requiring secure vehicle loading zones.

24. Need for enforcement against businesses that facilitate non-licensed activity, particularly to the extent that the activities directly impede upon the regulated marketplace.

The regulations do not address enforcement action or penalties for persons who willingly and intentionally undermine the success and integrity of the regulated marketplace. The two most egregious examples of such impediments include: 1) online advertising platforms that promote unlicensed operators, thereby driving consumers to the unregulated market and placing significant hardship on licensed operators competing with higher prices and higher operational costs, and 2) licensed operators who knowingly buy or sell cannabis goods that have not originated from a licensed producer and have entered the supply chain (inversion) from unlicensed producers. These activities undermine the entire regulatory system, and should be penalized with severe consequences such as suspension and revocation of their license.

25. Clarify regulations regarding products containing hemp-derived CBD.

Given the uncertain nature of changing state and federal laws relative to CBD, hemp-derived CBD, and industrial hemp production, we recommend the following policies for hemp-derived CBD as it relates to products produced and sold within the licensed commercial cannabis market:

Treat hemp-derived CBD as an ingredient, whereby hemp CBD products may only be sold by licensed cannabis operators if the hemp-derived CBD entered into the supply chain at the production (manufacturing) level as an ingredient in a manufactured product. Furthermore, such hemp-derived CBD must have a chain of custody illustrating that it was legally produced and legally purchased, according to state and federal laws regarding industrial hemp production, importation, purchase, and sale.

Additionally, it would be helpful to clarify that any topical or consumable products sold by a licensed retailer must have been produced by a licensed cultivator or licensed manufacturer. Whereby, only accessories and other non-consumable products (§5407) may be sold by a licensed retailer, requiring all consumable and topical products to have been produced within the regulated supply chain.

26. Clarify the definition of "cannabis products" in each agency's regulation text. (§5000)

While both state law and DPH regulation define "cannabis products" as manufactured products, BCC's regulations do not include a clear definition of "cannabis products." Without clarification, this is likely to cause confusion for non-attorneys and make regulatory compliance more difficult for businesses. Adding a definition of "cannabis products" consistent with state law will help to avoid confusion, differentiating "cannabis products" from "cannabis goods" in each agencies definitions.

27. Allow expired cannabis goods to be disposed at any storefront retail location. (§5410(a))

We encourage the Bureau to expand section 5410(a), regarding returns of customer goods, to require all retailers to accept returns of any cannabis products, and not limiting returns to solely

the retailer they were purchased from. In other circumstances, consumers can return beverage containers for recycling to any recycling center, and expired pharmaceuticals can be returned to any pharmacy. This “drug take-back” program would provide a compliant manner to dispose of expired, spoiled, or goods that are no longer needed by the consumer.

28. **Grant regulators discretion to allow normal commercial cannabis activity in the event of an extended track and trace system outage. (§5050(d))**

    Regulation text §5050(d) currently forbids any commercial transport or transfer of cannabis if a licensee loses access to the track-and-trace system. While we understand the intent of the regulation, we think it should be amended considering the potential for an extended server-side outage, such as the one that impacted Maryland just last month. The current regulation is acceptable in most cases, but regulators should leave themselves discretion to allow normal commercial cannabis activity if necessary to prevent an extended market-wide shutdown, so long as licensees track their activity on paper.