

**BUREAU OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42
MEDICINAL AND ADULT-USE CANNABIS REGULATION**

FINAL STATEMENT OF REASONS AND UPDATED INFORMATIVE DIGEST

SUBJECT MATTER OF PROPOSED REGULATIONS: Medicinal and Adult-Use Cannabis Regulation

SECTION(S) AFFECTED:

Adopt

Cal. Code Regs., Tit. 16, §§5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5007.1, 5007.2, 5008, 5009, 5010, 5010.1, 5010.2, 5010.3, 5011, 5012, 5013, 5014, 5015, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5023, 5024, 5024.1, 5025, 5026, 5027, 5028, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5040.1, 5041, 5041.1, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5052.1, 5053, 5054, 5300, 5301, 5302, 5303, 5303.1, 5304, 5305, 5305.1, 5306, 5307, 5307.1, 5307.2, 5308, 5309, 5310, 5311, 5312, 5313, 5314, 5315, 5400, 5402, 5403, 5403.1, 5404, 5405, 5406, 5407, 5408, 5409, 5410, 5411, 5412, 5413, 5414, 5415, 5415.1, 5416, 5417, 5418, 5419, 5420, 5421, 5422, 5423, 5424, 5426, 5427, 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5506.1, 5507, 5600, 5601, 5602, 5603, 5604, 5700, 5701, 5702, 5703, 5704, 5705, 5706, 5707, 5708, 5709, 5710, 5711, 5712, 5713, 5714, 5715, 5717, 5718, 5719, 5720, 5721, 5722, 5723, 5724, 5725, 5726, 5727, 5728, 5729, 5730, 5731, 5732, 5733, 5734, 5735, 5736, 5737, 5738, 5739, 5800, 5801, 5802, 5803, 5804, 5805, 5806, 5807, 5808, 5809, 5810, 5811, 5812, 5813, 5814, 5815, 5900, 5901, 5902, 5903, 5904 and 5905

BACKGROUND

On December 7, 2017 the Bureau of Cannabis Control (Bureau) adopted emergency regulations to clarify and make specific licensing and enforcement criteria for commercial cannabis businesses under the Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA or the Act). On June 6, 2018 the Bureau readopted the emergency regulations. On July 13, 2018 the Bureau issued a Notice of Proposed Rulemaking and began a 45-day comment period on the proposed regulations. The Bureau held public hearings on August 7, 2018, August 14, 2018, and August 27, 2018 in Oakland, Los Angeles, and Sacramento respectively. The Bureau received thousands of comments, both oral and written, on the proposed regulations. Based on review of the comments received, the Bureau determined that there were a number of sufficiently related changes to the proposed regulations that were necessary to clarify certain sections and provisions. These changes included clarifying sections and provisions of the regulations that were impacted by recent legislative changes to the Act, such as expanding the locations that temporary cannabis events can be held at and preventing the sell and transport of cannabis goods that are labeled with terms that would create a misleading impression that the product is an

alcoholic beverage. Additional changes included clarifying which individuals in a multi-layer business structure must be disclosed as owners or financial interest holders in an application for a commercial cannabis business and expanding on a distributor's ability to label or re-label cannabis goods with the amounts of cannabinoids and terpenoids after receiving a certificate of analysis for regulatory compliance testing. Pursuant to Government Code section 11346.8, subdivision (c) and section 44 of Title 1 of the California Code of Regulations the Bureau made substantive and sufficiently related changes to the proposed regulations and circulated them to the public for a 15-day comment period.

UPDATED INFORMATIVE DIGEST

There have been no substantial changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action. However, several bills were passed during the legislative session that modify the Act. Each bill that impacted the Bureau's proposed regulations is summarized below. Further discussion of the bills and their impacts on specific proposed regulations is included in the summary of changes made to the proposed regulations.

Stats. 2018, Chapter 556 (SB 311), which became effective on September 19, 2018, amended Section 26110 of the Business and Professions Code and authorizes a licensed distributor to transport cannabis or cannabis products that are fit for sale to the premises of another licensed distributor for further distribution.

Stats. 2018, Chapter 857 (SB 1459), which became effective on September 27, 2018, added Section 26050.2 to the Business and Professions Code and, until January 1, 2020, authorizes a licensing authority to issue a provisional license for commercial cannabis activity if the applicant holds or held a temporary license for the same premises and the same commercial cannabis activity. The bill requires a provisional license to be valid for 12 months and prohibits the license from being renewed. The bill requires the provisions of the Act to apply to a provisional license in the same manner as an annual license, except as specified and exempts the issuance of a provisional license from the California Environmental Quality Act (CEQA). The bill also prohibits the refusal by the licensing authority to issue a provisional license or revocation or suspension by the licensing authority of a provisional license from entitling the applicant or licensee to a hearing or an appeal of the decision.

Stats. 2018, Chapter 827 (AB 2914), which becomes effective on January 1, 2019, adds Section 26070.2 to the Business and Professions Code and prohibits a licensee from selling, offering, or providing a cannabis product that is an alcoholic beverage, including, but not limited to, an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage.

Stats. 2018, Chapter 749 (AB 2020), which becomes effective on January 1, 2019, amends Section 26200 of the Business and Professions Code and authorizes a state temporary event license to be issued to a licensee for an event to be held at any other venue expressly approved by a local jurisdiction for events. The bill also amends Section 26200 of the Business and Professions Code to codify requirements that are similar to those provided in the Bureau's emergency regulations, including requiring that all participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event to be licensed to engage in that activity, and requiring an applicant who submits an application for a state temporary event license to, 60 days before the event, provide the Bureau a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event and to update the list in a manner similar to what is provided in the existing emergency regulations. The bill also authorizes the Bureau to require the event and all participants to cease operations without delay if in the opinion of the Bureau or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The bill also authorizes the Bureau to require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the Bureau that authorizes the participant to sell cannabis or cannabis products and authorizes the Bureau to require the event and all participants to cease operations immediately if the participant does not leave immediately. The bill also specifies that an order by the Bureau for the event to cease operations does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision and exempts an order by the Bureau for the event to cease operations from specified provisions related to the discipline of a license and from specified provisions related to the appeal of a decision by a licensing authority.

Stats. 2018, Chapter 971 (AB 2799), which becomes effective on January 1, 2019, amends Section 26051.5 of the Business and Professions Code and requires an applicant for initial licensure or renewal of a state license under the Act to provide a statement that the applicant employs, or will employ within one year of receiving a license or renewal, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general industry course offered by a training provider that is authorized by an OSHA Training Institute Education Center.

Except as set forth above, there are no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code section 11346.9, subdivision (d), the Bureau hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations as initially proposed, the necessity for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as adopted.

All modifications from the initially proposed text of the regulations are summarized below.

MODIFICATIONS MADE AVAILABLE FOR A 15-DAY COMMENT PERIOD

Chapter 1. All Bureau Licensees

Changes Made to Article 1. Division Definitions:

§ 5000. Definitions

The Bureau has made amendments to this section, including the addition of new definitions. As such, the numbering of the subsections has changed beginning with subsection (b).

The Bureau has added a definition for “branded merchandise.” Branded merchandise has been defined to mean clothing, hats, pencils, pens, keychains, mugs, water bottles, beverage glasses, notepads, lanyards, cannabis accessories, or other types of merchandise approved by the Bureau with the name or logo of a commercial cannabis business licensed pursuant to the Act. The definition further clarifies that branded merchandise does not include items containing cannabis or any items that are considered food as defined by Health and Safety Code section 10993.5. This addition was necessary because the Bureau has proposed to allow distributors to distribute and retailers to sell branded merchandise but had not clarified what constitutes branded merchandise. The Bureau limited branded merchandise to those items often used for marketing to allow licensees to avail themselves of this type of marketing, while not allowing licensees to sell other items that are not cannabis goods or accessories. It was necessary for the Bureau to identify branded merchandise because this broad range of customary branded items provides licensees with a great deal of flexibility, while also ensuring that the health and safety of the public is protected by ensuring that licensees are not using branded materials to appeal to underage persons

The Bureau has added a definition for “business day.” Business day has been defined as a day Monday through Friday from 8:00 a.m. to 5:00 p.m. Pacific Time, excluding state holidays in which the Bureau is closed for business. This was necessary because the Bureau has clarified throughout the regulations its requirements related to a period of days whether the period is business days or calendar days. This change assures that licensees are aware of the appropriate timing associated with the Bureau’s regulatory requirements.

The Bureau has amended the definition of “cannabis waste” to remove a reference to section 5055. This is necessary because the Bureau has amended the sections regarding waste and has removed section 5055 in whole. The Bureau has also removed the references to hazardous waste and organic waste. This change was necessary because the Bureau determined that the terms were not appropriate for all types of cannabis waste that may be generated by a licensee.

Final Statement of Reasons Appendix C

Regulation Section	15-Day Comment Number(s) and Page Location	Summary of 15-Day Comments	Bureau Response to 15-Day Comments
Definitions	3646.5 (p.5254)	Commenter states that the Bureau has instructed them that brands need to obtain distribution licenses because they are “procuring” cannabis. Commenter states the definition of the word “procure” does not appear in any of the regulations and should be clarified.	The Bureau disagrees with this comment. Business and Professions Code section 26001(r) defines distribution to mean “the procurement, sale, and transport of cannabis and cannabis products between licensees.” The Bureau has determined that defining procure is unnecessary as the plain meaning of the word is applicable.
General	3513 (p.4428)	Commenter recommends moving forward with the changes for cannabis distribution throughout the state.	The Bureau notes the commenter’s support of the changes to the regulations.
	3516 (p.4431) 3517 (p.4432)	Commenter opposes any regulation that diminishes local control. Commenter wants marijuana related policies to be made at the local level, informed by those in the community, not in Sacramento, informed by marijuana companies and lobbyists.	The Bureau disagrees with this comment. State law provides for state licensing and regulation of commercial cannabis activity.
	3534 (p.4454)	Commenter recommends marijuana delivery be regulated in the same manner as alcohol delivery.	The Bureau disagrees with this comment. Delivery requirements for commercial cannabis activity are set by statute, under Business and Professions Code section 26070 et seq.
	3628.1 (p.4798) 3653.1 (p.5316)	Commenter recommends using business days instead of calendar days to figure deadlines, and this would sync with the cannabis industry. Using business days allows business to honor commitments to union employees and promotes sane and healthy workplace, enjoying weekends and holidays just as Bureau employees do. The change forces licensees to figure deadlines using calendar days instead of business and could cause problems pertaining to METRC and the inability to handle peak loads, communicate with track and trace teams on holiday, or with Bureau staff, union houses,	The Bureau disagrees with this comment. The timeframes established for certain activities or processes were determined as the appropriate and sufficient time period to accomplish or complete such activities either business or calendar days.

Regulation Section	15-Day Comment Number(s) and Page Location	Summary of 15-Day Comments	Bureau Response to 15-Day Comments
5023	3528.3 (p.4446) 3620.6 (p.4772)	Commenters support subsection (c)(1) regarding assigning licenses. This assures that licensees are aware that they cannot allow another person to operate under their license as the statute requires evaluation of individuals with specific roles in the business.	The Bureau has noted commenter’s support for the subsection.
5023	3308.3 (p.4092) 3310.3 (p.4100) 3719.3 (p.5700)	Commenters indicate section (e)(4) should be stricken. They suggest that changes to financial information including funds, loans, investments, and gifts be disclosed with re-application documents.	The Bureau disagrees with this comment. The Bureau’s review of financial information is necessary to determine how the commercial cannabis business will be organized and to ensure that all owners as defined in section 5003 and all financial interest holders in section 5004 are identified. To ensure the Bureau’s licensee information is up-to-date, the Bureau determined that requiring licensees to submit a notification of changes to its financial information was necessary to assure that the Bureau is apprised of changes to a license as soon as possible, while providing a reasonable time period for licensees to reach out to the Bureau regarding changes to its operations. The change aims to protect public health and safety by ensuring that all individuals that may be assuming responsibility for a license are accounted for and, if necessary, are qualified as owners.
5023	3490.2 (p.4404) 4092.3 (p.6787) 4103.8 (p.6833)	Commenter indicates that there needs to be clarification as to when a change of business structure will be considered a business modification. Commenter suggests that a change in the entity structure is not considered a modification unless there is an ownership interest change exceeding 20% of the existing ownership. One commenter indicates that owners of publicly traded companies may not be aware that a person has acquired 5% or more of their shares. The obligation to file an amendment should	The Bureau disagrees with this comment. Clarification regarding whether a change of business structure is considered a business modification is not necessary. A change in entity structure is considered a new entity that must qualify for licensure. The Bureau has determined that requiring a new application where ownership is changing is necessary to ensure prospective owners to comply with the Act at Business and Professions Code sections 26051.5 and 26057. Under section 26051.5 of the Business and Professions Code, the Bureau must conduct background checks on commercial cannabis business owners applying for licensure. If an owner does not qualify for licensure under section 26057 of the Business and Professions Code, the Bureau must deny that

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		<p>be limited to the public company’s knowledge of such a change in ownership.</p>	<p>application for licensure. Accordingly, section 5023(c) requires existing licensees to timely notify and apprise the Bureau of certain changes to the information listed in the application; this assures that the Bureau has up-to-date information on its licensees and that the Bureau has the opportunity to determine whether certain changes affect licensure status.</p> <p>The Bureau disagrees with commenter’s recommendation that the obligation to file an amendment should be limited to the public company’s knowledge of such a change in ownership. The Bureau’s requirement aligns with the requirements of the US Securities and Exchanges Commission, which requires certain filings for persons who hold at least 5 % of the total shares in a publicly traded company.</p>
5023	3628.8 (p.4801) 3650.8 (p.5274)	<p>Commenter indicates that subsection (c)(1) is overly cautious. If a business has a complete ownership changeover, the business must close between the time when all old owners divest and when the new owners are approved by the Bureau. Business will suffer irreversible damages or bankrupt themselves. No other business that deals with plants are required to shut down until the State approves the new owners. The Bureau should allow businesses to remain open when a complete change of ownership occurs. New ownership groups can nominate one of their members to exercise control until the full team is vetted by the Bureau. Such nominees would have no disqualifying criminal record and would have a work history which demonstrates the ability to serve as owner of record until the</p>	<p>The Bureau disagrees with this comment. The Bureau determined that limiting the transfer of a license where there was a presence of new ownership was necessary to ensure prospective owners comply with the Act at Business and Professions Code sections 26051.5 and 26057. Under section 26051.5 of the Business and Professions Code, the Bureau must conduct background checks on commercial cannabis business owners applying for licensure. If an owner does not qualify for licensure under section 26057 of the Business and Professions Code due to that owner’s conduct, the Bureau must deny that application for licensure. Accordingly, section 5023 (c) requires existing licensees to timely notify and apprise the Bureau of certain changes to the information listed in the application; this assures that the Bureau has up-to-date information on its licensees and that the Bureau has the opportunity to determine whether certain changes affect licensure status. The reapplication process outlined in section 5023 would not prevent a licensee and prospective owner from structuring their contract in a manner where license issuance is a condition precedent to the ownership transfer, to avoid having to cease operations.</p>