

BUREAU OF CANNABIS CONTROL CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

SUBJECT MATTER OF PROPOSED REGULATIONS: Medicinal and adult-use commercial cannabis regulations.

SECTION AFFECTED: Title 4, California Code of Regulations, sections 15000 – 15905; Title 16 California Code of Regulations, sections 5000-5905

BACKGROUND

On January 16, 2019, the Bureau of Cannabis Control within the Department of Consumer Affairs (Bureau) adopted regulations to clarify and make specific licensing and enforcement criteria for commercial cannabis businesses under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

On January 10, 2020, Governor Newsom’s administration (Administration) announced as part of the budget for the 2020-2021 fiscal year the consolidation of the Bureau, the CalCannabis Cultivation Licensing Division within the Department of Food and Agriculture (Department of Food and Agriculture), and the Manufactured Cannabis Safety Branch within the Department of Public Health (Department of Public Health) into a single entity to be named the Department of Cannabis Control (Department). The Department will oversee the licensing and enforcement of all commercial cannabis activity conducted in the state. Consolidation of the three licensing entities was to occur by July 1, 2020; however, due to the COVID-19 pandemic, the Administration re-evaluated its ability to implement the consolidation as scheduled and subsequently postponed the consolidation until the 2021-2022 fiscal year. On January 8, 2021, the Administration announced during the 2021-2022 budget proposal that the consolidation of the three entities into the Department will be effective July 1, 2021.

STATEMENT OF EXPLANATION

1 CCR 100 (a)(1) and (a)(4), provides that an agency may revise text published in the California Code of Regulations in order to renumber, reorder, or relocate regulatory provisions and to revise structure, syntax, cross-reference, grammar, or punctuation.

The Department will continue to enforce MAUCRSA and all the regulations adopted by the three licensing entities. Currently, the regulations of each of the three licensing entities are in different titles within the CCR. The Bureau is under Title 16, the Department of Food and Agriculture is under Title 3, and the Department of Public Health is under Title 17. The Department’s regulations will be located under 4 CCR, Division 19, sections 15000 - 17999. Therefore, the Bureau’s regulations will need to be relocated and renumbered within the new title. Further, all references and cross-references to the Bureau, the Department of Public Health, and the Department of Food and Agriculture as separate licensing entities will need to be changed to reference the Department since these entities will no longer exist as currently named as of July 1, 2021.

Additionally, since all three licensing entities are being consolidated under one title within the CCR, Chapter 1 of the Bureau's regulations will need to be amended to provide clarity that Chapters 1 to 8 of the regulations only apply to commercial cannabis distributor, retailer, microbusiness, cannabis event organizers, cannabis events, and testing laboratory licenses.

The fee tables in section 5014 (renumbered to 15014) of the regulations have also been reformatted and restructured to comply with the accessibility requirements under the American Disabilities Act for documents that will be placed on a government agency's website. The changes made to the tables are non-substantive and the fee amounts described in the regulations remain the same as they are currently published in the California Code of Regulations.

Further, the Bureau's disciplinary guidelines, which are incorporated by reference, will need to be renumbered consistent with the changes to the Bureau's text of regulations and the title will need to be revised to clarify that the guidelines only refer to commercial cannabis distributor, retailer, microbusiness, cannabis event organizers, cannabis events, and testing laboratory licenses. Additionally, the maximum and minimum fine amount tables in the disciplinary guidelines were reformatted and restructured to comply with the accessibility requirements under the American Disabilities Act for documents that will be placed on a government agency's website. The changes made to the tables are non-substantive and the fine amounts remain the same.

1 CCR 100 (a)(2), provides that an agency may delete text published in the California Code of Regulations if all statutory or constitutional authority for the regulatory provision has been repealed.

The three cannabis licensing entities, including the Department of Public Health, were authorized by MAUCRSA, under Business and Professions Code section 26054.2, to provide priority licensing to applicants identified as operating in compliance with the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) and its implementing laws before September 1, 2016. This section became inoperative by its own provisions on December 31, 2019 and the licensing entities were no longer authorized to provide priority licensing for applicants identified as operating in compliance with the Compassionate Use Act of 1996. Since the Department will continue to operate under the authority of MAUCRSA, it will also not have the statutory authority to provide priority licensing. Therefore, section 5016 of the Bureau's regulations is no longer enforceable.

Based upon the foregoing, the Bureau has determined that the proposed changes to relocate and renumber 16 CCR, sections 5000 - 5905 to 4 CCR, sections 15000 – 15905 and the renumbering of the Bureau's disciplinary guidelines, are appropriate for revision under 1 CCR 100(a)(1) and (a)(4) because the changes are relocating and renumbering the regulations consistent with the consolidation plans implemented by the Administration. The changes also eliminate any potential confusion and inconsistency created by the existing language of the regulations in referencing the Department of Public Health, the Bureau, or the Department of Food and Agriculture as separate licensing entities instead of the Department.

Additionally, the amending of Chapter 1 of the Bureau's regulations and its disciplinary

guidelines eliminates any potential confusion that may arise from consolidating all three licensing entities' regulations by clarifying that Chapters 1 to 8 and the disciplinary guidelines only apply to commercial cannabis distributor, retailer, microbusiness, cannabis event organizers, cannabis events, and testing laboratory license types and not all license types regulated by the Department. Further, the deletion of section 5016 regarding priority licensing is consistent with 1 CCR 100(a)(2) as the statutory authority to provide priority licensing has become inoperative.

The proposed changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any other provision of MAUCRSA.