

**DEPARTMENT OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 4, DIVISION 19**

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Authorization and release of applicant information to financial institutions pursuant to Business and Professions Code (BPC) section 26260.

Sections Affected: Title 4, California Code of Regulations, sections 15037.1 and 15037.2

Background

On September 29, 2020, Governor Gavin Newsom (Governor Newsom) signed California Assembly Bill 1525 by Assembly Member Jones-Sawyer. This chaptered bill, known as *Information Sharing with Financial Institutions*, AB 1525, (Jones-Sawyer, Chapter 270, Statutes of 2020), creates a safe harbor under state law for financial institutions and accountants that provide services to the cannabis industry. This also allows cannabis businesses to permit the Department of Cannabis Control (Department) to share licensee application and regulatory information, including track-and-trace data, with financial institutions.

The law became effective January 1, 2021. Prior to the establishment of the Department, the former three cannabis licensing authorities (the Bureau of Cannabis Control, the CalCannabis Licensing Division, and the Manufactured Cannabis Safety Branch) adopted emergency regulations to implement California AB 1525 consistent with Governor Newsom's signing statement directing the cannabis licensing authorities to promulgate regulations necessary to implement the provisions in a manner that protects confidential and proprietary data. The Office of Administrative Law (OAL) approved the initial three emergency actions on February 1, 2021 and filed them the same day with the Secretary of State, making them effective immediately. After the three licensing authorities were consolidated into the Department in July 2021, the Department filed an action with OAL to readopt all three sets of regulations. The readoption action was approved on August 2, 2021 and filed with the Secretary of State the same day, keeping them effective immediately.

Statement of Purpose, Problem, Rationale, and Benefits

The proposed regulations will allow the Department to provide a safe harbor, under state law, for financial institutions and accountants which will allow more banks to conduct cannabis related business. For example, financial institutions may be more likely to grant capital for business development (loans, lines of credit, etc.) for cannabis entrepreneurs. This will expand the limited funding for cannabis entrepreneurs, whereas individuals currently rely upon their own funding or investors, limiting the cannabis

industry's ability to expand. Secondly, normalizing access to banking services for cannabis entrepreneurs will help ensure that financial institutions and accountants, as well as cannabis producers, distributors, retailers, and other licensees, are in compliance with the state's laws, thus removing the threat of criminal penalties that previously existed. This could have a positive impact on the industry and lead to more stable business decisions.

Adoption of the proposed regulations will also continue to positively magnify California's economy by removing the threat of criminal penalties for financial institutions and accountants, making capital available to cannabis entrepreneurs, and helping cannabis operations become transparent regulated tax-paying businesses.

Additionally, access to banking is important for worker safety, as it eliminates a cannabis business' need to maintain a large amount of cash, on its premises, which can make the business a target for criminal activity. This is particularly important for retailers that are open to the public.

Specific Purpose, Necessity, and Rationale for Adoption

Prior to the consolidation and establishment of the Department, each of the three legacy licensing agencies adopted emergency regulations that addressed the process for obtaining authorization to release information to a financial institution. These emergency regulations are currently located in 4 CCR 15037.1, 15037.2, 16410, 16411, 17123.1, and 17123.2. 4 CCR 15037.1 and 15037.2 addressed the process for authorization and release for all non-cultivation and non-manufacturing licensees, 4 CCR 16410 and 16411 addressed the process for cultivation licensees, and 4 CCR 17123.1 and 17123.2 addressed the process for manufacturing licenses. On September 27, 2021, OAL approved the Department's emergency action to consolidate, clarify, and make consistent the licensing and enforcement criteria for all commercial cannabis businesses, and filed the regulations with the Secretary of State the same day, making them effective immediately. The approved action now expands 4 CCR 15037.1 and 15037.2 to be applicable to all commercial cannabis businesses, including cultivators and manufacturers. Therefore, the Department is proposing only to adopt these two sections as 4 CCR 16410, 16411, 17123.1 and 17123.2 are now duplicative and unnecessary.

The Department proposes adopting sections 15037.1 and 15037.2 of Division 19, of Title 4, of the California Code of Regulations, as follows.

Adopt 4 CCR 15037.1. Licensee Request to Release Data to Financial Institutions

The Department proposes adopting 4 CCR 15037.1, which provides the process by which a licensee may authorize the Department to provide information to a financial institution to facilitate the provision of financial services, which designated information

the Department will release, what information the Department will not release, and how a licensee may withdraw the authorization for the release of information. It is necessary to specify the process for which a licensee may authorize release of designated information regarding the licensee from the Department to a financial institution pursuant to BPC section 26260. Such information may be confidential and not subject to public disclosure; thus it is necessary for the Department to provide a licensee with the ability to designate the specific information the licensee is authorizing for release, and the specific financial institution(s) they are authorizing to receive the information. It is also necessary to establish a process that allows the withdrawal of the authorization to ensure that licensees may control when and how their confidential information is released to financial institutions. Lastly, this regulation is necessary to ensure that the Department releases only the specific information that is authorized by the licensee to the specific financial institution(s).

Proposed subsection (a) provides that a licensee may authorize the Department to provide a financial institution with specified information relating to the licensee and that the authorization requires the licensee make the authorization, in writing, on a form prescribed by the Department. This is necessary so that the Department has an accurate record of the authorization. The form is necessary to ensure that the authorization has all of the components necessary for the Department to provide the information. Proposed subsection (a) also requires the authorization contains the following information:

- (1) The name of the licensed business for which the licensee is authorizing the release of information;
- (2) The business's license number(s);
- (3) The financial institution authorized to receive information;
- (4) The name, phone number, email address, and signature of the owner submitting the authorization;
- (5) The categories of information authorized for release; and
- (6) An acknowledgement that the authorization to release information includes information that is otherwise protected from disclosure, and waiving privilege and confidentiality is strictly for purposes of disclosure to the financial institution.

The name of the licensed business and license number are necessary for the Department to identify proper licensee and ensure an accurate record of the authorization to release confidential information. Identification of the financial institution is necessary to ensure the confidential information is only released to the correct institution and that there is an accurate record of the authorization to release information. The name, contact information, and signature of the owner authorizing the release of confidential information is so the Department may confirm this is a proper

person to make the authorization, contact the owner if necessary, and ensure there is an accurate record of the authorization to release information.

The identification of categories of information authorized for release is necessary because BPC section 26260 allows for the release of confidential information and this provision will allow the person to whom the information pertains to control what confidential information is provided. Additionally, the acknowledgement is necessary to ensure the person understanding that they are waiving confidentiality and privilege for this information for purposes of the financial institution.

Proposed subsection (b) provides that after receiving the authorization, the Department will release the information designated by the licensee. The information includes:

- (1) The license application(s), including renewal applications, excluding information required to be kept confidential pursuant to Penal Code section 11105 and confidential personal information of individual owners of the licensed business;
- (2) Information captured in the track and trace system established pursuant to BPC section 26067, including, but not limited to, aggregated sales or transfer information, as applicable;
- (3) Documents issued to the licensee pursuant to disciplinary or enforcement proceedings.

Including applications in the information available for financial institutions is necessary as this information is included in the statute, and specifically referring to renewal applications provides clarity as to the applications available. Additionally, it is necessary to clarify that criminal history information and personal information about owners that are otherwise protected by law cannot be provided. Including track and trace information is also necessary because it is referenced in the statute as information available to be released, and the type of financial information contained in the system has been included for clarity. Further, regulatory documents are also referenced in the statute and it is necessary to clarify the documents the Department will provide.

Documents issued to the licensee pursuant to disciplinary action or enforcement proceedings are also identified as available to be provided, if authorized, because a formal determination has been made and these records are issued to the licensee, unlike pending investigations for which no determination of the licensee's conduct has been made.

Proposed subsection (c) of the regulation specifies that the licensee may withdraw the authorization, at any time, and that the request must be made in writing. Subsection (c) also lists the information that must be included in the waiver:

- (1) The name of the licensed business for which the licensee is withdrawing the authorization of the release of information;

- (2) The business's license number(s);
- (3) The financial institution from which authorization to receive information is withdrawn; and
- (4) The name, phone number, email address, and signature of the owner submitting the withdrawal.

This provision is necessary as the statute allows for the licensee to withdraw the authorization and control whether further information is provided to the financial institution. It is necessary for the withdrawal to be in writing, so that the Department has an accurate record of the withdrawal of authorization. The name of the business and the business' license number is necessary to ensure the Department identifies the correct licensee and has an accurate record of the withdrawal. Identification of the financial institution is necessary for the Department to ensure information is not improperly withdrawn from an incorrect institution. Additionally, the name, contact information, and signature of the owner executing the withdrawal is necessary to ensure that it is the proper person making the request to withdrawal authorization, ensure an accurate record of the withdrawal, and to reach the owner with any questions.

Adopt 4 CCR 15037.2. Financial Institutions Request for Licensee Information

The Department proposes adopting 4 CCR 15037.2, which provides a financial institution, as defined in BPC section 26260(c)(3), may request information from the Department related to a licensee for purposes of facilitating the provision of financial services to that licensee. The proposed regulation specifies the identifying information the financial institution is required to provide to request information, which information the financial institution is requesting, and the licensee for which they are requesting information on.

The financial institution is also required to identify the service for which they are requesting the information. The proposed regulation is necessary to specify how a financial institution can request and receive the information regarding a licensee that the licensee has authorized the Department to release to a financial institution. The proposed regulation is also necessary to ensure that information released, pursuant to a request from a financial institution, is being shared in a manner consistent with BPC 26260(e), which specifies that a financial institution may receive this information only for purposes of facilitating financial services to the licensee making the request.

The proposed regulation requires the request be on a form promulgated by the Department and include:

- (a) The name of the financial institution;
- (b) The name, phone number, email, and signature of the representative of the financial institution requesting information;

- (c) The business name and license number of the licensee for which the financial institution is requesting information;
- (d) The type of financial services for which the information is requested (including, but not limited to, establishment or maintenance of bank accounts, extending loans, and providing insurance) and whether the request is for consideration of a new service or maintenance of an existing service;
- (e) The specific information requested as described in Section 15037.1 if authorized by the licensee; and
- (f) An acknowledgment that use of the information is limited to that which is necessary for the provision of financial services.

It is also necessary to require the request be made, in writing, to ensure the Department has an accurate record of the request, and that it be on a form prescribed by the Department to ensure all necessary components are included. It is necessary to have the name of the financial institution to ensure there is an accurate record of the request and that the authorization is for that particular financial institution. The name and contact information for the financial institution is necessary in case the Department needs to reach the person that is processing the request for information. The name and license number of the licensee for which the information is requested is necessary so that the Department can ensure it releases information on the appropriate licensee.

The type of financial services, including whether the services are new or are continuing, are necessary to ensure the Department is complying with the statute that allows the release only for purposes of facilitating financial services. It is also necessary to require the financial institution to identify the specific information requested, as the financial institution may not need all of the categories of information that can be provided, especially if there are multiple requests at different times. This ensures that the Department is efficiently utilizing resources by gathering, preparing, and provided what is needed, as well as authorized. Additionally, it is necessary to require an acknowledgment that the information may only be utilized for the provision of financial institutions to ensure that the receiver is aware of this restriction and provide only that information which is necessary for the provision of financial services, as contained in statute.

Incorporation by Reference

No documents have been incorporated by reference.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents

None.

Economic Impact and Assessment

The Department has determined that the proposed regulations will not have a significant adverse economic impact on businesses. This determination is based on the following facts: If the form is submitted electronically, the Department has determined that licensees will be able to complete and submit the form electronically in a few minutes. As a result, no additional costs are anticipated. If the form is submitted by mail, licensees will still be able to complete the form in a few minutes, which is not anticipated to increase costs, but licensees will incur mail postage costs ranging from \$0.55 (first class) to \$3.55 (certified) per licensee. To the extent all 12,012 licensees opt to submit the form, the total economic impact would range from \$6,606 (first class) to \$42,642 (certified). However, based on current submission methods to the Department, it is anticipated that most licensees will utilize electronic submission. Therefore, no significant adverse economic impact is anticipated.

Business Impact

The Department of Cannabis Control (Department) currently has 12,012 licensees as of October 25, 2021. The businesses impacted by the regulation are all licensed commercial cannabis businesses.

Economic Impact Assessment

The proposed regulations requires licensees to complete and submit a form prescribed by the Department to permit the sharing of their financial information by the Department with licensees' financial institution(s). If the form is submitted electronically, the Department has determined that licensees will be able to complete and submit the form electronically in a few minutes. As a result, no additional costs are anticipated. If the form is submitted by mail, licensees will still be able to complete the form in a few minutes, which is not anticipated to increase costs, but licensees will incur mail postage costs ranging from \$0.55 (first class) to \$3.55 (certified) per licensee. To the extent all 12,012 licensees opt to submit the form, the total economic impact would range from \$6,606 (first class) to \$42,642 (certified). However, based on current submission methods to the Department, it is anticipated that most licensees will utilize electronic submission. Given this very minimal economic impact on licensees, the Department has determined that the proposed regulations will not create or eliminate jobs or businesses, or expand businesses currently doing business in California.

AB 1525 specifies that a licensee may authorize a financial institution to receive specific information from the Department. The Department anticipates that this sharing of data will benefit the health and welfare of California residents by increasing the number of financial institutions willing to provide banking services to cannabis businesses. Access to banking will benefit worker safety as it eliminates a cannabis business' need to maintain a large amount of cash on the premises that can make the business a target for criminal activity. The proposal is not anticipated to benefit the state's environment because it does not relate to or impact the environment.

Fiscal Impact

Fiscal Effect on State Government

The proposed regulations govern licensees and financial institutions seeking licensee information, while implementing the statutory requirement for Department staff to process requests submitted by licensees and financial institutions for licensee financial information. Processing a request includes verifying requesting entities are financial institutions, reviewing and analyzing application, license, and enforcement documents from the Department's cannabis licensing system to determine disclosable information, redacting protected information, and preparing disclosable information for release to financial institutions. Through the budget process, the Department has already received two positions to process this workload resulting from the statute.

The proposed regulations simply require a form to be filled out by the licensee authorizing the release of information and identifying which information may be shared, and a form to be filled out by the financial institution requesting the information and identifying the information they seek. This will assist the Department in processing the requests as required by the statute but does not alter the Department's workload created by the statute. Thus, there is not fiscal effect on state government as a result of the proposed regulations.

Specific Technologies or Equipment

None.

Consideration of Alternatives

The Department has made an initial determination that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

1. Option 1: Not adopt the regulations. This alternative was rejected because AB 1525, as codified in BPC section 26260, requires the Department to provide information to financial institutions when authorized by the licensee. If the Department does not adopt regulations, there will be no specific process for licensees and financial institutions to follow to have the information disclosed.
2. Option 2: Do not require a written request or waiver from a licensee. This alternative was rejected because AB 1525, as codified in BPC section 26260, requires that all requests and waivers for release of licensee information be submitted to the licensing authorities in writing. To ensure that the Department

has appropriate authorization to disclose the information to particular financial institutions, it is necessary to adopt these regulations requiring written authorization. These regulations are also necessary to ensure accurate recordkeeping of each request received by the Department.