

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

**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 (CCR), sections 15037.1 and 15037.2

**Notice is hereby given** that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

### **Public Hearing**

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The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person's authorized representative, no later than 15 days before the close of the written comment period.

### **Written Comment Period**

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Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail to the addresses listed below.

**Comments submitted must be received by the Department at its office by 5:00 p.m. on January 4, 2022.**

Submit comments to:

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
E-mail: [publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

## **Authority and Reference**

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The Department proposes adopting 4 CCR sections 15037.1 and 15037.2. BPC sections 26012, 26013, and 26260 authorize the Department to prescribe, adopt, and enforce the regulations governing the information sharing with financial institutions. These regulations will implement, interpret, make specific, or reference BPC section 26260.

## **Informative Digest / Policy Statement Overview**

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### **Existing Law**

The Department gathers substantial information related to licensees, including application materials, licensee information, financial information, and regulatory information. Much of this information is protected from disclosure under the California Public Records Act (PRA), Information Practices Act, and other legal provisions, including the various statutes and regulations under which the Department operates. Therefore, this information is only provided in very specific circumstances. Newly added BPC section 26260 allows the sharing of this information with financial institutions, when authorized by the licensee.

Existing law requires the Department to establish a track-and-trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain. Information received and contained in records kept by the Department pursuant to the track-and-trace program are confidential and exempt from disclosure pursuant to the PRA, except as necessary for authorized employees of the State of California or any city, county, or city and county, to perform official duties pursuant to MAUCRSA or a local ordinance.

Further, upon the request of a state or local law enforcement agency, the Department shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities.

## **Policy Statement**

### **Regulation Objectives**

The Department has developed this regulation to further clarify or make specific sections of MAUCRSA pertaining to information sharing with financial institutions. The regulations will continue to:

- Address the obligation of the Department to allow information sharing with financial institutions, including information that is otherwise not subject to public disclosure.
- Establish a regulatory process for licensees to request and permit the Department to share financial information with their financial institution(s).
- Establish a regulatory process for financial institutions to request and permit the Department to share financial information of a licensee for the purposes of facilitating the provision of financial services.
- Establish a regulatory process for licensees to withdraw a request for sharing licensee financial information at any time.

### **Incorporated by Reference**

There are no documents incorporated by reference.

### **Anticipated Benefit of the Proposed Regulations**

Making the Department's proposed regulations permanent will allow the Department to continue 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.

Making the proposed regulations permanent 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.

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations:**

As required by Gov. Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these proposed regulations and has determined that they are not inconsistent or incompatible with existing regulations.

### **Evaluation of Inconsistency with Federal Regulation Statute**

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis and cannabis products for persons aged 21 or older and for medicinal patients.

### **Plain English Requirement**

Department staff prepared these proposed regulations pursuant to the standard of clarity provided in Gov. Code section 11349 and the plain English requirements of Gov. Code sections 11342.580 and 11346.2, subsection (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

### **Disclosures Regarding the Proposed Action**

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The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

## **Economic Impact and Fiscal Impacts**

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### **Business Impact**

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

### **Estimated Costs to Businesses**

The proposed regulations require 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.

### **Estimated Benefits of Regulation**

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 increase the number of financial institutions willing to provide banking services to cannabis businesses. Access to banking is important for 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.

### **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 systems 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.

The Department has determined that the proposed regulations will not affect small businesses. Small businesses that are licensed by the Department will not incur any additional costs due to the proposed regulations.

### **Results of Economic Impact Assessment**

The proposed regulations will not have a significant adverse economic impact on businesses.

The Department does not anticipate the creation or elimination of jobs or licensed businesses, or the expansion of existing businesses, as a result of the proposal.

This regulatory proposal benefits the health and welfare of California residents for the reasons stated above. The proposal does not benefit or negatively impact the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to the environment in the State. The proposal is anticipated to 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.

### **Consideration of Alternatives**

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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 regulations in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Option 1: Not adopt the proposed 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 the proposed 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 proposed regulations requiring written authorization. These proposed regulations are also necessary to ensure accurate recordkeeping of each request received by the Department.

## **Contact Person**

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Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-465-9025  
[Kaila.Fayne@cannabis.ca.gov](mailto:Kaila.Fayne@cannabis.ca.gov)

The backup contact person for these inquiries is:

Paul Atienza  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-251-4494  
[Paul.Atienza@cannabis.ca.gov](mailto:Paul.Atienza@cannabis.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

## **Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File**

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The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting Kaila Fayne at the address, email or phone number listed above.

### **Availability of Changed or Modified Text**

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After considering all timely and relevant comments received, the Department may adopt the proposed regulations, substantially, as described in this Notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

### **Availability of The Final Statement of Reasons**

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Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kaila Fayne at the above address, email, or phone number indicated above.

### **Availability of Documents on the Internet**

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Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the proposed regulations can be accessed through the Department's website at: <https://cannabis.ca.gov/resources/rulemaking/>.