DRAFT REGULATIONS

MCRSA/AUMA

3 Agencies

1. Bureau of Medical Cannabis Regulations (BMCR) CCR, Title 16, Division 42 – Applies to all medical cannabis activities;

2. Department of Food and Agriculture (DFA) CCR, Title 3, Division 8 – Applies to cultivation activities;

3. Department of Public Health (DPH) CCR Title 17, Division 1 – Applies to manufacturing activities

KEY DEFINITIONS

“OWNER”

1. PUBLICLY TRADED COMPANIES

2. ALL OTHER BUSINESSES

PUBLICLY TRADED COMPANIES:

1. CEO

2. Any person or entity with aggregate ownership interest of 5% or more.

ALL OTHER BUSINESSES

1. An individual with an aggregrate ownership interest of 20% or more in the commercial cannabis business.

Ownership interest ≠ security interest, lien or encumbrance.

ALL OTHER BUSINESSES (ctd)

2. CEO and all members of the BOD of an entity with an ownership interest of 20% or more in the commercial cannabis business;

3. An individual that will be participating in the direction, control, or management (DCOM) of the licensed commercial cannabis business.

“INDIVIDUAL THAT WILL BE PARTICIPATING IN THE [DCOM] OF THE LICENSED COMMERCIAL CANNABIS BUSINESS”

1. Individual has been delegated discretionary powers to organize, direct, carry on or control the operations of the licensed commercial cannabis business.

“INDIVIDUAL THAT WILL BE PARTICIPATING IN THE [DCOM] OF THE LICENSED COMMERCIAL CANNABIS BUSINESS”

2. Evidence of DCOM is authority to:

    a. Hire or separate employees;

    b. Contract for the purchase or sale of medical cannabis goods;

    c. Make or participate in making policy decisions relative to operations of the licensed commercial cannabis business.

SPOUSES OF OWNERS

Individuals with FC § 760 community property (760 CP) interest in commercial cannabis business who do not participate in DCOM are not owners.

HOWEVER, owner must disclose 760 CP individual in application.

SPOUSES OF OWNERS (ctd)

NOTE

1. If licensee's license is revoked, the 760 CP individual is barred from holding interest in the same license type for the same time period as the owner is barred from obtaining a license.

2. If licensee's license is denied, the 760 CP individual is barred from holding an interest in the same license type for the same time period as the owner is barred from obtaining a license.

“**PREMISES**”

Designated structure(s) and land specified in the application that is:

1. owned;

2. leased; or

3. otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted.

“**PREMISES**”

FURTHER: premises shall be:

i. A contiguous area; AND

ii. Only be occupied by one licensee.

“Volatile solvent”

Any solvent that: (i) is or (ii) produces a:

(a) Flammable gas or

(b) Vapor

That when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

“**Volatile solvent**”

Examples of volatile solvents include, but are not limited to:

1. Butane
2. Hexane
3. Propane, and
4. Ethanol.

“Nonvolatile solvent”

Any solvent used in extraction process that is not a volatile solvent.

Nonvolatile solvent includes carbon dioxide used for extraction.

Priority Licensing

REQUIREMENTS

1. In Operation
2. Good Standing
3. By January 1, 2016

REQUIREMENTS (ctd)

DPH ONLY

DPH (manufacturing regs) adds:

Same business ownership as on January 1 2016

OR

Same premises as on January 1, 2016

NOTE

Must have been operating in same commercial cannabis activity as license type being applied for. (i.e., manufacturing = priority in manufacturing license; cultivation = priority in cultivation license)

ADDITIONAL NOTE

AUMA

1. Operated in compliance with CUA/MMPA before September 1, 2016 (MAUCRSA); OR

2. Currently operating in compliance with BP 19320 et seq (MCRSA).

“ACTIVELY CONDUCTING” OPERATIONS

EVIDENCE TO ESTABLISH “ACTIVELY CONDUCTING” OPERATIONS

1. Articles of Incorporation
2. Articles of Organization
3. Certificate of Stock

EVIDENCE TO ESTABLISH “ACTIVELY CONDUCTING” OPERATIONS

4. Certificate of Limited Partnership

5. Statement of partnership authority

6. Tax form

EVIDENCE TO ESTABLISH "ACTIVELY CONDUCTING" OPERATIONS (Ctd)

7. Local license, permit, or other written authorization;

8. Receipts evidencing business transactions to or from the applicant;

9. Tax or business forms submitted to Board of Equalization or Franchise Tax Board

EVIDENCE TO ESTABLISH “ACTIVELY CONDUCTING” OPERATIONS (Ctd)

10. Collective or Cooperative Membership Agreement

11. Any other business record as deemed fit by the Department.

GOOD STANDING

EVIDENCE TO ESTABLISH GOOD STANDING

A document issued or signed by the local jurisdiction that contains the following:

(1) The name of the applicant;

(2) The address of premises to be licensed;

(3) The name of the office that issued the local license, permit, or other authorization;

EVIDENCE TO ESTABLISH GOOD STANDING

A document issued or signed by the local jurisdiction that contains the following (ctd):

(4) The name, contact information, and signature of the individual authorized to sign on behalf of the local jurisdiction;

(5) The statement: "*The abovenamed party has been issued a license, permit, or other authorization from this jurisdiction to conduct commercial cannabis activity. The abovenamed party is currently in operation and is operating in good standing in this jurisdiction*."

Applicant shall attest to the date and “good standing” with the local jurisdiction under penalty of perjury.

Material misrepresentations can result in denial of application and non-issuance of license.

CONCLUSION:

Submitting false evidence to establish priority may do more than result in not getting priority, it may result in denial of a license

Labelling - Marijuana

Labelling - Marijuana

Marijuana

1. Written in English;

2. Label and all required label information shall be unobstructed and conspicuous;

3. Text size no less than 6 point font and in relation to the size of the container; and

Labelling - Marijuana

Marijuana

4. the following information:

(i) The applicable requirements of B & P Code Section 19347; (MCRSA)

(ii) The net weight of the contents in the package; and

(iii) DFA ID as required by Section 8402.

Labelling – Marijuana (ctd)

4(i) B & P Code Section 19347; (MCRSA)

1. Tamper proof packaging
2. Unique DFA ID
3. Not attractive to children.
4. Only generic food names may be used to describe edible medical cannabis products

Labelling – Marijuana (ctd)

4(i) B & P Code Section 19347; (MCRSA)

5. Shall include the following prominently displayed in clear legible font:

(a) Cultivation and manufacture date and source.

(b) The statement "SCHEDULE I CONTROLLED SUBSTANCE.”

(c) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

Labelling – Marijuana (ctd)

4(i) B & P Code Section 19347; (MCRSA)

5. Shall include the following prominently displayed in clear legible font:

(d) The statement "FOR MEDICAL USE ONLY."

(e) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(f) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

Labelling – Marijuana (ctd)

B & P Code Section 19347; (MCRSA) (ctd)

5. Shall include the following prominently displayed in clear legible font (ctd):

(g) For packages containing only dried flower, the net weight of medical cannabis in the package.

(h) A warning if nuts or other known allergens are used in the manufacturing of the medical cannabis products.

(i) List of ingredients and pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC, CBD, and other cannabinoid amount in milligrams per serving, servings per package, and the THC, CBD, and other cannabinoid amount in milligrams for the package total.

Labelling – Marijuana (ctd)

B & P Code Section 19347; (MCRSA) (ctd)

5. Shall include the following prominently displayed in clear legible font (ctd):

(j) Clear indication, in bold type, that the product contains medical cannabis.

(k) Any other requirement set by the BMCR or DPH.

Labelling – Marijuana (cdt)

B & P Code Section 19347; (MCRSA)

5. Shall include the following prominently displayed in clear legible font (cdt):

(l) Information associated with DFA ID per Section 11362.777 of the Health and Safety Code.

(m) All manufactured and edible medical cannabis products **shall be sold only in special packaging constructed to be child-resistant unless otherwise exempted by regulation.**

Labelling – Marijuana (cdt)

NOTE

Adult Use of Marijuana Act (AUMA), B & P Code, Div 10, Chapter 12, Sec 26120

Must be in Resealable child resistant package.

Labelling – Marijuana Products

1. Listed on a label in English.

2. Label and all required information unobstructed and conspicuous.

Labelling – Marijuana Products (cdt)

Primary Panel

Labelling – Marijuana Products (cdt)

3. Primary Panel (ctd)

(1) Identity of the product in a text size reasonably related to the most prominent printed matter on the panel;

(2) The words “cannabis-infused” **immediately above the identity** of the product in **bold type** and text size larger than the text size used for the identity of the product;

Labelling – Marijuana Products (cdt)

3. Primary Panel (ctd)

(3) The cannabis product symbol as prescribed in Section 40412 (4)The net weight or volume of the contents of the package;

(5) The THC content and CBD content for the package in its entirety, expressed in milligrams per package;

Labelling – Marijuana Products (cdt)

3. Primary Panel (cdt)

(6) The THC content and CBD content per serving, expressed in milligrams per serving; and

(7) The content of other cannabinoids or terpenes per serving if such information is verified by the certificate of analysis issued by a licensed testing laboratory pursuant to B & P Code section 19344.

Labelling – Marijuana Products (cdt)

3. Primary Panel (cdt)

The primary panel text must be:

(i) in type size no less than 6 point font; and

(ii) be in relation to the size of the primary panel and container.

Labelling – Marijuana Products (cdt)

4. Informational Panel.

(1) Licensed manufacturer's name, contact number or website address;

(2) Date of manufacture;

Labelling – Marijuana Products (cdt)

Informational Panel.

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd)

(3) Each of the following statements:

(A) “SCHEDULE I CONTROLLED SUBSTANCE.”

(B) “KEEP OUT OF REACH OF CHILDREN AND ANIMALS” in bold print.

(C) “FOR MEDICAL USE ONLY.”

(D) “IF PREGNANT OR BREASTFEEDING, CONSULT A PHYSICIAN PRIOR TO USE.”

(E) “THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS.”

(F) “THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY, PLEASE USE EXTREME CAUTION.”

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd)

(4) List of all product ingredients in descending order of predominance by weight or volume;

(5) If contains: (i) ingredient, (ii) flavoring, (iii) coloring, or an (iv) incidental additive that bears or contains a major food allergen, the word "**Contains**," followed by a list of the applicable major food allergens;

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd)

(6) Edible product: Names of any artificial food colorings contained in product;

(7) Edible product: Amount, in grams, of sodium, sugar, carbohydrates, and total fat per serving;

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd)

(8) The lot number;

(9) Instructions for use, such as the method of consumption or application, and any preparation necessary prior to use;

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd)

(10)Product: (i) expiration date; (ii) “use by” date; or (iii) “best by” date;

and

(11) The unique identifier.

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd) **Text Type Size**

(i) no less than 6 point font; and

(ii) in relation to the size of the primary panel and container

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd) **Text Type Size** (ctd)

UNLESS

Insufficient area on the container to print required

Information in 6 point font or greater.

Labelling – Marijuana Products (cdt)

Informational Panel. (ctd) **Text Type Size** (ctd)

IF INSUFFICIENT AREA FOR 6 POINT FONT OR GREATER.

(i) Label shall include warning statements required in (3) in 6 points font or greater, and

(ii) Product shall have supplemental label that includes all of the other required information in 8 point font or greater.

Labelling – Restrictions

Labelling – Restrictions

The label shall not contain any of the following:

(a) Claims that the manufactured cannabis or cannabis product was grown in a California county where it wasn’t grown.

(b) The name of a California county unless the cannabis was grown there.

Labelling – Restrictions

The label shall not contain any of the following (ctd):

(c) Content that is or designed to be attractive to individuals under the age of 21, including but not limited to:

(1) Cartoons;

(2) Any likeness to images, characters, or phrases that are popularly used to advertise to children; or

(3) Any imitation of candy packaging or labeling.

Labelling – Restrictions

The label shall not contain any of the following (ctd):

(d) False labeling information. Labeling is false if it is false or misleading in any particular. (UCL, B & P 17200 et seq)

(e) Claims of health benefits or other physical benefits.

Packaging

Packaging

A package used to contain a cannabis product shall adhere to the following requirements:

(a) The package shall protect the product from contamination and shall not expose the product to any toxic or harmful substance.

(b) The package shall be tamper-evident, which means that the product shall be packaged in a container within which a product is sealed so that the contents cannot be opened without obvious destruction of the seal.

Packaging

(c) The package shall be child-resistant, **which means** the package shall be:

(i) designed or constructed to be significantly difficult for children under five years of age to open or otherwise obtain access to the product contained therein within a reasonable time; and

(i) shall not be difficult for normal adults to open or obtain access to the product contained therein.

Poison Prevention Packaging Act

A package shall be deemed child-resistant if it satisfies the standard for “special packaging” as set forth in the Poison Prevention Packaging Act of 1970 Regulations (16 C.F.R. §1700.1(b)(4)).

Packaging (ctd)

(d) The package shall not imitate any package used for products typically marketed to children.

(e) If the product is an edible product, it shall be opaque.

(f) If the package contains more than one serving of cannabis product, the package shall be re-sealable so that child-resistance is maintained throughout the life of the package.

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Proposition 215: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

California Senate Bill Number: SB 420 -- Bill Text

INTRODUCED FEBRUARY 20, 2003 BY Senator Vasconcellos

PASSED SENATE SEPTEMBER 11, 2003

PASSED ASSEMBLY SEPTEMBER 10, 2003

(Principal coauthor: Assembly Member Leno. Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient' s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The

bill would require the Attorney General to develop and adopt guidelines to ensure the security and no diversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.

(2) Promote uniform and consistent application of the act among the counties within the state.

(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.

(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

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11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person' s medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decision maker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county' s designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed. (c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county' s designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical

marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient' s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a school bus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state

mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.

**** Footnotes to the above:***

11366. Every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

11366.5. (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide and who obtains excessive profits from the use of the building, room, space, or enclosure shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who violates subdivision (a) after previously being convicted of a violation of subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years.

(d) For the purposes of this section, "excessive profits" means the receipt of consideration of a value substantially higher than fair market value.

11570. Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

EDMUND G. BROWN JR.
Attorney General

DEPARTMENT OF JUSTICE
State of California

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).[1]) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

[1] Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b)(1)(A)-(B).)

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician." (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the "quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (http://www.boe.ca.gov/news/pdf/medseller2007.pdf.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (http://www.boe.ca.gov/news/pdf/173.pdf.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation**: Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card**: Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status**: Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. **Possession Guidelines**:

a) **MMP**:[2] Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

[2] On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215**: Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. **Enforcement Guidelines**.

1. **Location of Use**: Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders**: When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (http://www.calmmp.ca.gov); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines**: If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "co-op") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group." (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. **Guidelines for the Lawful Operation of a Cooperative or Collective:** Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation**: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].

2. **Business Licenses, Sales Tax, and Seller's Permits**: The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification**: When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana**: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited**: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
b) Provided in exchange for services rendered to the entity;
c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
d) Any combination of the above.

7. **Possession and Cultivation Guidelines**: If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

a) Operating a location for cultivation;
b) Transporting the group's medical marijuana; and
c) Operating a location for distribution to members of the collective or cooperative.

8. **Security**: Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines**: Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash "donations" – are likely unlawful. (*Peron*, *supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

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11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an

identification card issued pursuant to this article.
(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
(h) "Serious medical condition" means all of the following medical conditions:
(1) Acquired immune deficiency syndrome (AIDS).
(2) Anorexia.
(3) Arthritis.
(4) Cachexia.
(5) Cancer.
(6) Chronic pain.
(7) Glaucoma.
(8) Migraine.
(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
(10) Seizures, including, but not limited to, seizures associated with epilepsy.
(11) Severe nausea.
(12) Any other chronic or persistent medical symptom that either:
(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.
(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.
(b) Every county health department, or the county's designee, shall do all of the following:
(1) Provide applications upon request to individuals seeking to join the identification card program.
(2) Receive and process completed applications in accordance with Section 11362.72.
(3) Maintain records of identification card programs.
(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.
(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an

entity or organization that cultivates or distributes marijuana.
(d) The department shall develop all of the following:
(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.
(2) Application forms that shall be issued to requesting applicants.
(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.
(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.
(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:
(1) The name of the person, and proof of his or her residency within the county.
(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.
(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
(4) The name and the duties of the primary caregiver.
(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.
(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:
(1) A conservator with authority to make medical decisions.
(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.
(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county' s designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of

that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and

consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
(c) On a schoolbus.
(d) While in a motor vehicle that is being operated.
(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.
(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.
(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.
(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.
(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.
(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.
(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.
(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

(a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.

(b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
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U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 14, 2014

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Related Financial Crimes

On August 29, 2013, the Department issued guidance (August 29 guidance) to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). The August 29 guidance reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that marijuana is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of that commitment, the August 29 guidance instructed Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against marijuana-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the August 29 guidance, whether marijuana-related conduct implicates one or more of these enforcement priorities should be the primary question in considering prosecution

under the CSA. Although the August 29 guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide. The guidance, however, did not specifically address what, if any, impact it would have on certain financial crimes for which marijuana-related conduct is a predicate.

The provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. §§ 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. § 1960), and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a "specified unlawful activity," including proceeds from marijuana-related violations of the CSA. Transactions by or through a money transmitting business involving funds "derived from" marijuana-related conduct can also serve as a predicate for prosecution under 18 U.S.C. § 1960. Additionally, financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability under the BSA for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. *See, e.g.*, 31 U.S.C. § 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law.

As noted in the August 29 guidance, the Department is committed to using its limited investigative and prosecutorial resources to address the most significant marijuana-related cases in an effective and consistent way. Investigations and prosecutions of the offenses enumerated above based upon marijuana-related activity should be subject to the same consideration and prioritization. Therefore, in determining whether to charge individuals or institutions with any of these offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance and reiterated above. [1] For example, if a financial institution or individual provides banking services to a marijuana-related business knowing that the business is diverting marijuana from a state where marijuana sales are regulated to ones where such sales are illegal under state law, or is being used by a criminal organization to conduct financial transactions for its criminal goals, such as the concealment of funds derived from other illegal activity or the use of marijuana proceeds to support other illegal activity, prosecution for violations of 18 U.S.C. §§ 1956, 1957, 1960 or the BSA might be appropriate. Similarly, if the financial institution or individual is willfully blind to such activity by, for example, failing to conduct appropriate due diligence of the customers' activities, such prosecution might be appropriate. Conversely, if a financial institution or individual offers

[1] The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) is issuing concurrent guidance to clarify BSA expectations for financial institutions seeking to provide services to marijuana-related businesses. The FinCEN guidance addresses the filing of Suspicious Activity Reports (SAR) with respect to marijuana-related businesses, and in particular the importance of considering the eight federal enforcement priorities mentioned above, as well as state law. As discussed in FinCEN's guidance, a financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the federal enforcement priorities or violate state law, would file a "Marijuana Limited" SAR, which would include streamlined information. Conversely, a financial institution filing a SAR on a marijuana-related business it reasonably believes, based on its customer due diligence, implicates one of the federal priorities or violates state law, would be label the SAR "Marijuana Priority," and the content of the SAR would include comprehensive details in accordance with existing regulations and guidance.

services to a marijuana-related business whose activities do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.

The August 29 guidance rested on the expectation that states that have enacted laws authorizing marijuana-related conduct will implement clear, strong and effective regulatory and enforcement systems in order to minimize the threat posed to federal enforcement priorities. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.[2] In addition, because financial institutions are in a position to facilitate transactions by marijuana-related businesses that could implicate one or more of the priority factors, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. Moreover, as the Department's and FinCEN's guidance are designed to complement each other, it is essential that financial institutions adhere to FinCEN's guidance.[3] Prosecutors should continue to review marijuana-related prosecutions on a case-by-case basis and weigh all available information and evidence in determining whether particular conduct falls within the identified priorities.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct of a person or entity threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

[2] For example, financial institutions should recognize that a marijuana-related business operating in a state that has not legalized marijuana would likely result in the proceeds going to a criminal organization.
[3] Under FinCEN's guidance, for instance, a marijuana-related business that is not appropriately licensed or is operating in violation of state law presents red flags that would justify the filing of a Marijuana Priority SAR.

Department of the Treasury
Financial Crimes Enforcement Network

Guidance

FIN-2014-G001
Issued: February 14, 2014
Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network ("FinCEN") is issuing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice ("DOJ") concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act ("CSA") makes it illegal under federal law to manufacture, distribute, or dispense marijuana.[1] Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the "Cole Memo") to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.[2] The Cole Memo guidance applies to all of DOJ's federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

[1] Controlled Substances Act, 21 U.S.C. § 801, *et seq*.
[2] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), *available at* http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the "Cole Memo priorities"):[3]

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.[4]

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

[3] The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

[4] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

Filing Suspicious Activity Reports on Marijuana-Related Businesses

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.[5] Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

"Marijuana Limited" SAR Filings

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

[5] *See, e.g.*, 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term "MARIJUANA LIMITED" in the narrative section.

A financial institution should follow FinCEN's existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a "Marijuana Limited" SAR.[6] The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a "Marijuana Priority" SAR.

"Marijuana Priority" SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a "Marijuana Priority" SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term "MARIJUANA PRIORITY" in the narrative section to help law enforcement distinguish these SARs.[7]

"Marijuana Termination" SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

[6] Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at:* http://fincen.gov/whatsnew/html/sar_faqs.html (providing guidance on the filing timeframe for submitting a continuing activity report).

[7] FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., "Marijuana Limited" or "Marijuana Priority"). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between "Marijuana Limited" and "Marijuana Priority." Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term "MARIJUANA TERMINATION" in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.[8]

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution's knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
    - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
    - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
    - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
    - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
    - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

[8] Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at: http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf.*

- Deposits apparently structured to avoid Currency Transaction Report ("CTR") requirements.

- Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.

- Deposits by third parties with no apparent connection to the accountholder.

- Excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses.

- Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.

- Financial statements provided by the business to the financial institution are inconsistent with actual account activity.

- A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.

- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.

- The business is unable to demonstrate the legitimate source of significant outside investments.

- A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a "consulting," "holding," or "management" company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.

- Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.

- The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.

- A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.

- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.

- A marijuana-related business's proximity to a school is not compliant with state law.

- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

Currency Transaction Reports and Form 8300's

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than $10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than $10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

* * * * *

FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.

AMENDMENT TO H.R. 2578, AS REPORTED
(CJS APPROPRIATIONS)
OFFERED BY MR. ROHRABACHER OF CALIFORNIA

At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin, or with respect to either the District of Columbia or Guam, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Congress of the United States
Washington, DC 20515

April 8, 2015

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Holder:

As you know, 35 states have made the production, sale, and use of at least some form of medical marijuana legal under their states' laws, notwithstanding federal law. This number includes twelve states that have enacted measures that permit the use of CBD oils that are illegal under federal law to treat seizure disorders. We write in response to recent statements indicating that the Department of Justice does not believe a spending restriction designed to protect these state medical marijuana laws applies to specific ongoing cases against individuals and businesses engaged in medical marijuana activity, and that the Department will proceed with ongoing litigation that undermines the laws of California and other states that permit medical marijuana.

Specifically, in an *L.A. Times* article titled "Justice Department says it can still prosecute medical marijuana cases," a Department spokesman, Patrick Rodenbush, said that the amendment doesn't apply to cases against individuals or organizations, but merely stops the Department from "impeding the ability of states to carry out their medical marijuana laws."[1]

As the authors of the provision in question, we write to inform you that this interpretation of our amendment is emphatically wrong. Rest assured, the purpose of our amendment was to prevent the Department from wasting its limited law enforcement resources on prosecutions and asset forfeiture actions against medical marijuana patients and providers, including businesses that operate legally under state law. In fact, a close look at the Congressional Record of the floor debate of this amendment clearly illustrates the intent of those who sponsored and supported this measure. Even those who argued against the amendment agreed with the proponents' interpretation of their amendment.

Criminal prosecutions, like the recent Kettle Falls Five case in Washington, as well as asset forfeiture actions like those mentioned in the recent L.A. Times article against dispensaries in the San Francisco Bay Area, were what motivated us and a majority of our colleagues in the United States House of Representatives to approve this measure and ensure it was codified in the Consolidated and Continuing Appropriations Act late last year. In fact, we can imagine few more efficient and effective ways of "impeding the ability of states to carry out their medical marijuana laws" than prosecuting individuals and organizations acting in accordance with those laws.

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[1] "Justice Department says it can still prosecute medical marijuana cases," *L.A. Times*, April 2, 2015. Available at http://www.latimes.com/nation/nationnow/la-na-nn-medical-marijuana-abusers-20150401-story.html

Further, to the extent that there may be questions about whether the facts of these matters or any other specific case constitute violations of state law, we suggest that state law enforcement agencies are best-suited to investigate and determine free from federal interference. As you well know, state authorities handle the vast majority of enforcement of marijuana laws, and states are responsible for implementing and enforcing laws and regulations relating to medical marijuana. The states are therefore in a better position than the Department to resolve these questions.

In closing, we respectfully insist that you bring your Department back into compliance with federal law by ceasing marijuana prosecutions and forfeiture actions against those acting in accordance with state medical marijuana laws.

Sincerely,

Dana Rohrabacher
Member of Congress

Sam Farr
Member of Congress

Office of the Attorney General
Washington, D. C. 20530
May 1, 2017

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Department of Justice Appropriations

Dear Senators McConnell and Schumer, Speaker Ryan, and Representative Pelosi:

I write to renew the Department of Justice's opposition to the inclusion of language in any appropriations legislation that would prohibit the use of Department of Justice funds or in any way inhibit its authority to enforce the Controlled Substances Act (CSA).

As you know, the most recent continuing resolution contained a rider that restricts the Department from using appropriated funds to prevent certain states "from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana," even though marijuana remains unlawful under the Controlled Substances Act. *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542, 129 Stat. 2242, 2332-33 (2015); Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, § 101, 130 Stat. 1005, 1006 (2016) (extending 2016 Consolidated Appropriations Act).

Last year, and over the Department's objection, the U.S. Court of Appeals for the Ninth Circuit interpreted this provision broadly to apply both to Department actions that prevent states from implementing their laws regarding medical marijuana and to Department prosecutions of certain individuals and organizations that operate under those laws. *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016). The court held that the Department may not prosecute violations of the CSA with respect to marijuana unless a court concludes that the individuals or organizations are not in compliance with state medical marijuana law. As a result, in the Ninth Circuit, many individuals and organizations that are operating in violation of the CSA and causing harm in their communities may invoke the rider to thwart prosecution.

I believe it would be unwise for Congress to restrict the discretion of the Department to fund particular prosecutions, particularly in the midst of an historic drug epidemic and potentially long-term uptick in violent crime. The Department must be in a position to use all laws available to combat the transnational drug organizations and dangerous drug traffickers who threaten American lives.

Drug traffickers already cultivate and distribute marijuana inside the United States under the guise of state medical marijuana laws. In particular, Cuban, Asian, Caucasian, and Eurasian criminal organizations have established marijuana operations in state-approved marijuana markets. *E.g.*, U.S. Dep't of Justice & Drug Enforcement Administration, *National Drug Threat Assessment* 116-17 (2016). The individuals in these organizations often find a place for themselves within state regulatory systems. For example, just this past month in Colorado, state authorities allege that an individual who held an active Colorado license for operating a medical marijuana business was the ringleader of a criminal organization that also shipped marijuana out of state. *See* Jesse Paul, *Eight of 16 People Indicted in Colorado Marijuana Trafficking Operation Listed as Having State Pot Licenses, Denver Post* (Mar. 24, 2017).

Smoking marijuana, in addition, has significant negative health effects. According to the National Institute on Drug Abuse, marijuana use is linked to an increased risk of psychiatric disorders such as psychosis, respiratory ailments such as lung infections, cognitive impairments such as IQ loss, and substance use disorder and addiction. NIDA, *Drug Facts on Marijuana* (Feb. 2017). One recent study conducted in part by researchers at Duke University showed, for example, that people who started smoking marijuana frequently in their teens lost an average of eight IQ points by middle age. *Id.* It is thus unsurprising that in the last administration both the Department of Health and Human Services and the DEA concluded that "marijuana has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision." Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53,688, 53,689 (Aug. 12, 2016).

For these reasons, I respectfully request that you oppose the inclusion of such language in Department appropriations. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jefferson B. Sessions III
Attorney General

CC: The Honorable Richard Shelby, Chairman, Senate Subcommittee on Commerce, Justice, Science, and Related Agencies
The Honorable Jeanne Shaheen, Ranking Member, Senate Subcommittee on Commerce, Justice, Science, and Related Agencies
The Honorable John Culberson, Chairman, House Subcommittee on Commerce, Justice, Science, and Related Agencies
The Honorable Jose Serrano, Ranking Member, House Subcommittee on Commerce, Justice, Science, and Related Agencies

CC: The Honorable Thad Cochran, Chairman, Senate Committee on Appropriations
The Honorable Patrick Leahy, Vice Chairman, Senate Committee on Appropriations
The Honorable Rodney P. Frelinghuysen, Chairman, House of Representatives Committee on Appropriations
The Honorable Nita M. Lowey, Ranking Member, House of Representatives Committee on Appropriations

Office of the Attorney General
Washington, D. C. 20530

April 5, 2017

MEMORANDUM FOR HEAD OF DEPARTMENT COMPONENTS
UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Update on the Task Force on Crime Reduction and Public Safety

Combating violent crime is a priority of this Administration, and I want to take this opportunity to provide you an update on some of the Department's recent activities in this area. Recently, I directed all federal prosecutors to engage in a focused effort to investigate, prosecute, and thus deter violent criminals. Many of you are already engaged in this important work, and I want you to know that you have my full support to make violence reduction a priority within your jurisdictions. I believe that if we work together to address the most violent offenders, we can help reverse the recent increases in violent crime.

On February 27th, I established the Department's Task Force on Crime Reduction and Public Safety (the Task Force). This Task Force will identify ways in which the federal government can more effectively combat illegal immigration and violent crime, such as gun crime, drug trafficking, and gang violence. The Task Force will accomplish its work through a variety of subcommittees, and those groups are already hard at work, benefiting from the expertise of many offices throughout the Department. I have asked for initial recommendations from the Task Force no later than July 27th, but will continue to act upon recommendations as they become available and direct the policy of the Department on an ongoing basis.

The Violent Crime Reduction Strategy Development Subcommittee will make recommendations for the Department's overall violent crime reduction strategy, which will include focused enforcement against violent offenders. This subcommittee will also examine ways in which we can support local partners engaged in enforcement, prevention, and reentry efforts; leverage existing law enforcement efforts; and measure the effectiveness of our work.

Task Force subcommittees will also undertake a review of existing policies in the areas of charging, sentencing, and marijuana to ensure consistency with the Department's overall strategy on reducing violent crime and with Administration goals and priorities. Another subcommittee will explore our use of asset forfeiture and make recommendations on any improvements needed to legal authorities, policies, and training to most effectively attack the financial infrastructure of criminal organizations.

We must also protect the civil rights of all Americans, and we will not tolerate threats or acts of violence targeting any person or community in this country on the basis of their religious beliefs or background. Accordingly, the Hate Crimes Subcommittee will develop a plan to appropriately address hate crimes to better protect the rights of all Americans. As with many other areas of the Task Force's work, we are already making significant progress toward our goal of a safer America. Recently, the Federal Bureau of Investigation, working with law enforcement partners in Israel and elsewhere, helped secure the arrest of a man believed to be responsible for the recent surge in threats of violence against Jewish community centers and synagogues. I commend their outstanding efforts.

The Task Force subcommittees will also focus on immigration enforcement and human trafficking to ensure that the federal government has an aggressive and coordinated strategy to deter those who violate our borders and subject others to forced labor, involuntary servitude, sex trafficking, and other forms of modern-day slavery.

Many of these efforts will require that we have access to complete, accurate, and timely crime data and that the Department and our law enforcement partners and prosecutors across the country are able to rely on prompt and accurate forensic science analysis to investigate and prosecute violent offenders. Task Force subcommittees will examine these issues as well and make recommendations to me on needed improvements.

We cannot carry out this important work without the help of our law enforcement and community partners. I have directed the Task Force to hold a National Summit on Crime Reduction and Public Safety within 120 days, so that we can learn from federal, state, local, and tribal law enforcement agencies, victims' advocacy organizations, and community advocacy organizations about how we can best support and replicate successful local violent crime reduction efforts. This partnership is an essential, and we have much to learn from these groups. In addition, as part of the important work the Task Force is undertaking to combat hate crimes, the Department's Civil Rights Division will be reaching out to affected communities to hear directly what strategies and support are most needed to help reduce this particularly pernicious crime.

As a complement to the Task Force's work, I have pledged to listen to the stories and concerns of those who are most affected by this rise in violent crime in communities across the country. I started my travels in Richmond, Virginia, where I talked with our law enforcement partners, crime victims, community leaders and others. Last week, I was in St. Louis, Missouri. And I expect to visit additional cities in the weeks to come.

Importantly, I also want to hear from you, the Department's dedicated public servants. If you have specific recommendations or ideas on how to reduce violent crime, please contact Steven H. Cook (Steven.H.Cook@usdoj.gov, 202-305-0180), a career prosecutor from the Eastern District of Tennessee on detail to the Office of the Deputy Attorney General, or Robyn L. Thiemann (Robyn.Thiemann2@usdoj.gov, 202 514-8356), a 20-year Department veteran and Deputy Assistant Attorney General in the Office of Legal Policy, with any ideas or inquiries regarding the work of the Task Force.

I look forward to working with you in the coming months to secure the safety of all Americans, including the brave men and women of law enforcement, while ensuring fairness, impartiality, and equal justice under law.

California Code of Regulations Title 16, Division 42. Bureau of Marijuana Control	California Code of Regulations Title 17 Division 1, Chapter 13. Manufactured Cannabis Safety	California Code of Regulations Title 3. Food and Agriculture, Division 8. Medical Cannabis Cultivation
ALL CANNABIS ACTIVITIES	CANNABIS MANUFACTURING	CANNABIS CULTIVATION
Chapter 1. General Provisions Applicable To All Bureau Of Marijuana Control Applicants And Licensees Article 1. General Provisions (Definitions)	**Subchapter 1. General Provisions and Definitions** Article 1. Definitions §40100. Definitions **§40102. Owner**	**Chapter 1. Medical Cannabis Cultivation Program** Article 1. Definitions § 8000. Definitions.
Article 2. Applications **§ 5004. Owner** § 5006. Application Requirements § 5008. Law Enforcement Personnel Not to Hold Licenses **§ 5010. Premises** **§ 5012. Premises Diagram** § 5014. Property-Owner Approval § 5016. Bond § 5017. Waiver of Sovereign Immunity § 5018. Requirements for Continued Operation While Application Pending § 5020. Priority Review § 5022. Date Operation Began § 5024. Good Standing § 5026. Additional Information § 5028. Incomplete Applications § 5030. Withdrawal of Application	Article 2. General Provisions §40115. License Required §40118. Manufacturing License Classifications	Article 2. Applications § 8100. Application Fees. **§ 8101. Owner.** § 8102. Application Requirements. § 8103. Property Owner Approval. § 8104. Requirements for Continued Operation While Application Pending. § 8105. Priority Review. § 8106. Date Operation Began. § 8107. Good Standing. § 8108. Substantially Related Offenses Review. § 8109. Water Source Supplemental Information. § 8110. Application Processing. § 8111. Withdrawal of Application. § 8112. Grounds for Denial of a License. § 8114. Physical Modification of Premises. § 8115. Renewal of License. § 8116. Surrender of License. § 8117. Waiver of Sovereign Immunity.
Article 3. General Licensing § 5032. Substantially Related Offenses § 5033. Criteria for Rehabilitation § 5036. Additional Grounds for Denial of a License		Article 3: Cultivation License Fees and Requirements § 8200. License Fees. § 8201. License Posting Requirement.

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§ 5039. Notification of Change § 5042. Renewal of License § 5045. Surrender of License § 5048. Physical Modification of Premises § 5050. Track and Trace Requirements		§ 8202. General License Requirements. § 8203. Cultivation License Types. License types include: § 8204. Cultivation License Limits. § 8205. Medium Cultivation License Limits. § 8206. Multi-Tenant Cultivation. § 8207. License to License Movement and Commingling. § 8208. Vertical Integration. § 8209. Sample Collection by the Bureau. § 8210. Prohibition of Product Returns.
Article 4. Enforcement § 5051. Licensee's Responsibility for Acts of Employees and Agents § 5054. Additional Grounds for Disciplinary Action		Article 4. Cultivation Site Requirements § 8300. Premises Diagram. § 8301. Cultivation Plan Requirements for Specialty Cottage, Specialty, Small and Medium Licenses. § 8302. Cultivation Plan Requirements for Nursery Licenses. § 8303. Cultivation Plan Requirements for Processor Licenses. § 8304. Holding Area Requirements for Destruction of Material. § 8305. Cannabis Waste Management. § 8306. Standards of Cleanliness. § 8307. Packaging of Nonmanufactured Cannabis Products for Distribution. § 8308. Labeling of Nonmanufactured Cannabis Products for Distribution. § 8309. Propagation Requirements for Specialty Cottage, Specialty, Small, and Medium Licenses. § 8310. Processing Requirements for Specialty Cottage, Specialty, Small, and Medium Licenses. § 8311. Cultivation Requirements for Nurseries.

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		§ 8312. Cultivation Requirements for Processor Licenses. § 8313. Environmental Protection Measures. § 8314. Additional Environmental Protection Measure for Mixed-Light Licenses. § 8315. Additional Environmental Protection Measure for Indoor Licenses.
Article 5. Records and Reporting § 5056. Record Retention § 5058. Significant Discrepancy in Inventory § 5060. Notification of Criminal Acts, Civil Judgments, and Revocation of a Local License, Permit, or Other Authorization After Licensure § 5062. Notification of Diversion, Theft, Loss, or Criminal Activity Pertaining to Medical cannabis goods		Article 5. Records and Reporting § 8400. Record Retention. § 8401. Track-and-Trace System. § 8402. Track-and-Trace System Unique Identifiers (UID). § 8403. Track-and-Trace System User Requirements. § 8404. Track-and-Trace System Reporting Requirements. § 8405. Track-and-Trace System Inventory Requirements. § 8407. Inventory Audits. § 8408. Notification of Diversion, Theft, Loss, or Criminal Activity.
Article 6. Security § 5064. Access to Limited-Access Areas § 5066. Licensee Employee Badge Requirement § 5068. Video Surveillance System § 5070. Security Personnel § 5072. Locks § 5074. Alarm System		Article 6. Inspections, Investigations and Audits § 8500. Applicability. § 8501. Inspections, Investigations and Audits.
Article 7. Returns and Destruction of Product § 5076. Returns Between Licensees		Article 7. Enforcement § 8600. Applicability. § 8601. Administrative Actions. § 8602. Notice of Violation. § 8603. Administrative Hold Procedure.

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		§ 8605. Informal Hearing Schedule and Notification. § 8606. Conduct of Informal Hearings. § 8607. Licensing Actions.
CHAPTER 2. DISTRIBUTORS <u>Article 1. Activities</u> § 5082. Distributor Taking Title Before Manufacturing § 5096. Non-Medical-Cannabis Distribution Activities s	**Subchapter 2 – Manufacturing Licenses** <u>Article 1. Applications for Licensure</u> §40125. New License Application. §40128. Application Requirements. §40130. Owner Applications. §40132. Waiver of Sovereign Immunity. §40135. Incomplete Applications. §40137. Application Withdrawal.	
<u>Article 2. Testing and Quality Assurance</u> § 5098. Laboratory-Testing Logistics § 5100. Testing Sample § 5102. Laboratory Testing Results § 5104. Quality-Assurance Review	<u>Article 2. Operations in Existence as of January 1, 2018</u> §40140. Applicants Operating Prior to January 1, 2018. §40141. Priority of Review of Applications.	
<u>Article 3. Other Requirements</u> § 5106. Grace Period for Testing and Labeling § 5108. Insurance Requirements § 5110. Employee Requirements § 5112. Inventory Reconciliation § 5114. Records § 5116. Track and Trace Requirement	<u>Article 3. Fees</u> §40150. Application and License Fees.	
	<u>Article 4. Approval or Denial of Application for Licensure</u> §40155. New License Approval. §40159. Denial of License. §40162. Substantially Related Acts. §40165. Criteria for Evidence of Rehabilitation.	

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	§40167. Appeal of License Denial. §40169. Denial of Application – Reapplication.	
	Article 5. Licensing §40175. License Constraints. §40178. Material Change Request. §40180. License Renewal.	
Chapter 3. Transporters § 5118. Medical Cannabis Transporter § 5122. Transporter May Not Hold Title to Medical Cannabis Goods § 5124. Transport Requirements § 5130. Transporter Storage of Medical Cannabis Goods § 5132. Storage § 5136. Notification of Shipment § 5138. Shipping Manifest § 5140. Records § 5142. Transporter Track and Trace Requirements	**Subchapter 3. Requirements Of Operation** Article 1. Safety and Security §40200. Security Plan.	
	Article 2. Extractions §40220. Permissible Extractions. §40222. Volatile Solvent Extractions. §40225. Closed-Loop Extraction System Requirements. §40232. Requirements of Personnel §40234. Grounds. §40236. Facility Construction and Design. §40238. Sanitary Operations. §40240. Sanitary Facilities and Controls. §40242. Equipment and Utensils.	
	Article 4. Production and Process Controls	

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	§40250. General Provisions. §40252. Quality of Raw Materials and Ingredients. §40254. Manufacturing Operations. §40256. Hazard Analysis. §40258. Preventive Controls. §40260. Equipment and Machinery Qualification. §40262. Master Manufacturing Protocol. §40264. Batch Production Record. §40266. Product Complaints. §40268. Recalls.	
	Article 5. Record Keeping §40270. Record Keeping Requirements. §40272. Track-and-Trace Requirements for Manufacturers.	
	Article 6. Other Responsibilities §40275. Standard Operating Procedures. §40280. Training Program. §40282. Inventory Control – Cannabis and Cannabis Products. §40290. Disposal of Cannabis Waste. §40292. Consent to Sample Collection.	
Chapter 4. Dispensaries Article 1. Premises § 5145. Subletting of Premises § 5148. Access to Dispensary Premises. § 5151. Limited-Access Areas	**Subchapter 4. Products** Article 1. Cannabis Product Standards §40300. Prohibited Products. §40302. Prohibited Ingredients and Components. §40305. Edible Products – Serving Size. §40306. Finished Cannabis Products – Maximum THC Content. §40307. Uniform Distribution. §40310. Contaminants.	
Article 2. Retail Sales § 5154. Retail Area		

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§ 5157. Hours of Operation § 5160. Dispensary Customers § 5163. Medical Cannabis Goods Display § 5166. Medical Cannabis Goods for Sale § 5172. Daily Limits § 5175. Medical Cannabis Goods Returned by Medical Cannabis Patients or Primary Caregivers § 5178. Customer Samples § 5181. Packaging and Labeling § 5184. Exit Packaging		
Article 3. Delivery § 5187. Delivery § 5190. Delivery to Physical Address § 5193. Methods of Delivery § 5196. Delivery Hours of Operation §5199. Medical Cannabis Goods Carried During Delivery § 5202. Medical Cannabis Consumption During Delivery § 5205. Delivery Request Receipt § 5208. Delivery Route		
Article 4. Producing Dispensary § 5211. Producing Dispensary License		
Article 5. Inventory and Records § 5214. Storage of Inventory § 5217. Receiving Shipments of Inventory § 5220. Inventory Documentation § 5223. Inventory Reconciliation § 5226. Record of Sales		
Article 6. Other Requirements § 5229. Grace Period for Compliance § 5232. Dispensary Track and Trace Requirements		

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§ 5235. Law Enforcement Notification		
	Subchapter 5. Labeling And Packaging Requirements Article 1. General Provisions §40400. Applicability. §40401. Release to Distributor as Finished Product.	
	Article 2. Labeling Requirements §40403. General Provisions. §40405. Primary Panel Labeling Requirements. §40408. Informational Panel Labeling Requirements. §40410. Labeling Restrictions. §40412. Cannabis Product Symbol. Article 3. Packaging §40415. Packaging.	
	Subchapter 6. Inspections And Enforcement §40500. Inspections.	

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BUREAU OF MARIJUANA CONTROL
PROPOSED TEXT OF REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 16
DIVISION 42. BUREAU OF MARIJUANA CONTROL

CHAPTER 1. GENERAL PROVISIONS APPLICABLE TO ALL BUREAU OF MARIJUANA CONTROL APPLICANTS AND LICENSEES

Article 1. General Provisions

§ 5000. Definitions

For the purposes of this division, the definitions in this section shall govern the construction of this division unless otherwise indicated.

(a) "Act" means the Medical Cannabis Regulation and Safety Act.

(b) "Address of record" means the permanent address of an individual or organization.

(c) "Bureau" means the Bureau of Marijuana Control, previously named Bureau of Medical Cannabis Regulation and Bureau of Medical Marijuana Regulation.

(d) "Cannabis waste" means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed in section 5080 of this division.

(e) "Commercial vehicle" means a vehicle as defined in Vehicle Code section 260.

(f) "Delivery employee" means an individual employed by a licensed dispensary who delivers medical cannabis goods from the licensed dispensary premises to a medical cannabis patient or primary caregiver at a physical address.

(g) "Display" means medical cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

(h) "Display case" means container in the licensed dispensary retail area where medical cannabis goods are stored and visible to customers.

(i) "Free sample" means any amount of medical cannabis goods provided to a medical cannabis patient or primary caregiver without cost or payment or exchange of any other thing of value.

(j) "Limited-access area" means an area in which medical cannabis goods are stored or held and is only accessible to a licensee and his or her employees and contractors.

(k) “Lot number” or “batch number” means a distinctive group of numbers, letters, or symbols or any combination of these that is unique to the lot of medical cannabis goods.

(l) “Medical cannabis goods” means medical cannabis, including dried flower, and manufactured medical cannabis products.

(m) “Medical cannabis patient” is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

(n) “Nonvolatile solvent” means any solvent used in the extraction process that is not a volatile solvent. For purposes of this division, a nonvolatile solvent includes carbon dioxide used for extraction.

(o) “Operating hours” means the hours within a day during which a licensed dispensary may allow medical cannabis patients and primary caregivers to enter the dispensary premises and purchase medical cannabis goods.

(p) “Ownership interest” means an interest held by a person who is an owner as defined in section 5004 of this division.

(q) “Package” and “Packaging” means any container or wrapper that may be used for enclosing or containing any medical cannabis goods for final retail sale. “Package” and “packaging” does not include a shipping container or outer wrapping used solely for the transport of medical cannabis goods in bulk quantity to a licensee.

(r) “Pest” means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

(s) “Pre-roll” means dried cannabis flower rolled in paper prior to retail sale.

(t) “Proprietary private security officer” has the same meaning as that term as defined in Business and Professions Code section 7574.01.

(u) “Publicly owned land” means any building or real property that is owned by a city, county, state, federal, or other government entity.

(v) “Purchase” means obtaining medical cannabis goods in exchange for consideration.

(w) “Purchaser” means a person who is engaged in a transaction with a licensee for purposes of obtaining medical cannabis goods.

(x) “Quarantine” means the storage or identification of medical cannabis goods, to prevent distribution or transfer of the medical cannabis goods, in a physically separate area clearly identified for such use.

(y) “Residential area” is an area that is within 600 feet of any single-family or multifamily residence, other than commercial hotels, motels, and similar establishments for temporary lodging.

(z) “Retail area” means a building, room, or other area upon the licensed dispensary premises in which medical cannabis goods are sold or displayed.

(aa) “Security monitoring” means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

(bb) “Sell,” “sale,” and “to sell” include any transaction whereby, for any consideration, title to medical cannabis is transferred from one person to another, and includes the delivery of medical cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of medical cannabis goods by a licensee to the licensee from whom such medical cannabis goods were purchased.

(cc) “Sublet” means to lease or rent all or part of a leased or rented property.

(dd) “Vehicle alarm system” is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

(ee) “Wholesale” means the sale of medical cannabis goods to a distributor for resale to one or more dispensaries.

Authority: Section 19302, 19302.1, 19304, and 19300.5(b), Business and Professions Code. Reference: Section 19300.5(b), 19302, and 19304, Business and Professions Code.

§ 5001. [RESERVED]

§ 5002. [RESERVED]

Article 2. Applications

§ 5003. [RESERVED]

§ 5004. Owner

(a) For publicly traded companies, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(b) For all businesses other than publicly traded companies, an owner is:

(1) An individual that has an aggregate ownership interest, other than a security interest, lien, or encumbrance, of 20 percent or more in the commercial cannabis business;

(2) The chief executive officer and all members of the board of directors of an entity when that entity has an aggregate ownership interest, other than a security interest, lien, or encumbrance, of 20 percent or more in the commercial cannabis business; or

(3) An individual that will be participating in the direction, control, or management of the licensed commercial cannabis business. For purposes of this section, participating in the

direction, control, or management of the licensed commercial cannabis business means that the individual has been delegated discretionary powers to organize, direct, carry on or control the operations of the licensed commercial cannabis business. Authority to control one or more of the following functions may be considered evidence that such an individual is participating in the direction, control, or management of the licensed commercial cannabis business:

(A) To hire or separate employees.

(B) To contract for the purchase or sale of medical cannabis goods.

(C) To make or participate in making policy decisions relative to operations of the licensed commercial cannabis business.

(c) Individuals that have a community property interest under Family Code section 760 in the commercial cannabis business but who will not be participating in the direction, control, or management of the commercial cannabis business as defined under subsection (b)(3) of this section are not required to submit the information required of owners in the application for licensure under section 5006, subsection (b)(22) of this division. However, information regarding an individual with a community property interest shall be disclosed by the owner in the application for licensure pursuant to 5006, subsection (b)(22)(P). If a license in which an individual has a community property interest is revoked, the individual shall be barred from holding an interest in the same license type as the license that was revoked for the same period of time as the owner is barred from obtaining a new license. If a license in which an individual has a community property interest in is denied, the individual shall be barred from holding an interest in the same license type as the license that was denied for the same period of time as an owner is barred from obtaining a new license under Business and Professions Code section 486.

(d) A bank or financial institution whose interest constitutes only a loan is not considered to be an owner.

(e) The following individuals are considered to have a noncontrolling interest in the commercial cannabis business and are not required to submit the information required of owners in the application for licensure under section 5006, subsection (b)(22) of this division:

(1) Individuals that own an interest in a commercial cannabis business that is less than 5 percent for publicly traded companies or less than 20 percent for all other businesses;

(2) Individuals that own an interest of an entity owner under subsection (b)(2) that are not the chief executive officer nor a member of the board of directors; and

(3) Individuals that own an interest in an entity that owns an interest in a commercial cannabis business that is less than 20 percent.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19300.5(b), Business and Professions Code.

§ 5005. [RESERVED]

§ 5006. Application Requirements

(a) Applications may be completed online at www.bmcr.ca.gov or by delivering a printed copy to the bureau.

(b) An application for medical cannabis licensure includes the following:

(1) The name of the applicant. For applicants who are individuals, the applicant shall provide both the first and last name of the individual. For applicants who are business entities, the applicant shall provide the legal business name of the applicant.

(2) If applicable, the business trade name ("DBA") of the applicant.

(3) The license type the applicant is applying for.

(4) For applicants who are individuals, whether the owner is serving or has previously served in the military. Disclosure of military service is voluntary. An applicant that has served as an active duty member of the Armed Forces of the United States and was honorably discharged and who can provide evidence of such honorable discharge shall have his or her application expedited pursuant to Business and Professions Code section 115.4.

(5) A list of the license types and the license numbers issued from the bureau and all other medical cannabis licensing authorities that the applicant holds, including the date the license was issued and the licensing authority that issued the license.

(6) Whether the applicant has been denied a license by the bureau or any other medical cannabis licensing authority. The applicant shall provide the type of license applied for, the name of the licensing authority that denied the application, and the date of denial.

(7) The physical address of the premises.

(8) The address of record for the applicant.

(9) The telephone number for the premises.

(10) The website address of the applicant's business if applicable.

(11) The email address for the applicant's business if applicable.

(12) Contact information for the applicant's designated primary contact person including the name, title, address, phone number, and email address of the individual.

(13) Contact information for the designated agent for service of process including the name, title, address, phone number, and email address of this individual.

(14) The business organizational structure of the applicant, for example partnership or corporation.

(15) The business-formation documents, which may include but are not limited to articles of incorporation, operating agreements, partnership agreements, and fictitious business name statements. The applicant shall also provide all documents filed with the California Secretary of

State, which may include but are not limited to articles of incorporation, certificates of stock, articles of organization, certificates of limited partnership, and statements of partnership authority.

(16) A list of every fictitious business name the applicant is operating under including the address where the business is located.

(17) An applicant that is a foreign corporation shall include in its application the certificate of qualification issued by the California Secretary of State under Corporations Code section 2105.

(18) The applicant shall supply the following financial information:

(A) A list of funds belonging to the commercial cannabis business held in savings, checking, or other accounts maintained by a financial institution. The applicant shall provide for each account, the financial institution's name, the financial institution's address, account type, account number, and the amount of money in the account.

(B) A list of loans made to the commercial cannabis business. For each loan, the applicant shall provide the amount of the loan, the date of the loan, term(s) of the loan, security provided for the loan, and the name, address, and phone number of the lender.

(C) A list of investments made into the commercial cannabis business. For each investment, the applicant shall provide the amount of the investment, the date of the investment, term(s) of the investment, and the name, address, and phone number of the investor.

(D) A list of all gifts of any kind given to the applicant for its use in conducting commercial cannabis activity. For each gift the applicant shall provide the value of the gift or description of the gift, and the name, address, and phone number of the provider of the gift.

(19) The date the applicant began operations pursuant to section 5022 of this division.

(20) The contact information for the local jurisdiction in which the applicant proposes to operate, including the name of the local licensing authority, the address, and phone number.

(21) A complete list of every individual that has a noncontrolling interest in the commercial cannabis business as defined in section 5004, subsection (e) of this division.

(22) A complete list of every owner of the applicant as defined in section 5004 of this division. Each individual named on this list shall submit the following information:

(A) The full name of the owner.

(B) The owner's title within the applicant entity.

(C) The owner's date of birth and place of birth.

(D) The owner's social security number or individual taxpayer identification number.

(E) The owner's home address.

(F) The owner's telephone number. This may include a number for the owner's home, business, or mobile telephone.

(G) The owner's email address.

(H) The date the owner acquired an ownership interest in the applicant entity.

(I) The percentage of the ownership interest held in the applicant entity by the owner.

(J) If applicable, the number of shares in the applicant entity that the owner holds.

(K) Whether the owner has a financial interest in any other licensee under the Act. For purposes of this section "financial interest" means an investment into a commercial cannabis business, a loan provided to a commercial cannabis business, or any other equity interest in a commercial cannabis business.

(L) A copy of the owner's government-issued identification. Acceptable forms of identification are a document issued by a federal, state, county, or municipal government that includes the name, date of birth, physical description, and picture of the person, such as a driver license.

(M) A detailed description of the owner's convictions. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Convictions dismissed under Penal Code section 1203.4 or equivalent non-California law must be disclosed. Juvenile adjudications and traffic infractions under $300 that did not involve alcohol, dangerous drugs, or controlled substances do not need to be included. For each conviction, the owner shall provide the following:

(i) The date of conviction.

(ii) Dates of incarceration if applicable.

(iii) Dates of probation if applicable.

(iv) Dates of parole if applicable.

(v) A detailed description of the offense for which the owner was convicted.

(vi) A statement of rehabilitation for each conviction. The statement of rehabilitation is to be written by the owner and shall contain all evidence that the owner would like the bureau to consider that demonstrates the owner's fitness for licensure. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, a certificate of rehabilitation under Penal Code section 4852.01, and dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the individual providing the reference.

(N) A copy of the owner's completed application for electronic fingerprint images submitted to the Department of Justice.

(O) Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I

understand that a misrepresentation of fact is cause for rejection of this application, denial of the license, or revocation of a license issued.

(P) The following information regarding an individual with a community property interest in the commercial cannabis business under Family Code section 760 shall be provided by the owner:

(i) The full name of the individual.

(ii) The individual's date of birth and place of birth.

(iii) The individual's social security number or individual taxpayer identification number.

(iv) The individual's mailing address.

(v) The individual's telephone number. This may include a number for the owner's home, business, or mobile telephone.

(vi) Whether the individual has a financial interest in any other licensee under the Act. For purposes of this section "financial interest" means an investment into a commercial cannabis business, a loan provided to a commercial cannabis business, or any other equity interest in a commercial cannabis business.

(23) Documentation issued by the local jurisdiction in which the applicant proposes to operate certifying that the applicant is in compliance with all local ordinances and regulations, or will be in compliance with all local ordinances and regulations by the time the bureau issues a license.

(24) Evidence that the applicant has the legal right to occupy and use the proposed location that complies with section 5014 of this division.

(25) For an applicant applying for a dispensary license, the applicant shall provide evidence that the proposed location is at least a 600-foot radius from a school, as required by section 11362.768 of the Health and Safety Code.

(26) For an applicant with 20 or more employees, the applicant shall attest that the applicant has entered into a labor peace agreement and provide a copy of the agreement.

(27) The applicant shall provide a valid seller's permit number issued by the California State Board of Equalization. If the applicant has not yet received a seller's permit, the applicant shall attest that the applicant is currently applying for a seller's permit.

(28) A diagram of the premises as required by section 5012 of this division.

(29) Proof of a bond as required by section 5016 of this division.

(30) For applicants applying for a license to distribute medical cannabis goods, the application shall include a detailed description of the applicant's operating procedures including the following:

(A) Inventory Practices

(i) A description of the applicant's practice for receiving shipments of inventory.

(ii) Where the applicant's inventory will be kept and how records of the inventory will be maintained.

(iii) The applicant's practice for performing inventory reconciliation and for ensuring that inventory records are accurate.

(B) Quality-Assurance Practices

(i) The applicant's practices for preventing the deterioration of any medical cannabis goods held by the applicant.

(ii) The applicant's practices for ensuring that all medical cannabis goods are properly packaged and labeled prior to retail sale.

(iii) The applicant's practices for ensuring a licensed testing laboratory samples and analyzes medical cannabis goods held by the applicant.

(C) Security Practices

(i) The applicant's practices for allowing individuals access to the premises.

(ii) A description of the applicant's video surveillance system including camera placement and practices for the maintenance of video surveillance equipment.

(iii) How the applicant will ensure that all access points to the premises will be secured, including the use of security personnel.

(iv) A description of the applicant's security alarm system.

(31) For applicants applying for a license to transport medical cannabis goods, the application shall include a detailed description of the applicant's operating procedures including the following:

(A) The applicant's practices for taking possession of medical cannabis goods.

(B) The applicant's practices for holding medical cannabis goods while not in transport.

(C) The applicant's practices for preventing the deterioration of any medical cannabis goods held by the applicant.

(D) The applicant's practices for transport of medical cannabis goods.

(E) Security Practices

(i) The applicant's practices for allowing individuals access to the premises.

(ii) A description of the applicant's video surveillance system, including camera placement and procedures for the maintenance of video surveillance equipment.

(iii) How the applicant will ensure that all access points to the premises will be secured, including the use of security personnel.

(iv) A description of the applicant's alarm system.

(32) For applicants applying for a license to dispense medical cannabis goods, the application shall include a detailed description of the applicant's operating procedures including the following:

(A) Inventory Practices

(i) A description of the applicant's practices for receiving shipments of inventory.

(ii) Where the applicant's inventory will be kept and how records of the inventory will be maintained.

(iii) The applicant's practices for performing inventory reconciliation and for ensuring that inventory records are accurate.

(B) Quality-Assurance Practices

(i) The applicant's practices for preventing the deterioration of any medical cannabis goods held by the applicant.

(ii) The applicant's practices for ensuring that all medical cannabis goods are properly packaged and labeled prior to sale.

(C) Security Practices

(i) The applicant's practices for allowing individuals access to the licensed premises.

(ii) A description of the applicant's video surveillance system including camera placement and practices for the maintenance of video surveillance equipment.

(iii) How the applicant will ensure that all access points to the premises will be secured, including the use of security personnel.

(iv) A description of the applicant's security alarm system.

(33) The waiver of sovereign immunity required by Section 5017 of this division, if applicable.

Authority: Sections 19302, 19302.1, 19304, and 19322(a)(8), Business and Professions Code. Reference: Section 2105, Corporations Code and Section 19322, Business and Professions Code.

§ 5007. [RESERVED]

§ 5008. Law Enforcement Personnel Not to Hold Licenses

(a) No license authorized by the Act and issued by the bureau shall be held by, or issued to, any person holding office in, or employed by, any agency of the State of California or any of its political subdivisions when the duties of such person have to do with the enforcement of the Act or any other penal provisions of law of this State prohibiting or regulating the sale, use,

possession, transportation, distribution, testing, manufacturing, or cultivation of medical cannabis goods.

(b) This section applies to, but is not limited to, any persons employed in the State of California Department of Justice, in any district attorney's office, in any city attorney's office, in any sheriff's office, in any local police department, or in the State Department of Consumer Affairs.

(c) This section shall not prohibit the ownership of any licensed commercial cannabis business by any local law enforcement officer or local reserve law enforcement officer when the licensed premises are located in a county other than that in which he or she is employed as a law enforcement officer.

(d) This section applies to any person mentioned herein who has any ownership interest, directly or indirectly, in any business to be operated or conducted under a medical cannabis license.

(e) This section does not apply to any person who holds a license in the capacity of executor, administrator, or guardian.

Authority cited: 19302, 19302.1, and 19304, Business and Professions Code, and 19990, Government Code. Reference: Section 19302, 19302.1, and 19304, Business and Professions Code.

§ 5009. [RESERVED]

§ 5010. Premises

(a) Premises means the designated structures and land specified in the application that are in the possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

(b) The premises must be a contiguous area and may only be occupied by one licensee.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19320, and 19323, Business and Professions Code.

§ 5011. [RESERVED]

§ 5012. Premises Diagram

An applicant shall submit to the bureau with his or her application a complete and detailed diagram of the proposed premises.

(a) The diagram must show the boundaries of the property and the proposed premises to be licensed, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, windows, doorways, and common or shared entryways. The diagram must show the areas in which all commercial cannabis activities will take place, including but not limited to, limited-access areas.

(b) The diagram must be to scale.

(c) The diagram shall not contain any highlighting.

(d) If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

Authority: Sections 19302, 19302.1, 19304, 19320(c), 19322(a)(8), and Business and Professions Code. Reference: Sections 19320(c), Business and Professions Code.

§ 5013. [RESERVED]

§ 5014. Property-Owner Approval

(a) If the applicant is not the landowner of the property upon which the premises is located, the applicant shall provide to the bureau a document from the landowner that states that the applicant has the right to occupy the property and acknowledging the applicant may use the property for the commercial cannabis activity for which the applicant is applying for licensure. An applicant shall also provide a copy of the rental agreement, as applicable.

(b) If the applicant is the landowner of the property on which the premises is located, the applicant shall provide to the bureau a copy of the title or deed to the property.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19300.5(b), and 19321(b), Business and Professions Code.

§ 5015. [RESERVED]

§ 5016. Bond

An applicant shall provide proof of having obtained a surety bond in the amount of $5,000 payable to the State of California to ensure payment of the cost incurred for the destruction of medical cannabis goods necessitated by a violation of the Act or the regulations adopted thereunder. All bonds required under this regulation must be issued by a corporate surety licensed to transact surety business in the state of California.

Authority: Sections 19302, 19302.1, 19304, 19322, and 19334, Business and Professions Code. Reference: Sections 19322 and 19334, Business and Professions Code.

§ 5017. Waiver of Sovereign Immunity

(a) Any applicant or licensee that may fall within the scope of sovereign immunity that may be asserted by a federally recognized tribe or other sovereign entity must waive any sovereign immunity defense that the applicant or licensee may have, may be asserted on its behalf, or may otherwise be asserted in any state administrative or judicial enforcement actions against the applicant or licensee, regardless of the form of relief sought, whether monetary or otherwise, under the state laws and regulations governing commercial cannabis activity. The applicant or licensee must submit a written waiver of sovereign immunity to the bureau with any license application or renewal, which is valid for the period of the license. The written waiver shall include that the applicant or licensee has the lawful authority to enter into the waiver required by this section, the applicant or licensee hereby waives sovereign immunity, and the applicant or licensee agrees to do all of the following:

(1) Provide documentation to the bureau that establishes that the applicant or licensee has the lawful authority to enter into the waiver required by this section;

(2) Conduct all commercial cannabis activity in full compliance with the state laws and regulations governing commercial cannabis activity, including submission to all enforcement provisions thereof;

(3) Allow access as required by state statute or regulation by persons or entities charged with duties under the state laws and regulations governing commercial cannabis activity to any premises or property at which the applicant conducts any commercial cannabis activity, including premises or property where records of commercial cannabis activity are maintained by or for the applicant or licensee;

(4) Provide any and all records, reports, and other documents as may be required under the state laws and regulations governing commercial cannabis activity;

(5) Conduct commercial cannabis activity with other state commercial cannabis licensees only, unless otherwise specified by state law;

(6) Meet all of the requirements for licensure under the state laws and regulations governing the conduct of commercial cannabis activity, and provide truthful and accurate documentation and other information of the applicant's qualifications and suitability for licensure as may be requested; and

(7) Submit to the personal and subject matter jurisdiction of the California courts to address any matter related to the waiver or the commercial cannabis application, license, or activity, and that all such matters and proceedings shall be governed, construed and enforced in accordance with California substantive and procedural law, including but not limited to the Medical Cannabis Regulation and Safety Act and the Administrative Procedure Act.

(b) Any applicant or licensee must immediately notify the bureau of any changes that may materially affect the applicant or licensee's compliance with subdivision (a).

(c) Any failure by an applicant or licensee to comply with the requirements of subdivisions (a) or (b) shall be a basis for denial of an application or renewal or discipline of a licensee.

Authority: Sections 19302, 19302.1, 19304, Business and Professions Code. Reference: Sections 19303, 19304, 19311, 19312, 19322, 19323, and 19324, Business and Professions Code.

§ 5018. Requirements for Continued Operation While Application Pending

All applicants that were in operation prior to January 2, 2018, may continue to operate while their application is pending if a completed application is received by the bureau no later than 5:00 p.m. Pacific Time on July 2, 2018, and the continuing operations are the same commercial cannabis activity as the license type for which the applicant is applying. If the application for

licensure is denied, the applicant shall cease all commercial cannabis business operations until a license is obtained.

Authority: Sections 19304 and 19321, 19322, Business and Professions Code. Reference: Sections 19321 and 19322, Business and Professions Code.

§ 5019. [RESERVED]

§ 5020. Priority Review

Priority review of the application shall be given to applicants that were in operation and in good standing with the local jurisdiction by January 1, 2016, and whose business ownership or premises are currently the same as they were on January 1, 2016. Priority applications shall be processed for review in the order in which they are received.

Authority: Section 19302, 19302.1, 19304, and 19321(b), Business and Professions Code. Reference: Section 19321(b), Business and Professions Code.

§ 5021. [RESERVED]

§ 5022. Date Operation Began

(a) For the purposes of sections 5018 and 5020 of this division, the date on which an applicant was in operation is the date an applicant began actively conducting the same commercial cannabis activity as the license type for which the applicant is applying.

(b) For purposes of this section, "actively conducting" means engaging in the transportation, distribution, testing, or sale of medical cannabis goods as authorized by the local jurisdiction.

(c) The date an applicant began actively conducting the commercial cannabis activity shall be provided by the applicant. The applicant shall attest to the date under the penalty of perjury and shall provide evidence of the date operations began by submitting a dated copy of any of the following:

(1) Articles of incorporation;

(2) Certificate of stock;

(3) Articles of organization;

(4) Certificate of limited partnership;

(5) Statement of partnership authority;

(6) Tax form;

(7) Local license, permit, or other written authorization;

(8) Receipts; or

(9) Any other business record.

Authority: Section 19304 and 19321(b), Business and Professions Code. Reference: Sections 19320(b) and 19321(b), Business and Professions Code.

§ 5023. [RESERVED]

§ 5024. Good Standing

For purposes of sections 5018 and 5020 of this division, good standing shall be evidenced by a document issued or signed by the local jurisdiction that contains the following:

(a) Name of the applicant;

(b) Address of the premises to be licensed;

(c) License type that the applicant is applying to the bureau for;

(d) Name of the local jurisdiction;

(e) Name of the local jurisdiction office that issued the license, permit, or other authorization for the applicant to conduct commercial cannabis activity in the jurisdiction as required by Business and Professions Code section 19320;

(f) Name and contact information for the person authorized by the local jurisdiction to sign on its behalf;

(g) Signature of the person authorized to sign on behalf of the local jurisdiction; and

(h) A statement to the effect of: "The above named party has been issued a license, permit, or other authorization from this jurisdiction to conduct commercial cannabis activity. The above named party began operation and was in good standing in this jurisdiction on or before January 1, 2016."

Authority: Section 19304, 19320 and 19321(b), Business and Professions Code. Reference: Section 19321(b), Business and Professions Code.

§ 5025. [RESERVED]

§ 5026. Additional Information

The bureau may request additional information and documents from the applicant. The bureau will provide the applicant a deadline for submittal of additional information. The bureau will consider the complexity of the information requested and the ease with which the information can be obtained and transmitted to the bureau by the applicant in determining the deadline.

Authority: Sections 19302, 19302.1, 19304, and 19322(a)(4), Business and Professions Code. Reference: Sections 19302 and 19322, Business and Professions Code.

§ 5027. [RESERVED]

§ 5028. Incomplete Applications

(a) If the bureau determines that the application is incomplete, the bureau shall provide notice to the applicant in accordance with Business and Professions Code section 124.

(b) An applicant has one year from the date of the notice in subsection (a) to correct all deficiencies. If the applicant fails to correct the deficiencies within the one-year period, the application shall be considered abandoned under Business and Professions Code section 142.

(c) An applicant may reapply at any time following an abandoned application.

(d) The bureau will not refund application fees for an incomplete application.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 124, 142, and 19322 Business and Professions Code.

§ 5029. [RESERVED]

§ 5030. Withdrawal of Application

(a) An applicant may withdraw an application at any time prior to the bureau's issuance of a license or denial of a license.

(b) Requests to withdraw an application must be submitted to the bureau in writing, dated, and signed by the applicant.

(c) In accordance with Business and Professions Code section 118, withdrawal of an application shall not, unless the bureau has consented in writing to such withdrawal, deprive the bureau of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(d) The bureau will not refund application fees for a withdrawn application.

(e) An applicant may reapply at any time following the withdrawal of an application.

Authority: Sections 19302, 19302.1, 19304, and 19322, Business and Professions Code. Reference: Sections 118 and 19322, Business and Professions Code.

Article 3. General Licensing

§ 5031. [RESERVED]

§ 5032. Substantially Related Offenses

(a) For the purpose of denial of a license, convictions that are substantially related to the qualifications, functions, or duties of the business for which the application is made include:

(1) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(3) A felony conviction involving fraud, deceit, or embezzlement.

(4) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(5) A felony conviction for drug trafficking with enhancements pursuant to Health and Safety Code sections 11370.4 or 11379.8.

(b) Except as provided in subparagraphs (4) and (5) of paragraph (a) and notwithstanding Chapter 2 (commencing with Section 480) or Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

Authority: Sections 19302, 19302.1, 19304, and 19323(b)(4), Business and Professions Code. Reference: Sections 19302.1 and 19323(b)(4), Business and Professions Code.

§ 5033. Criteria for Rehabilitation

(a) When evaluating whether an applicant who has been convicted of a criminal offense that is substantially related to the qualifications, functions, or duties of the business for which the application is made should be issued a license, the bureau shall consider the following criteria of rehabilitation:

(1) The nature and severity of the act or offense;

(2) Whether the person has a felony conviction based on possession or use of cannabis or cannabis products that would not be a felony if the person was convicted of the offense on the date of the person's application;

(3) The applicant's criminal record as a whole;

(4) Evidence of any act committed subsequent to the act or offense under consideration that could be considered grounds for denial, suspension, or revocation of a commercial cannabis activity license;

(5) The time that has elapsed since commission of the act or offense;

(6) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;

(7) If applicable, evidence of dismissal under Penal Code section 1203.4 or another state's similar law;

(8) If applicable, a certificate of rehabilitation obtained under Penal Code section 4852.01 or another state's similar law; and

(9) Other evidence of rehabilitation submitted by the applicant.

(b) If an applicant has been denied a license based on a conviction, the applicant may request a hearing pursuant to Business and Professions Code section 19324 to determine if the applicant should be issued a license.

Authority: Sections 19302, 19302.1, 19304, and 19323(b)(4), Business and Professions Code. Reference: Sections 19302.1 and 19323(b)(4), Business and Professions Code.

§ 5034. [RESERVED]

§ 5035. [RESERVED]

§ 5036. Additional Grounds for Denial of a License

In addition to the reasons for denial in Business and Professions Code section 19323, a license may be denied for the following reasons:

(a) The applicant's premises does not fully comply with standards set in regulation.

(b) The applicant's premises is substantially different from the diagram of the premises submitted by the applicant, in that the size, layout, location of a common entryways, doorways, or passage ways, means of public entry or exit, or limited-access areas within the licensed premises are not the same.

(c) The applicant denied the bureau access to the premises.

(d) The applicant made a material misrepresentation on the application.

(e) The applicant failed to correct the deficiencies within the application in accordance with section 5028 of this division.

(f) The applicant has been denied a license, permit, or other authorization to engage in commercial cannabis activity by a state or local licensing authority.

Authority: Sections 19302, 19302.1, 19304, and 19323, Business and Professions Code. Reference: Sections 19302.1, 19322, and 19323, Business and Professions Code.

§ 5037. [RESERVED]

§ 5038. [RESERVED]

§ 5039. Notification of Change

(a) Every licensee shall notify the bureau in writing within 10 calendar days of any change to any item listed in the application. The notification shall be signed by an owner as defined in section 5004 of this division.

(b) If at the time of licensure a licensee employed less than 20 employees and later employs 20 or more employees, the licensee shall provide to the bureau a document attesting that the licensee has entered into a labor peace agreement and a copy of the agreement within 180 days of employing 20 or more employees.

(c) Licenses are not transferable. A change to the business organizational structure or ownership requires a new application under section 5006 of this division and the initial license fees.

Authority: Section 19302, 19302.1, and 19304 Business and Professions Code. Reference: Section 136, 19300.5(b) and 19322, Business and Professions Code.

§ 5040. [RESERVED]

§ 5041. [RESERVED]

§ 5042. Renewal of License

(a) To renew a license, a completed license renewal form and renewal license fee shall be received by the bureau from the licensee no earlier than 60 calendar days before the expiration of the license, and no later than 5:00 p.m. Pacific Time on the last business day before the expiration of the license. Failure to receive a notice for license renewal does not relieve a licensee of the obligation to renew all licenses as required.

(b) In the event the license is not renewed prior to the expiration date, the licensee must cease all commercial medical cannabis operations.

(c) The license renewal form shall contain the following:

(1) The name of the licensee. For licensees who are individuals, the applicant shall provide both the first and last name of the individual. For licensees who are business entities, the licensee shall provide the legal business name of the applicant.

(2) The license number and expiration date.

(3) The licensee's address of record and premises address.

(4) An attestation that all information provided to the bureau in the original application under section 5006 of this division or subsequent notification under section 5039 of this division, is accurate and current.

Authority: Section 19302, 19302.1, 19304, 19321, and 19322, Business and Professions Code. Reference: Sections 19321 and 19322, Business and Professions Code.

§ 5043. [RESERVED]

§ 5044. [RESERVED]

§ 5045. Surrender of License

(a) Every licensee who surrenders, abandons, or quits the licensed premises, or who closes the licensed premises for a period exceeding 30 consecutive calendar days, shall, within 30 calendar

days after closing, surrendering, quitting, or abandoning the licensed premises, surrender the license certificate or license certificates to the bureau. The bureau may seize the license certificate or certificates of a licensee who fails to comply with the surrender provisions of this section and may proceed to revoke the license or licenses.

(b) The bureau may cancel the license or licenses of a licensee upon request by the licensee.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302 and 19322, Business and Professions Code.

§ 5046. [RESERVED]

§ 5047. [RESERVED]

§ 5048. Physical Modification of Premises

(a) A licensee shall not make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from the premises diagram originally filed with the license application without the prior written approval of the bureau. A licensee whose premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the bureau.

(b) Material or substantial changes, alterations, or modifications requiring approval include, but are not limited to, the removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway, or passage alters or changes limited-access areas within the licensed premises.

(c) A licensee shall request approval of a physical change, alteration, or modification in writing, and the request shall include:

(1) A new premises diagram that conforms to requirements in section 5012 of this division; and

(2) A nonrefundable fee.

(d) A licensee shall provide additional documentation requested by the bureau to evaluate the licensee's request.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1 and 19320, Business and Professions Code.

§ 5049. [RESERVED]

§ 5050. Track and Trace Requirements

(a) A licensee shall create and maintain an active account within the track and trace system prior to buying, selling, or transporting, any medical cannabis goods under a license issued by the bureau.

(b) A licensee shall designate one individual within the organization as the licensee's designated track and trace administrator.

(1) The designated track and trace administrator may authorize additional licensee representatives to obtain track and trace system administrator accounts.

(2) Each licensee representative who obtains access to the track and trace system on behalf of the licensee, shall obtain his or her own unique track and trace system administrator log-on and password.

(3) Licensee representatives shall only log into the track and trace system and submit information to the track and trace system using a log-on that has been assigned to that licensee representative.

(4) A licensee shall maintain a complete and accurate list of all track and trace system administrators for each licensed premises. This list shall be provided to the bureau upon request.

(c) A licensee shall ensure that only authorized individuals are able to access the track and trace system on behalf of the licensee.

(d) A licensee shall accurately record all transactions involving the physical movement or destruction of medical cannabis goods in the track and trace system.

(1) A licensed transporter shall record transactions into the track and trace system pursuant to Chapter 3 of this division.

(2) A licensed distributor shall record transactions into the track and trace system pursuant to Chapter 2 of this division.

(3) A licensed dispensary shall record transactions into the track and trace system pursuant to Chapter 4 of this division.

(4) A licensed testing laboratory shall record transactions into the track and trace system pursuant to Chapter 5 of this division.

(e) All transactions must be entered into the track and trace system no later than the end of the day that the transaction occurred.

(f) If, for any reason, a licensee is not able to access the track and trace system, the licensee shall create and maintain records detailing all transactions that would have been entered into the track and trace system. Upon the restoration of access to the track and trace system, all transactions that occurred while access to the track and trace system was not available shall be accurately entered into the track and trace system.

(g) Licensees shall only enter accurate information into the track and trace system and shall correct any known errors in the information entered into the track and trace system by the licensee immediately upon discovery.

Authority: Sections 19302, 19302.1, 19304, and 19335, Business and Professions Code. Reference: Section 19335, Business and Professions Code.

Article 4. Enforcement

§ 5051. Licensee's Responsibility for Acts of Employees and Agents

In construing and enforcing the provisions of the Act and the regulations in this division, the act, omission, or failure of an agent, officer, or other person acting for or employed by a licensee, within the scope of his or her employment or office, shall in every case be deemed the act, omission, or failure of the licensee.

Authority: Sections 19302, 19302.1, 19304, 19311, and 19312, Business and Professions Code. Reference: Sections 19300, 19300.5, 19302.1, 19311, and 19312, Business and Professions Code.

§ 5052. [RESERVED]

§ 5053. [RESERVED]

§ 5054. Additional Grounds for Disciplinary Action

In addition to the provisions of Business and Professions Code section 19311, grounds for disciplinary action include the following:

(a) The licensee's premises is substantially different from the premises diagram submitted to the bureau, or from any change, alteration, or modification approved by the bureau.

(b) The licensee denied the bureau access to the premises for inspection.

(c) The licensee impeded an investigation by the bureau, law enforcement, or any other licensing authority.

Authority: Sections 19302, 19302.1, 19304, and 19311, Business and Professions Code. Reference: Section 19307, 19311, 19302.1, 19322, 19327, and 19360, Business and Professions Code.

§ 5055. [RESERVED]

Article 5. Records and Reporting

§ 5056. Record Retention

(a) Each licensee shall keep and maintain the following records for at least seven years:

(1) Financial records including, but not limited to, bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations section 1968.

(2) Personnel records, including each employee's full name, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

(3) Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

(4) Contracts with other licensees regarding commercial cannabis activity.

(5) Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity.

(6) Security records.

(b) The bureau may make any examination of the books and records of any licensee as it deems necessary to perform its duties under the Act.

(c) Records shall be kept in a manner that allows the records to be produced for the bureau at the licensed premises in either hard copy or electronic form, whichever the bureau requests.

(d) A licensee may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the licensee of his or her responsibilities under this section.

Authority: Sections 19302, 19302.1, 19304, and 19327, Business and Professions Code. Reference: Section 19327, Business and Professions Code and Section 1968, California Code of Regulations, Title 18.

§ 5057. [RESERVED]

§ 5058. Significant Discrepancy in Inventory

A significant discrepancy in inventory of medical cannabis goods means a difference of at least $1,000 of medical cannabis goods within a 7-day period or at least $2,000 of medical cannabis goods in a 30-day period.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Section 19334, Business and Professions Code.

§ 5059. [RESERVED]

§ 5060. Notification of Criminal Acts, Civil Judgments, and Revocation of a Local License, Permit, or Other Authorization After Licensure

(a) A licensee shall ensure that the bureau is notified in writing of a criminal conviction, either by mail or electronic mail, within 48 hours of the conviction.

(b) A licensee shall ensure that the bureau is notified in writing of a civil penalty or judgment rendered against the licensee, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner.

(c) A licensee shall ensure that the bureau is notified in writing of the revocation of a local license, permit, or other authorization, either by mail or electronic mail within 48 hours of receiving notice of the revocation.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19320, 19323, and 19360, Business and Professions Code.

§ 5061. [RESERVED]

§ 5062. Notification of Diversion, Theft, Loss, or Criminal Activity Pertaining to Medical cannabis goods

Licensees shall notify the bureau and law enforcement authorities, within 24 hours, of theft or loss of medical cannabis goods.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19334, Business and Professions Code.

Article 6. Security

§ 5063. [RESERVED]

§ 5064. Access to Limited-Access Areas

Licensees shall ensure that any person on the licensed premises, except for employees and contractors of the licensee, are escorted at all times by the licensee or at least one employee of the licensee when in the limited-access areas of the premises.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19322, 19334, Business and Professions Code.

§ 5065. [RESERVED]

§ 5066. Licensee Employee Badge Requirement

All agents, officers, or other persons acting for or employed by a licensee shall display a laminated identification badge issued by the licensee. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first and last name, and a color photograph of the employee that shows the full front of the employee's face and that is at least 2 inches by 2 inches in size.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19304, 19322, 19334 Business and Professions Code.

§ 5067. [RESERVED]

§ 5068. Video Surveillance System

(a) At a minimum, a licensed premises shall have a complete digital video surveillance system with a minimum camera resolution of 1280 × 1024 pixels.

(b) The surveillance-system storage device or the cameras shall be transmission control protocol/ TCP/capable of being accessed through the internet.

(c) All areas recorded by the video surveillance system shall at all times have adequate lighting to allow the surveillance cameras to effectively record images.

(d) Cameras must be immobile and in a permanent location. Cameras shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the licensed premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection (e).

(e) Areas that shall be recorded on the video surveillance system include, but are not limited to, the following:

(1) Areas where medical cannabis goods are weighed, packed, stored, quarantined, loaded and unloaded for transportation, prepared, or moved within the premises;

(2) Areas where cannabis is destroyed;

(3) Limited-access areas;

(4) Security rooms;

(5) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and

(6) Entrances and exits to the premises, which shall be recorded from both indoor and outdoor vantage points.

(f) Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where medical cannabis goods are displayed for sale. At each point of sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling medical cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.

(g) Cameras shall record continuously 24 hours per day and at a minimum of 20 frames per second.

(h) The physical media or storage device on which surveillance recordings are stored must be secured in a manner to protect the recording from tampering or theft.

(i) Surveillance recordings shall be kept for a minimum of 30 days.

(j) Videos are subject to inspection by a bureau employee and shall be copied and sent to or otherwise provided to the bureau, upon request.

(k) Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the United States National Institute Standards and Technology standards.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19332 and 19334, Business and Professions Code.

§ 5069. [RESERVED]

§ 5070. Security Personnel

A licensee shall hire or contract for security personnel to provide security services for the licensed premises. All security personnel hired or contracted for by the licensee shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.

Authority: Sections 19302, 19302.1, 19304, 19322(b)(6), and 19334, Business and Professions Code. Reference: Sections 19322(b)(6) and 19334, Business and Professions Code.

§ 5071. [RESERVED]

§ 5072. Locks

A licensee shall ensure that the limited-access areas described in section 5151 of this division can be securely locked using commercial-grade, nonresidential door locks. A licensee shall also use commercial-grade, nonresidential locks on all points of entry and exit to the premises.

Authority: Sections 19302, 19302.1, 19304, 19322, and 19334, Business and Professions Code. Reference: Section 19302, 19322, and 19334, Business and Professions Code.

§ 5073. [RESERVED]

§ 5074. Alarm System

(a) A licensee shall maintain an alarm system as defined in Business and Professions Code section 7590.1(n).

(b) A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system.

(c) Upon request, a licensee shall make available to the bureau all information related to the alarm system, monitoring, and alarm activity.

Authority: Sections 19302, 19302.1, 19304, and 19322(b)(6), Business and Professions Code. Reference: Sections 19322(b)(6), and 19334, Business and Professions Code.

§ 5075. [RESERVED]

Article 7. Returns and Destruction of Product

§ 5076. Returns Between Licensees

(a) If a licensee discovers that a manufactured medical cannabis good that was purchased from another licensee is defective, the purchasing licensee may return the medical cannabis good to the selling licensee only in exchange for a non-defective version of the same medical cannabis good.

(b) Except as provided in subsection (a) of this section, a licensee may not return medical cannabis goods purchased from another licensee.

Authority: Sections 19304 and 19334, Business and Professions Code. Reference: Section 19334, Business and Professions Code.

§ 5077. [RESERVED]

§ 5078. [RESERVED]

§ 5079. [RESERVED]

§ 5080. Cannabis-Waste Management

(a) A licensee may not sell cannabis waste.

(b) A licensee shall manage all waste that is hazardous waste, as defined in Public Resources code section 40141, in compliance with all applicable hazardous-waste statutes and regulations.

(c) A licensee shall not dispose of medical cannabis goods or cannabis waste in an unsecured waste receptacle, whether in the control of the licensee or not.

(d) Medical cannabis goods that a licensee intends to render into cannabis waste shall be held in quarantine for a minimum of 72 hours. A licensee shall affix to each batch one or more documents with batch information and weight. At no time during the quarantine period may the medical cannabis goods be handled, moved, or rendered into cannabis waste. The medical cannabis goods are subject to inspection by the bureau.

(e) A licensee shall make medical cannabis goods into cannabis waste by rendering the medical cannabis goods unusable and unrecognizable. The licensee shall render the medical cannabis goods into cannabis waste before removing the cannabis waste from the licensed premises. A licensee shall render the medical cannabis goods into cannabis waste by grinding and incorporating the medical cannabis goods with other ground material so that the resulting mixture is at least 50% non-cannabis material by volume. A licensee shall render medical cannabis goods into cannabis waste and track that cannabis waste one batch at a time and shall not comingle different batches into cannabis waste.

(f) The licensee shall render the medical cannabis goods into cannabis waste on camera in the manner required by section 5068 of this division.

(g) Medical cannabis goods that a licensee deposits at a compostable materials handling operation or facility or at an in-vessel digestion operation or facility may be rendered cannabis waste by incorporating any nonhazardous compostable material, as defined in Title 14 of the California Code of Regulations at section 17852(a)(11), that a compostable materials handling operation or facility or in-vessel digestion operation or facility may lawfully accept.

(h) After a licensee renders the medical cannabis goods into cannabis waste, a licensee shall do one of the following with the cannabis waste:

(1) Dispose of the cannabis waste at a manned and fully permitted solid waste landfill;

(2) Deposit the cannabis waste at a manned compostable materials handling operation or a manned and fully permitted compostable materials handling facility; or

(3) Deposit the cannabis waste at a manned in-vessel digestion operation or and a manned and fully permitted in-vessel digestion facility.

(i) In addition to all other tracking requirements set forth in section 5050 (General) of this division, a licensee shall use the track and trace system and on-site documents to ensure the cannabis-waste materials are identified, weighed, and tracked while on the licensed premises and when disposed of or deposited in accordance with subsection (h).

(j) A licensee shall enter the date and time that the medical cannabis goods were rendered into cannabis waste and the weight of the resulting cannabis waste into the track and trace system.

(k) A licensee shall maintain accurate and comprehensive records regarding cannabis waste material that account for, reconcile, and evidence all activity related to the generation and disposal or deposition of cannabis waste. A licensee shall obtain a record from the solid waste facility or operation evidencing the acceptance of the cannabis waste material at the facility or operation. The record must contain the name and address of the operation or facility, the date, the volume or weight of the cannabis waste accepted, and the name and signature of the person manning the facility or operation who accepts the cannabis waste. These documents are records subject to inspection by the bureau and shall be kept in compliance with section 5114 of this division.

(l) A licensee shall enter the date and time of the disposal or deposition of the cannabis waste at a solid waste facility into the track and trace system.

Authority: Sections 19302.1, 19304, and 19345, Business and Professions Code. Reference: Sections 19345, Business and Professions Code.

§ 5081. [RESERVED]

CHAPTER 2. DISTRIBUTORS

Article 1. Activities

§ 5082. Distributor Taking Title Before Manufacturing

A distributor may take title to and possession of medical cannabis after harvest but prior to manufacturing. A distributor may sell the medical cannabis to a manufacturer or enter into a contract with a manufacturer for manufacturing the medical cannabis into medical cannabis products.

Authority: 19302, 19302.1, 19304, and 19326, Business and Professions Code. Reference: Section 19300.5(p) and (q) and 19326, Business and Professions Code.

§ 5083. [RESERVED]

§ 5084. No Consignment

Once medical cannabis goods are received by a dispensary, a distributor shall not maintain title after transfer of the medical cannabis goods to the dispensary.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19300.5(p), 19300.5(q), and 19326, Business and Professions Code.

§ 5085. [RESERVED]

§ 5086. Distributor-to-Distributor Sales

A distributor licensee may sell medical cannabis goods to another distributor licensee.

Authority: Sections 19302, 19302.1 and 19304, Business and Professions Code. Reference: Sections 19300.5(p), 19300.5(q), and 19326, Business and Professions Code.

§ 5087. [RESERVED]

§ 5088. Distributor as Destroyer

A distributor may destroy medical cannabis goods on the distributor's licensed premises, in the manner required by section 5080 of this division, for another licensee. The distributor shall enter the destruction occurrence into the track and trace system.

Authority: Sections 19302, 19302.1 and 19304, Business and Professions Code. Reference: Sections 19300.5(p), 19300.5(q), and 19326, Business and Professions Code.

§ 5089. [RESERVED]

§ 5090. Storage

(a) A distributor shall ensure that all medical cannabis goods batches are stored separately and distinctly from other medical cannabis goods batches on the distributor's premises.

(b) A distributor shall ensure a label with the following information is physically attached to each container of each batch:

(1) The manufacturer or cultivator's name and license number;

(2) The date of entry into the distributor's storage area;

(3) The unique identifiers and batch number associated with the batch;

(4) A description of the medical cannabis goods with enough detail to easily identify the batch; and

(5) The weight of or quantity of units in the batch.

(c) A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

(d) Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

(e) A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Sections 19300.5, and 19334, Business and Professions Code.

§ 5091. [RESERVED]

§ 5092. Storage Only

A distributor may provide medical cannabis goods storage only services to a cultivator, manufacturer, transporter, or other distributor, unrelated to the quality assurance and laboratory testing processes.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19326 and 19334, Business and Professions Code.

§ 5093. [RESERVED]

§ 5094. Packaging and Labeling

(a) A distributor may package and label medical cannabis in the form of dried flower on behalf of a cultivator or another distributor or while holding title.

(b) A distributor may re-package and re-label medical cannabis in the form of dried flower on behalf of a cultivator or another distributor or while holding title.

(c) A distributor may have another licensee or nonlicensee package and label on the distributor's premises. The distributor is responsible for compliance with applicable medical cannabis packaging and labeling laws including but not limited to Business and Professions Code section 19347 and Division 8 of Title 3 of the California Code of Regulations.

(d) A distributor shall not package, re-package, label, or re-label manufactured medical cannabis goods.

Authority: Sections 19300.5(j), 19302, 19302.1, 19304, 19326, and 19334, Business and Professions Code. Reference: Sections 19326 and 19334, Business and Professions Code.

§ 5095. [RESERVED]

§ 5096. Non-Medical-Cannabis Distribution Activities

A distributor may not store or distribute non-medical-cannabis goods on or from the premises licensed for distribution of medical cannabis goods.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Section 19300.5(p) and 19334, Business and Professions Code.

Article 2. Testing and Quality Assurance

§ 5097. [RESERVED]

§ 5098. Laboratory-Testing Logistics

(a) After taking physical possession of a medical cannabis batch, the distributor shall contact a licensed testing laboratory and arrange for one of the following to occur:

(1) A laboratory agent to come to the distributor's licensed premises to select a random sample for laboratory testing; or

(2) The distributor to transport the entire batch to the laboratory, and a laboratory agent to select a random sample at the laboratory.

(b) The distributor shall observe the laboratory agent select the random samples as defined in Chapter 5 of this division. For harvest batches, the distributor shall ensure that samples be taken from batches that do not exceed 10 pounds. The sampling shall occur on video with the batch number stated at the beginning of the video and a visible time and date indication on the video recording footage.

(c) After the sample has been selected, both the distributor and the laboratory agent shall sign and date a document, attesting to the sample selection having occurred, as required by Chapter 5 of this division.

Authority: Sections 19302, 19302.1, 19304, 19326, and 19342, Business and Professions Code. Reference: Sections 19326 and 19342, Business and Professions Code.

§ 5099. [RESERVED]

§ 5100. Testing Sample

A distributor shall be physically present to observe the laboratory agent obtain samples of medical cannabis goods for testing. A distributor shall not assist the laboratory agent nor touch the medical cannabis goods or the sampling equipment while the laboratory agent is obtaining the samples.

Authority: Sections 19302, 19302.1, 19304, 19326, 19334, and 19342, Business and Professions Code. Reference: Sections 19326, 19334, and 19342, Business and Professions Code.

§ 5101. [RESERVED]

§ 5102. Laboratory Testing Results

(a) A sample "passes" a laboratory test when the sample meets specifications in Chapter 5 of this division.

(b) When a batch from a manufactured or harvest batch passes, the medical cannabis goods may be transported to one or more dispensaries.

(c) A sample "fails" a laboratory test when it does not meet specifications of Chapter 5 of this division.

(d) If a failed sample was collected from a manufactured cannabis batch, the distributor storing the batch shall destroy the batch. A distributor shall destroy the batch in accordance with section 5080 of this division and shall do so on camera as required by section 5068 of this division.

(e) If a failed sample was collected from a harvest batch and the harvest batch could be processed by a manufacturer without the resulting production batch causing harm to medical cannabis patients, as determined under Chapter 5 of this division, a distributor may, under his or her transporter license, transport the harvest batch or arrange for transportation of the harvest batch to a manufacturer.

(f) If a failed sample was collected from a harvest batch and the harvest batch cannot be processed into a production batch that is safe for medical cannabis patients, the distributor or another licensee shall destroy the batch. A distributor shall destroy the batch in accordance with section 5080 of this division and shall do so on camera as required by section 5068 of this division.

(g) A distributor shall not transport nor arrange for the transportation of a batch that failed a laboratory testing to a cultivator, manufacturer, or other licensee unless authorized to do so by this section.

Authority: Sections 19302, 19302.1, 19304, 19342, 19343, 19344, and 19345, Business and Professions Code. Reference: Sections 19342, 19343, 19344, and 19345, Business and Professions Code.

§ 5103. [RESERVED]

§ 5104. Quality-Assurance Review

When a distributor receives a certification of analysis stating that the sample meets specifications required by law, the distributor shall ensure the following before transport to one or more dispensaries:

(a) The certificate of analysis the distributor received from the testing laboratory is the certificate of analysis that corresponds to the batch;

(b) The label on the medical cannabis goods is consistent with the certificate of analysis regarding cannabinoid content and contaminants required to be listed by law;

(c) The packaging complies with applicable packaging laws including, but not limited to, Business and Professions Code section 19347;

(d) The packaging is tamper evident. "Tamper evident" means a one-time-use seal is affixed to the opening of the package, allowing a person to recognize whether or not the package has been opened;

(e) The weight or count of the medical cannabis batch comports with that in the track and trace system. A distributor shall use scales as required by the Act; and

(f) All events up to this point have been entered into the track and trace system.

Authority: Sections 19302, 19302.1, 19304, 19326, and 19334, Business and Professions Code. Reference: Sections 19326 and 19334, Business and Professions Code.

Article 3. Other Requirements

§ 5105. [RESERVED]

§ 5106. Grace Period for Testing and Labeling

A licensee is not required to have his or her medical cannabis goods tested or to follow the labeling requirements in these regulations until 180 days after licensure, or December 31, 2018, whichever is sooner.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19334, Business and Professions Code.

§ 5107. [RESERVED]

§ 5108. Insurance Requirements

(a) A distributor shall provide evidence of insurance coverage required under this section. An applicant for a distributor license shall provide the bureau with a certificate of insurance that shows the kinds of insurance and minimum amounts have been secured as required by this section. Failure to provide proof of insurance, as required, will result in denial of a license.

(b) A distributor licensee shall at all times carry and maintain commercial general liability insurance and commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness, and death; property damage associated with the licensee's premises or operations; and personal injury. The limits of liability insurance shall not be less than one million dollars.

(c) A distributor licensee shall maintain the insurance required in subsection (b) from an insurance company authorized to do business in California by the Secretary of State.

(d) A distributor licensee shall notify the bureau in writing within 10 calendar days of a lapse in insurance.

Authority: Sections 19302, 19302.1, 19304, and 19322, Business and Professions Code. Reference: Section 19322 and 19334, Business and Professions Code.

§ 5109. [RESERVED]

§ 5110. Employee Requirements

(a) A distributor shall not hire an employee or volunteer if the person works or volunteers for another licensee unless the other licensee is a distributor or transporter.

(b) A distributor licensee shall ensure his or her employees do not have a financial interest as defined in section 5006 subsection (b)(22)(K) of this division in another medical cannabis license. A distributor licensee shall have a document for each employee in which the employee signs and attests to not having a financial interest in another medical cannabis license unless allowed under subsection (a).

Authority: Sections 19302, 19302.1, 19304, 19322, and 19334, Business and Professions Code. Reference: Sections 19322 and 19334, Business and Professions Code.

§ 5111. [RESERVED]

§ 5112. Inventory Reconciliation

(a) A distributor shall reconcile all inventories of medical cannabis goods a minimum of once per week.

(b) A distributor shall keep an inventory log, containing the following information for each batch:

(1) Where the batch originated and license number of the cultivator or the manufacturer;

(2) The date of physical transfer to the distributor;

(3) The time the batch arrived at the premises;

(4) The unique identifiers for the batch;

(5) The total weight or amount of the batch;

(6) Where on the premises the batch is kept;

(7) The storage conditions the batch is held in;

(8) The best-by, sell-by, or expiration date of the batch, if any;

(9) Shipping manifests and bills of lading;

(10) A copy of the service or sale contract pertaining to the batch; and

(11) Warehouse receipts.

(c) If a distributor finds a discrepancy between the inventory of stock and the inventory log or track and trace system that is outside of normal weight loss caused by moisture loss, the distributor shall commence a full audit of the batch in which the discrepancy was found. The distributor shall notify the bureau within 24 hours if, after the audit, there is a significant discrepancy in inventory.

(d) If a distributor finds evidence of theft or diversion, the licensee shall immediately report the theft or diversion to the bureau.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Sections 19327, and 19334, Business and Professions Code.

§ 5113. [RESERVED]

§ 5114. Records

(a) In addition to those records required by section 5056 of this division, a distributor shall maintain the following records:

(1) Records relating to branding and packaging and labeling;

(2) Current inventory log;

(3) Transportation bills of lading and shipping manifests;

(4) Quality-assurance records;

(5) Records relating to destruction of medical cannabis goods;

(6) Video that is required under section 5068 of this division;

(7) Laboratory-testing records;

(8) Inventory records; and

(9) Warehouse receipts.

Authority: Sections 19302, 19304, and 19327, Business and Professions Code. Reference: Section 19327, Business and Professions Code.

§ 5115. [RESERVED]

§ 5116. Track and Trace Requirements

A distributor shall enter the following events into the track and trace system:

(a) Receipt of medical cannabis goods from cultivator, manufacturer, or distributor.

(1) Enter the following information:

(A) Cultivator's, manufacturer's, or distributor's name and license number;

(B) Name of licensee who transported the medical cannabis goods and license number;

(C) Type of medical cannabis goods received;

(D) Amount received, by weight or count;

(E) Best-by, sell-by, or expiration date of the batch;

(F) Party who holds title to the medical cannabis goods;

(G) The date of receipt of the medical cannabis goods;

(H) The unique identifiers associated with the medical cannabis goods; and

(I) Other information required elsewhere by law.

(b) Sample taken by testing laboratory.

(1) Enter the following information:

(A) The testing laboratory's name and license number;

(B) The name of the laboratory agent or agents who obtained the samples;

(C) The weights of the samples obtained;

(D) The date the samples were obtained; and

(E) Other information required elsewhere by law.

(c) Sale to dispensary.

(1) If a distributor purchases medical cannabis goods, the distributor shall enter the following information:

(A) Name of dispensary licensee with whom the distributor contracted for sale and the dispensary's license number;

(B) The date of the contract for sale;

(C) The type of medical cannabis goods contracted for sale;

(D) The amount of medical cannabis goods contracted for sale, by weight or count;

(E) The date title passed to the dispensary; and

(F) Other information required elsewhere by law.

(d) Transportation to dispensary.

(1) If the distributor uses his or her transporter license to transport the medical cannabis to a dispensary, the distributor shall enter the following information:

(A) Transporter name and license number;

(B) Driver's name and driver's license number;

(C) Amount of medical cannabis goods transported, by weight or count;

(D) Vehicle license plate number used for transportation;

(E) Date of transport; and

(F) Other information required elsewhere by law, including for transporters.

(e) Destruction.

(f) Laboratory-test results.

Authority: Sections 19302, 19302.1, 19304, and 19335, Business and Professions Code. Reference: Section 19335, Business and Professions Code.

§ 5117. [RESERVED]

CHAPTER 3. TRANSPORTERS

§ 5118. Medical Cannabis Transporter

Only a person licensed by the bureau as a transporter may transport medical cannabis goods between licensees, unless that person is exempt from holding a transporter license pursuant to Business and Professions Code section 19319.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19300.5(j), 19326(a), and 19334(b), Business and Professions Code.

§ 5119. [RESERVED]

§ 5120. [RESERVED]

§ 5121. [RESERVED]

§ 5122. Transporter May Not Hold Title to Medical Cannabis Goods

A transporter shall not hold title under its transporter license to medical cannabis goods it is transporting. However, a licensed transporter may hold legal title to medical cannabis goods if the transporter holds title to the medical cannabis goods under another medical cannabis license.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19300.5 and 19328, Business and Professions Code.

§ 5123. [RESERVED]

§ 5124. Transport Requirements

The following requirements apply when transporting medical cannabis goods:

(a) Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

(b) Medical cannabis goods may only be transported inside of a commercial vehicle or trailer and may not be visible or identifiable from outside of the commercial vehicle or trailer.

(c) Medical cannabis goods shall be locked in a box that is secured to the inside of the commercial vehicle or trailer.

(d) While left unattended, the commercial vehicle and trailer shall be locked and secured.

(e) A transporter shall not leave a commercial vehicle containing medical cannabis goods unattended or parked overnight in a residential area.

(f) At a minimum, a transporter shall have a vehicle alarm system on all transport vehicles. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

(g) Packages or containers containing medical cannabis goods may not be tampered with during transport.

(h) A transporter shall only travel between licensees shipping or receiving medical cannabis goods and its own licensed premises when engaged in the transportation of medical cannabis goods. The transporter may transport multiple shipments of medical cannabis goods at once in accordance with applicable laws. A transporter may not transport non-medical cannabis goods with medical cannabis goods.

(i) Transport vehicles and all licensed premises are subject to inspection by the bureau. Commercial vehicles used to transport medical cannabis goods may be inspected by the bureau at any licensed premises or during transport.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19334, Business and Professions Code.

§ 5125. [RESERVED]

§ 5126. Additional Transport Vehicle Application Requirements

(a) With the general licensing application, an applicant for a transporter license shall provide the following information to the bureau:

(1) Proof of ownership or a valid lease for any and all commercial vehicles that will be used to transport medical cannabis goods;

(2) The year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for any and all commercial vehicles that will be used to transport medical cannabis goods; and

(3) Proof of insurance in the amount of $1,000,000 for any and all commercial vehicles being used to transport medical cannabis goods.

(b) The licensee shall provide the bureau with the information required by this section in writing for any new commercial vehicle that will be used to transport medical cannabis goods prior to using the commercial vehicle to transport medical cannabis goods.

(c) The licensee shall provide the bureau with any changes to the information required by this section in writing within 30 calendar days.

Authority: Sections 19302, 19302.1, 19304, and 19334(b), Business and Professions Code. Reference: Section 19334(b), Business and Professions Code.

§ 5127. [RESERVED]

§ 5128. Transport Personnel Requirements

(a) No person under the age of 21 years old shall be in a commercial vehicle transporting medical cannabis goods; and

(b) Only a licensed transporter or an employee of the licensee shall be in a vehicle while transporting medical cannabis goods.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19334 and 19337, Business and Professions Code.

§ 5129. [RESERVED]

§ 5130. Transporter Storage of Medical Cannabis Goods

A transporter may store medical cannabis goods on his or her licensed premises for no longer than 72 hours.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19300.5(am) and 19300.5(an), Business and Professions Code.

§ 5131. [RESERVED]

§ 5132. Storage

(a) A transporter shall ensure all medical cannabis batches are stored separately and distinctly from other medical cannabis batches on the transporter's premises.

(b) A transporter shall ensure a label with the following information is physically attached to each container of each batch:

(1) The manufacturer or transporter's name and license number;

(2) The date of entry into the transporter's storage area;

(3) The unique identifiers and batch number associated with the batch;

(4) Description of product with enough detail to easily identify the batch; and

(5) Weight of or quantity of units in the batch.

(c) A transporter shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A transporter may not store medical cannabis goods outdoors.

(d) Employee break rooms, changing facilities, and bathrooms shall be completely separated from the storage areas.

(e) A transporter shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a transporter shall store harvest batches in a darkened area with no more than 60% humidity.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Sections 19300.5, and 19334, Business and Professions Code.

§ 5133. [RESERVED]

§ 5134. [RESERVED]

§ 5135. [RESERVED]

§ 5136. Notification of Shipment

Before transporting any medical cannabis goods, the transporting licensee shall complete an electronic shipping manifest and transmit it to the bureau and the licensee receiving the shipment.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19335, and 19337, Business and Professions Code.

§ 5137. [RESERVED]

§ 5138. Shipping Manifest

The shipping manifest shall contain the following information:

(a) The name of the licensee;

(b) The names of authorized drivers;

(c) The type and quantity or amount of medical cannabis goods being transported;

(d) The unique identifiers issued by the Department of Food and Agriculture pursuant to Health and Safety Code section 11362.777;

(e) The quantity and weight or amount of medical cannabis goods being transported;

(f) The time and location of departure;

(g) The time and location of expected arrival; and

(h) The make, model, and license plate number of the commercial vehicle.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19327, and 19337, Business and Professions Code.

§ 5139. [RESERVED]

§ 5140. Records

In addition to those records required by section 5056 of this division, a transporter shall maintain the following records:

(a) Commercial vehicle maintenance and ownership records; and

(b) All shipping manifests for completed transports and for medical cannabis goods in transit.

Authority: Section 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19327, and 19337, Business and Professions Code.

§ 5141. [RESERVED]

§ 5142. Transporter Track and Trace Requirements

A transporter shall enter the following information into the track and trace system:

(a) Name and license number of the transporter;

(b) Date the transporter receives the medical cannabis goods from licensee for transport;

(c) Amount transported, by weight or count;

(d) Date the transporter delivers the medical cannabis goods to the licensee;

(e) The unique identifiers associated with the medical cannabis goods transferred;

(f) Spoilage or fouling of the medical cannabis goods;

(g) Any event resulting in exposure or compromise of the medical cannabis goods; and

(h) Other information required elsewhere by law.

Authority: Sections 19302, 19302.1, 19304, 19335, and 19337, Business and Professions Code. Reference: Sections 19335 and 19337, Business and Professions Code.

§ 5143. [RESERVED]

§ 5144. [RESERVED]

CHAPTER 4. DISPENSARIES

Article 1. Premises

§ 5145. Subletting of Premises

A licensed dispensary shall not sublet any portion of the licensed premises of the dispensary.

Authority: Sections 19302, 19302.1, 19303, and 19304, Business and Professions Code.
Reference: Section 19302, Business and Professions Code.

§ 5146. [RESERVED]

§ 5147. [RESERVED]

§ 5148. Access to Dispensary Premises

(a) Except as stated in subsection (b), access to the licensed premises shall be limited to individuals who are at least 18 years old and have a bona fide business reason for entering the premises.

(b) An individual younger than 18 years of age may enter the premises to purchase medical cannabis goods only if the individual is a medical cannabis patient. Any medical cannabis patient younger than 18 years old shall be accompanied by his or her parent, legal guardian, or primary caregiver.

Authority: Sections 19302, 19302.1, 19303, 19304, and 19332, Business and Professions Code.
Reference: Sections 19332, and 19334, Business and Professions Code.

§ 5149. [RESERVED]

§ 5150. [RESERVED]

§ 5151. Limited-Access Areas

(a) A licensed dispensary shall only permit authorized individuals to enter the dispensary limited-access areas.

(b) Authorized individuals include individuals employed by the licensed dispensary as well as any outside vendors, contractors, or other individuals who have a bona fide business reason for entering the dispensary limited-access area.

(c) An individual who is not an authorized individual for purposes of entering the dispensary limited-access areas shall not enter the dispensary limited-access area at any time for any reason.

(d) An individual in the dispensary limited-access area who is not employed by the licensed dispensary shall be escorted by individuals employed by the licensee at all times within the dispensary limited-access area.

(e) An individual who enters the dispensary limited-access areas shall be at least 21 years of age.

(f) The licensed dispensary shall maintain a log of all authorized individuals who are not employees of the dispensary that enter the dispensary limited-access area. These logs shall be made available to the bureau upon request.

(g) A licensed dispensary shall not receive consideration or compensation for permitting an individual to enter the dispensary limited-access area.

Authority: Sections 19302, 19302.1, 19303, 19304, and 19334, Business and Professions Code. Reference: Section 19334 Business and Professions Code.

§ 5152. [RESERVED]

§ 5153. [RESERVED]

Article 2. Retail Sales

§ 5154. Retail Area

(a) Individuals shall only be granted access to the area to purchase medical cannabis goods after the licensee has identified the individual as a medical cannabis patient or a primary caregiver. Prior to identifying an individual as a medical cannabis patient or a primary caregiver, a licensed dispensary shall verify that the individual has the following:

(1) A valid physician recommendation for medical cannabis in compliance with Health and Safety Code sections 11362.5 et seq.

(2) A valid proof of identification. Acceptable forms of identification include the following:

(A) A document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, physical description, and picture of the person; or

(B) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person; or

(C) A valid passport issued by the United States or by a foreign government.

(3) In the case of a primary caregiver, valid written documentation containing the signature and the printed name of the medical cannabis patient designating the individual as a primary caregiver for a medical cannabis patient.

(b) The licensee or its employees shall be physically present in the retail area at all times when there are individuals who are not employees of the licensed dispensary in the retail area.

Authority: Sections 19302, 19302.1, 19303, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, and 19304, 19323, and 19324, Business and Professions Code.

§ 5155. [RESERVED]

§ 5156. [RESERVED]

§ 5157. Hours of Operation

(a) A licensed dispensary may only sell medical cannabis goods during the hours of 6:00 a.m. Pacific Time to 9:00 p.m. Pacific Time.

(b) At any time the licensed dispensary is not open for retail sales, the licensee shall ensure the following:

(1) The premises shall be securely locked with commercial-grade, non-residential door locks;

(2) The premises shall be equipped with an active alarm system;

(3) When closed for retail business, all medical cannabis goods shall be stored in a locked safe or vault on the licensed premises; and

(4) Only authorized employees and contractors of the licensee shall be allowed to enter the premises after hours.

Authority: Sections 19302, 19302.1, 19303, and 19304, Business and Professions Code. Reference: Sections 19332, 19303, and 19334, Business and Professions Code

§ 5158. [RESERVED]

§ 5159. [RESERVED]

§ 5160. Dispensary Customers

(a) A licensed dispensary shall only sell medical cannabis goods to medical cannabis patients or the primary caregivers of medical cannabis patients.

(b) A licensed dispensary shall verify the identity of a medical cannabis patient or primary caregiver as required by section 5154 of this division.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19302.1, 19323, 19324, Business and Professions Code.

§ 5161. [RESERVED]

§ 5162. [RESERVED]

§ 5163. Medical Cannabis Goods Display

(a) The display of medical cannabis goods for sale shall only occur in the retail area during the operating hours of the licensed dispensary.

(b) The licensee shall not display any medical cannabis goods in areas outside of the retail area. The licensed dispensary shall not display medical cannabis goods in a place where it is visible from outside the licensed premises.

(c) Medical cannabis goods on display shall not be readily accessible to the customers.

(d) The amount of medical cannabis goods that are displayed shall not exceed the average amount of medical cannabis goods the licensed dispensary sells during an average one day period. The remainder of the licensee's inventory of medical cannabis goods shall be stored in accordance with section 5214 of this division.

(e) Medical cannabis goods may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of dispensary personnel. A container must be provided to the customer by the licensee or employee, who shall remain with the customer at all times that the container is being inspected by the customer.

(f) Medical cannabis goods removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed pursuant to section 5080 of this division when the medical cannabis goods are no longer used for display.

Authority: Sections 19302, 19302.1, 19303, 19304, and 19334, Business and Professions Code. Reference: Sections 19303, and 19334, Business and Professions Code.

§ 5164. [RESERVED]

§ 5165. [RESERVED]

§ 5166. Medical Cannabis Goods for Sale

(a) A licensed dispensary shall not make any medical cannabis goods available for sale or delivery to a medical cannabis patient or primary caregiver unless:

(1) The medical cannabis goods were received from a licensed distributor and delivered to the dispensary by a licensed transporter; and

(2) The licensed dispensary has verified that the medical cannabis goods have not exceeded their expiration or sell-by date if one is provided.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19326, 19347.5, 19347.6, and 19347, Business and Professions Code.

§ 5167. [RESERVED]

§ 5168. [RESERVED]

§ 5169. [RESERVED]

§ 5170. [RESERVED]

§ 5171. [RESERVED]

§ 5172. Daily Limits

(a) A licensee shall not sell more than eight ounces of medical cannabis in a single day to a single medical cannabis patient.

(b) A licensee shall not sell more than eight ounces of medical cannabis in a single day to a primary caregiver for each medical cannabis patient that the primary caregiver is authorized to purchase for.

(c) If a medical cannabis patient or primary caregiver has a physician's recommendation that eight ounces of medical cannabis in a single day does not meet the medical cannabis patient's medical needs, the medical cannabis patient or primary caregiver may purchase an amount of medical cannabis consistent with the patient's needs as recommended by a physician.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, and 19303, Business and Professions Code; Section 11362.77, Health and Safety Code.

§ 5173. [RESERVED]

§ 5174. [RESERVED]

§ 5175. Medical Cannabis Goods Returned by Medical Cannabis Patients or Primary Caregivers

(a) For the purposes of this section, a medical cannabis patient or primary caregiver return means a return of medical cannabis goods that were purchased from a dispensary back to the dispensary the medical cannabis goods were purchased from.

(b) A licensed dispensary may accept patient or primary caregiver returns of medical cannabis goods that were previously sold to the medical cannabis patient or primary caregiver returning the medical cannabis goods. A primary caregiver may return medical cannabis goods sold to a patient for whom he or she provides care.

(c) A licensed dispensary shall not resell medical cannabis goods that have been returned.

(d) A licensed dispensary shall treat any medical cannabis goods abandoned on the dispensary premises as a patient return.

(e) A licensed dispensary shall destroy all medical cannabis goods that have been returned to a dispensary by a medical cannabis patient or primary caregiver, in accordance with section 5080 of this division.

Authority: Sections 19302, 19302.1, 19304, and 19347.6, Business and Professions Code. Reference: Section 19302.1, Business and Professions Code.

§ 5176. [RESERVED]

§ 5177. [RESERVED]

§ 5178. Customer Samples

(a) A licensed dispensary shall not provide free samples of medical cannabis goods to any person.

(b) A licensed dispensary shall not allow representatives of other companies or organizations to provide free samples of medical cannabis goods to individuals on the licensed dispensary premises.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19303, Business and Professions Code.

§ 5179. [RESERVED]

§ 5180. [RESERVED]

§ 5181. Packaging and Labeling

(a) A dispensary shall not accept from a distributor medical cannabis goods that are not packaged as they will be sold at final sale, in compliance with this division.

(b) A dispensary shall not purchase dried flower that is not already packaged for final sale, in compliance with this division.

(c) A dispensary shall not package or label medical cannabis goods.

Authority: Sections 19300.5(j), 19302, 19304, and 19326, Business and Professions Code. Reference: Sections 19302 and 19326, Business and Professions Code.

§ 5182. [RESERVED]

§ 5183. [RESERVED]

§ 5184. Exit Packaging

(a) Medical cannabis goods purchased by a customer shall not leave the licensed dispensary premises unless they are placed in an exit package.

(b) An exit package shall meet all of the following requirements:

(1) The package shall be designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly, as defined by 16 C.F.R. 1700.20.

(2) The package shall be opaque so that the medical cannabis goods cannot be seen from outside the packaging.

(3) For any medical cannabis goods that are intended for more than a single use, the package shall have the ability to be resealed.

(4) The package shall be labeled properly pursuant to the Act and this division.

(c) This section does not apply to medical cannabis goods that are sold in packages that are child-resistant pursuant to the Act and this division.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19303, Business and Professions Code.

§ 5185. [RESERVED]

Article 3. Delivery

§ 5186. [RESERVED]

§ 5187. Delivery

(a) All deliveries of medical cannabis goods must be performed by a delivery employee of a licensed dispensary.

(b) Each delivery employee of a licensed dispensary shall be at least 21 years of age.

(c) A licensed dispensary shall not use the services of an independent contractor or courier service to deliver medical cannabis goods.

(d) All deliveries of medical cannabis goods shall be made in person. A delivery of medical cannabis goods shall not be made through the use of an unmanned vehicle.

(e) A delivery employee begins the process of delivering when the delivery employee leaves the dispensary premises with the medical cannabis goods for delivery. The process of delivering ends when the delivery employee returns to the licensed dispensary premises after delivering the medical cannabis goods to the medical cannabis patients or primary caregivers.

(f) A delivery employee of a licensed dispensary shall, during deliveries, carry a copy of the dispensary's current license, the employee's government-issued identification, and an employer provided badge containing a picture and the name of the delivery employee.

(g) A licensed dispensary shall maintain an accurate list of the dispensary's delivery employees.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5188. [RESERVED]

§ 5189. [RESERVED]

§ 5190. Delivery to Physical Address

(a) A licensed dispensary may only deliver medical cannabis goods to a physical address in California.

(b) A licensed dispensary delivery employee shall not leave the state of California while possessing medical cannabis goods.

(c) A licensed dispensary shall not deliver medical cannabis goods to an address located on publicly owned land or any address on land or in a building leased by a public agency.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5191. [RESERVED]

§ 5192. [RESERVED]

§ 5193. Methods of Delivery

(a) A delivery employee of a licensed dispensary, carrying medical cannabis goods for delivery, shall only travel in an enclosed motor vehicle operated by the delivery employee or another delivery employee of the licensee.

(b) While carrying medical cannabis goods for delivery, a delivery employee of a licensed dispensary shall ensure the medical cannabis goods are not visible to the public.

(c) A delivery employee of a licensed dispensary shall not leave medical cannabis goods in an unattended motor vehicle unless the motor vehicle is equipped with an active vehicle alarm system.

(d) A vehicle used for the delivery of medical cannabis goods shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle. A dedicated GPS device does not include a phone or tablet. The device shall be either permanently or temporarily affixed to the delivery vehicle and shall remain active and inside of the delivery vehicle at all times during delivery. At all times, the licensed dispensary shall be able to identify the geographic location of all delivery vehicles that are making deliveries for the dispensary and shall provide that information to bureau upon request.

(e) Upon request, a licensed dispensary shall provide the bureau with information regarding any motor vehicles used for the delivery of medical cannabis goods, including the vehicle's make, model, color, Vehicle Identification Number, and license plate number.

(f) Any motor vehicle used by a licensed dispensary to deliver medical cannabis goods is subject to inspection by the bureau. Vehicles used to deliver medical cannabis goods may be stopped and inspected by the bureau at any licensed premises or during delivery.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5194. [RESERVED]

§ 5195. [RESERVED]

§ 5196. Delivery Hours of Operation

A licensed dispensary shall only deliver medical cannabis goods to medical cannabis patients and primary caregivers during the hours of 6:00 a.m. and 9:00 p.m. Pacific Time.

Authority: Sections 19302, 19302.1(d), and 19304, Business and Professions Code. Reference: Sections 19302.1(d), 19303, 19334(a)(1), 19340, Business and Professions Code.

§ 5197. [RESERVED]

§ 5198. [RESERVED]

§5199. Medical Cannabis Goods Carried During Delivery

While making deliveries, a delivery employee of a licensed dispensary shall not carry medical cannabis goods in excess of $3,000 at any time. This value shall be determined using the retail price of all medical cannabis goods carried by the delivery employee.

Authority: Sections 19302, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5200. [RESERVED]

§ 5201. [RESERVED]

§ 5202. Medical Cannabis Consumption During Delivery

Delivery employees of a licensed dispensary shall not consume medical cannabis goods while delivering medical cannabis goods to medical cannabis patients or primary caregivers.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5203. [RESERVED]

§ 5204. [RESERVED]

§ 5205. Delivery Request Receipt

A licensed dispensary shall prepare a delivery request receipt for each delivery of medical cannabis goods.

(a) The delivery request receipt shall contain the following:

(1) The name and address of the licensed dispensary.

(2) The name of the delivery employee of the licensed dispensary who delivered the order.

(3) The name of the licensed dispensary employee who prepared the order for delivery.

(4) A patient identification number for the medical cannabis patient who is requesting the delivery. Upon request from the bureau, a licensed dispensary shall provide the name of the medical cannabis patient associated with the patient identification number listed on the delivery request receipt.

(5) The date and time the delivery request was made.

(6) The delivery address.

(7) A detailed description of all medical cannabis goods requested for delivery. The description shall include the weight, volume, or any other accurate measure of the amount of any medical cannabis goods requested.

(8) The total amount paid for the delivery, including any taxes and fees.

(9) Upon delivery, the date and time the delivery was made, and the signature of the medical cannabis patient or primary caregiver who received the delivery.

(b) At the time of the delivery, the delivery employee of the licensed dispensary shall provide the medical cannabis patient, or primary caregiver, who placed the order a copy of the delivery request receipt. The delivery employee shall retain a signed copy of the delivery request receipt for the dispensary's records.

(c) The delivery request receipt shall comply with state and federal law regarding the protection of confidential medical information.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19327, 19334, and 19340, Business and Professions Code.

§ 5206. [RESERVED]

§ 5207. [RESERVED]

§ 5208. Delivery Route

While making deliveries of medical cannabis goods, a delivery employee of a licensed dispensary shall only travel from the licensed dispensary premises to the delivery address; from one delivery address to another delivery address; or from a delivery address back to the licensed dispensary premises. A delivery employee of a licensed dispensary shall not deviate from the delivery path described in this section, except for necessary rest, fuel, or vehicle repair stops, or because road conditions make continued use of the route unsafe, impossible, or impracticable.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19334, and 19340, Business and Professions Code.

§ 5209. [RESERVED]

Article 4. Producing Dispensary

§ 5210. [RESERVED]

§ 5211. Producing Dispensary License

(a) To obtain a Type-10A producing dispensary license, a licensee shall either:

(1) Hold at least one Type-10 dispensary license; or

(2) Concurrently apply for at least one Type-10 dispensary license.

(b) A licensee holding a Type-10A producing dispensary license shall designate a licensed Type-10 dispensary facility held by the licensee to concurrently hold both a Type-10 dispensary license and the Type-10A producing dispensary license.

(c) A licensee shall hold a separate Type-10 dispensary license for each dispensary facility he or she operates.

(d) A licensee who holds a Type-10A producing dispensary license shall not hold licenses for more than three Type-10 dispensary facilities.

(e) A licensee who holds a Type-10A producing dispensary license may apply for licenses in other license categories as allowed under Business and Professions Code section 19328(a).

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19328 and 19334, Business and Professions Code.

§ 5212. [RESERVED]

Article 5. Inventory and Records

§ 5213. [RESERVED]

§ 5214. Storage of Inventory

(a) A dispensary shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A dispensary may not store medical cannabis goods outdoors.

(b) Employee break rooms, changing facilities, and bathrooms shall be completely separated from the storage areas.

(c) A dispensary shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a dispensary shall store harvest batches in a darkened area with no more than 60% humidity.

Authority: Sections 19302, 19302.1, 19304, and 19334, Business and Professions Code. Reference: Sections 19300.5, and 19334, Business and Professions Code.

§ 5215. [RESERVED]

§ 5216. [RESERVED]

§ 5217. Receiving Shipments of Inventory

(a) A licensed dispensary shall only receive a shipment of medical cannabis goods from a licensed transporter.

(b) A licensed dispensary shall only accept shipments of medical cannabis goods between the hours of 6:00 a.m. Pacific Time to 9:00 p.m. Pacific Time.

(c) During business hours, any shipment of medical cannabis goods accepted by the licensed dispensary shall not enter the premises through an entrance that is available for use by the public to enter or exit the premises.

(d) Upon accepting a shipment of medical cannabis goods from a licensed transporter, the licensed dispensary shall immediately place the products in a secured and locked room, safe, or vault in a manner as to prevent diversion, theft, and loss.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, 19303, 19326, 19327, and 19334, Business and Professions Code.

§ 5218. [RESERVED]

§ 5219. [RESERVED]

§ 5220. Inventory Documentation

A licensed dispensary shall maintain an accurate record of its inventory. A licensed dispensary shall provide the bureau with a record of its current inventory upon request. The licensed dispensary shall keep a record of the following information for all medical cannabis goods the licensed dispensary has in its inventory:

(a) A description of each item in the licensed dispensary's inventory. This description will be such that the medical cannabis goods can easily be identified;

(b) An accurate measurement of the quantity of the item;

(c) The date and time the product was received by the licensed dispensary;

(d) The sell-by or expiration date on any medical cannabis goods, if any;

(e) The name and license number of the licensed transporter that delivered the medical cannabis goods;

(f) The name and license number of the licensed distributor that provided the medical cannabis goods to the licensed dispensary; and

(g) The price the licensed dispensary payed for the medical cannabis goods, including taxes, delivery costs, or any other costs.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1, and 19327, Business and Professions Code.

§ 5221. [RESERVED]

§ 5222. [RESERVED]

§ 5223. Inventory Reconciliation

(a) A licensed dispensary shall perform a reconciliation of its inventory at least once every seven days.

(b) A licensed dispensary shall verify that the dispensary's physical inventory matches the licensed dispensary's records pertaining to inventory.

(c) The result of inventory reconciliation shall be retained in the dispensary's records and shall be made available to the bureau upon request.

(d) If a licensed dispensary identifies any evidence of theft, diversion, or loss, the licensed dispensary shall notify the bureau and law enforcement pursuant to section 5235 of this division.

(e) If a significant discrepancy is discovered between a licensed dispensary's physical inventory and the licensed dispensary's inventory records, the licensed dispensary shall notify the bureau and law enforcement pursuant to section 5235 of this division.

(f) For the purpose of this section, a significant discrepancy in inventory means a difference of at least $1,000 of product within a seven day period or at least $2,000 of product in a 30-day period. The price paid by the dispensary to acquire the product is the value to be used in this assessment.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Sections 19302.1(d), and 19327, Business and Professions Code.

§ 5224. [RESERVED]

§ 5225. [RESERVED]

§ 5226. Record of Sales

(a) A licensed dispensary shall maintain an accurate record of every sale made to a medical cannabis patient or primary caregiver.

(b) A record of a sale shall contain the following information:

(1) The name of the licensed dispensary employee who processed the sale;

(2) The name of the medical cannabis patient or primary caregiver who made the purchase;

(3) The date and time of the transaction;

(4) A list of all of the medical cannabis goods purchased, including the quantity purchased; and

(5) The total amount paid for the sale including the individual prices paid for each medical cannabis good purchased and any amounts paid for taxes.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19327, Business and Professions Code.

§ 5227. [RESERVED]

Article 6. Other Requirements

§ 5228. [RESERVED]

§ 5229. Grace Period for Compliance

Up to 180 days after the date of licensure or December 31, 2018, whichever is sooner, a dispensary may sell its inventory of untested medical cannabis goods if the dispensary places a label on each package it sells with the date of purchase and the following statement: "This product has not been tested under the Medical Cannabis Regulation and Safety Act." During the time period allowed by this section, a dispensary may package and sell medical cannabis goods that have not been packaged by a cultivator or distributor before it is transported to the dispensary as required by this division.

Authority: Sections 19302, 19302.1, and 19304, Business and Professions Code. Reference: Section 19334 Business and Professions Code.

§ 5230. [RESERVED]

§ 5231. [RESERVED]

§ 5232. Dispensary Track and Trace Requirements

A dispensary shall enter the following events into the track and trace system:

(a) Receipt of medical cannabis goods from a distributor or transporter;

(1) Enter the following information:

(A) Distributor's name and license number;

(B) Name of licensee who transported the medical cannabis goods and license number;

(C) Type of medical cannabis goods received;

(D) Amount received, by weight or count;

(E) Best-by, sell-by, or expiration date, if any, of each product received;

(F) The date of receipt of medical cannabis goods;

(G) The unique identifiers associated with the medical cannabis goods received; and

(H) Other information required elsewhere by law.

(b) Sale of medical cannabis goods to a medical cannabis patient or primary caregiver;

(1) Enter the following information:

(A) The name of the licensed dispensary employee who processed the sale;

(B) The name or a patient identification number of the medical cannabis patient or primary caregiver who made the purchase;

(C) The date and time of the transaction;

(D) A list of all of the medical cannabis goods purchased, including a description of the quantity purchased;

(E) The unique identifiers associated with the medical cannabis goods sold; and

(F) Other information required elsewhere by law.

(c) Return of medical cannabis goods from a medical cannabis patient or primary caregiver;

(1) If a dispensary accepts a return of medical cannabis goods from a medical cannabis patient or a primary caregiver, the dispensary shall enter the following information:

(A) The name of the licensed dispensary employee who processed the return;

(B) The name or a patient identification number of the medical cannabis patient or primary caregiver who made the purchase;

(C) The date and time of the transaction;

(D) A list of all of the medical cannabis goods returned, including a description of the quantity purchased;

(E) The unique identifiers associated with the medical cannabis goods; and

(F) Other information required elsewhere by law.

(d) Return of medical cannabis goods to a distributor;

(1) Enter the following information:

(A) Distributor's name and license number;

(B) Name of licensee who transported the medical cannabis goods and license number;

(C) Type of medical cannabis goods returned;

(D) Amount received, by weight or count;

(E) Best-by, sell-by, or expiration date, if any, of each medical cannabis good returned;

(F) The date of the return of medical cannabis goods;

(G) The unique identifiers associated with the medical cannabis goods returned; and

(H) Other information required elsewhere by law.

(e) Destruction of medical cannabis goods;

(1) Enter the following information:

(A) The name of the licensed dispensary employee who performed the destruction;

(B) The date and time of the destruction;

(C) A list of all of medical cannabis goods destroyed, including a description of the quantity destroyed;

(D) The unique identifiers associated with the medical cannabis goods destroyed; and

(E) Other information required elsewhere by law.

(f) Transfer of medical cannabis goods to a distributor for destruction;

(1) Enter the following information:

(A) Distributor's name and license number;

(B) Name of licensee who transported the medical cannabis goods and license number;

(C) Type of medical cannabis goods transferred;

(D) Amount transferred, by weight or count;

(E) The date of the transfer of medical cannabis goods;

(F) The unique identifiers associated with the medical cannabis goods transferred; and

(G) Other information required elsewhere by law.

Authority: Sections 19302, 19302.1, 19304, 19335, 19337, Business and Professions Code. Reference: Sections 19335 and 19337, Business and Professions Code.

§ 5233. [RESERVED]

§ 5234. [RESERVED]

§ 5235. Law Enforcement Notification

(a) A licensed dispensary shall notify law enforcement and the bureau within 24 hours of discovery of any of the following situations:

(1) The licensed dispensary discovers a significant discrepancy as defined in section 5223 of this division in its inventory.

(2) The licensed dispensary becomes aware of or has reason to suspect diversion, theft, loss, or any other criminal activity pertaining to the operation of the dispensary.

(3) The licensed dispensary becomes aware of or has reason to suspect diversion, theft, loss, or any other criminal activity by an agent or employee of the dispensary pertaining to the operation of the dispensary.

(4) The licensed dispensary becomes aware of or has reason to suspect the loss or unauthorized alteration of records related to medical cannabis goods, registered medical cannabis patients or primary caregivers, or dispensary employees or agents.

(5) The licensed dispensary becomes aware of or has reason to suspect any other breach of security.

Authority: Sections 19302, 19302.1, 19303, 19304, and 19334, Business and Professions Code. Reference: Sections 19302.1, 19303, and 19334(b), Business and Professions Code.

§ 5236. [RESERVED]

Proposition 65 in Plain Language

Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

What is Proposition 65?

In 1986, California voters approved an initiative to address their growing concerns about exposure to toxic chemicals. That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include over 800 chemicals since it was first published in 1987.

Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals. Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water.

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. OEHHA, which is part of the California Environmental Protection Agency (Cal/EPA), also evaluates all currently available scientific information on substances considered for placement on the Proposition 65 list.

What types of chemicals are on the Proposition 65 list?

The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

How is a chemical added to the list?

There are four principal ways for a chemical to be added to the Proposition 65 list. A chemical can be listed if either of two independent committees of scientists and health professionals finds that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm. These two committees—the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant (DART) Identification Committee—are part of OEHHA's Science Advisory Board. The

committee members are appointed by the Governor and are designated as the “State’s Qualified Experts” for evaluating chemicals under Proposition 65. When determining whether a chemical should be placed on the list, the committees base their decisions on the most current scientific information available. OEHHA staff scientists compile all relevant scientific evidence on various chemicals for the committees to review. The committees also consider comments from the public before making their decisions.

A second way for a chemical to be listed is if an organization designated as an "authoritative body" by the CIC or DART Identification Committee has identified it as causing cancer or birth defects or other reproductive harm. The following organizations have been designated as authoritative bodies: the U.S. Environmental Protection Agency, U.S. Food and Drug Administration (U.S. FDA), National Institute for Occupational Safety and Health, National Toxicology Program, and International Agency for Research on Cancer.

A third way for a chemical to be listed is if an agency of the state or federal government requires that it be labeled or identified as causing cancer or birth defects or other reproductive harm. Most chemicals listed in this manner are prescription drugs that are required by the U.S. FDA to contain warnings relating to cancer or birth defects or other reproductive harm.

A fourth way requires the listing of chemicals meeting certain scientific criteria and identified in the California Labor Code as causing cancer or birth defects or other reproductive harm. This method established the initial chemical list following voter approval of Proposition 65 in 1986 and continues to be used as a basis for listing as appropriate.

What requirements does Proposition 65 place on companies doing business in California?

Businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65’s warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. Health risks are explained in more detail below.

What does a warning mean?

If a warning is placed on a product label or posted or distributed at the workplace, a business, or in rental housing, the business issuing the warning is aware or believes

that one or more listed chemicals is present. By law, a warning must be given for listed chemicals unless exposure is low enough to pose no significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm.

For chemicals that are listed as causing cancer, the "no significant risk level" is defined as the level of exposure that would result in not more than one excess case of cancer in 100,000 individuals exposed to the chemical over a 70-year lifetime. In other words, a person exposed to the chemical at the "no significant risk level" for 70 years would not have more than a "one in 100,000" chance of developing cancer as a result of that exposure.

For chemicals that are listed as causing birth defects or reproductive harm, the "no observable effect level" is determined by identifying the level of exposure that has been shown to not pose any harm to humans or laboratory animals. Proposition 65 then requires this "no observable effect level" to be divided by 1,000 in order to provide an ample margin of safety. Businesses subject to Proposition 65 are required to provide a warning if they cause exposures to chemicals listed as causing birth defects or reproductive harm that exceed 1/1000th of the "no observable effect level."

To further assist businesses, OEHHA develops numerical guidance levels, known as "safe harbor numbers" (described below) for determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited. However, a business may choose to provide a warning simply based on its knowledge, or assumption, about the presence of a listed chemical without attempting to evaluate the levels of exposure. Because businesses do not file reports with OEHHA regarding what warnings they have issued and why, OEHHA is not able to provide further information about any particular warning. The business issuing the warning should be contacted for specific information, such as what chemicals are present, and at what levels, as well as how exposure to them may occur.

What are safe harbor levels?

As stated above, to guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor levels. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. These safe harbor levels consist of No Significant Risk Levels for chemicals listed as causing cancer and Maximum Allowable Dose Levels for chemicals listed as causing birth defects or other reproductive harm. OEHHA has established over 300 safe harbor levels to date and continues to develop more levels for listed chemicals.

What if there is no safe harbor level?

If there is no safe harbor level for a chemical, businesses that expose individuals to that chemical would be required to provide a Proposition 65 warning, unless the business can show that the anticipated exposure level will not pose a significant risk of cancer or reproductive harm. OEHHA has adopted regulations that provide guidance for calculating a level in the absence of a safe harbor level. Regulations are available at

Article 7 and Article 8 of Title 27, California Code of Regulations. Determining anticipated levels of exposure to listed chemicals can be very complex. Although a business has the burden of proving a warning is not required, a business is discouraged from providing a warning that is not necessary and instead should consider consulting a qualified professional if it believes an exposure to a listed chemical may not require a Proposition 65 warning.

Who enforces Proposition 65?

The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Lawsuits have been filed by the Attorney General's Office, district attorneys, consumer advocacy groups, and private citizens and law firms. Penalties for violating Proposition 65 by failing to provide notices can be as high as $2,500 per violation per day.

How is Proposition 65 meeting its goal of reducing exposure to hazardous chemicals in California?

Since it was passed in 1986, Proposition 65 has provided Californians with information they can use to reduce their exposures to listed chemicals that may not have been adequately controlled under other State or federal laws. This law has also increased public awareness about the adverse effects of exposures to listed chemicals. For example, Proposition 65 has resulted in greater awareness of the dangers of alcoholic beverage consumption during pregnancy. Alcohol consumption warnings are perhaps the most visible health warnings issued as a result of Proposition 65.

Proposition 65's warning requirement has provided an incentive for manufacturers to remove listed chemicals from their products. For example, trichloroethylene, which causes cancer, is no longer used in most correction fluids; reformulated paint strippers do not contain the carcinogen methylene chloride; and toluene, which causes birth defects or other reproductive harm, has been removed from many nail care products. In addition, a Proposition 65 enforcement action prompted manufacturers to decrease the lead content in ceramic tableware and wineries to eliminate the use of lead-containing foil caps on wine bottles.

Proposition 65 has also succeeded in spurring significant reductions in California of air emissions of listed chemicals, such as ethylene oxide, hexavalent chromium, and chloroform.

Although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state. They have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with this law. Recognizing that compliance with Proposition 65 comes at a price, OEHHA is working to make the law's regulatory requirements as clear as possible and ensure that chemicals are listed in accordance with rigorous science in an open public process.

Where can I get more information on Proposition 65?

For general information on the Proposition 65 list of chemicals, you may contact OEHHA's Proposition 65 program at (916) 445-6900, or visit http://www.oehha.ca.gov/prop65.html . For enforcement information, contact the California Attorney General's Office at (510) 873-6321, or visit http://oag.ca.gov/prop65.

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