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California Department of Public Health



GAVIN NEWSOM
Governor

FINDING OF EMERGENCY
Cannabis: Financial Institutions (AB 1525, Jones-Sawyer)
DPH-20-019E

The director of the California Department of Public Health (Department) finds that an emergency exists and that the proposed emergency regulations, as required by the legislature, are necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.

NOTICE AND INTRODUCTION

Notice is hereby given that the Department proposes to adopt the regulations described below. Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

DEEMED EMERGENCY

The Department has been provided specific statutory authority to adopt emergency regulations as needed to implement the Medicinal and Adult Use Cannabis Regulation and Safety Act (Act), codified in Business and Professions Code section 26000 et seq. Section 26013, subdivision (b), paragraph (3) of the Business and Professions Code states that “the initial adoption of emergency regulations and readoption of emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare.”

AUTHORITY AND REFERENCE

The Department is proposing to adopt the proposed rulemaking under the authority provided in sections 26012 and 26013 of the Business and Professions Code.

The Department is proposing to add sections 40186 and 40187 to Chapter 13 of Division 1 of Title 17, California Code of Regulations in order to implement, interpret, or make specific section 26260 of the Business and Professions Code.



INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Purpose and Objective

These proposed regulations clarify or make specific sections of MAUCRSA pertaining to information sharing with financial institutions. The regulations will:

- Establish a regulatory process for licensees to request and permit the licensing authorities to share financial information with their financial institution(s).
- Establish a regulatory process for financial institutions to request and permit licensing authorities to share financial information of a licensee for the purposes of facilitating the provisions of financial services.
- Establish a regulatory process for licensees to withdraw a request for sharing licensee financial information at any time.

Background

Under recently-enacted legislation (AB 1525, Jones-Sawyer, Chapter 270, Statutes of 2020), the three state cannabis licensing authorities (California Department of Public Health, California Department of Food and Agriculture, and the Bureau of Cannabis Control within the Department of Consumer Affairs) are authorized to share the application, licensing, regulatory, and financial information of licensees with financial institutions for purposes of facilitating the provision of financial services to the licensee.

Governor Newsom included a signing message with AB 1525 that states, in relevant part, “to ensure the State is appropriately protecting all licensee information subject to this bill, I hereby direct state commercial cannabis licensing authorities to promulgate regulations implementing these provisions in a manner that protects the confidential and proprietary nature of licensee data, ensures data is only being used for the provision of financial services to support licensees and further specifies how a licensee may withdraw their authorization.”

Because cannabis remains illegal under federal law, access to banking and other financial services is limited for cannabis businesses. In 2014, the Department of the Treasury issued a guidance document (FIN-2014-G001) regarding a financial institutions obligation when conducting business with a cannabis business. Any financial institution willing to provide services must conduct regular, extensive reviews of the business’s licensing status and commercial activities. These reviews are time-consuming and expensive, leaving financial institutions hesitant to provide services to cannabis businesses, which in turn leaves cannabis businesses with large amounts of cash. AB 1525 was intended to provide a mechanism for financial institutions to more readily conduct the federally-required reviews of the cannabis business, with the ultimate goal of providing greater access to banking services for the cannabis industry.

Policy Statement Overview

Problem Statement: Access to banking services is limited for cannabis businesses, which poses a public health and safety threat due to large amounts of cash on hand. Financial institutions that do offer services to cannabis businesses are burdened by the

time and expense of conducting the regular reviews of the business required by United States' Treasury Department guidelines.

These proposed regulations will allow the Department to provide information that is otherwise confidential to financial institutions, upon authorization of the licensee, for purposes of providing financial services. Additionally, these proposed regulations will also allow a licensee to withdraw their authorization to provide information to a financial institution.

Benefits: Because there are barriers to obtain bank accounts, cannabis businesses rely heavily on cash to conduct day-to-day transactions. Large amounts of on-hand cash are attractive to criminals and can therefore pose a threat to public safety. Financial institutions that do offer services to cannabis businesses are burdened by the time and expense of conducting the regular reviews of the business required by United States' Treasury Department guidelines. By reducing the burden of providing financial services to cannabis businesses, more financial institutions may be willing to provide services, thereby reducing the need to keep cash on-hand and improving public safety.

Effect of Regulatory Action

This proposed action will add sections 40186 and 40187 to Chapter 13 of Division 1 of Title 17 of the California Code of Regulations, as follows:

Add §40186. Licensee Request to Release Data to Financial Institutions

This section provides the manner in which licensees can authorize the Department to release information to a financial institution, as well as the manner in which the authorization may be withdrawn.

- Subsection (a): provides that a licensee may authorize the Department to provide information to financial institution by submitting, in writing, the specified information. This provision is necessary to ensure that the Department has an accurate record of the licensee's authorization to release confidential information.
 - Paragraph (1): requires the name of the licensed business for which the licensee is authorizing the release of information. This provision is necessary to ensure that the Department has an accurate record of the licensee's authorization to release confidential information.
 - Paragraph (2): requires the business's license number or numbers. A business can hold multiple licenses at different locations. This provision is necessary to ensure that the Department has an accurate record of the licensee's authorization to release confidential information and that the appropriate information is released.
 - Paragraph (3): requires the financial institution authorized to receive information. This is necessary to ensure that the information is only released to an institution authorized by the licensee to receive it.
 - Paragraph (4): requires the name, phone number, email address, and signature of the owner submitting the authorization. This provision is

necessary to ensure that the Department has an accurate record of the licensee's authorization to release confidential information and so that the Department can easily contact the owner if needed.

- Paragraph (5): requires the categories of information, as specified in subsection (b), that are authorized for release. Some of the information that BPC section 26200 authorizes the Department to share with financial institutions is information that is otherwise confidential. This provision is necessary to allow the licensee to control the confidential information to be released.
- Paragraph (6): requires an acknowledgement that the authorization to release information includes information that is otherwise protected from disclosure, and waiving privilege and confidentiality strictly for purposes of disclosure to the financial institution. Because the information to be released would otherwise be confidential, this provision is necessary to ensure the licensee is fully aware that they are waiving confidentiality.
- Subsection (b): specifies the information that will be released by the Department pursuant to the licensee's designation, upon request by an authorized financial institution. Subsection (b) will make specific the statutory language of BPC section 26260(b) that states the state licensing authority "may share application, licensee, and other regulatory and financial information." This provision is necessary so that licensees are aware of and able to specifically designate the category of information that will be released.
 - Paragraph (1): the license application(s), including renewal application. This provision is necessary to implement the specific statutory language of BPC 26260(b).
 - Paragraph (2): information captured in the track-and-trace system established pursuant to BPC section 26067, including aggregated sales or transfer information. Track-and-trace information is expressly specified in BPC section 26260(c)(1) as information to be released to a financial institution.
 - Paragraph (3): documents issued to the licensee pursuant to disciplinary or enforcement proceedings. This provision clarifies the specific "regulatory information" to be released to financial institutions and is necessary so that licensees are aware that documents issued pursuant to proceedings will be released if authorized.
- Subsection (c): provides that the licensee may withdraw the authorization to provide information to a financial institution at any time and that the request shall be in writing. This provision is necessary to allow licensees to maintain control over their confidential information and to ensure that the Department has accurate records of the licensee's withdrawal of authorization. The information required to withdraw information is:

- Paragraph (1): the name of the licensed business for which the licensee is withdrawing information. This provision is necessary to ensure that the Department has accurate records of the licensee's withdrawal of authorization.
- Paragraph (2): the license number(s) for which the business is withdrawing information. If a licensee has provided authorization for information associated with multiple licenses, this provision is necessary to ensure that the Department ceases release of the correct information.
- Paragraph (3): the financial institution from which authorization is withdrawn. This provision is necessary to ensure that the Department does not release information to a unauthorized institution.
- Paragraph (4): the name, phone number, email address, and signature of the owner submitting the withdrawal. This provision is necessary to ensure that the Department has an accurate record of the licensee's withdrawal of authorization to release confidential information and so that the Department can easily contact the owner if needed.

Add §40187. Financial Institution Request for Licensee Information

This section provides the manner in which a financial institution may request licensee information from the Department. This provision is necessary to ensure that the Department is able to release information as needed by the licensee and to ensure that the Department only releases the information to the appropriate entity. The information to be submitted is as follows:

- Subsection (a): the name of the financial institution. This provision is necessary to ensure that the Department has an accurate record of the request to release information.
- Subsection (b): The name, phone number, email, and signature of the representative of the financial institution requesting information. This provision is necessary to ensure that the Department can easily contact the financial institution if necessary.
- Subsection (c): The business name and license number of the licensee for which the financial institution is requesting information. This information is necessary to ensure that the Department releases information on the appropriate licensee.
- Subsection (d): The type of financial services for which the information is requested (including, but not limited to, establishment or maintenance of bank accounts, extending loans, and providing insurance) and whether the request is for consideration of a new service or maintenance of an existing service. This provision is necessary so that the Department can meet its statutory mandate to ensure that the information is released for the purposes of facilitating financial services.

- Subsection (e): the specific information requested as described in Section 40186(b). Financial institutions may not need all of the possible licensee information every time the request is made if multiple requests are made throughout the year. The ability to specify which information is requested is necessary to reduce the workload on the Department and reduce the amount of unnecessary information sent to a financial institution.
- Subsection (f): an acknowledgment that use of the information is limited to that which is necessary for the provision of financial services. This provision is necessary to ensure that the financial institution is aware of the statutory limitation that the receipt of confidential licensee information is solely for the provision of financial services.

STATEMENTS OF DETERMINATIONS AND ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulatory action would not have a significant economic impact on California business enterprises and individuals.

EVALUATION AS TO WHETHER THE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Department has made a determination that these regulations are not inconsistent or incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The Department has made a determination that this proposal is not mandated by federal law or regulations.

LOCAL MANDATE

The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with Section 17500) of division 4 of the Government Code.

FISCAL IMPACT ASSESSMENT

- A. **Cost to Any Local Agency or School District:** None.
- B. **Cost or Savings to Any State Agency:** The Department has determined that this proposal will result in expenditures of \$134,000 annually, beginning in FY 2021-22.
- C. **Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None.
- D. **Cost or Savings in Federal Funding to the State:** None.

INCORPORATION BY REFERENCE

None

DOCUMENTS RELIED UPON

None

CONTACT PERSON

Inquiries regarding the proposed regulatory action can be directed to Linda M. Cortez, with the Office of Regulations at (916) 440-7807, or the designated backup contact, Dawn Basciano at (916) 440-7367.