

**FINDING OF EMERGENCY AND NOTICE FOR
PROPOSED EMERGENCY REGULATIONS
Cannabis: Financial Institutions (AB 1525, Jones-Sawyer)**

SUBJECT MATTER OF PROPOSED REGULATIONS: Authorization and release of applicant information to financial institutions pursuant to Business and Professions Code section 26260.

SECTIONS AFFECTED: Title 3, California Code of Regulations (CCR), sections 8410 and 8411.

Required Notice of Proposed Emergency Action

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 set forth in Government Code section 11349.6.

This document provides the required notice that the California Department of Food and Agriculture (Department) will submit a proposed emergency action to the Office of Administrative Law to implement allowance of cannabis businesses to permit licensing authorities to share licensee application and regulatory information, including track-and-trace data with financial institutions as defined in Business and Professions Code section 26260(c)(3)¹. As required by subdivisions (a)(2) and (b)(2) of Government Code section 11346.1, this notice includes and incorporates the following: (1) the specific language of the proposed regulations and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, and required determinations.

Specific Facts Demonstrating the Need for Immediate Action

On September 29, 2020, Governor Gavin Newsom signed California Assembly Bill 1525 by Assemblymember Jones-Sawyer, known as Information Sharing with Financial Institutions, which would create a safe harbor under state law for financial institutions and accountants that provide services to the cannabis industry. This bill would also allow cannabis businesses to permit licensing authorities to share licensee application and regulatory information, including track-and-trace data with financial institutions. This law is effective January 1, 2021. Regulations are necessary to implement California

¹ Hereinafter any reference to financial institutions is as they are defined in Bus. & Profs. Code section 26260(c)((3)).



Assembly Bill 1525 consistent with Governor Gavin Newsom's signing statement directing the cannabis licensing authorities promulgate regulations to implement the provisions in a manner that protects confidential and proprietary data. Additionally, Business and Professions Code section 26013 grants the Department the authority to adopt emergency regulations to implement the Medicinal and Adult-use Cannabis Regulation and Safety Act (MAUCRSA).

Authority and Reference

The Department is proposing to adopt sections 8410 & 8411 of title 3 of the California Code of Regulations. Business and Professions Code sections 26012, 26013, and 26260 authorizes the Department to prescribe, adopt, and enforce the emergency regulations governing the information sharing with financial institutions. The emergency regulations will implement, interpret, make specific, or reference section 26260, of the Business and Professions Code.

Informative Digest

Existing Law

Requires the Department, in consultation with the Bureau of Cannabis Control, to establish a track-and-trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain.

States information received and contained in records kept by the Department or licensing authorities pursuant to the track-and-trace program are confidential and exempt from disclosure pursuant to the California Public Records Act (PRA), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to MAUCRSA or a local ordinance.

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

SB 94 (Budget Committee, Chapter 27, Statutes of 2017) established MAUCRSA and enabled the Department and related state agencies to implement one concise cannabis licensing structure by January 1, 2018. MAUCRSA required the Department, in consultation with the BCC, to establish a track-and-trace program for reporting the movement of medical cannabis items throughout the distribution chain that utilizes a unique identifier, capable of providing certain information.

SB 930 (Hertzberg, 2018) and SB 51 (Hertzberg, 2019) would have authorized the creation of special purpose, limited charter banks and credit unions, as specified, to help provide a limited number of core banking services to cannabis businesses. SB 930 was held on the Assembly Appropriations Committee Suspense file. SB 51 remains on the Inactive File on the Assembly Floor.



Inconsistency with Federal Regulation Statute

The United States Drug Enforcement Administration under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. Meaning, this is a drug with a high potential for abuse, has no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision.

Controlled Substances Act, Title 21 - Food and Drugs, Chapter 13 - Drug Abuse and Prevention Control, Subchapter 1 - Control and Enforcement:

<https://www.fda.gov/regulatoryinformation/lawsenforcedbyfda/ucm148726.htm>

However, California, through the MAUCRSA, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

Consistency with Existing State Regulations

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

Policy Statement

Regulation Objectives

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

- Address the obligation of the Department to allow information sharing with financial institutions.
- 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.

Benefits to the Public

Access to a safe harbor under state law for financial institutions and accountants would allow more banks to conduct cannabis related business. For example, financial institutions could grant capital for business development (loans, lines of credit, etc.) for cannabis entrepreneurs. This bill would expand the margin of cannabis entrepreneurs, whereas individuals currently rely upon their own funding and/or investors, limiting the



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

This bill could positively magnify California's economy with the removed threat of criminal penalties for financial institutions and accountants, the availability of capital for cannabis entrepreneurs, and cannabis operations being able to become transparent regulated tax-paying businesses.

Plain English Requirement

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

Mandate on Local Agencies and/or School Districts

LOCAL MANDATE: There will be no local mandate.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT PURSUANT TO GOVERNMENT CODE SECTION 17500 et seq:

None.

ANY OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

Cost or Savings Estimate to State Agencies (Fiscal Impact)

At minimum, there will be a need for one Staff Services Analyst position to evaluate request authority and process the reports. Cost estimate: \$64,320 in salaries and wages, plus \$40,175 in benefits with \$15,674 in administrative costs – totaling \$120,169. For assessed workload, request for one (1) permanent fulltime personnel year (PY) and \$120,169 in ongoing budget appropriation authority. In addition, the Department identifies indeterminate costs to help promulgate regulations and address other administrative workload.

The Department also estimates a total one-time cost estimate \$82,795. The Department has not identified any ongoing costs for the changes beyond normal maintenance and operations activities. These activities can be absorbed by existing staff.



ANY COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

Purpose and Necessity

The Department is revising its regulations due to the ratification of AB 1525 on September 29, 2020 which added section 26260 to the Business and Professions Code. This section allows for the Department to share financial information of cannabis licensees for the purposes of facilitating the provision of financial services for that licensee.

The necessity regarding key sections is explained below.

Article 5
Records and Reporting

§ 8410 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 26260 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 disciplinary and enforcement 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.

§ 8411 Financial Institutions 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 8410(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 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.

CONTACT PERSON

Inquiries regarding the proposed regulatory action can be directed to the Regulations Coordinator, Kristi Armstrong, or the designated backup contact, Nicole Newkirk, at (916) 263-0801.

