



County Health Executives Association of California (CHEAC)

Department of Public Health Response to CHEAC Comments Proposed Text of Regulations California Code of Regulations Title 17

Division 1. Manufactured Cannabis Safety DPH-17-010 Modified Text

General Recommendations

Recommendation: Manufacturers should not be allowed to create high potency cannabis and cannabis products until there is clear and convincing evidence to support the creation of these products.

CDPH Response: Not Addressed

Recommendation: A new equity applicant category should be created to ensure that majority ownership applications by persons in communities with high rates of cannabis-related incarceration and cannabis-related felony convictions or offenses and that have experienced other social ill effects from the unequal enforcement of cannabis possession laws have prioritized application status to benefit from the legalization of cannabis, such as demonstrated disproportionate cannabis-related crime data or related felony conviction data by police beat.

CDPH Response: Rejected - This comment does not present sufficient specificity for the Department to make any modifications to the text. The Department would note that the Type S license was developed with the specific intention to reduce barriers to entry into the legal market.

Recommendation: In the interest of the public's health and safety, maximum allowable levels of concentrations for THC in leaf/bud and concentrate products should be established. This maximum allowable level would be consistent with the approach taken on THC level maximums of individual servings of edible cannabis products. The manufacturing and availability of higher and higher levels of THC concentrations is highly inconsistent with protections applied to other products including alcohol and tobacco. Without establishing maximum levels for these products, the public's health and safety will be put at risk.

CDPH Response: Not Addressed

§ 40100. Definitions; § 40120. Additional Activities; § 40300. Prohibited Products; § 40315. THC Concentration Limits

Recommendation: Infused pre-roll cannabis products should be prohibited. Labeling of pre-roll products should also include the percentage of THC by weight and the total milligrams of THC contained in a pre-roll product.

CDPH Response: Rejected - The Department has determined that it is not necessary to prohibit infused prerolls. Other regulatory provisions provide for the listing of the cannabinoid content.

§ 40100. Definitions

Recommendation: Add the definition for “designated area.”

“Designated area” means the separated and enclosed area of the manufacturer’s registered shared-use facility that is designated by the primary licensee for the sole and exclusive use of a Type S licensee, including storage of the Type S licensee’s cannabis, cannabis concentrates, and cannabis products.”

CDPH Response: Not Addressed

Recommendation: Create a “Shared Facility Manager” license such as a “Type SM” that does not allow manufacturing of cannabis but allows for the management of a shared facility where cannabis is manufactured. Add Type SM license or licensee to all other relevant sections. Rationale: CDPH should allow for people not directly involved in the manufacturing process at a shared-facility to have the opportunity to hold a license that would allow them to manage a shared facility. This would not exclude licensees under the current regulations from holding an S-Type license but would allow others to apply. There is some concern that a licensee may not be able to effectively manage the entire facility if they are also having to manage their own manufacturing business in addition to that.

“Primary licensee” means the Type 7, Type 6, Type N, or Type SM licensee that has registered and been approved to operate its licensed premises as a shared-use facility.

CDPH Response: Not Addressed

Recommendation: Add definition of “common-use area.” CDPH should include examples of types of equipment that can be shared “included but not limited to...”. CDPH should also outline a list of items that cannot be shared. An example would be a refrigerator, unless it is a walk-in refrigerator with separated, sealed off sections. The current regulations do not define the term “equipment.” There are certain pieces of equipment that should not be shared due to cross-contamination concerns.

“Common-use area” means any area of the manufacturer’s registered shared-use facility, including equipment that is available for use by more than one licensee, provided that the use of a common-use area is limited to one licensee at a time.

CDPH Response: Not Addressed

§ 40230 Manufacturing Practices Definitions

Recommendation: Replace (m) with “Control Measures.”

*(m) **Control** measures means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would employ to significantly minimize or prevent the hazards identified pursuant to a product quality plan as specified in Section 40253.*

CDPH Response: Not Addressed

§ 40240. Grounds, Building, and Manufacturing Premises

Recommendation: Add “cannabis” and “cannabis components” to the last sentence of section (a)(6)(b)(1).

*(1) Walls, ceilings, and floors. Walls, ceilings, and floors shall be constructed of material this is smooth, nonporous, easily cleanable, corrosion-resistant, and suitable to the activity that will be conducted. Fixtures, ducts, and pipes shall not pose a source of drip or condensate that may contaminate **cannabis, cannabis components, cannabis products, contact surfaces or packaging material.***

CDPH Response: Not Addressed

Recommendation: Add “contact surfaces” and “packaging material” to last sentence of (2)(6)(b)(2).

*(2) Lighting. Interior facility lighting shall meet the requirements of subdivisions (a)(1) and (3), (b)(3) and (4), and (c) of section 114252 of the Health and Safety Code. Interior facility lighting shall also meet the requirements for shatter-resistant lighting in section 114252.1 of the Health and Safety Code. The requirements of Health and Safety Code section 114252.1, subdivision (a), shall also apply to all areas where glass breakage may result in the contamination of exposed cannabis, components **contact surfaces, packaging material** or products at any step of preparation.*

CDPH Response: Not Addressed

Recommendation: Add “cannabis” and “components” to the last sentence of (a)(6)(b)(3)(C).

(C) Sewage disposal. Sewage systems shall meet the requirements of the California Plumbing Code, contained in Part 5 of Title 24, California Code of

*Regulations and shall be maintained and kept in good repair so that it does not pose a potential source of contamination to **cannabis, components**, cannabis products, contact surfaces, or cannabis product-packaging materials.*

CDPH Response: Not Addressed

Recommendation: Add “cannabis” and “components” to the last sentence of (a)(6)(b)(3)(D).

*(D) Toilet facilities. Each manufacturing premises shall provide employees with access to toilet facilities that meet the requirements of Health and Safety Code section 114250. Toilet facilities shall be kept clean and shall not pose a potential source of contamination of **cannabis, components**, cannabis products, contact surfaces, or packaging materials.*

CDPH Response: Not Addressed

§ 40297. Recalls

Recommendation: CDPH should clarify and delineate specifically how the licensee should communicate recalls and subsequently how CDPH will disseminate the recall information to local authorities. CDPH should provide guidance on the mechanism on how to process and respond to edible-borne illness complaints.

CDPH Response: Not Addressed

§ 40300. Prohibited Products

Recommendation: In the interest of public health, precautions should be taken to ensure products are not enticing or attractive to youth. Our experience with tobacco has proven that offering products in a variety of flavors is one key tool for attracting youth smokers. In fact, most adolescent tobacco and e-cigarette users use and initiated use with flavored products. As such, we recommend the following:

Manufacturers should be prohibited from the addition of menthol or other flavorings in non-topical and non-edible products that could be attractive to children and youth.

CDPH Response: Rejected - The Department can use its existing authority to determine if specific products are intended to be attractive to minors on a case-by-case basis.

Recommendation: Cannabis infused beverages should be prohibited as they may attract youth to the product.

CDPH Response: Rejected - A prohibition on beverages would be an unreasonable restriction on consumers.

§ 40306. Requirements for Topical Cannabis Products

Recommendations: According to the CDC, every day over 300 children in the United States ages 0 to 19 are treated as the result of being poisoned. Precautions should be considered to limit the adverse impact of accidentally ingesting topical cannabis products. As such, we recommend the following:

THC limits for concentrates and other products should be lowered to protect children or adults should the product accidentally be consumed.

CDPH Response: Rejected - The regulations require that products be clearly labeled as cannabis and include the universal symbol, limit the concentration of THC in the product, and require child-resistant, resealable packaging.

§ 40405. Primary Labeling Requirements: Manufactured Products; § 40408. Informational Labeling Requirements

Recommendations: We believe consumers have every opportunity to make informed choices about cannabis use. As such we recommend the following:

Manufactured cannabis warning labels should be enlarged to increase visibility.

Package labels should include all required product warnings rather than on package inserts or booklets.

All edible cannabis products must display a state-approved common warning message and symbol on product label information panels that includes “Not for Kids” and the national poison control hotline (1-800-222-1222). The information panel must also include instructions for safe storage of the product away from the reach of children under the age of 21.

CDPH Response: Rejected - The Department has required warning labels in accordance with statutory requirements and in consideration of balancing the need for other information of interest to the consumer.

§ 40410. Labeling Requirements

Recommendations: Cannabis products that are attractive to children or youth increases the risk of consumption. In the interest of public health, it is important to reduce adolescent consumption, both intentional and unintentional, and the associated adverse impacts. As such, we recommend the following:

The definition of “attractive to children or youth” should include edible cannabis products that are typically marketed to youth or sent to school such as rice

krispie treats, cupcakes, granola bars, and animal crackers that could be mistaken for non-cannabis products.

Consider the adoption of a plain packaging standard that would avoid packaging intended to mislead consumers or unlawfully market to youth.

CDPH Response: Rejected - The Department regulations implement the statutory mandate that products and packaging not be attractive to children.

§ 40415. Packaging

Recommendation: Unintentional ingestion, particularly amongst children and youth present a public health concern. It is very important that California take the needed precautions to ensure that packaging be child-resistant. While we greatly appreciate the changes for a January 1, 2020, child-resistant packaging standard, we also recognize the need for greater protections for children. As such, we recommend the following:

Consider the adoption of a plain packaging standard that would avoid packaging intended to mislead consumers or unlawfully market to youth.

CDPH Response: Rejected - A requirement for plain packaging without further statutory guidance would be an overreach of Department authority. Proposition 64 established some minimum requirements for packaging and labeling of cannabis and cannabis product but does not lead to the interpretation that plain packaging should be required.

§ 40525. Advertising and Marketing

Recommendation: Health related statements should be prohibited from any marketing of cannabis products.

CDPH Response: Rejected - BPC §26154 states that advertising and marketing cannot contain “any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption.” The Department cannot make the requested modification to the text as it would be an unlawful expansion of the statute.

Recommendation: Advertising and marketing materials should not be permitted to display the consumption of cannabis, contain material that encourages the use of cannabis due to its intoxicating effects, depicts the activities considered dangerous while under the influence of cannabis including operating a motorized vehicle, being pregnant, or breastfeeding.

CDPH Response: Rejected - BPC §26152 establishes the restrictions on advertising.

Cannabis manufacturers should be prohibited from using their product brand, including logos, trademarks, or names, on any clothing, toys, games, game equipment, or other products typically marketed to or used by persons under the age of 21 or attractive to children or youth.

CDPH Response: Rejected - The Department does not prohibit branded merchandise however any form of merchandise that advertises or markets the business must meet the advertising restrictions of BPC 26152.