

Getting into the Weeds: Sorting Through the New Regulations on Cannabis

January 18, 2019

On January 16, 2019, the California Office of Administrative Law [approved](#) state [regulations for the California cannabis industry](#). Although these regulations might be subject to further modifications, they are effective immediately. They supersede the emergency regulations that had been adopted in 2017 by the Bureau of Cannabis Control (BCC)—the statewide agency charged with overseeing California’s cannabis industry.

We are closely examining these regulations to better understand their impact, but it is worth taking immediate note of two significant changes.

1. Stricter Disclosure Requirements for License Applicants

The first significant change is that the regulations impose more stringent disclosure requirements on both “owners” and “financial interest holders” of a cannabis license.

A. Disclosure Requirements for Owners

The regulations broadly define the term “owner” to include any person that owns at least 20% in the license applicant, any person entitled to at least a 20% share of the profits, and any individual participating in the direction, control or management of the license applicant. 16 CCR § 5003.

Each owner must be listed in a licensee’s annual license application, provide personal information in the application, including contact information, a social security number, and employment information, disclose and describe any past convictions, and submit to a live scan fingerprint analysis for a background check. 16 CCR § 5002.

B. Disclosure Requirements for Financial Interest Holders

The regulations also present a broad definition of “financial interest holders” that includes anyone who has entered into an agreement to invest in, provide a loan to, or receive profits from a commercial cannabis business. This definition includes a landlord who has entered into a lease with a commercial cannabis business for a share of the profits as well as a consultant who is providing services to the commercial cannabis business for a share of the profits. 16 CCR § 5004.

All “financial interest holders” in a licensee must be disclosed, although the disclosure requirements are less strict than for owners. Financial interest holders must disclose their name, birthdate and government-issued identification type and number, but do not need to submit to other disclosure requirements for owners, such as the live scan fingerprint analysis for a background check. 16 CCR § 5003.

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C. Individuals Cannot Use Entities to Shield Themselves from These Disclosure Requirements

The BCC emphasizes that individuals cannot use entities to shield themselves from these disclosure requirements. For example, the new regulations require all entities with a financial interest in a cannabis license to disclose this fact (even if the entities are one part of a multi-layer business structure), and that each entity “**must disclose the identities of persons holding financial interests until only individuals remain.**” 16 CCR § 5003(c) (emphasis added). The BCC explains that these requirements are necessary because: “Every person with a financial interest in a business holds the potential to influence the business. Therefore, the Bureau must be aware of who has a financial interest in the business.”

2. Stricter Limits on Who Can Engage in Cannabis-Related Business Transactions

The second significant change is that the regulations impose strict limits on who can engage in cannabis-related business transactions. The regulations state that “[a]ll commercial cannabis activity shall be conducted between licensees,” and that “[l]icensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the Act.” 16 CCR § 5032. The BCC [clarified](#) that these limits were necessary to establish that “a licensee shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with an unlicensed person.”

Although the BCC limits who can engage in commercial cannabis activities, it is unclear whether this regulation affects intellectual property owners who license their intellectual property to cannabis businesses. An earlier version of this regulation [contained](#) language specifically prohibiting “packaging and labeling cannabis goods under a non-licensee’s brand or according to the specifications of a non-licensee,” but the final regulation omits this language. In explanation, the BCC stated that the “inclusion of the clarifying example transactions” was causing “confusion.”

We encourage you to bring your questions regarding the effects of these regulations to the members of our Cannabis Industry Group.

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