

# State of California

- Office of Administrative Law
- In re:
- Department of Public Health
- Regulatory Action:
- Title 17, California Code of Regulations
- Adopt sections: 40127, 40132, 40190, 40191, 40192, 40194, 40196
- Amend sections:
- Repeal sections:
- NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION
- Government Code Sections 11346.1 and 11349.6
- OAL Matter Number: 2018-1001-02
- OAL Matter Type: Emergency Readopt (EE)

This emergency rulemaking action by the Department of Public Health readopts seven sections implementing the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Senate Bill 94, Stats. 2017, Ch. 27). This action will: 1) establish the licensing scheme, including temporary licenses, for manufacturers of cannabis products to utilize shared-use facilities; and 2) establish a CEQA annual license application requirement.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/11/2018 and will expire on 4/10/2019.

Date: October 9, 2018

/s/ \_\_\_\_\_

Lindsey S. McNeill

Attorney

For: Debra M. Cornez

Director

Original: Dr. Karen Smith, Director

Copy: Linda M. Cortez

## **Methodology to Indicate Changes to DPH-17-013E - Cannabis Regulations for CEQA Compliance and Shared-Use Facilities**

Changes to the regulations are indicated as follows:

- Deleted text is indicated by single strike-through
- Additions to the regulation text are indicated by single underline (underline)

### Title 17. Public Health

#### Division 1. State Department of Health Services

#### Chapter 13. Manufactured Cannabis Safety

#### Subchapter 2. Manufactured Licenses

#### Article 1. Applications for Licensure

(1) Readopt **§40127**

### **§40127. Temporary Shared-Use Facility Registration; Temporary Licenses: Type S.**

(a) To register a manufacturing premises as a shared-use facility as defined in Section 40190, an applicant shall submit to the Department the following:

(1) Form CDPH-9037 (03/18), which is hereby incorporated by reference;

(2) A copy of the valid license, permit, or other authorization issued by the local jurisdiction that enables the applicant to operate as a shared-use facility. Upon receipt of the registration application, the Department shall contact the applicable local jurisdiction to confirm the validity of the authorization. If the local jurisdiction does not respond within 10 calendar days, the Department shall consider the authorization valid.

(b) To request a temporary Type S license, an applicant shall submit to the Department the following:

(1) Form CDPH-9038 (03/18), which is hereby incorporated by reference;

(2) A copy of the valid license, permit, or other authorization issued by the local jurisdiction that enables the applicant to conduct commercial cannabis activity. Upon receipt of the license application, the Department shall contact the applicable local jurisdiction to confirm

the validity of the authorization. If the local jurisdiction does not respond within 10 calendar days, the Department shall consider the authorization valid;

(3) The license number and address of the shared-use facility at which the applicant will conduct manufacturing operations; and

(4) The days and hours in which the applicant will conduct manufacturing operations.

(c) Temporary licenses and registrations issued pursuant to this section shall be subject to the terms and conditions of subsections (b), (c), (d), (e), and (f) of Section 40126.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Section 26050.1, Business and Professions Code.

\* \* \* \* \*

(2) Readopt §40132

**§40132. Annual License Application Requirements - Compliance with CEQA.**

(a) An applicant for a new license shall provide evidence of exemption from or compliance with Division 13 (commencing with section 21000) of the Public Resources Code, California Environmental Quality Act (CEQA).

(b) The evidence provided pursuant to subsection (a) shall be, one of the following:

(1) If the premises is located in a local jurisdiction that has adopted an ordinance, rule, or regulation pursuant to Business and Professions Code section 26055(h), a copy of the local license, permit or other authorization shall be sufficient to demonstrate compliance.

(2) If the applicant does not provide a copy of the local license, permit, or other authorization pursuant to subsection (b)(1), or if the premises is located in a local jurisdiction that has not adopted an ordinance, rule, or regulation pursuant to Business and Professions Code section 26055(h), a copy of the Notice of Exemption or Notice of Determination and a copy of the CEQA document from the local jurisdiction, or a reference to where it can be found electronically shall be required to demonstrate compliance.

(3) Any other permit or local authorization issued by the local jurisdiction that indicates compliance with CEQA.

(c) If an applicant does not have the evidence specified in subsection (b), or if the local jurisdiction did not prepare a CEQA document, the applicant shall be responsible for the preparation of an environmental document in compliance with CEQA that can be approved or certified by the Department, if applicable.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Section 26055, Business and Professions Code.

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#### **Article 6. Shared-Use Facilities**

(3) Readopt §40190

§40190. Definitions.

For purposes of this Article, the following definitions shall apply:

(a) "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.

(b) "Designated area" means the 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.

(c) "Primary licensee" means the Type 7, Type 6, or Type N licensee that has registered and been approved to operate a shared-use facility.

(d) "Shared-use facility" means a manufacturing premises operated by a Type 7, Type 6, or Type N licensee in which Type S licensees are authorized to conduct manufacturing operations.

(e) "Type S" is a license that allows the licensee to conduct manufacturing operations at a shared-use facility.

(f) "Use agreement" means a written agreement between a primary licensee and a Type S applicant or licensee that specifies the designated area of the Type S licensee, the days and hours in which the Type S licensee is assigned to use the common-use area, any allocation of responsibility for compliance pursuant to Section 40196, and an acknowledgement that the Type S licensee has sole and exclusive use of the common-use area during the Type S licensee's assigned time period.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Sections 26001, 26050, 26051.5 and 26130, Business and Professions Code.

(4) Readopt §40191

#### **§40191. Type S License.**

(a) Applications for a Type S license shall:

(1) Be submitted in accordance with Section 40128, except that the nonrefundable application processing fee shall be \$500 for each new application submitted;

(2) Include the license number and address of the registered shared-use facility at which the applicant will conduct manufacturing operations;

(3) Include a copy of the use agreement signed by both the applicant and the primary licensee; and

(4) On the premises diagram submitted pursuant to Section 40131(i), indicate the designated area to be used by the Type S applicant and detail where the applicant will store its cannabis, cannabis concentrates, and cannabis products.

(b) A Type S license shall only be available to applicants within Tier I or Tier II fee categories, as defined in Section 40150.

(c) A Type S licensee may conduct the following operational activities:

(1) Infusions, as defined in Section 40100(dd);

(2) Packaging and labeling of cannabis products, and

(3) Extractions with butter or food-grade oils, provided that the resulting extract or concentrate shall be used solely in the manufacture of the Type S licensee's infused product, and shall not be sold to any other licensee.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Sections 26050, 26051.5, 26130 and 26180, Business and Professions Code.

(5) Readopt §40192

#### **§40192. Registration to Operate a Shared-Use Facility.**

(a) No licensee shall operate as a shared-use facility without prior approval by the Department.

(b) To register as a shared-use facility, a Type 7, Type 6, or Type N licensee shall submit the following to the Department through the online licensing system available on the Department's website:

(1) A copy of the valid license, permit, or other authorization issued by the local jurisdiction that enables the licensee to operate as a shared-use facility. Upon receipt of the registration, the Department shall contact the applicable local jurisdiction to confirm the validity of the authorization. If the local jurisdiction does not respond within 10 calendar days, the Department shall consider the authorization valid.

(2) A registration form prescribed by the Department, which includes the following information:

(A) The proposed occupancy schedule that specifies the days and hours the common-use area will be available for use by Type S licensees and when the common-use area will be used by the primary licensee. The occupancy schedule shall allow for adequate maintenance and sanitizing between uses by individual licensees.

(B) A diagram indicating:

(i) Each designated area for Type S licensee(s).

(ii) The common-use area, including identification of any shared equipment.

(c) The Department shall notify the Type 7, Type 6, or Type N licensee upon approval of the registration to operate as a shared-use facility. Notification shall be made through the Department's online licensing system available on the Department's website.

(d) At least one business day prior to a Type S licensee commencing manufacturing operations at a registered shared-use facility, the primary licensee shall provide written notification to the Department. The notification to the Department shall include the Type S licensee's business name, contact person, contact phone number, and license number. The primary licensee shall also provide an updated occupancy schedule that includes the Type S licensee and an updated diagram that specifies the Type S licensee's designated area. Notification shall be provided by email or through the Department's online licensing system available on the Department's website.

(e) A primary licensee that wishes to discontinue operation as a shared-use facility may cancel its registration by providing written notice to the Department and each Type S licensee authorized to use the shared-use facility at least 30 days prior to the effective date of the cancellation.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Sections 26051.5, 26055 and 26130, Business and Professions Code.

(6) Readopt §40194

**§40194. Shared-Use Facility Conditions for Operation.**

(a) A primary licensee shall operate the shared-use facility in accordance with the conditions of operation specified in this section.

(b) Each Type S licensee shall be assigned a "designated area" that, at minimum:

(1) Is for exclusive use by the Type S licensee;

(2) Provides an area for storage that is secure, fixed in place, locked with a commercial-grade lock, and accessible only to the Type S licensee for storage of that Type S licensee's cannabis, cannabis concentrates, and cannabis products.

(c) Any part of the premises used for manufacturing activities that is a common-use area shall be occupied by only one licensee at a time by restricting the time period that each licensee may use the common-use area. During the assigned time period, one licensee shall have sole and exclusive occupancy of the common-use area.

(d) The use of the shared-use facility shall be restricted to the primary licensee and the Type S licensees authorized by the Department to use the shared-use facility.

(e) Any cannabis product or other materials remaining after a Type S licensee ceases operation and discontinues use of its designated area shall be considered cannabis waste and disposed of by the primary licensee consistent with the requirements of the Act and regulations.

(f) The shared-use facility shall meet all applicable requirements of the Act and regulations.

(g) The occupancy schedule shall be prominently posted near the entrance to the shared-use facility.

(h) The primary licensee may conduct manufacturing activities as permitted under its Type 7, Type 6, or Type N license and may use the common-use area during its scheduled time period.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Sections 26011.5 and 26130, Business and Professions Code.

(7) Readopt §40196

#### **§40196. Shared-Use Facility Compliance Requirements.**

(a) As part of the use agreement, the primary licensee and Type S licensee(s) may allocate responsibility for providing and maintaining commonly used equipment and services, including, but not limited to security systems, fire monitoring and protection services, and waste disposal service. However, such agreement is not binding on the Department and the Department may take enforcement action against either the primary licensee or Type S licensee(s), regardless of the allocation of responsibility in the use agreement.

(b) A primary licensee or a Type S licensee is liable for any violation found at the shared-use facility during that licensee's scheduled occupancy or within that licensee's designated area. However, a violation of any provision of the Actor regulations may be deemed a violation for which each Type S licensee and the primary licensee are responsible. In the event of a recall

or embargo of a cannabis product produced at a shared-use facility, the Department, in its sole discretion, may include any or all cannabis products produced at the shared-use facility.

(c) The occupancy schedule and designated area for a Type S licensee shall not be altered without prior notification to the Department. Prior to making any changes to the occupancy schedule or the designated area, written notification shall be submitted to the Department that includes the intended changes. Notification shall be submitted by email or through the Department's online licensing system available on the Department's website.

Authority: Sections 26012, 26013 and 26130, Business and Professions

Code. Reference: Sections 26011 5, 26055 and 26130, Business and Professions Code.

**Application Instructions:**

Complete one form for each premises in which you will be conducting commercial cannabis manufacturing. Please type or write legibly.

Submit the completed application and attachments via mail or email to:

[MCLS@cdph.ca.gov](mailto:MCLS@cdph.ca.gov)

California Department of Public Health

Manufactured Cannabis Safety Branch

PO Box 997377, MS-7606

Sacramento, CA 95899-7377

If you have any questions, please visit our website, [www.cdph.ca.gov/mcsb](http://www.cdph.ca.gov/mcsb), or contact us at [MCSB@cdph.ca.gov](mailto:MCSB@cdph.ca.gov).

**Privacy Statement**

*The information requested on this form is required by the California Department of Public Health, Manufactured Cannabis Safety Branch (MCSB). Furnishing the information on this form is mandatory. MCSB collects the personal information on this application pursuant to Business and Professions Code section 26050.1 and the Information Practices Act (Civil Code section 1798 et seq.). The information will be used by MCSB authorized personnel for purposes of identification, to determine your eligibility for licensure, to maintain current licensee information, and for mailing purposes. Failure to provide the information will result in the application being deemed incomplete by MCSB.*

*MCSB sends all official correspondence to the business contact information provided on the application. This mailing address may be the owner's business address, residence, post office box, or mail drop. Business contact information is considered public information and is disclosable pursuant to the California Public Records Act (PRA) (Government Code section 6250 et seq.). License information may be accessible on MCSB's website through the Licensee Lookup Tool or through a PRA request. Please consider this, especially when listing business contact information.*



*MCSB makes every effort to protect the personal information provided by license applicants. However, application information may be disclosed as permitted by the Information Practices Act. (Civil Code section 1798 et seq.) to another governmental agency as required by state or federal law, for law enforcement purposes, in response to a court or administrative order, a subpoena, or a search warrant, and as permitted in response to a California Public Records Act request (Government Code section 6250 et seq.).*

*You may review the records maintained by the Department that contain your personal information unless access is exempt by law. For information or access to your records, you may contact the Manufactured Cannabis Safety Branch, California Department of Public Health, PO Box 997377, MS-7606, Sacramento, CA, 95899-7377, (855) 421-7887, [MCSB@cdph.ca.gov](mailto:MCSB@cdph.ca.gov).*

### **Shared-Use Facility Registration Form -Temporary Licensees**

Note: You must submit this registration with a completed Form CDPH-9041, Temporary License Application: Cannabis Manufacturing, or already hold a Type 7, 6, or N temporary license to register as a shared-use facility.

#### **SECTION A - PRIMARY LICENSEE INFORMATION**

##### **Temporary license Application: Type S**

##### **Application Instructions:**

Complete one form for each premises in which you will be conducting commercial cannabis manufacturing. Please type or write legibly.

Submit the completed application and attachments via mail or email to:

[MCLS@cdph.ca.gov](mailto:MCLS@cdph.ca.gov)

California Department of Public Health

Manufactured Cannabis Safety Branch

PO Box 997377, MS-7606

Sacramento, CA 95899-7377

If you have any questions, please visit our website, [www.cdph.ca.gov/mcsb](http://www.cdph.ca.gov/mcsb), or contact us at [MCSB@cdph.ca.gov](mailto:MCSB@cdph.ca.gov).

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*for licensure, to maintain current licensee Information, and for mailing purposes. Failure to provide the information will result in the application being deemed incomplete by MCSB.*

*MCSB sends all official correspondence to the business contact information provided on the application. This mailing address may be the owner's business address, residence, post office box, or mail drop. Business contact information is considered public information and is disclosable pursuant to the California Public Records Act (PRA) (Government Code section 6250. et seq.). License information may be accessible on MCSB's website through the Licensee Lookup Tool or through, a PRA request. Please consider this, especially when listing business contact information.*

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### **Temporary License Application: Type S**

Note: This form is only for those applicants who wish to conduct commercial cannabis manufacturing in a shared-use facility. All other applicants must use Form CDPH-9041, Temporary License Application: Cannabis Manufacturing.