

August 27, 2018

Lori Ajax, Chief
Bureau of Cannabis Control
P.O. Box 419106
Rancho Cordova, CA 95741

RE: Bureau of Cannabis Control Proposed Permanent Regulations – July 2018

Dear Chief Ajax,

On behalf of the organizations listed below, we appreciate the opportunity to provide input on the California Bureau of Cannabis Control (BCC) proposed permanent regulations released July 13, 2018 (hereinafter the “Proposed Permanent Regulations”). The fourteen organizations listed below represent a diverse set of cannabis and cannabis-ancillary organizations, a strong track record of commitment to the long-term success of the legal cannabis ecosystem, and collectively serve hundreds of thousands of consumers and hundreds of employees. We believe that cannabis delivery is good for the health and happiness of consumers and patients. In turn, it is a vital component to establishing a well-balanced and regulated cannabis marketplace.

California’s Proposed Permanent Regulations must prioritize health and safety first and foremost. Therefore, our cannabis delivery framework must thoughtfully balance public and consumer health and safety with access and effective business practices. Specifically, we endorse a twofold approach: (1) maintaining the proposed Chapter 3, § 5416(d) language to ensure delivery access in all California jurisdictions; and (2) establishing a requirement that all deliveries be ordered and prepared at a licensed premises and reflected on a delivery manifest prior to a delivery employee leaving the premises.

We strongly support Chapter 3, § 5416(d), clarifying that licensed cannabis delivery businesses can travel on public roads and deliver into any jurisdiction within the State of California. With 70% of local jurisdictions banning and/or not licensing retail sale of cannabis, this regulatory clarification is vital to support patient and consumer access and rights and to reduce demand for the illicit market. It is our opinion that local governments do not have the authority to restrict access to legal consumer products. Whereas the Proposed Permanent Regulations allow for delivery in all California jurisdictions, it is even more incumbent on regulators to support delivery guidance that upholds the safety of local communities, drivers, and consumers.

The permanent BCC regulations are essential to support the safety and health of Californians, the growth of diverse businesses and good jobs, and the effectiveness of enforcement to ensure the success of the legal market by reducing demand for the illicit market. As currently written, the Proposed Permanent Regulations permit an irresponsible cannabis delivery structure that would allow an unlimited amount of vehicles across the

State to roam around without a preset delivery destination or order placed, carrying up to \$10,000 worth of cash or cannabis products, and allow cannabis orders to be filled by individual drivers on public streets. We are aware of no other industry that allows for such an unlimited, unchecked, delivery marketplace, especially not a heavily regulated industry such as cannabis. This, by its very nature, is a threat to public safety.

We strongly oppose the current language in Chapter 3 § 5418(c), which allows delivery drivers to leave the licensed premises with only one delivery order placed and fulfill any and all future orders from the road for the following reasons:

- **Increased threat to public and driver safety, and undermines public trust.** Under Chapter 3 § 5418(c), the majority of delivery orders will be processed on public streets and in private vehicles. This will increase the threat to delivery drivers as targets of theft.¹ Under 5418(c), drivers will be tasked with assembling orders on the go. In practice, this proposal allows a driver to open a trunk full of product and, while completely exposed, assemble each order on a public street. This is a stark contrast to the video and security requirements that apply to retail storefronts. Additionally, this allowance is inconsistent with § 5417(b) requiring that a retailer’s delivery employee “...ensure the cannabis goods are not visible to the public.” It will also undermine the public’s faith in regulatory oversight. The safety of children is safeguarded with fulfillment from a storefront or non-storefront retail location. In the fulfillment from a car model, orders could be easily and unknowingly received and processed next to schools, or other sensitive use restrictions that are mandated by the state, or local jurisdictions.
- **Weakens product safety protections.** By requiring less oversight and fewer protections for product packaging and order preparation than if conducted within a secure and staffed licensed premises, there is increased risk of product mishandling/tampering and errors. Licensed retail and non-storefront premises have significant requirements for video surveillance, and security. These requirements are necessary for the safety of both employees and consumers as well as to provide important quality assurance protections for the licensed retailer.
- **Stifles competition and hinders diversity in the retail marketplace.**
 - *Encourages unfair competition.* The Proposed Permanent Regulations compound and incentivize the already unfair advantage given to large entities with more capital resources. Those large entities will be allowed to put an unlimited number of vehicles on the road, with the maximum amount of product, regardless of where the licensed premises is located. Small and medium-sized operators with less access to employees and capital will be at a significant disadvantage in the competition for consumers, inventory and delivery coverage.

¹ U.S Bureau of Labor statistics (2013) cite delivery drivers in the top ten most dangerous jobs, which is why many delivery services and taxicabs have explicit policies to limit the amount of cash drivers carry to reduce the threat of robbery.

- *Undercuts established businesses.* Longstanding, good-faith dispensaries that have actively helped build the legal market in California may quickly be unable to compete, even if they do offer delivery. The Proposed Permanent Regulations significantly overcorrect the BCC’s intention to create a lower-cost retail option by providing a place in the market for non-storefront licensees that can dispatch across the state, with a seemingly limitless delivery coverage zone versus brick and mortar retailers that are subject to geographic limitations and significantly higher fixed costs. The current proposal essentially turns personal vehicles into roaming retail cannabis shops with minimal oversight or enforcement ability, which was not the original intention of the Act.
- **Increases barriers and costs to enforcement and compliance.** § 5418(c) creates additional risk and difficulties in tracking and monitoring. Specifically, following the addition of the one order rule (6/8/18), the Proposed Permanent Regulations (Subsection 5418) resulted in a list of new and tedious requirements (d-h) including inventory ledgers and a time and stop log. Drivers will be required to keep accurate records and enforcement will need to be able to verify, in real-time, all of these multiple moving pieces (when/where/how), all of which is inefficient and time consuming, as opposed to a having a fully-prepared manifest already in hand. The 30-minute grace period policy will be very difficult to enforce. Other allowable stops (other than deliveries) and necessary rest breaks will hinder the ability to properly monitor drivers and could be used both against the licensee by law enforcement and/or create higher risk for potentially illegal activity. All of these pieces place additional onus on the individuals charged with enforcement and additional criminal risk on drivers to prove that they are delivering cannabis pursuant to customer orders. Lastly, as track and trace is currently designed, it would not account for on-the -road fulfillment which will (1) add unnecessary and burdensome layers to record-keeping and (2) reduce the efficacy of the overarching tracking system that was the intent of The Act.

Our undersigned organizations propose that the language below be adopted in Subsection 5418 of the final cannabis control regulations.² This simple but necessary regulation change will increase protections for local communities and drivers, level the retail playing field, support existing good actors, and make enforcement and compliance more cost-effective and administratively efficient. Ensuring all delivery orders are received and prepared within a licensed premises, in conjunction with the current cannabis goods limits and consumer/patient access in all jurisdictions, provides an effective and balanced cannabis delivery framework protecting access to consumers while upholding public safety and trust in the legal cannabis market. Additionally, by requiring the full delivery process – receiving, preparing, and packaging – occur within a licensed and sanctioned business before the delivery drop-off happens, the State can more consistently respect local guidance and needs.

² Minor regulatory clean-up language, modifications and deletions, would be required in § 5418 as a result of our suggested language change.

Additionally, our proposed changes will not compromise patient and consumer access, or demand. Leafly conducted a regional analysis of the current dispensaries listed on Leafly.com and found that at peak traffic hours, 87% of Californian's delivery demand could be covered in an hour or less and 92% of the population's delivery demand could be covered in 90 minutes (*see Figure 1 below*). We believe this is likely a conservative estimate given that we chose a peak traffic time and the Leafly website may not include the most updated list of every retail and non-storefront licensee.

The BCC's *Initial Statement of Reasons* (italicized below) illustrates the need for all delivery orders to be prepared within a licensed premises before departure.

- *Proposed subsection 5418(c) provides that a delivery employee shall not leave the licensed premises without at least one delivery order that has been received and processed by the retailer. This subsection assures that delivery drivers are not aimlessly driving around, waiting for orders. Allowing delivery drivers to do so would not only result in potential environmental impacts associated with greenhouse gasses, but increase potential opportunities for theft or other crimes, as the driver may be a potential target.*

The Proposed Permanent Regulations directly undermine the BCC's own efforts to minimize public view and access of minors in other areas of the regulations thereby increasing the likelihood of drivers as potential theft targets. With only one order required - which could be as little as \$50 out of the \$10,000 limit - to be fully packaged and ready for delivery, the current language allows drivers to drive and/or park aimlessly, and unmonitored, every 29 minutes. That language explicitly encourages unnecessary, negative environmental impacts. It also increases the risk of potential illicit activity that the Act and the BCC wish to curb. Under the Proposed Permanent Regulations, drivers are permitted to package all but one delivery order in their trunk, which is inherently in public view.

- *§ 5421. Delivery Route: If a specific delivery route is not defined, the delivery employee has unfettered freedom of movement. This freedom could potentially increase the opacity of the activity, making diversion and illegal activity more likely to occur. Without a clearly defined delivery plan, enforcement of proper and improper activity is more difficult. This section is necessary to ensure cannabis goods stay within the designed supply chain and prevent diversion and other illegal activity.*

We strongly agree with the BCC's logic. If a delivery route is not defined, enforcement "is more difficult" and "illegal activity is more likely to occur." Requiring drivers to fulfill all delivery orders at a licensed premises will ensure that routes are pre-determined. If drivers have a completed delivery manifest in place before leaving their licensed premises, both their safety and the enforcement of local officials will be better served.

For the reasons outlined above, we respectfully request that the BCC adopt our proposed amendments, as outlined below:

§5418 (b) A delivery employee may only carry cannabis goods in the delivery vehicle and may only perform deliveries for one licensed retailer at a time. A delivery employee must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries ~~or engage in any other activity outside the scope of the licensee's regulated activity while in possession of cannabis or cannabis products.~~

§5418(c) A retailer's delivery employee shall not leave the licensed premises with cannabis goods ~~with out at least one delivery order that has~~ unless those goods have already been pre-ordered ~~received and~~, processed and placed in an opaque package by the licensed retailer.

(1) All orders shall have the customer receipt on the outside of the opaque package and the associated delivery address.

§5418(d) Before leaving the licensed premises, the retailer's delivery driver must have a delivery inventory ledger of all cannabis goods provided to the retailer's delivery driver. For each cannabis good, the delivery inventory ledger shall include the type of good, the brand, the retail value, the track and trace identifier, and the weight, volume or other accurate measure of the cannabis good, ~~delivery address and customer information.~~ After each customer delivery, the delivery inventory ledger must be updated to reflect the current inventory in possession of the retailer's delivery driver.

§5418(f) Prior to ~~arrival at any delivery location~~ leaving the licensed premises, the licensed retailer must have received a delivery request from the customer and provided the delivery request receipt to the retailer's delivery driver electronically or in hard copy. The delivery request receipt provided to the retailer's delivery driver shall contain all of the information required in section 5420 of this division, except for the date and time the delivery was made, and the signature of the customer.

~~**§5418 (h)** If a retailer's delivery driver does not have any delivery requests to be performed for a 30-minute period, the retailer's delivery driver shall not make any additional deliveries and shall return to the licensed premises. Required meal breaks shall not count toward the 30-minute period.~~³

Thank you for considering our response. The organizations represented here appreciate the open communication fostered by the BCC and look forward to continuing to work with state regulators to develop California's legal, regulated cannabis system.

³ We would only recommend removing this language if the 30-minute roaming breaks become unnecessary whereas §5418(c) of our proposed amendments are adopted in full.

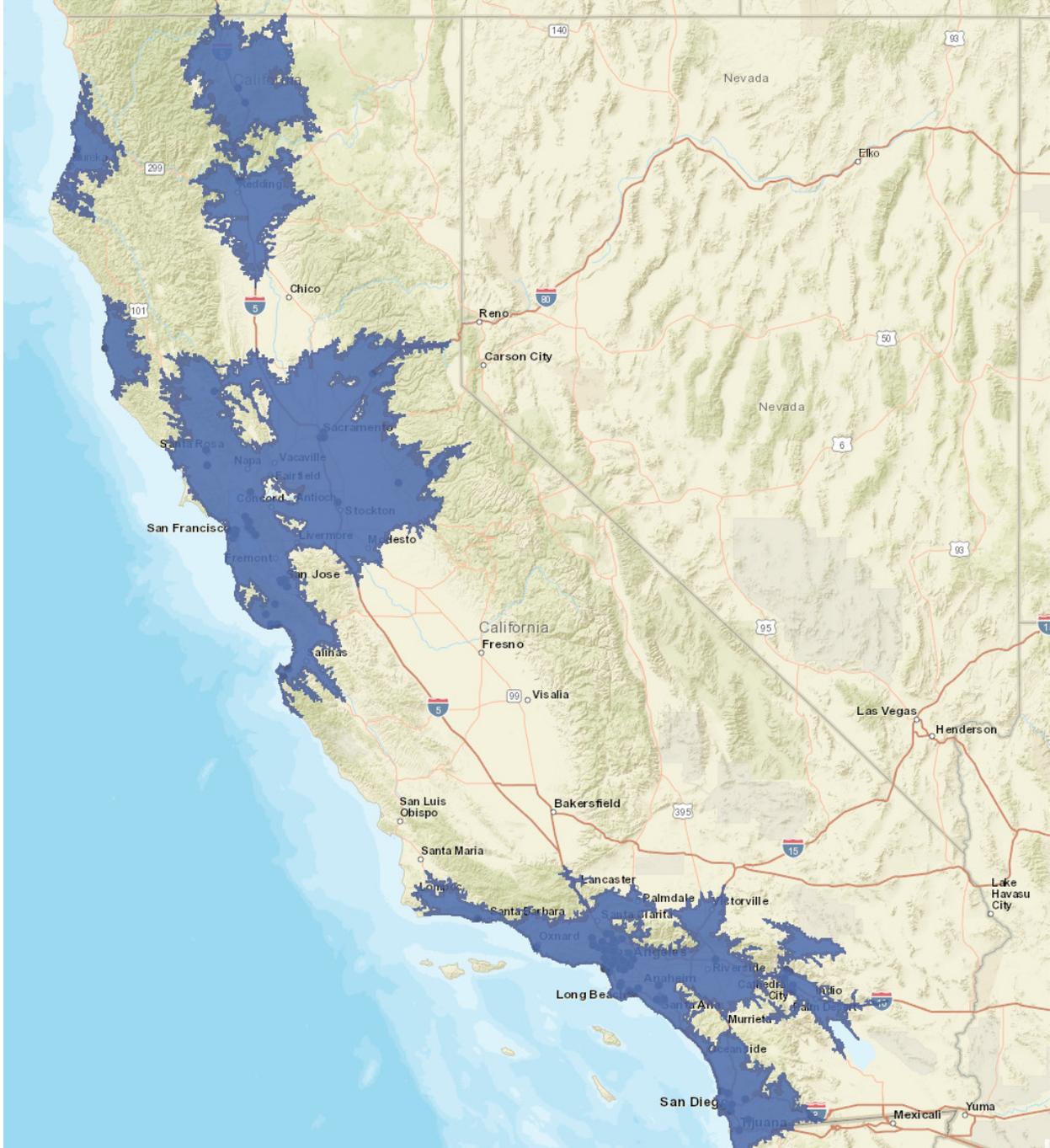
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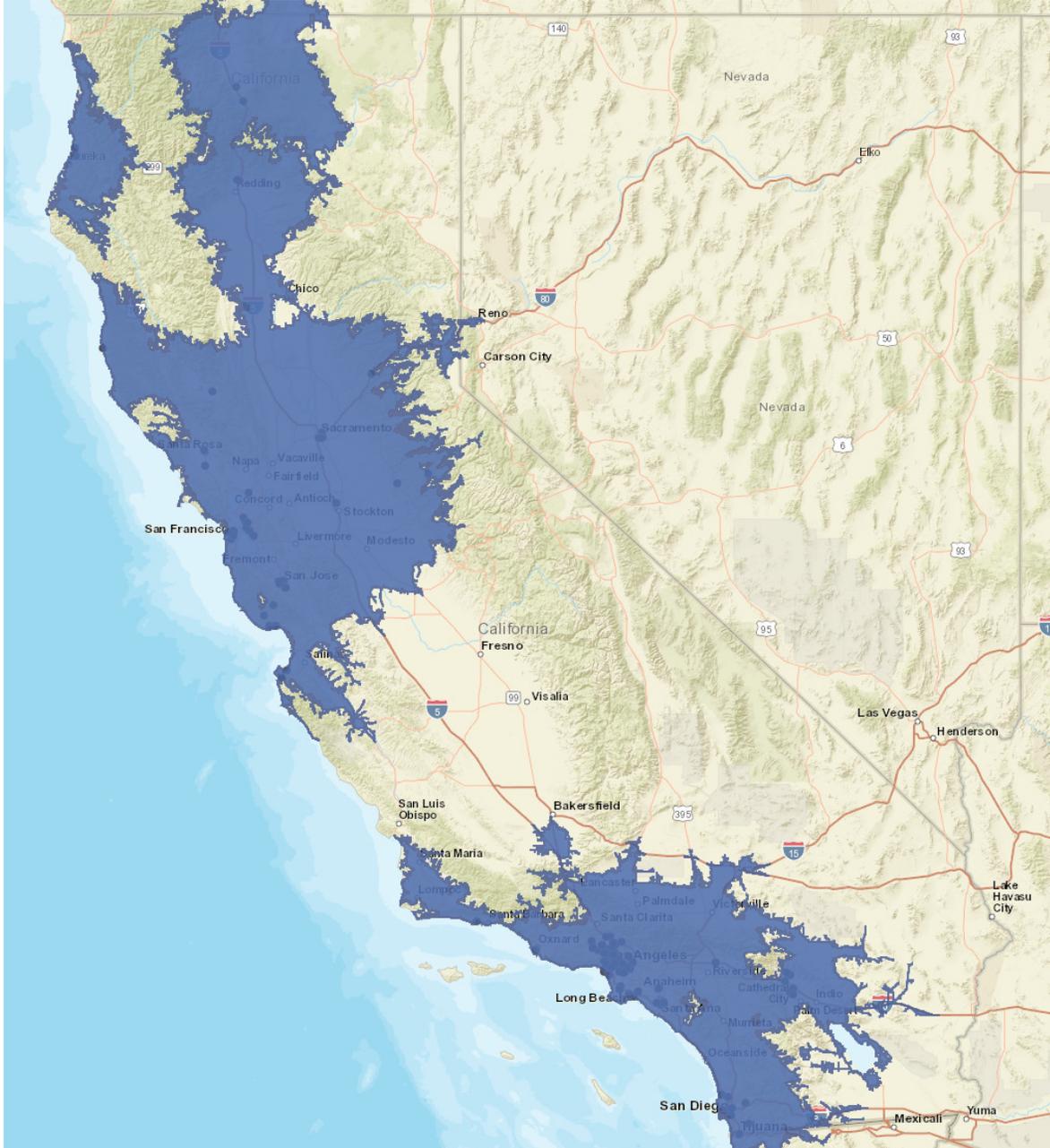
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Figure 1:
60 Minute Drive Time Serves 34,571,225 People
(87% Population Coverage)



90 Minute Drive Time Serves 36,633,100 People (92% Population Coverage)



Methodology: This analysis is based on the 145 California dispensaries listed on Leafly.com as of 8/9/18. Utilizing traffic data on an average Wednesday evening at 5:30 p.m we plotted out 60 and 90 minute drive-time polygons to determine the population delivery coverage (using arcGIS & Esri - world leading mapping and analytics software). This coverage figure is likely an underestimate as we did not have access to the most updated list of California retail licenses.