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To: California Department of Public Health, Manufactured Cannabis Safety Branch
Email: regulations@cdph.ca.gov

From: California Growers Association
Email: policy@cagrowers.org

CGA Comment on DPH Proposed Regulations – August 2018

On behalf of the California Growers Association, representing over 1,000 cannabis businesses in 46 counties, the below comments represent our perspective on the proposed regulations.

Eight months into state permitting, the regulated cannabis market lags far behind expectations. The official numbers, including Q2 state tax revenue at less than 50% of projections, underscore the consensus of our membership: that state and local regulation has been even more difficult to navigate than expected, that high costs and bottlenecks have created substantial barriers to compliance, and that competition with the unregulated market continues to be a major challenge.

Although statute prevents regulators from addressing several key issues, including over-taxation, there's many steps DPH can take to improve things significantly, particularly for small manufacturers who are struggling most to transition into the regulated market. We appreciate the steps DPH has taken to this point to support small manufacturing businesses, including the creation of the Type S license for shared manufacturing spaces, and hope that DPH will continue regulations affecting smaller manufactures as the regulated market develops.

We appreciate your attention to these difficult issues, and we look forward to continuing to work with you to develop rules that promote the success of California's regulated marketplace, protect public health and safety, and reduce barriers to entry for the thousands of small and independent cannabis businesses throughout the state.

Respectfully,

Hezekiah D. Allen
Executive Director



Summary of Comments

1. Support - transition from child-resistant product packaging to child-resistant exit bags, with several amendments to encourage sustainability and preserve flexibility.
 - 1A. Packaging may be in either child-resistant exit bags or child-resistant product packaging.
 - 1B. By 2020 all exit bags should be required to be durable, intended for multiple uses, and made of compostable materials.
 - 1C. Customers may reuse their exit bags.
 - 1D. Retailers should be required to make exit bags available on request. Retailers may charge a fee for exit bags as part of a program to encourage reuse.
2. Clarify rules regarding samples between businesses, as recommended by the Cannabis Advisory Committee.
3. Amend §40150 to scale annual regulatory fees proportionately for businesses with \$100,000-\$500,000 in gross receipts.
4. Remove §40404(a)(3), requiring the universal symbol on packaging for flower and pre-rolls.
5. Amend §40401 to clarify that THC and CBD potency are not required to be labeled prior to testing, and can be added by the distributor after certified testing.
6. Amend §40205 to exempt locally-approved cottage edibles manufacturers from video surveillance requirements.
7. Amend §40205 to reduce video surveillance requirements to 10fps, and reduce storage requirements to 60 days.
8. Clarify that immature cannabis plants and seeds are not required to be sold in child-resistant packaging, consistent with legislative intent.
9. Amend §40300 to exempt topicals from the prohibition on caffeine.
10. Amend §40513(d) to grant regulators discretion to allow normal commercial cannabis activity in the event of an extended METRC outage.
11. Support – §40191(b), increasing the Type S gross receipts threshold.



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12. Support – §40409(b), allowing products with trace amounts of cannabinoids to be labeled as containing <2mg THC or CBD.

Comments on DPH Regulations

1. Support - transition from child-resistant product packaging to child-resistant exit bags, with several amendments to encourage sustainability and preserve flexibility.

We support the BCC and DPH's new standards regarding child-resistant packaging (CRP), which would remove requirements for CRP on products, and instead require retailers to place all products in child-resistant and resealable exit bags. Requiring CRP on each product produces large amounts of waste, and is significantly more expensive than CR exit bags. Further, current universal product-level CRP requirements are clearly inappropriate for many products, such as flower, which are not accessible to children under five.

We also support several amendments to the proposed regulation:

1A. Packaging may be in either child-resistant exit bags or child-resistant product packaging.

Some producers have made large investments in developing and purchasing child-resistant packaging under the current regulations, and should have the flexibility to use this packaging rather than exit bags. Additionally, some producers may prefer to place CRP on the product itself and should be allowed to do so.

1B. By 2020 all exit bags should be required to be durable, intended for multiple uses, and made of compostable materials.

While most current CR exit bags contain mylar and are not environmentally sustainable, it's essential that sustainable exit bags be adopted universally as soon as practically possible. Standardizing design in exit bags - rather than in thousands of different packages for individual products - provides an opportunity for sustainable design at scale. If the market does not provide this solution, the state should require it.

1C. Customers may reuse their exit bags.

Re-use, even more than recycling, is crucial to environmental sustainability. Single-use exit bags will produce enormous amounts of unnecessary waste.



1D. Retailer should be required to make exit bags available on request. Retailers may charge a fee for exit bags as part of a program to encourage reuse.

Customers should have the opportunity to request exit bags if they prefer. Additionally, the ability for retailers to charge a fee for exit bags is important to encourage customers to re-use exit bags.

2. Clarify rules regarding samples between businesses, as recommended by the Cannabis Advisory Committee.

The ability for producers to provide samples to distributors and retailers is essential in any industry, and follows long-standing practice in the cannabis industry. Samples can help small producers gain a foothold in the marketplace, and ensure that patients and customers have access to high-quality products.

Our understanding is that providing samples is technically allowed under current regulation so long as samples are not given away for free, as would be prohibited under Business and Professions Code Section 26153. CDTFA also provides guidance to distributors on B2B handling of cannabis samples on its website at <http://www.cdtfa.ca.gov/industry/cannabis.htm#Distributors>, under Sales of Samples or Promotional Items,” and requires these items to be labeled as “not for resale.”

That said, regulations currently don’t provide clear guidance on how samples can be entered into track and trace or recorded if they are not intended for final sale to the consumer. Regulations clarifying that samples may be provided between businesses for a nominal fee, must be labeled as “not for resale,” and may not be sold to a consumer, would help provide businesses with the clarity and confidence to use samples more consistently.

3. Amend §40150 to scale annual regulatory fees proportionately for businesses with \$100,000-\$500,000 in gross receipts.

§40150 proposes a large increase in annual fees from \$2,000 for a business with gross revenue under \$100,000, to \$7,500 for a business making \$100,000-\$500,000. An annual fee of \$7,500 for a business in the \$100,000 gross range is an enormous expense and essentially constitutes a large regressive tax:

Annual Gross Revenue	Annual Regulatory Fee	Effective Percentage
\$50,000	\$2,000	4%



\$100,001	\$7,500	7.5%
\$500,001	\$15,000	3%
\$1,500,000	\$15,000	1%
\$2,000,001	\$35,000	1.75%

Accordingly, DPH should amend the fee structure to smooth regulatory costs in the \$100,000-\$300,000 gross revenue range, possibly by creating a new fee tier for businesses in this range.

4. Remove §40404(a)(3), requiring the universal symbol on packaging for flower and pre-rolls.

We appreciate the addition of §40404 in general, which provides much-needed clarification on flower and pre-roll packaging, and support most of the proposed packaging requirements in §40404. However, we oppose the requirement in §40404(a)(3) to include the universal symbol on flower and pre-roll packages.

The proposed regulation goes beyond state law, which only requires the universal symbol to be printed on edible cannabis products (Business and Professions Code 26130(c)(7)). DPH’s ISOR states that “the cannabis product symbol provides a method of informing people that the product contains cannabis and helps to protect public health and safety by reducing the potential for unintended consumption.” While this reasoning is applicable to edible products, which can potentially be mistaken for non-infused food products, flower and pre-rolls are not likely to be mistaken for non-cannabis products and cannot be consumed accidentally.

Additional unnecessary packaging requirements will burden cultivators who have already invested in bulk packaging, and will make it more difficult to fit required packaging information alongside brand information on packages that are limited in size.

5. Amend §40401 to clarify that THC and CBD potency are not required to be labeled prior to testing, and can be added by the distributor after certified testing.

Given the current lack of reliability in testing labs and high variance between unofficial and official tests, required potency labeling prior to testing is costly and creates unnecessary waste. DPH’s ISOR claims that “under the Act, only a licensed manufacturer can package, repackage, label, or relabel a cannabis product.” However, while Business and Professions Code



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§26121(a)(1) prohibits packaging of a cannabis product by a distributor, statute does not prevent labeling or re-labeling by a distributor. Further, DPH regulations already allow relabeling of cannabis products if the originally-labeled potency is incorrect. Given that precedent, it's reasonable to go a step further and allow all labeling of potency after a certified test is completed.

6. Amend §40205 to exempt locally-approved cottage edibles manufacturers from video surveillance requirements.

The City of Oakland has adopted an ordinance to encourage small-scale home production of edibles by allowing these businesses in residential zones, so long as they remain under the \$50,000 gross receipts threshold allotted for cottage food businesses under California law (Oakland Municipal Code 5.81.045(A)). State requirements for video surveillance, however, make these licenses inaccessible even with local approval. The small scale of these operations makes video surveillance unnecessary, and leaving security requirements to local government would parallel CDFA's approach in regulating the diversity of small cultivation businesses across the state. The following wording could be adopted to exempt cottage operators from surveillance requirements:

"Manufacturers operating in a residential premises who are locally permitted as cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code shall not be required to comply with video surveillance requirements in §40205."

7. Amend §40205 to reduce video surveillance requirements to 10fps, and reduce storage requirements to 60 days.

These two changes would reduce the storage burden on licensees by approximately 56% without perceptibly impacting security. Additionally, the lessened volume of data would make regulatory requests for review copies easier for all parties.

8. Clarify that immature cannabis plants and seeds are not required to be sold in child-resistant packaging, consistent with legislative intent.

Currently, no regulation clearly specifies that immature cannabis plants and seeds must be sold in child-resistant packaging (CRP). Despite this, we understand that regulators have at times suggested that CRP is required for these items, and some retailers refuse to carry immature plants and seeds based on that impression.

The reasons for excluding these items from CRP requirements are straightforward. Live plants will die in CRP packaging; immature cannabis plants and seeds are not psychoactive or



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dangerous to children; and Prop 64's intent can't be carried out unless consumers have the ability to access the base materials for personal cultivation.

Business and Professions Code 26110(a) exempts immature plants and seeds from quality assurance and testing, and several BCC regulations – notably 5301(c) and 5315(a) – further underscore that live plants are exempt from quality assurance. In this context, an exemption from CRP for these items is consistent with legislative intent, existing regulation, and common sense.

9. Amend §40300 to exempt topicals from the prohibition on caffeine.

§40300 currently prohibits added caffeine in all products, including topicals. Caffeine is a common ingredient in non-cannabis topicals and cosmetics and is often used for its anti-oxidant and anti-inflammatory properties. The reason for caffeine's prohibition in general – to prevent mixing of psychoactive substances – is not applicable to topicals containing cannabis.

10. Amend §40513(d) to grant regulators discretion to allow normal commercial cannabis activity in the event of an extended METRC outage.

§40513(d) currently forbids any commercial transport or transfer of cannabis if a licensee loses access to the track-and-trace system. While we understand the intent of the regulation, we think it should be amended considering the potential for an extended server-side METRC outage, such as the one that impacted Maryland just last month. The current regulation is acceptable in most cases, but regulators should leave themselves discretion to allow normal commercial cannabis activity if necessary to prevent an extended market-wide shutdown, so long as licensees track their activity on paper.

11. Support – §40191(b), increasing the Type S gross receipts threshold.

Allowing more businesses to qualify for the Type S license will enable additional businesses to benefit from shared space, and prevent businesses from being displaced from shared space if they grow beyond \$500,000 in revenue. While some our members feel that a higher threshold would be appropriate, the proposed \$1,000,000 threshold is a meaningful and important increase. As more businesses take advantage of the Type S license and additional data becomes available, we support continued attention to this issue to ensure that the Type S benefits as many businesses as possible and provides opportunities for growth.

12. Support – §40409(b), allowing products with trace amounts of cannabinoids to be labeled as containing <2mg THC or CBD.

We appreciate this technical fix, which was inadvertently causing frequent testing failures in products with trace amounts of cannabinoids.