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Response to Proposed Permanent Regulations Re: Packaging, Testing, Consumer Tracking

Thank you for the opportunity to respond to the agency's proposed permanent regulations. California NORML is a non-profit consumer advocacy organization that has been representing the interests of cannabis consumers, medical and otherwise, since 1972. Earlier, in a separate communication, we indicated our strong support for the Bureau's proposed regulation allowing home deliveries by state-licensed delivery services.

Here, we wish to recommend changes in regulations regarding three different issues of concern to consumers.

CONCERN #1: Resealable Child-Resistant Opaque Exit Packaging Unnecessary

The proposed regulations unnecessarily require that no cannabis goods leave the premises unless placed in a "resealable, child-resistant opaque packages" (Sec. 5411(b)4 and 5413).

Cal NORML constantly hears consumer complaints about the ungainly, non-recyclable packaging in which they must carry their products. Besides being expensive and awkward, these packages are frequently thrown away at the door, contributing to waste and litter. Many consumers—especially the elderly—find them impossible to open in their intended manner and end up cutting them open with scissors.

Child-resistant exit packaging is NOT required under MAUCRSA. Two different kinds of packaging are to be distinguished in the law: First, under BPC 26120, products must be placed in "resealable, tamper-evident, child-resistant" packages with unique IDs *prior to delivery or sale.* However, the statute doesn't require this type of package for consumer exit packaging after sale. Secondly, BPC 26070.1 specifies that purchases

leave the premises in "opaque" packages. There's no requirement that these packages be child-resistant, resistant or tamper-evident. A simple paper bag should suffice.

Consumers should not be burdened with excessive, expensive, non-recyclable packaging at the store. The proposed regulations unreasonably put the burden of child-proof packaging on retailers, rather than manufacturers, who are charged with that responsibility under BPC 26001(ah). We note that the need for child-proof packaging is most urgent in the case of edibles, which are most likely to be attractive to children. In contrast, cannabis flowers are inactive when eaten raw and less toxic or dangerous than many other common household products, including alcohol, tobacco, detergents, etc., which aren't sold in child-resistant packages. We therefore see no need for child-proofing for flowers, aside from the statutory requirement in BPC 26120.

Recommendation: No more than an opaque bag should be required for exit packaging. Child-resistant, resealable packages for edibles and other products should be the responsibility of manufacturers.

Recommended Amendments:

§5411(b)(4) The cannabis goods shall not leave the licensed premises unless placed in an ~~a resealable child-resistant~~ opaque package as required for purchased cannabis goods under Business and Professions Code section 26070.1.

§5413 - Cannabis goods purchased by a customer shall not leave the licensed retailer's premises unless the goods are placed in an ~~a resealable child-resistant~~ opaque exit package.

§5415 (f) - Prior to providing cannabis goods to a delivery customer, a delivery employee shall confirm the identity and age of the delivery customer as required by section 5404 of this division, and place the cannabis goods in ~~an resealable child-resistant~~ opaque exit package

CONCERN #2: Excessive and Burdensome Testing Requirements

The Bureau's proposed testing requirements go well beyond what is necessary or reasonable to protect consumers' health. The current costs of compliance testing range from $500 - $800 per sample—not counting the costs of testing for heavy metals or mycotoxins, which aren't required until next year. This amounts to some $50–$80 per pound for a ten-pound batch. No other consumer agricultural product is subject to such costly, rigorous, mandatory testing requirements. The food sold in grocery stores is not subject to routine testing at all, even though consumers regularly consume orders of magnitude greater quantities of apples, carrots, lettuce, beer, etc. than they do cannabis.

The likely health benefits of the proposed testing requirements seem dubious, given that not a single instance of consumer harm due to chemical contamination of cannabis from pesticides, heavy metals, or residual solvents has ever been documented in the scientific literature. On the other hand, the economic costs of excessive testing run the real danger of aggravating production bottlenecks and driving consumers to less costly, unregulated black-market alternatives. Hardly a day goes by when we don't hear complaints about high costs and product shortages from medical users who used to be well served by the state's medical marijuana collective system, which is now being terminated.

The cost of testing can be realistically reduced to a fraction of the proposed level by taking a more flexible approach as to what kinds of tests are required. We therefore

recommend that the Bureau be authorized to modify its testing requirements in light of observed real-world experience. While we appreciate the value of thorough mandatory screening during this start-up phase of regulations, so as to sort out what kinds of risks are actually substantive and who the bad actors may be, we think that routine testing of every batch is excessively costly in the long run and should no longer be needed in most cases once quality-control standards in the industry have become established.

In particular, we recommend that:

(1) Licensees whose products have consistently tested free of contaminants should be made eligible for "skip lot" testing—that is, occasional spot checks instead of routine testing of every sample.
(2) Routine screening requirements should be dropped in the case of unusual contaminants that are found never to occur in tested samples.
(3) Crops that consist of multiple batches from a single farm should not need to have every batch tested for heavy metals or pesticides. One sample from the crop should suffice to determine whether there exists a serious contamination risk from the farm. If the one sample tests dirty, require other batches to be tested; otherwise, not.

Please see comments and suggestions on specific tests below.

§ 5724 . Cannabinoid Testing

§ 5724 (d) 1: "for all cannabis goods, the concentration of any one cannabinoid shall not exceed the labeled content of the cannabinoid, plus or minus 10%."

Comment: The 10% tolerance is unnecessarily tight. Consumers can't detect such small differences in potency. For standard high-THC cannabis, a tolerance of 15% should suffice. For cannabinoids that occur at low levels of just one or two per cent, a 10% variation is meaningless (≤ 0.2%), below the threshold of reliable measurement.

Suggestion: At levels below 5%, allow a range of +/- 0.5% in *total* potency. That is, 4.5% - 5.5% should be allowed for a product labeled 5%, and 0.5% - 1.5% for a product labeled 1%. For trace amounts of cannabinoids below 0.5%, just say "detectible ≤ 0.5%" without trying to determine exact amounts, which are meaningless at such low levels.

§ 5718. Residual Solvents and Processing Chemicals

The 1,000 microgram/gram threshold for ethanol is unreasonably low. The previous 5,000 microgram/gram standard was more than adequate. There is no evidence of meaningful health risks for exposure at lower levels. The lower standard is apt to be problematic for vape cartridge extracts, which often rely on ethanol to enhance volatility. Vaporizers should be encouraged as a harm-reduction substitute for smoking.

Some of the listed solvents are rarely if ever used. If they are found never to occur in actual tested samples, the Bureau should drop them from the list.

§ 5719. Residual Pesticides

Many of the listed pesticides are rarely if ever used. Those that aren't detected in actual test samples should be dropped.

Crops that consist of multiple batches should not need to submit to multiple pesticide tests if they harvested at one time.

§ 5723. Heavy Metals

The need for heavy metal testing is questionable in the first place. Heavy metals occur naturally in the food supply in far more substantial quantities. In any case, a single test from each grow site should suffice to establish their presence in the crop, since heavy metals originate from the medium in which the crop is grown. Multiple tests of every batch are thus unwarranted and excessive. Farms whose crops have consistently tested free of heavy metals should be exempted.

CONCERN #3 – Customer registration & record of purchases

Adult-use consumers rightly object to having to register and provide personal information such as addresses at dispensaries. This procedure is time-consuming, inconvenient and intrusive of personal privacy. "Why can't I just show an ID to prove age, like at a bar?" they ask. Some consumers tell us they have left dispensaries rather than go through the hassle of a lengthy registration wait.

This procedure is a consequence of **§ 5425** regulations on "Record of Sales." These require retailers to maintain an accurate record of every customer sale, including the customer's first name and a retailer-assigned customer number. The regulations go on to specify that retailers be able to identify each customer at the Bureau's request based on their customer number. These records are to be kept for seven years. In short, customers are forced to place their name on a register and have every purchase recorded, at a time when possession of cannabis remains a federal crime punishable by loss of employment, housing, and other rights – including deportation in the case of foreign immigrants. There is nothing in MAUCRSA that requires tracking of customers or ID numbers; BPC **§** 26067 requires only the tracking of licensees, not customers.

Presumably, the rationale for this regulation is to help enforce the daily purchase limits set forth in **§ 5409,** namely one ounce of cannabis or 8 grams of concentrated cannabis. If so, however, there is no need to keep the records for seven years, which puts consumers at extended risk of scrutiny by federal authorities.

We should add that the daily limit itself is not strictly required by the statutory language of MAUCRSA. All that is required is that no single transaction exceed the personal use possession limit of one ounce at one time. For example, consumers might conceivably buy their ounce, share it or give it away, and come back for another later the same day without exceeding their personal possession limit. Even if customers make multiple daily purchases, there is no financial incentive for them to re-sell it due to the high cost of cannabis from taxed, licensed dealers. Multiple daily purchases will thus not undermine the legal market.

Even if the daily limit is retained, no useful end is served by requiring retailers to enforce it with a customer purchase register and traceable ID #. This requirement is inconvenient and off-putting to users, creates needless service delays, and poses legal risks to consumers, especially immigrants.

RECOMMENDATION:

Drop the requirement that every purchase be documented with a traceable customer ID number.

STRIKE: Subsections 5425 (b) (2), 5425 (d), 5420 (a)(4) and 5420 (d).

Sincerely,

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