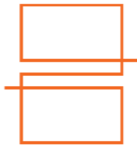


HCGA Comments: Cannabis Advisory Committee, August 20-21, 2020

Date: August 18, 2020

Humboldt County Growers Alliance (HCGA) appreciates the opportunity to comment on the regulatory items under consideration by the Cannabis Advisory Committee. HCGA is a trade association representing nearly 300 licensed cannabis businesses of Humboldt County, including cultivators, manufacturers, distributors, testing laboratories, and retailers.

Humboldt County is home to the greatest number of licensed cannabis farms in North America, with Humboldt farmers holding approximately 30% of state cultivation licenses. These farms are largely small, independent, and owner-operated: the average size of a licensed Humboldt cannabis farm is approximately half an acre, and 51% of Humboldt cannabis farms are licensed for less than 10,000 square feet of canopy area.

Additionally, Humboldt County is home to many small and independent cannabis businesses across the supply chain, including 60 manufacturers, 58 distributors, 20 retailers, and 14 microbusinesses.

The prevalence of many small and independent cannabis business in Humboldt County informs our perspective on the regulatory issues under consideration by the CAC and state regulators, and we look forward to working with policymakers on these important issues.

Trade Samples Between Licensees

HCGA is strongly supportive of streamlining trade samples between licenses. We want to emphasize, however, that trade samples are not solely a distribution issue, as implied by the present agenda. We believe it is essential that any solution to the trade samples issue be inclusive to ensure that small and independent businesses, without access to vertical integration, can take advantage of these tools. Fortunately, we believe this is possible without major changes to the current regulatory structure.

For small businesses who sell craft products and compete on quality and exclusivity rather than volume and market share, trade samples are an essential tool. Over three separate weekly membership calls early in 2020, each with about 40 participants, HCGA members discussed the critical importance of trade samples, and worked to develop recommendations on policy changes that would be necessary for trade samples work effectively for independent producers. These recommended legal changes were further developed in an HCGA working group composed of both independent farmers and distributors.

The conclusion of these discussions was that trade samples can be made workable for independent producers with modest amendments to existing regulation. Specifically, three changes to existing regulation would be necessary:

1) Create a process for designation of trade samples within METRC.
2) Allow trade samples to be returned to cultivators and manufacturers in final packaged form after quality assurance testing.
3) Allow these trade samples to be transported to other licensees via a distribution or distribution transport-only license, and manifested and tracked within METRC.

A trade samples system designed along these lines would make it viable for a Humboldt-based cultivator or manufacturer to drive five to ten hours to the Bay Area or Los Angeles to distribute trade samples to multiple potential partners in distribution and retail.

Currently, regulations prohibit a distributor from transporting cannabis to a cultivator after quality assurance testing is performed (CDFA regulation, Section 8211). Current regulations also prohibit a Type 13 transport-only license from transporting cannabis to a retailer (BCC regulation, Section 5315). While we understand the purpose of these regulations in the context of cannabis that is intended for the commercial market, in the context of trade samples, they are unnecessary and create barriers to a workable system for small producers.

We are aware that distributors and vertically integrated businesses face a separate set of considerations in terms of making trade samples workable. We encourage consideration of these models as well, and would like to emphasize that separate regulatory solutions may be necessary for both independent producers and distributors to have full access to trade samples.

Shareable Areas for Licensee with Multiple Licenses

We strongly support an expansion of sharable areas to allow single farmers with multiple licenses to share collective processing, immature plant, storage, and packaging space.

Prior to 2018, ancillary services such as processing and propagation were seamlessly integrated activities for most farmers. Following the implementation of regulation, these activities have now been functionally separated in a way that makes it difficult for most small farmers to access services like nursery space, processing, storage, and packaging.

Many small farms in Humboldt County have obtained multiple CDFA licenses in order to cultivate using distinct methods (e.g. 5,000 square feet of “outdoor” space, and 5,000 square feet of “mixed-light” space). However, these farmers are unable to utilize common ancillary spaces among these licenses due to Section 8106 of CDFA regulation, which disallows processing, packaging, immature plant, and harvest storage space from being shared among multiple cultivation licenses on the same parcel. This differs from CDFA’s treatment of pesticide storage, compost, and waste areas, which are explicitly allowed to be shared among multiple licenses.

For small farmers with two or three licenses, the requirement to obtain separate accessory spaces ranges from inefficient to impossible. Although CDFA allows the physical subdivision of single ancillary spaces to serve multiple licenses – such as dividing a single drying shed into “side A” and “side B” for two different licenses – our members have not found this arrangement practical. Separating a single building into separate, discrete spaces, and ensuring that the proper license is connected to the activity in each space, is logistically difficult and practically not possible when full use of the space is needed during harvest.

Harvest is often incredibly chaotic and time-pressured, and farmers are frequently under tight timelines with zero margin for error. It is not an exaggeration to say that a farmer’s entire livelihood can be based

on the ability to quickly and efficiently conduct processing activities during harvest, especially during wet conditions that threaten mold and mildew.

We see no reason to prevent a single farmer, on a single parcel, from utilizing the same processing space for two separate licenses. While large farms can obtain a fully separate processing or nursery license to use collectively for all cultivation licenses, small farmers do not have access to the same economies of scale. Revisiting Section 8106 would help to level the playing field and enable equal access to processing for small and large farms.

Allowing Light Deprivation in Outdoor Cultivation

HCGA supports allowing light deprivation in outdoor cultivation. So long as no artificial light is used in the flowering state of cultivation, we believe it is all cultivation can be subsumed under the same "outdoor" license type.

As mentioned previously, many small Humboldt cultivators have obtained multiple licenses to enable use of both light deprivation and full-term outdoor techniques. Requiring separate licenses for these production methods increases administrative burden, cost, and logistical complexity, and decreases needed flexibility. Classifying all cultivation that does not use supplemental lighting as "outdoor" is in line with state law and would streamline the process for small cultivators.

Information and Documents Required from Owners and Financial Interest Holders

As agency consolidation is considered, we support finding ways to streamline ownership and Live Scan submittals so that multiple submittals are not necessary for multiple licenses held under the same ownership. Additionally, we believe that at times, the interpretation of which individuals have "direction, control, or management" of a business has been overly broad, and has included individuals with no functional control over the direction of the business.

Permissible Ingredients for Inhaled Cannabis Products and Classification of Manufactured Cannabis Goods

While we may have comment on these issues, we do not understand specifically what is being proposed based on the agenda and materials provided. We hope that, in future regulatory discussions, greater detail will be made available.

Comment on Items Not on The Agenda: Other Major Regulatory Issues

We would like to emphasize several other major regulatory issues not on the agenda. Due to the short time period available for submitting public comment, this list is not exhaustive. However, the following issues have been long-standing priorities for HCGA's membership.

1. **Allow cultivators to sell and share seeds and clones –** CDFA regulations §8300(c) and §8301 prohibit cultivators from selling seeds and immature plants unless they also hold a Type 4 Nursery license. Many cultivators hold specialty genetics that would be valuable to sell to other cultivators; many others find themselves with extra immature plants that they were unable to get in the ground during planting season, for a variety of reasons. The ability to sell seeds and plants would enable small farmers to defray their costs and make additional side income. More broadly, on a cultural level, sharing plants and seeds is deeply rooted in legacy cannabis cultivating

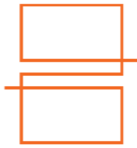
communities. We see no reason why these transfers, appropriately logged in track-and-trace, should be prohibited.

2. **Remove burdensome track-and-trace requirements which add cost, complexity, and waste, but which do not prevent diversion** – one year into the implementation of track-and-trace, our members have faced major frustrations and challenges with the track-and-trace system. Many of these issues are complex and highly technical; however, we'd like to highlight several big-picture issues which affect cannabis farmers specifically.

    - **Eliminate the requirement to tag and weigh each plant –** the requirement to track the weight of each individual plant adds substantial additional labor for little benefit. During harvest, regulations require farmers to individually and separately weigh dozens or hundreds of plants. Tagging each plant separately is also time and labor intensive, and produces large amounts of unnecessary waste from plant tags. Rather than requiring separate weights for each individual plant, requiring the harvest as a whole to be tagged and weighed – or requiring a separate tag for each discrete cultivation area – would be substantially simpler and provide a similar quality of information for regulators.
    - **Eliminate the requirement to measure wet weight -** CDFA regulation requires farmers to record separate weights, for each plant, of both "wet" cannabis (the weight immediately upon harvest) and "dry" cannabis (the weight after processing has been completed). Obtaining accurate wet weights in the midst of a time-pressured and labor-pressured harvest is extremely impractical if not impossible. In effect, many farmers are being asked to choose between risking their year's harvest and fully fulfilling METRC requirements. For all the work required to record wet weight accurately, we do not believe this data would be of any use in preventing diversion. Most of the "wet weight" of cannabis is lost as moisture during drying and processing, and there is no consistent ratio between wet and dry weight.
    - **Allow more than three days to report harvest data to METRC -** once wet weight data is collected at time of harvest, it must be uploaded to METRC within three days. Given the pressures of harvest, this is extremely challenging and is not the top priority for most farmers. Expanding this time window would ease the burden on farmers and would not threaten the integrity of data collection.

3. **Streamline testing requirements for small farms by introducing compositing regulations -** while our members generally support existing state testing standards, certain aspects of the testing system can be streamlined to level the playing field for small farmers. Because the maximum batch size for testing under state regulation is fifty pounds, cultivators who grow multiple strains under fifty pounds - typical for small cultivators - are required to conduct multiple tests at higher cost. "Compositing" rules, already implemented in Oregon, would allow farmers to test multiple strains collectively for contaminants up to the fifty pound maximum batch size limit, and significantly decrease testing costs without affecting quality standards.

4. **Allow electronic COAs -** BCC regulation 5306 requires that "a printed copy of the certificate of analysis for regulatory compliance testing shall accompany the batch and be provided to the licensee receiving the cannabis goods." In our view, electronic COAs are more streamlined than printed COAs, prevent waste, and help to protect against fraud.



HUMBOLDT COUNTY
GROWERS ALLIANCE

Comment on Items Not on The Agenda: Cannabis Advisory Committee Process

While we appreciate the opportunity to provide comment through the CAC, we believe that, without additional structure, the CAC process will not be sufficient to provide thorough input on agency consolidation.

Most importantly, we believe it's essential that there be a transparent and collaborative process for setting the agenda on the items under regulatory consideration. The existing CAC process does not provide a clear opportunity for agenda-setting, and we were not aware of such an opportunity before an agenda became available last week. Rather than responding to a pre-set agenda, we believe the first step in a regulatory comment process should be to create a space for stakeholders to openly communicate their regulatory concerns.

Additionally, longer timeframes and notice are important for our ability to effectively comment on proposed regulatory changes. The present CAC agenda was released just eight days before written comments are due. As a member-driven trade association, it is important that our comments reflect the experiences and opinions of our membership. An eight-day comment period is not sufficient to fully consult with our members.

We understand that the CAC process itself is subject to limitations due to noticing, scheduling, and Bagley-Keene requirements. Considering these limitations, while the CAC is an important aspect of the regulatory feedback process, we believe it should not act a gatekeeper for regulatory conversations. We propose that an ongoing working group process, similar to the Cannabis Appellations Project working group, would be more appropriate for the nuanced and complex topic of regulatory streamlining and consolidation.

Thank you for your consideration.

Sincerely,
Ross Gordon
Policy Director
Humboldt County Growers Alliance