Cannabis Administration and Opportunity Act: Comments from Legacy California Cultivation Regions

August 31, 2021

Dear U.S. Senators and Staff,

We write to you today on behalf of state-legal and licensed cannabis businesses located in legacy cannabis cultivation regions of California.

Collectively, our associations represent regions that are home to nearly 2,000 independent

licensed cannabis cultivators, constituting approximately two-thirds of the licensed cannabis farms in California and the greatest concentration of legal cannabis agriculture in the United States. The regions we represent also include many hundreds of licensed cannabis businesses in other segments of the supply chain including manufacturing, distribution, testing, and retail.

The end of federal prohibition is long overdue, and we commend your leadership in charting a path forward for legalization of cannabis through the U.S. Senate.

We also stand in strong support for your commitment to federal cannabis reform that is grounded in principles of equity and justice. In our view, there can be no path forward for federal cannabis legalization that does not, as its central goal, seek to redress the fundamental injustices perpetrated by the War on Drugs.

We believe strongly that addressing the deep and systemic harm caused by the War on Drugs must be foundational to federal cannabis reform, embedded in the DNA of federal legislation itself, and not instrumentalized as a talking point or slogan. From our experience in California, we have found that a commitment to equity cannot be fully expressed in any single policy or piece of legislation: it must be enacted as an ongoing, democratic, participatory process, in which the challenge of building a newly-legal industry based on principles of justice is continually kept at the forefront of the discussion, and informed by the people and communities who are most impacted.

California's history with cannabis differs in many ways from other American states. In 1996, California voters approved Proposition 215, the Compassionate Use Act, which established an affirmative legal defense for personal medical use but which did not clearly address the question of how cannabis could be produced, distributed, or sold. As a result, for the twenty years leading up to the passage of Proposition 64 in 2016, California cannabis patients and caregivers remained highly vulnerable to law enforcement activity. In our communities, law enforcement operations including the Campaign Against Marijuana Planting and Operation Green Sweep were a fact of life for many decades, deeply impacting thousands of individuals, many of whom now operate within the licensed cannabis market.

Today, thousands of legacy cannabis businesses in California have made the transition into the legal, licensed, and regulated state cannabis market. These businesses are overwhelmingly small, and often led by families and owner-operators with few or no additional employees. In the regions we represent, nearly all cannabis farms are under an acre in size, and most farms are smaller than a quarter-acre. The vast majority of these licensed cultivation sites are operated outdoors and under the full sun: they are farms, operated by farmers, who are struggling with many of the same agricultural issues as small farmers in any other part of America. This perspective leads us to view cannabis agriculture through a deeply environmental lens, with a

focus on production standards and that prioritize sustainability, protection of water resources and wildlife, carbon sequestration, and strictly-enforced prohibitions on the use of toxic pesticides, herbicides, and other chemicals.

Over many years of engagement in state and local cannabis reform efforts, we have found that the small-scale, outdoor, legacy cannabis cultivation that is so central to our communities is often not well-represented in conversations on the future of the "cannabis industry," which is often assumed to be the provenance of a small number of well-capitalized, vertically-integrated companies, many of whom grow cannabis indoors in factory-like and energy-intensive conditions.

Consequently, as a discussion on cannabis reform moves forward in the U.S. Senate, we are pleased to offer the following comments on the proposed Cannabis Administration and Opportunity Act.

In collaboration with other stakeholders, and with the leadership of your offices, we are hopeful that it will be possible to establish a federal cannabis framework that ends cannabis prohibition, addresses the legacy of the War on Drugs, and builds a lasting federal cannabis framework that is firmly based on principles of racial, economic, and environmental justice.

Thank you for your consideration of these important issues, and your leadership in seeking to provide an equitable path forward in response to the failed policies of cannabis prohibition. As we move forward into a new era of cannabis reform and renaissance, we look forward to cooperatively striving for a bright future together.

Summary of CAOA Policy Comments

1. Cannabis cultivation is agriculture. Cannabis farmers should be regulated as farmers, and should not be regulated by the FDA.

2. Federal law should prevent the fraudulent use of city, county, state, or appellation names that misrepresent the origin of cannabis products.

3. The proposed tax structure should be significantly reformed. Small and equity businesses and medical cannabis patients should be exempt from federal cannabis taxation, overall tax burden should be substantially reduced in line with beer and wine taxes, and the details of the proposed tax structure should be amended to incorporate a range of lessons from state-level cannabis tax frameworks.

4. High-THC hemp must not be able to enter the cannabis supply chain for as long as hemp and cannabis agriculture are regulated inequitably at the federal, state, and local levels.

5. Federal policy should incentivize cooperative projects for small farmers by allocating a percentage of Opportunity Trust Fund revenue to agricultural cooperatives and cooperatively-owned processing, distribution, and sales.

6. If federal law includes “tied-house” restrictions, states should be able to adopt exemptions to these restrictions - similar exemptions for wine and beer - that allow small and equity businesses to access retail sales options.

7. Protections against commercial bribery (“slotting fees”) are a critical protection against monopolization. We support the CAOA’s inclusion of these protections.

8. Final product testing for cannabis products is an essential public health protection and must be retained.

9. We are concerned that a 12-person Cannabis Products Advisory Committee would be unable to adequately represent the diversity of stakeholders in the cannabis industry. Instead, we recommend an open, publicly-facilitated stakeholder process as the primary process to inform cannabis regulations.

CAOA Policy Comments

1. Cannabis cultivation is agriculture. Cannabis farmers should be regulated as farmers, and should not be regulated by the FDA.

As written, the CAOA does not include any reference to cannabis as an agricultural product, or to a role for USDA within a federally-legal cannabis marketplace. To the contrary, Section 1105(c)(2) of the CAOA establishes FDA authority over cannabis products. This section explicitly defines "manufacturing" as including cultivation, suggesting that the FDA would have responsibility for regulation of cultivation, including adoption of GMP practices. This is inconsistent with our understanding of other areas of federal regulation, where farms are exempt from FDA regulation.[1]

Cannabis farmers are farmers - not factory operators, manufacturers, or pharmaceutical companies. In the regions we represent, the vast majority of over 2,000 independently-permitted farms operate outdoors and under the sun. In Humboldt County, the average size of a cannabis farm is half an acre, and the median size is a quarter-acre. In Mendocino and Trinity counties, nearly all farms are capped by local ordinances at less than a quarter-acre in size.

From an agricultural perspective, there is essentially no difference between high-THC cannabis cultivation and high-CBD hemp cultivation, the latter of which is already recognized as an agricultural product at the federal level.

To recognize cannabis as an agricultural product at the federal level, we recommend the following:

- Section 1105(c)(2) would define cultivation activities as "manufacturing," and regulate these activities under the FDA. We recommend amending this subsection to instead explicitly exclude agricultural activities, including post-harvest processing activities, from FDA regulation:

  > Recommended language: 1105(c)(2) For purposes of this subsection, the term 'manufacture' ~~includes~~ **does not include** the planting, cultivation, growing, **drying, curing, grading, trimming,** and harvesting of a cannabis product.

- In general, federal regulation of cannabis cultivation should be consistent with regulations for other agricultural crops.

[1] https://www.fda.gov/files/food/published/Questions-and-Answers-Regarding-Food-Facility-Registration-%28Seventh-Edition%29.pdf

- Cannabis farmers should have equitable access to USDA programs, including programs currently provided for hemp farmers[2] and programs that incentivize sustainable agriculture, agriculture cooperatives, and cooperative processing, distribution and sales.[3]
- Proposed federal cannabis laws and regulations should be scrutinized to ensure these rules are compatible with small-scale outdoor cannabis agriculture. For example, video surveillance cameras and/or on-site security personnel are required for cultivation in some states where cannabis cultivation is primarily conducted in large indoor facilities. These requirements are not practically feasible for small-scale outdoor cultivation in rural areas.

2. Federal law should prevent the fraudulent use of city, county, state, or appellation names that misrepresent the origin of cannabis products.

Section 1103 of the CAOA proposes a range of requirements to prevent the misbranding of cannabis, including a requirement to list "the place of business of [the] manufacturer, packer, or distributor" on the label.

We strongly support expanding these protections to include a prohibition on using the name of a state, city, county, or state-approved appellation in the labeling or marketing of a cannabis product unless 100% of the cannabis in the product was produced in that state, city, county, or appellation.

California, and many California cities and counties, carry significant reputations for craft cannabis along with cannabis history and culture. Without adequate protection at the federal level, these regional names - as well as regional names in other states with reputations for cannabis craft and culture - will be subject to misuse by businesses not based in the claimed city, county, or state. California state law already recognizes the importance of regional place names by legally protecting both city and county of origin from misuse. Geographical place-name protections are critical to small, craft brands which may not have the capacity to market an individual brand, but can cooperate to market their products under the umbrella of a geographic location.

In addition, California has established an appellations of origin program that protects regional cannabis production which is essentially tied to geographic factors such as climate, soil, and geology.[4] Like wine appellations, cannabis appellations denote craft cannabis products that are essentially tied to their production in specific regions. By requiring cannabis to be planted outdoors, in the ground, and under the full sun to utilize the appellation name, appellations also

[2] https://www.farmers.gov/your-business/row-crops/hemp
[3] https://www.rd.usda.gov/programs-services/cooperatives
[4] https://www.cdfa.ca.gov/calcannabis/appellations.html

provide an incentive for cannabis cultivators to adopt regenerative and low carbon-intensity production practices.[5]

In addition to protecting state, county, and city names, federal law should protect the names of appellations of origin developed and protected under state laws.

3. The proposed tax structure should be significantly reformed. Small and equity businesses and medical cannabis patients should be exempt from federal cannabis taxation, overall tax burden should be substantially reduced in line with beer and wine taxes, and the details of the proposed tax structure should be amended to incorporate a range of lessons from state-level cannabis tax frameworks.

a. **The proposed 10-25% federal tax, even with a 50% tax credit, would threaten the continued existence of most small cannabis producers. Excessive taxation will boost the illicit market and undermine environmental, public health, and equity goals.**

Cannabis is already heavily taxed at the state and local level. In California, in addition to the state cultivation and excise tax, most local jurisdictions levy separate taxes on each independent step of the supply chain, including cultivation, manufacturing, distribution, testing, and retail. Fitch Ratings has found that the cumulative burden of state and local taxes in California can be as high as 45%.[6]

In California, the illicit market continues to be a major force, estimated at 75% of the total in-state cannabis market.[7] High taxes encourage businesses and consumers alike to remain in the illicit and unregulated market, exacerbating negative effects on the environment and public health that cannabis legalization was designed to solve and complicating a successful transition into the legal market for individuals impacted by cannabis prohibition.

While cannabis taxes are often framed through a public health lens as a tax on excessive consumption, we believe they can more accurately be framed as a tax on businesses that choose to enter the regulated market and consumers who choose to purchase legal cannabis. In California's still-robust illicit market, there is no question that higher cannabis taxes discourage participation in the legal market, and incentivize cannabis production that takes place without the stringent environmental and public health

[5] https://mjbizdaily.com/california-outdoor-marijuana-cultivators-to-designate-products-by-growing-region/
[6] Zezima, K. "High taxes could drive up marijuana prices and bolster the black market in California, analysis says," Washington Post, October 30, 2017. https://www.washingtonpost.com/news/post-nation/wp/2017/10/30/high-taxes-could-drive-up-marijuana-prices-and-bolster-the-black-market-in-california-analysis-says/
[7] Romero, D. "California's cannabis black market has eclipsed its legal one," NBC News, September 20, 2019. https://www.nbcnews.com/news/us-news/california-s-cannabis-black-market-has-eclipsed-its-legal-one-n1053856

protections required under state law. A 10-25% additional federal tax, even with a potential 50% tax credit, is far too high in light of existing state and local taxation.

These costs will disproportionately impact small and independent businesses that do not have capital to operate at a loss, and will incentivize the consolidation of the industry by a small number of highly-capitalized operators.

b. <u>Proposed tax rates on cannabis are substantially higher than comparable rates for beer and wine, particularly for the smallest producers.</u>

The highest tier federal tax rate for wine on large producers under 16% ABV is $1.07 per gallon, or an effective rate of 5.9% on a typical wine sold at $18/gallon at wholesale. The highest tier federal tax rate for beer on large producers is $18/barrel, or 6% on a typical $300 wholesale barrel.[8]

For smaller producers, the difference is more pronounced. The first 30,000 gallons of wine made by a small producer are taxed at $.07/gallon, an effective federal tax of 0.3%. The first 60,000 barrels of beer produced are taxed at $3.50/barrel, for an effective federal tax rate of 1.2%. Some California jurisdictions, such as Trinity County, have adopted a similar progressive tax structure.

Overall, the CAOA proposes to tax both large and small cannabis producers at rates many times greater than comparable rates for wine and beer.

	Cannabis	**Beer**	**Wine (<16% ABV)**
Largest producer federal tax rate	25%	6%	5.9%
Smallest producer federal tax rate	12.5%	1.2%	0.3%

When state and local taxation are considered, the differences grow even further. In California, at the state level, cannabis is taxed at 15% at retail, plus $154.40 per pound on production. The production tax is historically equivalent to approximately 3% of retail price. Local jurisdictions also levy retail taxes, typically between 4% (Sacramento) and 10% (Los Angeles and Oakland). Assuming a 5% local retail tax, the total state and local

[8] https://www.ttb.gov/tax-audit/tax-and-fee-rates

retail tax burden at retail is 23%. Assuming 80% mark-up, this is equivalent to a 41% tax at wholesale.[9]

In Oregon, the state retail tax is 17%, and local governments can levy additional taxes up to 3%, for a total retail tax rate of 20%. Assuming 80% mark-up, this is equivalent to a 36% tax at wholesale.

For alcohol, the state wine tax in California is $0.20/gallon. The Oregon state wine tax is $0.65/gallon. Unlike cannabis, our understanding is that local city and county governments typically do not levy additional taxes on alcohol production or sales.

When these state and local taxes are taken into account, the cumulative tax burden on cannabis under the proposed federal tax would be, in some cases, dozens of times greater than for alcohol.

	Cannabis - CA	**Cannabis - OR**	**Wine (<16% ABV) - CA**	**Wine (<16% ABV) - OR**
Cumulative wholesale tax rate - largest producers	41% state/local 25% federal 66% total	36% state/local 25% federal 61% total	1.2% state/local 5.9% federal 7.1% total	3.7% state/local 5.9% federal 9.6% total
Cumulative wholesale tax rate - smallest producers	41% state/local 12.5% federal 53.5% total	36% state/local 12.5% federal 48.5% total	1.2% state/local 0.3% federal 1.5% total	3.7% state/local 0.3% federal 4% total

c. The complexity of the proposed tax creates significant compliance hurdles for small businesses. Moving the tax from production to retail could substantially simplify taxes from both an administrative and small business perspective.

35 pages of new tax law will create major additional compliance burdens for small and owner-operated farms, which are already tasked with complying with hundreds of pages of state cannabis regulation.

Based on our initial reading, much of the complexity of the proposed tax law appears to stem from the decision to levy this tax on production rather than retail. Production taxes – particularly in an industry where cannabis can pass through five or more independent

[9] This is a very conservative estimate, since many California cities and counties also levy additional local taxes on each independent step of the supply chain including cultivation, manufacturing, and distribution. For example, Sacramento's tax is not just 4% at retail, but 4% on each step of the supply chain. For simplicity, these local supply chain taxes are excluded - but the real tax burden in California is significantly greater than the 41% estimated here.

supply chain businesses before reaching retail – necessitates complex rulemaking on topics including bonding, recordkeeping, tax liability, and arm's length transactions.

By contrast, a simple percentage-based *ad valorem* tax at retail would eliminate the need for most of these rules.

From an administrative perspective, our experience is that production-based taxes create significant and avoidable problems. We encourage review of the California LAO's December 2019 analysis of the California cannabis tax, which speaks to the difficulty of administering the existing weight-based cultivation tax and recommends its repeal and replacement with a potency tax or ad-valorem tax, assessed and collected at a single point in the supply chain.[10]

A retail-based tax would significantly decrease the number of total taxpayers: for example, under the current version of the CAOA, over 5,000 California cultivators, manufacturers, and distributors would be required to be bonded and comply with voluminous tax laws. If this tax were levied on retailers, the number of taxpayers would drop to approximately 1,300, easing administrability of the tax and decreasing burden on most small businesses.

More broadly, the fragmented nature of the California cannabis supply chain significantly complicates the premise of taxing at a production level. It is common for cannabis to pass through many independent businesses before reaching retail: for example, cannabis flower might pass through a nursery (who cultivates immature plants), a cultivator (who grows them to maturity), a processor (who trims the plant), and then multiple distributors before being placed in final packaged form. An edible product might pass through a nursery, then a cultivator, then an extractor (who extracts raw cannabis oil), then an edible-maker (who infuses the oil into a food product), and then several additional distributors before reaching retail.

A tax on production places a heavy administrative burden on each step of this supply chain – which could include many small, independent, and equity businesses – while privileging large, vertically-integrated businesses that can integrate each of these functions and streamline tax compliance under full-time compliance employees.

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[10] California Legislative Analyst's Office. "How High?
Adjusting California's Cannabis Taxes," December 17, 2019. https://lao.ca.gov/Publications/Report/4125. From the report: "We analyze four types of taxes: basic ad valorem (set as a percentage of price, such as the current retail excise tax), weight-based (such as the current cultivation tax), potency-based (for example, based on tetrahydrocannabinol [THC]), and tiered ad valorem (set as a percentage of price with different rates based on potency and/or product type). **Our analysis focuses primarily on three main criteria: (1) effectiveness at reducing harmful use, (2) revenue stability, and (3) ease of administration and compliance**. No individual type of tax performs best on all criteria. For example, tiered ad valorem and potency-based likely are best for reducing harmful use, but basic ad valorem is easiest to administer. Given these trade-offs, the Legislature's choice depends heavily on the relative importance it places on each criterion. That said, **the weight-based tax is generally weakest, performing similarly to or worse than the potency-based tax on the three main criteria**."

d. Conceptually, we support the progressive tax proposal in the CAOA. However, amending the CAOA to include a full tax waiver for small and equity businesses would do far more to promote equitable outcomes.

The CAOA proposes that 100% of federal cannabis taxes be reinvested back into communities impacted by the War on Drugs. Of this amount, 40% would be directed specifically to individuals impacted by the War on Drugs who seek to enter the licensed cannabis market.

Rather than taxing equity businesses at a high rate - perhaps ten times more than the rate for small beer and wine producers - and then redistributing revenue back to these businesses, an alternative approach would be to waive taxes on these businesses altogether, while continuing to direct revenue raised from larger businesses back into the Opportunity Trust Fund. Such a policy would help to materially enact the findings of the CAOA by lowering barriers to entry and establishing substantive incentives for an equitable cannabis market.

If the $20,000,000 threshold is maintained for a 50% tax credit, we support an additional, entirely tax-exempt tier for small and equity operators with annual revenue below $5 million.

e. Tax liability on the packager may not be practically workable.

The CAOA requires all producers – including any business involved in cultivation, processing, manufacturing, or packaging – to be bonded, and each of these businesses could theoretically be made liable for the cannabis tax. In practice, however, we read the CAOA as requiring the tax to be remitted by the last "producer": meaning, effectively, the business that places the product in final packaging. This tax appears to be levied on the wholesale price of the final transaction to the packager.

In California, packaging is often conducted by a middleman, typically a distributor. Packaging is frequently performed as a service: the packager often does not take title to the product, and so there is no wholesale transaction to tax on a percentage basis.

These dynamics also complicate the proposed progressive tax structure. If cannabis is propagated by a nursery, cultivated by a farmer, trimmed by a processing business, extracted by a manufacturer, and packaged by a distributor, it is unclear which of these five independent businesses are eligible for the 50% tax credit.

f. Weight-based taxes on cannabis flower are inequitable, difficult to administer, and incentivize high-carbon indoor cultivation practices. The alcohol and tobacco tax models are not easily applicable to variable, non-homogenous grades of plant material produced by an independent supply chain.

After five years, the CAOA would convert the 25% tax on the price of flower to an equivalent weight-based tax. Presumably, this means that there would be a set rate (for example, $10/ounce) applicable to all cannabis flower based on its weight.

In practice, different grades of cannabis flower can command substantially different prices by weight. Flower can be of a certain grade either due to the craft of the grower – where certain growers will produce higher-quality flower – or because, as an agricultural product, certain parts of the plant grown by the same farmer will inherently command different prices. For example, the large buds on the top of the plant draw significantly higher prices than the smaller "B-buds" lower on the plant.

This variability creates a double-bind for tax administrators. If regulators tax all cannabis flower at the same rate by weight, taxes on B-Buds and other less-valued flower will be far too high as a proportion of price, making these products potentially unsellable without incurring a loss. While this problem can be avoided by setting a different rate for different grades of flower, this requires turning the tax administrator into an agricultural grading service, which in our experience (in the context of California's weight-based cultivation tax) is both outside the competency of tax administrators and too complex to be effectively accomplished.

A weight-based carbon tax also strongly incentivizes the most carbon-intensive indoor cultivation practices. As of August 20, 2021, Cannabis Benchmarks estimated the average wholesale price of cannabis at $2,003 for indoor cultivation, $1,196 for greenhouse cultivation, and $732 for outdoor cultivation,[11] meaning that a weight-based tax on outdoor cultivation would amount to more than double the effective rate on indoor cultivation. Studies have found that widespread adoption of such indoor facilities can consume a tremendous quantity of energy: in 2012, prior to the implementation of state cannabis regulations, indoor cannabis cultivation was estimated to account for 3% of total California electricity demand.[12]

Unlike tobacco, cannabis is not a commodity: there are vast differences in quality and type of flower. And unlike alcohol products, cannabis is a plant material: it is not manufactured into a homogenous batch, but rather can exist in significantly variable forms even within a certain batch. These qualities make cannabis flower a poor candidate for the weight or volume-based approach utilized for alcohol and tobacco.

g. Donated medicinal cannabis should be exempt from taxation.

California farmers, retailers, and patient advocates have a long history of providing compassionate use cannabis to low-income and chronically-ill individuals, often free of charge or at drastically reduced cost. In 2019, the California legislature passed SB 34,

[11] https://www.cannabisbenchmarks.com/report-category/united-states/

[12] Mills, E., Zeramby, S., Corva, D., & Meisel, J. (2020). Energy Use by the Indoor Cannabis Industry: Inconvenient Truths for Producers, Consumers, and Policymakers.

legislation that exempts donated compassionate use cannabis from taxation.[13] Prior to the passage of SB 34, dispensaries were required to pay taxes even on cannabis given away for free to patients with serious medical needs. We support a similar provision in the federal tax framework to contain an exemption for donated medicinal cannabis.

h. Taxes should not be due prior to cannabis entering the commercial market.

Small producers who are not highly capitalized are not in a position to pay taxes prior to sale, or to pay a higher tax rate up front with the promise of receiving a small producer tax credit at the end of the year.

Along these lines, we are seeking additional clarity on the proposed requirement to remit cannabis taxes every two weeks. How does this apply to, for example, a farm which stores cannabis on-site for several months prior to sale to a distributor? Is paperwork required to be filed every two weeks regardless of whether any tax is due in this period?

Additionally, cannabis which does not enter the commercial market for other reasons - such as failure of final product testing - should not be taxed.

4. High-THC hemp must not be able to enter the cannabis supply chain for as long as hemp and cannabis agriculture are regulated inequitably at the federal, state, and local levels.

Section 303 of the CAOA allows hemp which is "inadvertently produced with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis" to be transferred to a permitted cannabis operator.

We strongly oppose this policy, unless and until hemp and cannabis agriculture are treated with parity at both a state and federal level. Due to the unique scrutiny applied to high-THC cannabis cultivation compared with other forms of agriculture, cannabis agriculture is subject to vastly higher standards than hemp agriculture in many states, including California. In California, cannabis farmers are required to pay cultivation taxes, enact labor peace agreements, follow special water use and environmental regulations, abide by track-and-trace regulation, pay special permitting fees. These standards, and many others, do not apply to California hemp farmers.

Until cannabis agriculture is fully normalized to parity with other agriculture, allowing the remediation of high-THC hemp into the legal cannabis market would create a major loophole enabling hemp cultivators to evade state and federal cultivation rules, including tax rules, by "inadvertently" cultivating high-THC products under a hemp permit.

5. Federal policy should incentivize cooperative projects for small farmers by allocating a percentage of Opportunity Trust Fund revenue to agricultural cooperatives and cooperatively-owned processing, distribution and sales.

[13] https://www.leafly.com/news/politics/free-marijuana-compassion-law-enacted-california

Like farmers in other segments of agriculture, small cannabis farmers rely on post-harvest processing, distribution and sales in order to bring products to market. This is especially true for craft products that require a high level of attention and care. Agricultural cooperatives, and cooperatively-owned processing, distribution and sales, are a critical tool to enable farmers to have access to these resources.

Existing USDA programs, such as the Value-Added Producer Grant and Rural Cooperative Development Grant, recognize the importance of cooperative structures for small farmers. We view these projects as critical to building a long-term equitable cannabis industry and recommend that 5% of the Opportunity Trust Fund be allocated towards cooperative projects.

6. If federal law includes "tied-house" restrictions, states should be able to adopt exemptions to these restrictions - similar exemptions for wine and beer - that allow small and equity businesses to access retail sales options.

In the wine and beer industries, many states have adopted exceptions to "tied-house" restrictions that allow small businesses to engage in retail sales. If federal cannabis law includes restrictions on vertical integration, it should enable states to adopt programs that allow small and equity businesses to engage in a limited amount of retail sales, including on-farm sales, farmer's market sales, and direct-to-consumer shipping models similar to those common in the wine industry.

7. Protections against commercial bribery ("slotting fees") are a critical protection against monopolization. We support the CAOA's inclusion of these protections.

We strongly support the protections against commercial bribery or "slotting fee" practices in Section 304(a)(3) of the CAOA. Slotting fees enable large producers and distributors to purchase retail shelf space, limiting competition and locking small producers out of the market. Absent a prohibition on slotting fees, small brands will face major challenges in bringing their product to market. These practices are already widespread in California.[14]

8. Final product testing for cannabis products is an essential public health protection and must be retained.

Section 1106 of the CAOA requires the FDA to promulgate regulations for final testing of cannabis products. We strongly support final-form product testing for cannabis in order to ensure that harmful pesticides, herbicides, heavy metals, and other contaminants are not present in cannabis products. In addition to consumer safety benefits, final product testing also provides a

[14] https://mjbizdaily.com/california-marijuana-retailers-charge-product-suppliers-for-shelf-space-creating-friction-in-the-industry/

critical safeguard and point of accountability that prevents harmful chemicals with negative environmental impacts from use in the cultivation of cannabis.

Prior to implementation of state cannabis regulations in 2018, California cannabis products were not tested or otherwise regulated for safety. Despite a voluntary testing regime, it was common for adulterated cannabis products to be sold at retail, including to patients with significant health conditions. Since the establishment of cannabis testing standards, the situation has improved drastically, with rates of cannabis contamination falling from 24% to 3% within months of the implementation of state-mandated cannabis testing.[15]

9. We are concerned that a 12-person Cannabis Products Advisory Committee would be unable to adequately represent the diversity of stakeholders in the cannabis industry. Instead, we recommend an open, publicly-facilitated stakeholder process as the primary process to inform cannabis regulations.

Based on our experience with advisory committee structures in other contexts, we recommend against the creation of a federal cannabis products advisory committee, and instead recommend that regulatory input be sought through normal public process, facilitated by federal regulators, which provides thorough opportunity for stakeholder engagement.

We are concerned about the creation of an advisory committee for the following reasons:

1. The nationwide cannabis industry is too diverse to be represented by a finite and fixed number of representatives. The supply chain for cannabis is highly segmented and includes nurseries, cultivators, processors, manufacturers, distributors, testing laboratories, storefront dispensaries, and delivery services. Businesses within these segments are highly diverse in terms of size, production method, business model, geography, and other factors.
2. Stakeholders outside the cannabis industry are also numerous, diverse, and difficult to adequately represent. Labor, environmental, public health, and criminal justice organizations are among those groups that have a legitimate interest in cannabis regulation. Representing these additional stakeholders on a 12-person committee will add to the difficulties in adequately representing the cannabis industry.
3. Advisory committees blur public and private interests. Typically, private individuals who are not public employees or publicly-compensated are asked to make recommendations with substantial public impacts. A traditional regulatory stakeholder process keeps these lines clearly delineated.

[15] Adlin, Ben. "Can Washington Fix Its Broken Cannabis Lab Testing System?" Leafly, June 17, 2019. https://www.leafly.com/news/industry/can-washington-fix-its-broken-cannabis-lab-testing-system

4. Many cannabis-related issues are politically, technically, and legally complex in ways that are difficult to adjudicate at advisory committee meetings, particularly when decisions are made on the dais. Public regulatory agencies generally seek stakeholder input in these topics over many months before arriving at final decisions. In our experience, these processes are far more equipped to fairly and thoughtfully evaluate different perspectives and incorporate relevant technical or legal expertise.

If an advisory committee is convened, we recommend the following:

1. Advisory committee members should be limited to individuals who are participating on behalf of representative, stakeholder-driven associations, and should not include private individuals, companies, or consultants.
2. The advisory committee should be tasked with completing written reports, informed by substantial stakeholder input, rather than making on-the-dais decisions at agendized meetings.
3. The advisory committee should not be responsible for determining who may be exempted from permitting restrictions included in the CAOA, as proposed in the discussion draft. This should be a public regulatory function.
4. The advisory committee should include representatives from each segment of the supply chain, including nurseries, cultivators, manufacturers, distributors, testing laboratories, and retailers; should include representatives of equity businesses, small outdoor farmers, patient advocates, and veterans organizations; should adequately represent geographic diversity within the industry; and should include representation by organizations outside the cannabis industry including labor, environmental, public health, state/local government, civil rights, and other stakeholders.

Final Comments

As discussions on the CAOA move forward, we look forward to learning more from regions outside of California, and from federal policymakers, on their perspectives on federal cannabis legalization. With fifty different state frameworks that have been siloed from each other to this point, we recognize the incredible complexity in building a single federal framework that accounts for the unique circumstances in each state. We are excited to learn from the experiences and perspectives of other stakeholders, and to work together to build a just, equitable, and environmentally responsible cannabis industry.

Thank you for your consideration, and for your leadership in bringing an end to federal cannabis prohibition.

Sincerely,

Ross Gordon
Policy Director
Humboldt County Growers Alliance

Genine Coleman
Executive Director
Origins Council

Diana Gamzon
Executive Director
Nevada County Cannabis Alliance

Joanna Cedar
Board Member & Policy Co-Chair
Sonoma County Growers Alliance

Adrien Keys
President
Trinity County Agricultural Alliance

Michael Katz
Executive Director
Mendocino Cannabis Alliance

Oliver Bates
President
Big Sur Farmers Association