Statement of California Cannabis Industry Association
Hearing before the Committee on Energy and Commerce: Subcommittee on Health
For a Hearing Entitled "Cannabis Polices for the New Decade"
15 January 2020

California Cannabis Industry Association ("CCIA") is pleased to submit this statement for the record and applauds Chairwoman Anna Eshoo, Ranking Member Michael Burgess, Chairman Frank Pallone and the members of the Subcommittee on Health for the Committee on Energy & Commerce for holding a hearing entitled "Cannabis Policies for the New Decade." We appreciate your commitment to modernizing our nation's cannabis laws and wish to offer our input and suggestions as policy continues to develop on the federal level.

CCIA is uniquely positioned to weigh in on cannabis policy. Representing over 600 businesses and 15,000 employees from all aspects of the cannabis supply chain, including plant touching and ancillary businesses, CCIA promotes the growth of a responsible and legitimate cannabis industry. The California cannabis industry is the largest, and most regulated, cannabis market in the world with legal sales topping $3 billion dollars for 2019 according to analysis by the sales-tracking firms Arcview Market Research and BDS Analytics.[1] Unfortunately, due to federal illegality, and at times burdensome regulation by the state of California, these legal sales account for only a fraction of cannabis sold in the state when including the illicit market (estimated to be $8.7 billion in 2019).[2]

For the past two and a half decades California has been a pioneer in developing and passing cannabis legislation and regulation. This has led to many positive developments that protect consumer safety, but also some growing pains that have proven to be overly burdensome to industry. As the federal conversations shifts from not if, but how, cannabis should be legalized, California can serve as model of both what regulations are effective – and perhaps more importantly pitfalls to avoid as a federal regulatory framework is considered.

While the regulation of cannabis at the federal level will certainly be a complex process, one thing is clear: the current federal-state conflict is untenable, and any contemplated federal regulation of cannabis must at minimum contemplate removing cannabis from its Schedule I classification.

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[1] Sean Williams, *California's Cannabis Black Market is Insanely Larger Than Its Legal Market*, MOTLEY FOOL, (Sept. 19, 2019), https://www.fool.com/investing/2019/09/14/californias-cannabis-black-market-is-insanely-larg.aspx, *See also*, Patrick McGreevy, *California Now Has the Biggest Legal Marijuana Market in the World. Its Black Market is Even Bigger*, LA Times, (Aug. 15, 2019), https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market

[2] *Id.*

1. Adverse Events and Product Recalls

Perhaps the best argument for federal regulation of cannabis is that regulated markets provide stronger protections for consumer safety. While some of the bills before the committee contemplate federal legalization, they do not fully address the role of the federal government from a regulatory prospective. To be sure, numerous federal agencies will need to be involved in the event cannabis is legalized at the federal level, including but not limited to the FDA, Department of Treasury, IRS, NIDA, EPA, and NIST. The cooperation of these agencies must at minimum be able to ensure that cannabis and cannabis products are appropriately tested and marketed (i.e. not advertised towards minors), and that consumers will have options for recourse if a product is revealed to be injurious or detrimental to public health.

Illicit market sellers do not test products for contaminants, pesticides or dangerous additives such as Vitamin E Acetate, a chemical that has been linked to many cases of lung injury during the CDC's investigation of vaping products.[3] Reports have shown that Vitamin E Acetate was used by illicit operators to mimic the appearance and viscosity of cannabis concentrate oil, to increase production while minimizing costs.[4] Quality control is central component to a regulated market. While California has not been immune to the lung injury cases associated with vaping, not a single product from the state's regulated market has been identified as the sole cause for lung injury. In fact, in Utah, a state where the consumption of cannabis is not yet permitted, there were nearly ten times more cases of lung injury per capita than in California.[5] Many of the cases in California were clustered in counties that prevented cannabis sale through local regulations, so consumers had no choice but to turn to illicit sources because regulated cannabis was not easily accessible. California's regulated market has the most stringent standards for testing for solvents, pesticides and heavy metals and similar product safety guardrails should be implemented by the federal government.

Another area where the Federal Government can build from California policy is recall and adverse event reporting.[6] As federal legalization of cannabis is contemplated, there must be strong regulatory protocols in place that allow for recalls of potentially dangerous products and the effective reporting of adverse events. Current FDA recall protocols allow for medicines, foods, and devices to be pulled off the market for contamination, defects, and undeclared additives. On the state level, California cannabis producers should be able to afford themselves to the same public health safeguards as other products regulated by the FDA. Allowing cannabis producers to

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[3] Benjamin C. Blount, et. al., *Vitamin E Acetate in Bronchoalveolar-Lavage Fluid Associated with EVALI*, N. J. MED., (Dec. 20, 2019), https://www.nejm.org/doi/full/10.1056/NEJMoa1916433

[4] *See e.g.*, David Downs, *Amid Vape Pen Lung Disease Deaths: What exactly is Vitamin E Oil?*, LEAFLY, (Sept. 11, 2019), https://www.leafly.com/news/health/vape-pen-lung-disease-vitamin-e-oil-explained

[5] David Downs, *Legal Vape Markets Literally 1000% Safer Than Street*, LEAFLY, (Dec. 19, 2019), https://www.leafly.com/news/strains-products/vapi-evali-states-analysis-leafly

[6] *See e.g.*, Michelle Wiley, *State Regulators Order Recall of Hundreds of Marijuana Products*, The California Report, (Dec. 22, 2018), https://www.kqed.org/news/11714412/state-regulators-order-recall-of-hundreds-of-marijuana-products

take advantage of the FDA recall procedures would be beneficial to public health in the event of undisclosed ingredients or harmful additives.

2. Packaging and Labeling

To promote consumer safety, California requires clear and accurate packaging and labeling. Cannabis products must be labeled accurately with cannabinoid content, a unique identification and tracking number, allergens, weight, a universal symbol, nutrition info, and other disclosures.[7] While it may be challenging for the subcommittee to develop a uniform federal label without the assistance of executive agencies, federal legalization should consider the massive existing market and the labels that exist on it presently. The current labeling processes that exist for alcohol may have to be modified for cannabis products. Currently, when a new alcoholic product enters the marketplace, the label must be approved by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") prior to sales of the beverage. However, as many cannabis companies and brands have existing pockets of consumers, label approval may need to take place while products are still on the market rather than requiring producers to pull their products before receiving label approval from TTB or another agency.

3. Taxation and Illicit Market

Tax revenue is oft cited as a primary reason why states move forward with legalization, however, over taxation can result in unintended consequences, and further growth of the illicit market. At least one of the bills considered by the subcommittee, the MORE Act (H.R. 3884), proposes leveraging a federal excise tax on the cannabis industry. CCIA applauds many of the principles contained in the MORE Act but cautions against any excessive federal taxation of cannabis. While CCIA appreciates that tax revenue from cannabis can be used for a variety of programs, it is critical that prices in the regulated market are not so high as to drive consumers to the illicit market. At the state level in California, taxation of cannabis and cannabis products can reach effective rates of 80%[8] making it incredibly difficult for licensed producers to compete with the lower prices of the illicit market.

Recently, Governor Gavin Newsom proposed streamlining cannabis taxation, but this may not be sufficient enough to keep prices at a rate competitive with the illicit market. As federal regulators look to strike the balance between fairness to businesses and revenue generation, we urge them to exempt state legal cannabis businesses from Internal Revenue Code § 280E so these businesses can take standard business deductions like any other non-cannabis company.

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[7] *See generally, Labeling Requirements*, Cal. Dept. Pub. Health, (last visited Jan. 14, 2020) ,https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/CDPH%20Document%20Library/LabelingChecklist-Products.pdf

[8] Cal. Dep't. of Tax and Fee Admin, *Cannabis Special Notice – L270*, (last visited Jan. 14, 2020), https://www.cdtfa.ca.gov/formspubs/L720.pdf

4. Expansion of Research and Centers of Excellence

CCIA is pleased that the committee is considering a variety of research proposals. Currently, the requirements to conduct a clinical trial or other study with cannabis are incredibly burdensome due to the plant's Schedule I status. Researchers are fearful of losing federal funding if they engage in cannabis research, and are frustrated by the the lack of genetic and cannabinoid diversity available through the NIDA Cannabis Farm at the University of Mississippi.[9] As Congress considers research proposals, a central tenet should be the availability for researchers to source cannabis from private sources.

The cannabis commercially available in California is markedly different from the cannabis grown at the Mississippi NIDA facility. California cannabis differs in THC and cannabinoid content, formulation, and undergoes far more rigorous testing than cannabis grown under NIDA's supervision. For example, there is no readily available testing protocols for cannabis grown at the NIDA facility, while California requires testing in over a dozen different categories including cannabinoid content, impurities, pesticides, heavy metals and mycotoxins.[10] Allowing cannabis to be sourced from private industry would provide researchers the opportunity to more appropriately align their research studies with what is going on in the marketplace.

As the committee considers research proposals, they should also consider establishing centers of excellence for cannabis research. Top California universities including UCLA, and Berkley have developed substantial research programs. UC San Diego is home to the Center for Medicinal Cannabis Research. By allowing for California universities to become Centers of Excellence, Congress could facilitate grants to universities who have made substantial progress in research. Centers of excellence have been established in agriculture, marine & maritime issues, and other policy areas. [11]

Conclusion

CCIA deeply appreciates the subcommittee holding this hearing and for its willingness to reexamine the current framework surround cannabis. As the subcommittee and the committee at large continue to contemplate how to effectively regulate cannabis, we are happy to serve as a resource and provide guidance and feedback to the committee as appropriate. Please contact Executive Director Lindsay Robinson at lindsay@cacannabisindustry.org with any questions or if additional information is needed.

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[9] Owen Daugherty, *Risk of Losing Federal Funding Reason Why Medical Marijuana Research Won't Happen,* (Aug. 23, 2017), https://www.thelantern.com/2017/08/risk-of-losing-federal-funding-reason-why-medical-marijuana-research-wont-happen/

[10] Bureau of Cannabis Control, *Required Testing Chart*, (last visited Jan. 14, 2020), https://bcc.ca.gov/about_us/documents/17-261_required_testing_chart.pdf

[11] *See e.g.,* U.S. Dep't Treasury, *Centers of Excellence Research Grants Program,* (last updated Oct. 15, 2019), https://www.thelantern.com/2017/08/risk-of-losing-federal-funding-reason-why-medical-marijuana-research-wont-happen/