

MVM STRATEGY GROUP
Government Relations Consulting & Advocacy

January 20, 2022

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P. O. Box 4010
Sacramento, California 95812-4010

RE: Proposed Modified Amendments to Article 6, Clear and Reasonable Warnings
Short-Form Warnings

Dear Ms. Vela:

On behalf of The Parent Company, the largest vertically integrated cannabis company in the state, we wish to offer the following public comments relative to the proposed modified amendments referenced above.

The Parent Company (previously referred to as Caliva) is engaged in one of the most (if not, the most) regulated and consumer safety-focused industries in the state. Current cannabis law imposes robust warning requirements to ensure that consumers have abundant information in hand before making a decision to purchase a product. These warnings include reproductive health warnings for both pregnant and breastfeeding persons, child safety warnings and stringent protections against misleading health claims. TPCO subscribes to the commitment to full regulatory compliance, especially as it relates to consumer safety.

Warning label size:

We acknowledge that the modifications include an increase in size of the label from 5 square inches to 12 square inches. While the increased size may be a step in the right direction for many industries, we assert that increased size is not valuable relative to most cannabis products, which tend to be small, often smaller than 5 square inches. So, allowing a 12 square inch label on a product that is smaller than 5 square inches is not helpful to the cannabis industry.

However, notwithstanding the size of the label, our previously stated concerns regarding the amount of verbiage required to be included on the label remain. Current cannabis law places very specific requirements on manufacturers to include labels that highlight specific health warnings as well as other information, including:

- Unique identifier linked to a testing certificate of analysis
- Product manufacturer information
- Batch numbers
- Concentration levels of THC and/or CBD
- Expiration or “best by” date
- Universal cannabis symbol.

We are also required to include the information established in the current Proposition 65 short form warning regulations. All of this information must be placed on a label that resides on a product that is often substantially less than 5 square inches, let alone 12 square inches.

The Administration needs to pay attention to the fact that this overabundance of information on warning labels is ultimately defeating the purpose of the labels and doing a great disservice to California consumers. The combined verbiage requirements by OEHHA and the Department of Cannabis Control effectively crowds all of the warnings to the point that they become the visual equivalent of “white noise.”

Because cannabis products already have expansive warning requirements, we submit that OEHHA should not increase the Proposition 65 verbiage on short form warning labels. We further submit that while we can speak authoritatively about cannabis, we know that other industries face similar challenges. Because of that, we caution OEHHA against further marginalizing Proposition 65’s effectiveness by crowding more and more language onto small labels.

Further contributing to the crowding issue is the requirement that type size must be no smaller than the largest size used for other consumer information. This issue could be resolved by allowing the warning to be printed in 6-point type, regardless of the size of other consumer information.

Explicit mention of chemicals: We echo the concerns raised by the coalition led by the California Chamber of Commerce and the Consumer Brands Association regarding the listing of one or more chemicals that can cause cancer or reproductive harm. Their letter notes the uncertainty in the proposed regulatory changes as to whether OEHHA means one chemical or all chemicals that might cause harm. That uncertainty aggravates the situation with the amount of space available on a cannabis product label. Not only does every new word squeeze the space available, making the label increasingly unproductive for the consumer, but current law requires cannabis products to undergo rigorous testing, the results of which must be made easily accessible to the consumer. Cannabis products are already required to provide far more consumer safety information than OEHHA could ever imagine.

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Timing: We share the broader concern of the business community that these changes allow only 12 months for businesses to overhaul their compliance program to align with these new regulations. While the cannabis industry has not been subject to Proposition 65 regulations for very long, the individual companies arose at the time the current short form warning regulations were in place and created their packaging and labeling in part to comply with those regulations. These proposed changes will force the industry to engage in the very expensive revamping of labels on a very wide variety of products at a time that regulatory ramp up under cannabis laws is already costly.

Finally, OEHHA is unwittingly giving illegal cannabis operators more motivation to remain outside the licensed marketplace. The cannabis industry suffers from an illegal market that is at least twice the size of the legal market. Illicit operators have decided that they prefer to risk legal consequences (which are not terribly heavy) than to abide by the raft of regulatory requirements and tax obligations that add heavy costs to the product. The state and the legal industry have been working fervently to eradicate that black market through enforcement and through regulatory relaxation where possible. With these new regulations, OEHHA is working in contravention to the state's efforts to reduce some of the burdens that have motivated illegal operators to remain illegal. We implore you to recognize that the more operators remain illegal, the fewer products will have any kind of warning label (OEHHA or DCC) and the impact on consumer safety will be magnified.

Solution: We urge OEHHA to clarify in these regulations that any products that are in compliance with cannabis labeling laws are in compliance with the Proposition 65 short form warning regulations. The effect would be the same as complying with the short form warning provisions without the unnecessary redundancies that will exacerbate the current regulatory burdens in the cannabis industry.

We thank you for your favorable consideration of these comments.

Sincerely,



Rand Martin

cc: Nicole Elliott, Director, Department of Cannabis Control
Stuart Thompson, Chief Deputy Legislative Secretary to Governor Newsom