

U.S. Hemp Roundtable

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VIA EMAIL

September 13, 2021

Mr. Steven Crowley
Compliance Specialist
Hemp and Processing Technician
Oregon Liquor Control Commission
9079 SE McLoughlin Avenue
Milwaukie, OR 97222

Ms. Madeline Kane
Rules Coordinator
Oregon Liquor Control Commission
9079 SE McLoughlin Avenue
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Re: Emergency Rule – Adult Use Cannabis and Hemp Concentration Limits

Dear Mr. Crowley and Ms. Kane:

The U.S. Hemp Roundtable submits the following comments on the Emergency Temporary Rule (“the Emergency Rule”) adopted by the Oregon Liquor Control Commission (“OLCC”) on July 19, 2021 concerning Adult Use Cannabis and Hemp Concentration Limits. The Roundtable is the industry’s leading national business advocacy organization that represents over 90 firms and organizations from across the country – at each link of the hemp supply and sales chain – and includes the ex officio membership of the industry’s major grassroots organizations.

While the Roundtable supports restrictions on the sale of intoxicating cannabis products to minors, we have significant concerns regarding the Emergency Rule’s definition of “adult use cannabis item” under Section 845-26-0300. Specifically, the 0.5 milligram per package limit for total tetrahydrocannabinols (“THCs”) inappropriately classifies many safe and non-intoxicating hemp products as “adult use cannabis items.” We also share OLCC’s concerns about the marketing of delta-8 tetrahydrocannabinol (“delta-8 THC”) and other potentially intoxicating products as hemp products, and have issued numerous public statements to this effect.¹ However, as explained below, the Emergency Rule poses several challenges for the hemp extract industry, and it is unclear whether the process by which it was adopted was grounded in science.

¹ See, e.g., U.S. Hemp Roundtable, Statement of Marketing Hemp Products (Mar. 8, 2021), available at: <https://hempsupporter.com/news/for-immediate-release-statement-on-marketing-hemp-products>.

First and foremost, the total THC limit does not take into account the mass or volume of the product, and whether the product is a multi-serving product. Under the Emergency Rule, a 30- or 60-day serving product, for example, is subject to the same limit as a single serving beverage. This approach unfairly shackles and penalizes companies marketing hemp supplements in particular, as the overwhelming majority of these products are sold in multi-serving packages and are specifically not intended to be consumed on one occasion. Even more troubling, the Emergency Rule classifies these and many other safe, non-intoxicating hemp products as “adult use cannabis items,” when these products are neither intended nor likely to cause intoxication. We understand the Emergency Rule only impacts the sale of hemp products to minors, and does not restrict the sale of items that may exceed the 0.5 mg limit to OLCC-regulated stores. However, this distinction is not clear in the language itself or in the guidance document issued jointly with the Oregon Department of Agriculture and Oregon Health Authority,² leaving the impression that an otherwise safe and non-intoxicating hemp product poses a public health and safety risk. As a leader and pioneer in the hemp space, other states are likely to look to Oregon as a model for hemp product regulation, but in this case, having additional states adopt what appears to be an arbitrary limit for total THCs will have severe consequences for the hemp extract industry as a whole.

Further to this point, we are not aware of any clear and compelling scientific evidence indicating that 0.5 mg of total THCs – as defined by OAR 845-026-0300 (2)(a) to include the combination of THCs or tetrahydrocannabinolic acids, including delta-8 THC or delta-9 THC, or any other cannabinoids advertised by the manufacturer or seller as having an intoxicating effect – causes or is likely to cause intoxication in minors, or adults. It is also unclear whether and what scientific evidence or studies OLCC relied upon in establishing the limit, and whether the potential for abuse was taken into consideration. For example, in establishing a standard unit for research regarding delta-9 THC, the National Institute on Drug Abuse (“NIDA”) notes that 5 mg of delta-9 THC “may produce a high in both experienced and occasional users, but in most studies, has not produced adverse effects.”³ Although the standard unit is not a limit or recommendation from NIDA, it was developed based on extensive deliberation and scientific input. It also suggests that consumption of **0.5** mg total THCs (of which delta-9 THC may only be a portion) is unlikely to cause adverse effects or a high. Thus, given the significant impact the Emergency Rule’s limit will have on hemp products – especially full-spectrum hemp products that comply with the 0.3% federal concentration limit for delta-9 THC – we are deeply concerned that the limit was not developed with the necessary scientific rigor.

Another notable consequence of the Emergency Rule is its impact on retailers. Many, if not all, retailers will likely be forced to segregate full-spectrum hemp products from other hemp products in their inventory, rather than individually determine which products may exceed the 0.5 mg total THCs limit. This hinders commerce, chills the economy, and sends an inaccurate message that full-spectrum hemp products are a public health or safety risk. Coupled with the burden of checking photo identification prior to selling these products, retailers may choose to not carry these products altogether – hurting farmers and business owners of every size in Oregon and the rest of country who are engaged in this industry, as well as consumers in the state who are clearly demanding access to these products. In addition to placing undue burdens on retailers, age restrictions such as this also send an inaccurate and inappropriate message to consumers: that these safe health and wellness products are dangerous or should be associated with a vice of some sort. The 2018 Farm Bill created new, legal markets for farmers and businesses, and mischaracterizing or otherwise demonizing these markets not only stifles these opportunities, but also deprives consumers seeking to improve their quality of life.

² Oregon Department of Agriculture, Oregon Health Authority, and the Oregon Liquor Control Commission, CBD and Consumable Hemp Items: Information on No Sales to Minors (July 22, 2021), https://www.oregon.gov/olcc/marijuana/Documents/Fact_Sheets/No-Sales-to-Minors-THC.pdf.

³ National Institute on Drug Abuse, Establishing 5 mg of THC as the Standard Unit for Research (May 10, 2021), available at: <https://www.drugabuse.gov/about-nida/noras-blog/2021/05/establishing-5mg-thc-standard-unit-research>.

For these reasons, we strongly urge the OLCC to immediately amend the Emergency Rule to remove the 0.5 mg total THC per package limit, and use the federal concentration limit of 0.3% on a dry weight basis, which can be applied to total THCs in a product, as defined in the Emergency Rule. We believe this approach is reasonable and will prevent the vast majority of intoxicating cannabis products from being sold to minors, without imposing unreasonable burdens on retailers and misclassifying safe, non-intoxicating hemp products as adult use cannabis items. Additionally, the guidance document should be updated to clarify that stores outside of the OLCC-licensed system can continue to sell hemp products that exceed 0.5 mg total THCs per package, if all other requirements under Oregon law are met, including meeting the 0.3% delta-9 THC concentration limit. This clarification would help address confusion among hemp product manufacturers and retailers alike.

We also have concerns regarding the broad scope of the Emergency Rule. By defining “consumption or use” to mean to “eat, drink, ingest, inhale, apply topically to the skin or hair, or otherwise consume an item,” the 0.5 mg total THCs limit is also imposed on products such as lotion. Such products are extremely unlikely to cause intoxication, even at amounts much higher than 0.5 mg. Notably, the guidance document refers to “consumable hemp items” as “anything that is made to eat, drink, or inhale,” which stands in contrast to the Emergency Rule and has already created significant confusion within the industry, as well as for retailers. Therefore, we also strongly urge the OLCC to expressly exclude products that are “applied topically to the skin or hair” from scope of the Emergency Rule and in the guidance document, prior to the adoption of the permanent rule and in the permanent rule itself.

Finally, in addition to utilizing a notice-and-comment process that allows substantial stakeholder input and addresses the science regarding intoxicating levels of THCs, the Roundtable welcomes the opportunity to work with the OLCC on a permanent rule to ensure that ingestible hemp products with amounts of THCs evidenced as inducing intoxication are not freely sold to consumers – minors or otherwise – in Oregon. We agree that intoxicating products, including delta-8 THC products, should be restricted to the OLCC-regulated cannabis system. However, the decision to classify products as adult use cannabis items based on the level of total THCs must be directly tied to reliable, accurate scientific evidence, and based on an approach that considers the number of servings in the product and its intended use.

In closing, we strongly urge the OLCC to consider the recommendations outlined above, and most importantly remove the 0.5 mg total THCs per package limit and instead utilize a 0.3% total THCs concentration limit for hemp products, which will keep intoxicating products out of the hands of minors and others, while also supporting the hemp extract industry as a whole and avoid hindering farmers and commerce and placing undue burdens on retailers in the state.

Thank you for considering our comments.

Sincerely,



Jonathan Miller
General Counsel
U.S. Hemp Roundtable

2021 U.S. HEMP ROUNDTABLE

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