U.S. Hemp Roundtable

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**VIA EMAIL**

August 5, 2022

Senate Majority Leader Chuck Schumer
Senator Ron Wyden
Senator Cory Booker
U.S. Senate
Washington, DC 20510

Dear Sirs:

The U.S. Hemp Roundtable, the hemp industry's national advocacy organization, appreciates the introduction of the Cannabis Administration and Opportunity Act ("CAOA"), as well as your longtime support for a robust hemp industry Unfortunately, while much of the proposed legislation would advantage hemp commerce, progress for the industry would be significantly undermined by a few of the provisions in the legislation as introduced. We look forward to working with you on improvements so that hemp growers, manufacturers, and processors can take advantage of the economic growth that hemp presents.

Since introduction, we have had conversations with members of your staff focusing on our concerns with some of the bill's provisions, as well as offering suggestions to improve and strengthen the legislation. They have shared their openness to our ideas, indicating that this bill was intended to further conversations on these important topics and not serve as a fait accompli.

In that spirit, we offer the following comments on key provisions in the CAOA, as well as our suggestions for improvement:

1. **Hemp-Derived CBD (Section 504)**

   We are grateful for your inclusion of a regulatory pathway for the sale of hemp-derived CBD as a dietary supplement. However, as explained in our comments regarding last year's discussion draft, we are concerned that the current language subjects hemp-derived CBD to a uniquely onerous and unprecedented regulatory regime. We strongly believe that non-intoxicating, hemp-derived CBD should be regulated like any other botanical ingredient, similar to the language included in H.R. 841, the Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act of 2021 sponsored by Reps. Kurt Schrader and Morgan Griffith, and S.1698, the Hemp Access and Consumer Safety Act, sponsored by Sen. Ron Wyden. Our white paper outlines why this legislation is so valuable for the industry.

   We reiterate our recommendations for adjustments outlined in our August 2021 letter. In sum, they include:

   - Expanding protections to all non-intoxicating hemp derivatives and cannabinoids, rather than CBD only.
   - Allowing companies to use all forms of safety evaluations permitted by law, rather than mandating the use of new dietary ingredient notifications (NDINs).

- Providing a more comprehensive rulemaking process for determining potential daily serving limits for CBD to ensure ample stakeholder input.
- Opening an additional pathway for the sale of hemp extracts like CBD as food and beverage ingredients.
- Ensuring separate regulatory pathways for non-intoxicating hemp and intoxicating cannabis products.

**2. Definition of Hemp (Section 803)**

When Congress passed both the 2014 and 2018 Farm Bills, it sought to define hemp as the non-intoxicating genus of the cannabis plant. At that time, the standard benchmark for intoxication was considered to be 0.3% delta-9 THC on a dry weight basis.

In the succeeding years, intoxicating products that technically comply with this standard have been sold under the guise of the hemp name and have proliferated. Some contain significant quantities of potentially intoxicating compounds such as delta-8 THC; others contain highly concentrated delta-9 THC, purporting to contain less than 0.3% on a dry weight basis. FDA and the CDC have shared alarming data about poor quality control in many delta-8 products and, worse yet, misuse, particularly among children. The Ninth Circuit Court of Appeals has confirmed the legality of many of these products, arguing that "if Congress inadvertently created a loophole legalizing vaping products containing delta-8 THC, then it's up to Congress to fix their mistake."

The CAOA intends to address this mistake, a mission that we support: We believe that intoxicating products should be regulated in adult-use cannabis markets, with retail hemp product sales limited to non-intoxicating substances. However, in addressing this issue, the CAOA develops a misguided standard for intoxication that would lead to the elimination of the substantial majority of the hemp extract and CBD industry.

The language at issue states that the allowable THC equivalent amount for products made or derived from hemp could not exceed 1 milligram of total THC per 100 grams on a dry weight basis, translating into a 0.001% total THC standard. This is an arbitrary and unrealistic standard. No full spectrum or broad-spectrum hemp extract would qualify, and likely most CBD isolates would be challenged to comply, given the limitations of current testing technology. Indeed, this limit would delegate most, if not all, popular, ***non-intoxicating*** CBD and hemp extract products to the adult-use cannabis market.

While your staff has assured us that the language is not intended to criminalize such products because it would apply in the context of full legalization of all cannabis, the proposed THC limit as drafted would impose a devastating setback to a thriving industry, and further limit opportunities for already struggling hemp farmers. A recent economic study estimates the retail and online sales market for CBD products will hit $5 billion in 2022, and if FDA issues regulatory guidance by the end of 2024, the study projects the market will top $11 billion by 2027. Limiting these products to the adult-use cannabis market or otherwise placing heavy restrictions that are merited for intoxicating products could level a death blow to this potential economic progress.

Your staff has also assured us that this language would not be included in the 2023 Farm Bill, which we do appreciate. Unfortunately, the new arbitrary standard has been disseminated broadly, even cited favorably by the Cannabis Regulators Association in its important efforts to address the issue of intoxicating cannabis-derived compounds at the state level.

We are unaware of any studies or scientific data that suggest a 1 mg THC/100 g limit is appropriate for hemp products. States that have endeavored to define intoxication have called for a much higher line of demarcation. But the most effective solution we have found is in Colorado, which recently created a commission of experts to develop standards

grounded in science and industry experience. Indeed, we propose the creation of such a commission at the federal level, and we urge you to consider such an approach as the CAOA progresses. We have provided draft language for your consideration below:

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

(a) Establishment Of Task Force.—Not later than 90 days after the date of the enactment of this section, the Secretary, in consultation with the U.S. Food and Drug Administration and the National Institute on Drug Abuse of the National Institutes of Health, shall establish a task force to study the 0.3% concentration limit for delta-9 tetrahydrocannabinol and restrictions on other potentially intoxicating hemp derivatives (in this section referred to as the "Task Force").

(b) Membership. The Task Force shall be composed of representatives from the U.S. Food and Drug Administration, the National Institute on Drug Abuse of the National Institutes of Health, hemp industry representatives including cultivators, testing laboratories, chemists, manufacturers/processors and distributors, and other members as determined by the Secretary.

(c) Duties. The Task Force shall review the 0.3% concentration limit on a dry-weight basis for tetrahydrocannabinols in hemp, whether additional cannabinoids or hemp derivatives should be restricted in finished hemp products due to the potential for intoxication, and what type and form of limits should be utilized for finished hemp products.

(d) Report by Task Force. Not later than 120 days after the Task Force is established in accordance with section (a), the Task Force shall submit to the Secretary a report that includes the findings and recommendations of the Task Force.

(e) Rulemaking Process. Not later than 90 days after the Task Force submits the report in accordance with section (d), the Secretary, in consultation with the U.S. Food and Drug Administration and any other federal agency as determined by the Secretary, shall initiate a rulemaking process to implement the recommendations of the Task Force

We look forward to further discussions with your staff as this legislation proceeds, and we appreciate your leadership and consideration of our recommendations.

Sincerely,

Jonathan Miller
General Counsel
U.S. Hemp Roundtable

# 2022 U.S. HEMP ROUNDTABLE

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