

U.S. Hemp Roundtable

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Andrew Brisbo
Executive Director, Cannabis Regulatory Agency
2407 North Grand River
P.O. Box 30205
Lansing, MI 48909

Dear Mr. Brisbo:

The U.S. Hemp Roundtable appreciates the opportunity to comment on the Proposed Industrial Hemp Rules for Marihuana Businesses ("Proposed Rule") issued by the Michigan Cannabis Regulatory Agency ("CRA").¹ The U.S. Hemp Roundtable is the industry's leading national advocacy organization that represents nearly 100 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 associations.

As you know, Act 56 of 2021 requires the CRA to adopt rules to establish a limit on the total amount of THC contained in industrial hemp products, among other mandates.² We strongly support the legislative intent: cannabis products that contain intoxicating levels of THC should be sold within regulated marijuana markets only, and not under the guise of hemp. We have issued numerous public statements to this effect,³ along with leading the battle in state legislatures across the country to crack down on the retail sale of intoxicating products such as delta-8 THC. We also continue to work on federal legislation to adjust the 2018 Farm Bill's definition of hemp and develop uniform, science-based standards to more clearly distinguish between non-intoxicating and intoxicating cannabis products.

As discussed during our call last week, the Roundtable was surprised and disappointed to see the THC limits in the Proposed Rule, which will lead to restrictions and retail prohibitions on many non-intoxicating hemp products. When the legislation was being considered, the CRA assured us that the limits it would set would not prohibit the retail sale of non-intoxicating hemp products that are currently in the marketplace. We urge the CRA to reconsider these limits. In addition, we are concerned the Proposed Rule does not provide distributors and retailers ample time to sell through existing inventory that may exceed the THC limits. Below we offer the following comments and suggestions to improve the Proposed Rule.

¹ Cannabis Regulatory Agency, Industrial Hemp Rules for Marihuana Businesses, Pending Rule 2022-35 LR, <https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1394>.

² Act. No. 56 of 2021, <https://www.legislature.mi.gov/documents/2021-2022/publicact/htm/2021-PA-0056.htm>.

³ See, e.g., U.S. Hemp Roundtable, Statement of Marketing Hemp Products (Mar. 8, 2021), <https://hempsupporter.com/news/for-immediate-release-statement-on-marketing-hemp-products>.

1) THC Limits for Hemp Products Must be Reasonable

The Proposed Rule would establish concentration limits of 1 mg of THC per serving and 10 mg of THC per container for edible industrial hemp products. While the Roundtable supports reasonable THC limits, and appreciates the exclusion of topically-applied hemp products from these limits, the rule's limits will prohibit the retail sale of many non-intoxicating edible hemp products, and essentially ban edible full-spectrum hemp extract products.

Many non-intoxicating, full-spectrum hemp products in the marketplace contain delta-9 THC serving levels between 1 and 2 mg. Most full-spectrum products, such as tinctures, gummies, and capsules, contain well over 10 mg per package. However, these products are often packaged to provide a 30-, 60-, or 90-day supply of the product, and include instructions for use that direct users not to consume more than the recommended daily serving. As currently written, and given that the definition of "THC" includes all THC's and their isomers, the Proposed Rule will force a significant number of companies to reformulate and repackage products in order to achieve compliance. Not only will this come at a great expense for these companies, but consumers will also be forced to purchase multiple products at once, and the additional packaging will create unnecessary waste.

Moreover, we are unaware of adverse events associated with edible full-spectrum hemp extract products, or incidents of abuse or misuse or other safety concerns, including intoxication. While the FDA and states have issued warnings about abuses of intoxicating delta-8 products,⁴ we are not aware of any such incidents associated with non-intoxicating full-spectrum products. In fact, science has shown that intoxication is likely to occur at much higher levels than the limits proposed by the CRA. In establishing a standard unit for research regarding delta-9 THC (the primary intoxicating cannabinoid in cannabis), 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."⁵ Although the standard unit is not a limit or recommendation from NIDA, it was developed based on extensive deliberation and scientific input. As discussed, another useful source of science-based information on this topic is Oregon's rationale in developing its current THC limits for hemp products.⁶

It is also important to note that delta-9 THC and CBD are both constituents of the cannabis plant and essentially share space in that plant. In effect, the more CBD there is in the plant or the extract from that plant, the less THC, and vice versa. CBD and delta-9 THC also work differently on the body. Research has shown that CBD effectively can help offset the intoxicating effects of delta-9 THC, due to CBD's ability to minimize the opportunities for THC to bind with receptors in the body. Simply put, CBD "crowds out" the THC, which can prevent intoxication. It is this physiological dynamic that was instrumental in the federal government adopting 0.3% delta-9 THC on a dry weight basis as the upper limit in hemp, because at that very low limit, the THC will be overwhelmed by the counteracting influence of the CBD.

As you may be aware, other states have opted for THC product limits that are higher than the limits in the Proposed Rule. For example, Oregon has established limits of 2 mg of total delta-9 THC per serving and 20 mg of total delta-9 THC per

⁴ FDA, [5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC \(May 4, 2022\)](https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc), <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

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

⁶ Oregon Liquor and Cannabis Commission, [Considerations in Establishing Cannabinoid Limits for Hemp Products, Rationale for Rulemaking \(Dec. 27, 2021\)](https://www.oregon.gov/olcc/Docs/commission_minutes/2021/Considerations-In-Establishing-Cannabinoid-Limits-Hemp-Whitepaper.pdf), https://www.oregon.gov/olcc/Docs/commission_minutes/2021/Considerations-In-Establishing-Cannabinoid-Limits-Hemp-Whitepaper.pdf.

container for edible hemp products,⁷ Louisiana recently adopted a limit of 8 mg of total THC per serving for consumable hemp products,⁸ and, Minnesota recently adopted limits of 5 mg of total THC per serving and 50 mg of total THC per container for edible cannabinoid products.⁹ Although the aforementioned states also impose age restrictions on the sale of these products, such restrictions are only appropriate for hemp products that approach the NIDA standards. Hemp products with lower amounts of THC – such as 2 mg per serving – are unlikely to be intoxicating and should not be subject to age restrictions.

Many if not most retailers will choose not to carry hemp products if unreasonably low THC limits or age restrictions force them to review Certificates of Analysis and/or segregate full-spectrum hemp extract products, and possibly other products, from their hemp product inventory. Coupled with the burden of checking photo identification prior to selling these products, retailers may choose not to carry these products altogether – hurting farmers and business owners of every size in Michigan 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. And, similar to the lack of evidence indicating that hemp products are being abused or misused by the general population, we are also unaware of abuse or misuse by minors. Indeed, for consumers, even younger consumers, it makes little sense from a financial standpoint (purchasing and ingesting an inordinate number of products in pursuit of a possible high), or from a consumption standpoint given that ingesting a great deal of product is likely to result in physical ailments, such diarrhea and upset stomach, rather than a high.

We therefore strongly urge the CRA to reconsider the proposed 1 mg/10 mg total THC limits, and instead utilize the policy strategy developed in Colorado. After rejecting legislation that would have imposed per serving the per container limits, the state opted to create a task force to intentionally study the topic of intoxicating compounds and make recommendations on science-based standards for assessing what levels of these compounds are likely to cause intoxication, and what restrictions are appropriate.¹⁰ The task force includes broad representation from across the hemp and adult-use cannabis industries – regulators, manufacturers, refiners, retailers, laboratories, consumer nonprofit organizations, and adult-use patients – to help ensure that all stakeholder viewpoints are captured. The creation of such a task force in Michigan is the better approach, and would fulfill the mandate of Act 56 of 2021 while also assuring that THC limits are grounded in science and not arbitrarily imposed on non-intoxicating hemp products.

However, if the CRA determines that THC limits must be established at this time, we urge you to instead consider more reasonable limits of at least 2 mg of total THC per serving and at least 50 mg of total THC per container for non-tincture products, which is the per container limit utilized in both Alaska¹¹ and Minnesota. For tincture products, we urge the CRA to adopt a 100 mg per container limit only with no per serving limits, which is consistent with Oregon's approach. While Oregon applies this higher limit to unsweetened tinctures only, we see no reason why it should not be applied to all hemp tincture products. As noted above, we are not aware of hemp products being abused or misused for their THC content. Tinctures in particular have an even lower abuse/misuse potential, as they are typically formulated with oil- or ethanol-based ingredients, which discourages over-consumption.

⁷ Or. Admin R. § 845-026-0400, Table 3, <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=287299>.

⁸ Louisiana House Bill 758 of 2022, <https://legis.la.gov/legis/ViewDocument.aspx?d=1289568>.

⁹ Minnesota House File 4065 of 2022,

https://www.revisor.mn.gov/bills/text.php?number=HF4065&type=bill&version=3&session=1s92&session_year=2022&session_number=0.

¹⁰ Colorado Senate Bill 22-205, https://leg.colorado.gov/sites/default/files/2022a_205_signed.pdf. Legislative history may be accessed here: <https://leg.colorado.gov/bills/sb22-205>.

¹¹ 11 AAC 40.415, http://plants.alaska.gov/pdf/11_AAC_Ch40-Industrial_Hemp_Regulations.pdf.

2) The Rule Must Include a Sell-Through Provision

As drafted, it appears the Proposed Rule would become effective once the Final Rule is filed with the Secretary of State, or shortly thereafter. We strongly urge the CRA to permit retailers to continue to sell hemp products that are part of their existing inventory prior to the effective date of the Proposed Rule, and include a minimum 180-day effective date for the Proposed Rule to allow ample time for the hemp industry to come into compliance with the regulations, especially in light of the potential packaging and/or formulation changes that will be necessary due to the THC limits.

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In closing, we appreciate the opportunity to comment on the Proposed Rule, and respectfully urge the CRA to include the suggested recommendations and modifications described above, which we believe will encourage compliance and protect both consumers and the industry.

Thank you for your consideration.

Sincerely,



Jonathan Miller
General Counsel
U.S. Hemp Roundtable

2022 U.S. HEMP ROUNDTABLE

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