



November 27, 2024

Christin Templeton, Acting State Supervisor
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Re: Written Statement in Opposition & Request for Hearing – Proposed Amendment 11 CSR 70.213(18)

Dear Acting State Supervisor Templeton:

The U.S. Hemp Roundtable has closely followed the legislative and bureaucratic efforts this year in Missouri to regulate potentially intoxicating hemp products. Efforts have, of course, included outgoing Governor Mike Parson's failed emergency rulemaking designating foods containing psychoactive cannabis products as adulterated and directing the Division of Alcohol and Tobacco Control ("DATC") to amend its regulations to prohibit psychoactive cannabis products from being sold in liquor-licensed facilities¹. Secretary of State rejected the emergency rulemaking, meaning the rulemaking could not take effect on an expedited basis and with limited public input.

We think DATC should have deferred to the legislature—or, at the very least, Governor-elect Mike Kehoe's incoming administration—to take up the failed emergency rulemaking in its entirety. This appears to be what DATC is doing for the part of the failed emergency rulemaking that would have designated foods containing psychoactive cannabis products as adulterated. But as to the part of the failed emergency rulemaking that would have prohibited liquor-licensed facilities from selling psychoactive cannabis products, DATC is unwisely pushing ahead.

We urge DATC to rescind the proposed amendment.² First, we have serious concerns about the proposed amendment's legality. Hemp and hemp products are explicitly legal in Missouri, are removed from Missouri's Controlled Substances Act, and are not otherwise regulated or restricted. The Missouri Constitution specifically states that "marijuana does not include industrial hemp, as defined by Missouri statute, or commodities or products manufactured from industrial hemp."³ Missouri's Controlled Substance Law broadly defines "industrial hemp" to include:

¹ Executive Order 24-10 (available at <https://www.sos.mo.gov/library/reference/orders/2024/eo10>).

² Department of Public Safety, Division of Alcohol and Tobacco Control, Proposed Amendment 11 CSR 70-2.130(18) (available at <https://atc.dps.mo.gov/documents/11-csr-70-2-130.pdf>).

³ Mo. Const. art. XIV, § 2(13).

- (a) All nonseed parts and varieties of the *Cannabis sativa* L. plant, growing or not, that contain an average delta-9 tetrahydrocannabinol (THC) concentration that does not exceed three-tenths of one percent on a dry weight basis or the maximum concentration allowed under federal law, whichever is greater;
- (b) Any *Cannabis sativa* L. seed that is part of a growing crop, retained by a grower for future planting, or used for processing into or use as agricultural hemp seed; and
- (c) Industrial hemp commodities and products and topical or ingestible animal and consumer products derived from industrial hemp with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.⁴

Moreover, it is doubtful that DATC may regulate potentially intoxicating hemp products as “cannabis derivatives,” as the proposed amendment seeks to do. Neither the Missouri Constitution nor Missouri law gives the Department of Public Safety or DATC the authority to regulate hemp or marijuana. Under the Missouri Constitution, the Department of Health and Human Senior Services (“DHSS”) has the exclusive authority over the regulation of marijuana.⁵

We do not see any defense that the proposed amendment pertains to “cannabis derivatives” as opposed to marijuana. There is no definition for “cannabis” or “cannabis derivatives” under Missouri law. Rather, Missouri law defines “marijuana” to include “**all parts of the plant genus *Cannabis*** in any species or form thereof, including, but not limited to *Cannabis Sativa* L., except industrial hemp, *Cannabis Indica*, *Cannabis Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea* . . .”⁶

Second, even if the proposed amendment is lawful, it is ill-advised policy. We have not seen that bans work. In most cases, they eliminate commercial markets for hemp that is lawfully grown under the 2018 Farm Bill, reduce economic opportunities for hemp farmers and small- and medium-sized business, and stifle competition. And here, banning potentially intoxicating products from liquor-licensed facilities makes no sense because liquor-licensed facilities already carry intoxicating products and only adults may shop there.

We acknowledge DATC’s important interest in ensuring public safety and ensuring the potentially intoxicating hemp products are not attractive to or accessible by minors. That is why we have strongly supported and worked with other states to implement a regulatory approach that preserves consumer choice and addresses policymakers’ concerns about safety and youth access. This approach would include stronger enforcement, licensing for manufacturers and sellers, independent testing of hemp products, adequate labeling which prohibits child-enticing images, and age restrictions on the sale of consumable hemp products.

Third, DATC asserts that the public and private costs of the proposed amendment are “unknown.” This is a gross underestimate. Perhaps the *exact* costs are unknown, but the reasonably projected costs are significant and should not be ignored. DHSS estimates that at least 9,000 retailers in Missouri currently sell consumable hemp-cannabinoid products, which may not account for online retailers outside Missouri whose

⁴ Mo. Ann. Stat. § 195.010(24).

⁵ Mo. Const. art. XIV, § 2(13).

⁶ Mo. Ann. Stat. § 195.010(28) (emphasis added).

products are available direct-to-consumer. And DATC's own data is that retailers expect to lose between \$15,732 to \$240,000 in sales per year. Using these low estimates (\$15,732 x 9,000), the proposed amendment could easily cost retailers more than \$140,000,000 in annual sales, which would be a huge hit to Missouri's business tax and sales tax bases. This does not even account for the legal fees that DATC will incur to defend the proposed amendment, which, if it goes into effect, will undoubtedly be challenged in court.

Finally, we are concerned that "[n]o public hearing is scheduled" on the proposed amendment. It would be a mistake to proceed without a hearing, as it is critically important that the public not only be afforded the opportunity to submit written comments, but also be able to present live testimony and answers questions from policymakers at public hearing. We hope that DATC will reconsider.

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The Roundtable is grateful to DATC for its focus on the important topic of appropriately regulating potentially intoxicating hemp products. We are available to collaborate with DATC so that the issues discussed above are resolved for the benefit of the hemp products industry in Missouri and across the country. To that end, we respectfully urge DATC to rescind the proposed amendment or, if DATC will not do that, that a public hearing on the proposed amendment be held. Thank you for your consideration.

Sincerely,



Jonathan Miller
General Counsel
U.S. Hemp Roundtable