



September 23, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Room S-221, The Capitol
Washington, DC 20510

The Honorable Cory Booker
United States Senator for New Jersey
717 Hart Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
United States Senator for Oregon
221 Dirksen Senate Office
Building
Washington, DC 20510

Re: Request for Comment on the Cannabis Administration and Opportunity Act

Dear Majority Leader Schumer, Senator Booker, and Senator Wyden,

The Cannabis Regulators Association (CANNRA) represents cannabis regulatory agencies from 35 states and territories, bringing unparalleled regulatory and policy expertise that is a necessary component of any conversation on federal cannabis policy reform. While this is a burgeoning and novel topic in the federal policy arena, states have been developing and implementing cannabis policy for over two decades. As current cannabis regulators, we have a unique voice on this issue that cannot be replicated.

The issues raised in the Cannabis Administration and Opportunity Act (CAOA) are ones we as regulators have thought about extensively in our own states and territories. State regulators have come together through Special Committees within CANNRA to work on cannabis regulatory issues that are germane to the CAO A discussion draft, including federal policy and its potential implication on state regulatory frameworks, finance and taxation, social and economic equity, testing and product safety, packaging and labeling, public health and data monitoring, research, and medical use. Additionally, CANNRA members work with a broad community of state and local regulatory offices, public health officials, law enforcement agencies, financial agencies, consumer protection agencies, research institutions, and other supporting regulatory partners to help stakeholders find objective data and evidence-based approaches to policymaking and implementation. Based on our extensive experience as cannabis regulators, CANNRA has five overarching comments on the CAO A discussion draft:

1. **Federal regulators should set a floor, not a ceiling.** States need to be allowed to continue to be responsive to urgent regulatory needs to protect public health and safety, promote equity, and protect markets in each state. The cannabis industry is dynamic and products evolve rapidly. To date, states have been at the forefront of regulating emerging issues in a timely manner that is responsive to regulatory situations that arise in each state. Federal regulation should not hinder this critical state regulatory role.
2. **Minimum standards are needed for lab testing, ingredients and additives, packaging, and labeling.** In the absence of federal engagement, states have had to: develop their own standards, methods, and thresholds for testing cannabis; create their own approaches for reviewing and evaluating the safety of new product additives; and develop their own approaches to packaging and labeling to inform consumers and prevent accidental and over consumption. Federal minimum standards that build on existing standards that states have set are needed to support consumer education, consumer safety, and state regulation of cannabis.
3. **Data monitoring and research are paramount to inform policymaking and should be resourced and prioritized.** The current federal approach has put the onus on states to collect data on the

impacts of cannabis legalization on health and societal outcomes, yet most states lack the funding and resources to do this. Furthermore, scientific knowledge lags far behind policy and needs to catch up. Funding and prioritizing both data monitoring and research is essential.

4. **The generation of revenue from cannabis taxes should be reserved for states.** In states where cannabis is legal, states have developed budgets that incorporate cannabis tax revenues. States dedicate significant portions of cannabis tax revenue towards education, treatment and prevention initiatives, and public safety. A growing number of states are allocating substantial amounts of cannabis revenue towards community reinvestment, restorative justice, and social equity programs. Federal cannabis tax policy should reserve revenue for regulation and implementation, research and data monitoring, and initiatives to promote equity.
5. **More concordance and clarity between hemp regulation and cannabis regulation is urgently needed.** Currently, several psychotropic, impairing compounds are being derived from hemp and are available online and in hemp marketplaces with little or no regulation. Furthermore, hemp products can legally contain more THC in some states than products on the state-regulated cannabis marketplace and are generally not subject to the same testing and product standards. Uniform regulation and oversight of similar or comparable products from cannabis and hemp will be needed for markets to succeed.

Additional detailed comments on the CAO A discussion draft can be found in the attachment below and on our website at <https://www.cann-ra.org/news-events>.

Helping public officials understand the myriad of issues surrounding cannabis legalization is central to our mission. The members of CANNRA appreciate the opportunity to provide feedback on the discussion draft of the CAO A and will continue to engage with and provide invaluable insights to federal policymakers and regulatory agencies. We are certain that Congress and federal regulatory agencies understand the important role of state-level regulatory and policy experts, and we look forward to working with you as you develop and refine the final draft of this act.

Sincerely,



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**Detailed Comments from CANNRA on the
Cannabis Administration and Opportunity Act Discussion Draft**
Submitted September 23, 2021

Regulatory Agencies, Timelines, and Authority

- **Bi-directional communication is needed between federal agencies and states and territories.**
There should be a focus on possible points of interaction with existing state structures as opposed to a focus on division between state and federal authority. Consideration should be given to a specific process through which the federal government can share information with states (e.g., product safety reviews, product recalls, adverse events) in a timely manner, and vice versa.
- **Communication is vital between federal agencies, states, and tribal nations** with respect to government-to-government relationships and compacts. Regulations may differ across jurisdictions and information sharing will be essential.
- **More specificity is warranted in terms of regulatory authority and implementation timelines for federal regulatory agencies.**
Giving clear, specific authority and implementation direction to designated federal agencies may result in more rapid and effective regulatory implementation. Deadlines or timelines for implementation, as well as more detailed language around the authority each agency possesses to regulate aspects of the market are warranted. Failure to set timelines or to lay out specific regulatory authority may result in delayed regulatory action, unclear regulatory authority, and potential litigation.
- **Details about how federal regulatory agencies will coordinate are needed.**
A number of CANNRA members have experienced first-hand how challenging coordination can be across multiple state agencies that are involved in cannabis regulation. More detail is needed about specific ways that the federal agencies named in the bill will coordinate with each other (and with states), as well as how they will coordinate with the agencies involved in hemp regulation. Furthermore, concordance of regulatory functions may also be warranted (e.g., the bill names FDA as the regulatory authority over marijuana growing, while USDA is the regulatory authority over hemp growing).
- **Federal regulatory agencies should set a floor, not a ceiling, and continue to allow for regulatory action in states.**
While standardization is warranted across a host of cannabis policy areas (e.g., lab testing, packaging and labeling, product ingredients), federal regulation on these and other issues should set a minimum standard, allowing states to provide additional regulations they may feel are needed to protect public health and safety.
- **Clarity in the definition of terms (i.e., cannabis, marijuana, hemp) is needed in the CAO.**
Consideration for all intoxicating cannabinoids, known and unknown, natural and synthetic, should be the focus. The industry is evolving dynamically and quickly to new synthetic cannabinoids such as Delta-8 THC, Delta-10 THC, THC-O-Acetate and Hexahydrocannabinol. Even where individual states are enacting legislation and rules around these cannabinoids, control of interstate sales is federal jurisdiction.
- **The impact to existing state structures on the regulation of specific types of cannabis products, and the intent and registration of all cannabis products, warrants close consideration.**

Restorative Justice and Opportunity

- **Consider reconstituting the Cannabis Opportunity Program as a grant program.** Entities and individuals should be allowed to apply for Opportunity Trust Fund Program grants directly, and grant funding should be set aside specifically for economic development.
- **Support should be provided directly to and specifically for demographic populations traditionally left out of farming opportunities supported by the federal government** (e.g., Black, Hispanic/LatinX, and Native farmers).
- **Methods to incentivize state participation in restorative justice programs beyond social equity dollars are needed.** If carefully implemented alongside members of communities disproportionately impacted by the criminalization of cannabis, reinvestment in communities is likely to have substantial impact in terms of improving a range of social, economic, and health indicators.
- **Expungement processes should be automated and specifically funded, broadening eligibility for expungement.**
- **Consider alternatives to criminalization as a deterrent to illicit market activity.** It is important that cannabis is treated as a legal substance in any quantity once it is no longer a controlled substance.
- **Consider the impact of a significant federal tax on programming currently funded by cannabis tax dollars at the state level (including programs related to community reinvestment).** With an additional tax imposed, state tax levels will necessarily decrease, increasing the importance of robust federal programming to fill the inevitable gap.
- **Include historically disadvantaged communities in research grants for the National Institutes of Health and the U.S. Department of Veterans Affairs to study cannabis.** Include specific funding to historically black college and universities, particularly those that are land grant institutions.

Lab Testing and Product Safety

- **Lab testing standards and harmonization of testing methods, analytes, and thresholds are urgently needed.** Product quality and safety depends on having consistent, high-quality approaches to lab testing that extend beyond testing for cannabinoid content. Specificity on standardized lab testing in critical areas (i.e., microbiological contaminants, heavy metals, pesticides) is needed, particularly in the case of interstate commerce. There is an overarching need for harmonization of validated methods, analytes that are assessed, and contamination thresholds or limits. Methods and standards should not differ from state to state. Furthermore, input from other federal agencies is warranted (e.g., EPA input is needed for pesticides and pesticide limits).
- **Consider expanding the FDA's Bacteriological Analytical Manual (BAM).** Include the agency's preferred laboratory procedures for microbiological analyses of cannabis and manufactured cannabis products.
- **Consider establishing a proficiency program for cannabis lab testing.** This program should be similar to those in place for food, dairy, and water labs. Federal legalization should also make it clear that state laboratories that accept federal funds are allowed to engage with state regulatory agencies as reference labs. The current Schedule 1 designation of cannabis has resulted in reluctance for many state and university laboratories to step in to help develop and validate methods and to conduct reference testing.

- **Regulatory approaches will be needed in a timely manner for cannabis product ingredients.** Sufficient resources will be needed for the regulatory agency that is responsible for the federal regulation of product ingredients (e.g., diluents, excipients, flavors), as ingredients can evolve rapidly in the market and may lack safety profiles or sufficient science about their public health impacts to follow standard regulatory approaches taken for other commercial products. States will not be able to wait for a multi-year review process to regulate certain ingredients that have unknown safety. Regulatory approaches will be needed to either prohibit certain classes of ingredients or additives until proven safe, or to rapidly review and regulate ingredients and additives in manufactured cannabis products. Pre-market review of certain ingredients could be an approach to regulation of additives.
- **Consider the important differences between cannabis and tobacco and the use of more detailed, cannabis-specific definitions.** For example, language in Section 1109 indicates that vape devices may not include any flavor other than cannabis and may not include characterizing flavors (e.g., menthol, mango, strawberry, grape, orange, etc.). This section does not address or define the flavor of “cannabis.” Cannabis strains can have some of the “flavors” mentioned above from terpenes that naturally occur in the cannabis plant (unlike tobacco). Leaving the definition of the “flavor of cannabis” open to interpretation could render the language in this section largely meaningless. In addition, many of the additive ingredients in the cannabis market are not “natural” or “artificial flavors” under the FDA’s definition of those terms. **Rather than litigate what “cannabis flavor” is – the CAO A could consider prohibiting any non-cannabis derived additives in cannabis vaping products, as many states have already done.** This straightforward approach could address concerns about products being attractive to youth and the unknown health effects of additives.
- **Consider nuanced differences between tobacco and cannabis in terms of product delivery mechanisms.** For example, the definition of “electronic cannabis product delivery system” in Section 1109 seems to have been borrowed from nicotine, and more detail is needed for this section of the act to be actionable and enforceable. There are electronic devices that deliver dried herb cannabis that are inherently different than electronic cannabis vaping devices that use oils and concentrates. Furthermore, **opportunities exist to create standards for electronic cannabis vaping devices to help prevent public health risks**, including leaching of heavy metals from vape cartridge components. Along with more specific definitions, standards (or the authority for a federal entity to regulate to a standard) could be called out in the CAO A.

Medical Cannabis Marketplaces and Access

- **The current bill lacks consideration for existing state medical cannabis programs, which are the only current legal marketplaces across 18 states.** Even in states where adult-use is legal, legislators and state regulators have developed approaches to maintain patient access to medicinal cannabis through regulated programs. In particular, the CAO A should:
 - Consider providing regulatory guidance or allowance for establishing a program only for medical cannabis products – especially given that 18 states currently only have legal medical marketplaces, and 11 states have legal low THC or CBD marketplaces.
 - Consider providing additional verbiage where the CAO A lists the legal age to possess cannabis being 21 years to allow for individuals under the age of 21 years to possess cannabis products for medicinal purposes, in accordance with state regulated medical cannabis programs.
 - Consider a provision to decrease tax rates (or provide tax exemption) for medical patients. Many states do not have an added tax on medical cannabis products.

Research and Data Monitoring

- **The dedicated financial support of research and data monitoring should be clearly defined in the language of the act.** These activities are critically important to policy making and should be prioritized both in terms of funding and timeline.
- **Consider expanding the research priorities called out in Section 202.** The CAO should build upon the existing research being done in states and provide for specific research needs that cannot be met with state-level resources. For example, consider these additional research topics not mentioned in the bill:
 - Product research to identify and remove metals and dangerous diluents and additives from cannabis vaping devices (something that is increasingly important after the Vaping Use Associated Lung Injury [VALI] outbreak of 2019).
 - Research on appropriate dosing.
 - Research on routes of cannabis administration (and comparative safety profiles).
 - Research on the effectiveness of medical cannabis as a method to treat opioid use disorder and/or other substance use disorders.
 - Research on negative effects that may result from medical cannabis use (e.g., drug interactions, dependence, etc.) and ways to mitigate or prevent those effects.
 - Cannabis policy research to study and suggest policies that more effectively protect public health and safety in legal cannabis markets.
- **Section 201 calls for a report to be produced by the U.S. Comptroller General two years after legalization to assess the social health and related impacts of legalization.** Related to this section:
 - **Consider requesting recurring reports on the impacts of cannabis legalization.** An evaluation report like this is warranted more than just two years after legalization, and ideally, could be commissioned and delivered every two to three years for the first ten years of legalization. The effects of legalization federally will not be known two years after passage of the CAO.
 - **Consider expressly naming other federal agencies that should be engaged in the report.** Many of the impact areas identified for this report are likely best addressed by HHS agencies, along with NHTSA.
 - **Consider specifically resourcing and prioritizing the improvement of federal data collection systems related to cannabis.** Many of the data measures required by the report are measures for which high-quality national (or state level) data are currently unavailable. Failure to immediately bolster cannabis-related data monitoring on federal surveys will result in a lack of baseline data, and data may not even be available to fully assess impacts of legalization as outlined in Section 201.
 - **State policy differences will need to be accounted for in any report on the impacts of federal legalization.** Looking at national data alone will be insufficient and, given the heterogeneity of state approaches to legalization, may result in inaccurate inferences and conclusions.
 - **Consider including an evaluation of the impacts of legalization on states with medical cannabis use as well.** The scope of the required report in Section 201 appears to be limited to states with adult-use cannabis.
 - **Consider including harm reduction approaches/strategies.** These strategies should be part of the report, instead of an abstinence only approach.
 - **Consider partnering with states to include any state-collected data.** For example, some states have linked cannabis tracking data with prescription monitoring programs regarding opioid use, etc.

Cannabinoid Hemp

- **Section 505 should address cannabinoids derived from hemp more broadly, not just CBD.**
- **Consider regulating cannabinoids that are derived from hemp and can be psychotropic as part of the cannabis regulatory system being established in CAO, as opposed to the hemp regulatory system.**
- **Contaminant testing should be required of hemp products.** Hemp product testing should go beyond the cannabinoid testing required by the farm bill.
- **Limits to the amount of total THC that can be in a finished hemp product are warranted.** The 0.3% dry weight limit can result in manufactured cannabis products (concentrated extracts used in foods and oils) that have more legal THC than is allowed in state cannabis marketplaces.

Public Health and Prevention

- **Specificity on standards for labeling and packaging is needed.** Data suggest that cannabis consumers in the U.S. are generally under-educated about the contents of the products they are consuming. Standard and clear consumer labeling is paramount, as are clear science-based warning labels that are easily understood by consumers and are not overly complex. Warnings about cannabis products should not differ across states, particularly if interstate commerce is in place. Labeling should not contain any false or misleading information.
- **Consider funding a federal public education campaign about cannabis.** Federal policies may be unclear to the population in the event of policy change. A public education campaign (similar to Colorado's *Good to Know* or California's *Let's Talk Cannabis*) can educate individuals about the law and deliver prevention and harm reduction messages to promote public health and safety.
- **Consider allocating resources for the development of an adverse event reporting system.** Such a system could monitor reporting on adverse events from cannabis or hemp and communicate information to states. Further, such a system could be used to guide product recalls or ingredient safety reviews.
- **Minimum federal standards for marketing and advertising are needed.** State and local regulations prohibiting marketing to underaged individuals across various platforms should be supported.

Cannabis Trade Practices and Interstate Commerce

- With state primacy as a basic principle, **consider the interplay between differing state regulatory structures, existing state track and trace systems, and the implementation of a federal track and trace system.** If state level policies are given control over import/export between states, the concept of a national track and trace system could be challenging. State level policies on the privacy of business data within these systems is also a variable to consider.
- **The impacts of proposed federal purchase and possession limits should consider the impacts on existing state limits (which may be lower or higher).**

Taxation of Cannabis and Establishment of Trust Fund

- **Consider providing greater specificity on the intent and imposition of the proposed establishment of a federal tax structure for cannabis.**
- **Reserve the generation of revenue from cannabis taxes to states,** focusing generated federal cannabis tax revenue specifically on regulation and implementation, research and data monitoring, and equity.