



April 17, 2023

The Honorable Kevin McCarthy  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Hakeem Jeffries  
Minority Leader  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, D.C. 20510

### **Re: Urging Federal Action to Address Hemp-Derived Cannabinoid Product Regulation**

The Cannabis Regulators Association, a nonpartisan association representing cannabis and hemp regulatory agencies from more than 40 member states and U.S. territories, urges federal action to provide a regulatory framework for hemp-derived cannabinoid products. These products currently lack federal manufacturing, testing, and labeling requirements, and they pose consumer safety and public health risks. In the absence of federal regulation, state government agencies have borne the brunt of the efforts to effectively regulate cannabinoid hemp products.

The Agriculture Improvement Act of 2018 (the Farm Bill) was drafted with a focus on agricultural commodities and non-intoxicating hemp products. However, the language of the bill created a thriving market for intoxicating cannabinoid products that fit within the definition of “hemp.” State cannabis and hemp regulators have observed three primary loopholes that businesses are using to justify the manufacture or sale of intoxicating hemp-derived products:

- **“0.3% loophole”:** While the threshold of 0.3% delta-9 THC (tetrahydrocannabinol) by weight is a small amount of THC in a hemp plant, when applied to hemp-derived products (e.g., chocolate bars, beverages, etc.) which can weigh significantly more, 0.3% by weight can amount to hundreds of milligrams of THC. For example, a 50-gram chocolate bar at 0.3% THC would have around 150 mg of THC (30 times the standard 5 mg THC dose established by the National Institute on Drug Abuse). A family sized pack of cookies weighing 20 oz can contain around 1700 mg of THC using the 0.3% THC threshold.
- **“THCA loophole”:** The 0.3% threshold specifically applies to “delta-9 THC.” As written, it does not include delta-9 THCA (the precursor to THC). Hemp plants produce a much greater amount of THCA than THC, and THCA readily converts into THC when smoked, heated, or combusted. Most states with medical or adult-use cannabis programs define “total THC” to capture the total intoxicating potential of cannabis by combining the amount of THC with the potential of THCA that can convert into THC. Despite some states’ efforts

to address this issue within regulated markets, many hemp businesses are selling “THCA hemp” flower that contains less than 0.3% delta-9 THC but has a total THC concentration of 15% to 20%. This so-called “hemp” is indistinguishable from marijuana flower.

- **“Derivatives loophole”:** The definition of hemp also includes “all derivatives” of the cannabis plant. As a result, many hemp businesses are taking CBD (cannabidiol) derived from hemp and chemically converting it into intoxicating cannabinoid derivatives like delta-8 THC, THCO acetates, and HHC (hexahydrocannabinol). This loophole appears to be an unintended outcome of copying catch-all language from the Controlled Substances Act and is resulting in chemically derived compounds that have not been well-studied for human safety.

While intoxicating cannabinoid hemp products present significant consumer safety and public health risks, the unregulated manufacture and sale of non-intoxicating cannabinoid hemp products can also pose potential risks. In considering the reauthorization of the Farm Bill, Congress should consider the experiences of state cannabis and hemp regulators who have grappled with these regulatory issues.

**CANNRA has identified several key considerations as the Farm Bill language is revised and cannabinoid hemp product regulation is debated:**

- Explicitly separating regulation of conventional agricultural and industrial hemp (e.g., food, fiber, seed, grain) from regulation of cannabinoid hemp products, and clarifying the definition of hemp in the Farm Bill to state that the 0.3% THC threshold only applies to plants, not to finished products;
- Having federal regulations that set a floor, while allowing states to implement more restrictive regulations without being preempted by federal law;
- Identifying appropriate limits for THC and other cannabinoids in finished products, including approaches that address full-spectrum products (which can contain high amounts of THC), approaches to determine a threshold for THC at which a majority of people will not be intoxicated, and approaches to prevent the sale of any potentially intoxicating cannabinoid product to minors;
- Addressing “total THC” (including THCA) in hemp regulations generally, rather than just in the context of pre-harvest crop testing;
- Implementing labeling requirements that inform consumers of the cannabinoid composition of the products they purchase, including the total milligrams of THC in the serving size and product;
- Implementing manufacturing and testing requirements on all cannabinoid hemp products to ensure that products are free from contaminants and potentially harmful byproducts;
- Regulating intermediate and finished-product manufacturers, including safe harbor for crude or in-process hemp extracts that exceed 0.3% THC in the manufacturing process but are ultimately processed into federally compliant finished products;
- Regulating the manufacture and sale of semisynthetic “derivative” products (e.g. products derived chemically from materials sourced from hemp) in a way that ensures consumer safety;
- Developing a regulatory approach to address the manufacture of any synthetic (e.g., cannabinoids made chemically) and biosynthetic (e.g., cannabinoids derived from genetically modified yeast or algae) cannabinoids or products to ensure consumer safety;
- Engaging essential federal agencies that should have regulatory oversight over cannabinoid hemp products, including not only the US Department of Agriculture, but also the Food and Drug Administration, the Environmental Protection Agency, and if a tax mechanism is being considered, the Alcohol and Tobacco Tax & Trade Bureau.

As discussions about revisions to the Farm Bill continue, it is vital to include cannabis and hemp regulators at the table as a group of government officials with direct regulatory experience related to cannabinoid products. Federal engagement is urgently needed to support states in the regulation of these products and to protect public health and consumer safety. CANNRA stands ready to serve as a resource as discussions about the Farm Bill reauthorization continue, and a regulatory framework is considered for hemp-derived cannabinoid products.

Respectfully,



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Executive Director, CANNRA



Chris Tholkes, Treasurer, CANNRA  
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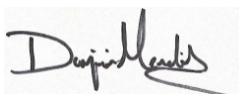
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Andrew Turnage, Board Member, CANNRA  
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