U.S. Hemp Roundtable

202.292.4147 | info@hempsupporter.com
20 F Street NW, Suite 850, Washington, DC 20001

November 14, 2022

Department of Agriculture & Consumer Services
Task Force to Analyze Industrial Hemp Extracts
and Other Substances Containing Tetrahydrocannabinol
Intended for Human Consumption
Attn: Hon. Parker Slaybaugh, Deputy Secretary
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Re: U.S. Hemp Roundtable's further written public comments in response to the "Report of the Task Force to Analyze and Make Recommendations Regarding Whether Any Statutory or Regulatory Modifications are Necessary to Ensure the Safe and Responsible Manufacture and Sale of Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol that are Intended for Human Consumption in the Commonwealth."

Summary: The U.S. Hemp Roundtable supports the establishment of a robust, comprehensive framework for the regulation of hemp products that contain THC in Virginia. Any such framework should: 1) be grounded in science, 2) strike an appropriate balance between ensuring consumer safety and maintaining consumer access to safe, high quality hemp products, and 3) not place unnecessary restrictions on producers and marketers of non-impairing, non-intoxicating hemp products.

The U.S. Hemp Roundtable—the hemp industry's national advocacy organization—appreciates the opportunity to provide further comments to the Task Force to Analyze and Make Recommendations Regarding Whether Any Statutory or Regulatory Modifications are Necessary to Ensure the Safe and Responsible Manufacture and Sale of Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol that are Intended for Human Consumption in the Commonwealth (hereinafter "the Task Force"). We previously submitted, on July 5, 2022, initial public comments regarding House Bill 30's age restrictions for hemp extract, food with hemp extract, and ingestible or inhalable hemp substances with any amount of THC, as well as comments to the Task Force on August 2, 2022 preceding its August 9, 2022 meeting, where our General Counsel, Jonathan Miller, also testified in person.

Consistent with our previous comments, the Roundtable continues to advocate for a regulatory framework that distinguishes non-impairing, non-intoxicating hemp products from intoxicating, impairing products sold under the guise of hemp, and more importantly protects consumers by assuring access to quality, regulated products. Although we are encouraged by some of the suggestions and recommendations in the report and appreciate the Task Force's acknowledgement of industry's concerns, we have identified areas of improvement that we believe will help achieve an appropriate balance between consumer safety and access.

- **Assess a product's legality using its Total THC concentration**. We agree with this recommendation. Specifically, we believe the 0.3% concentration limit should apply to all forms of THC, including delta-8 THC, and their isomers. As you know, the Roundtable has advocated for this approach at both the federal and state level. However, we caution against using a total THC concentration to, as the Task Force recommends, "determine[ ] whether the substance is marijuana." Instead, the total THC concentration should determine whether a product is impairing or intoxicating, and therefore subject to more stringent regulation than non-intoxicating hemp products. We oppose criminalizing the sale of intoxicating hemp products, urging Virginia's legislature to instead regulate them in a stricter regulatory framework akin to adult-use cannabis.

  On the topic of impairment, we further recommend the Task Force create a science-based panel that brings together industry stakeholders and regulators to identify appropriate standards for evaluating whether a product is intoxicating, rather than regulating all products with any amount of THC in the same way. As directed by Senate Bill 22-205,[1] enacted in May 2022, Colorado is currently engaged in this process. The SB 22-205 Task Force has convened several highly productive, interactive meetings and is expected to submit a report of its findings and recommendations to the Legislature no later than January 1, 2023. We urge this Task Force to follow the lead of Colorado and ensure any standards for intoxication or impairment are firmly grounded in science and that input from both government and industry is considered.

- **Coordinated cannabis regulation and enforcement**. We support this recommendation in concept, however we urge the Task Force to ensure the agencies overseeing and administering the regulatory framework for hemp products have the appropriate expertise and subject matter knowledge, and also recognize and preserve the distinction between hemp and marijuana products.

- **Require a permit to sell certain hemp products**. While the Roundtable does not object in principle to this requirement, given several states require a permit or registration in order to lawfully distribute or sell hemp-derived cannabinoid products at retail, we strongly urge the Task Force to ensure the fees are reasonable and the process is not overly burdensome to businesses. The

[1] 9 NYCRR Part 114, https://cannabis.ny.gov/system/files/documents/2021/11/part_114_cannabinoid_hemp_regulation_11-10-21.pdf.

Cannabinoid Hemp regulations adopted by the New York Office of Cannabis Management ("OCM"),[2] which includes permitting and registration requirements for hemp retailers, is working well for both consumers and industry, and we therefore encourage Virginia to adopt a similar approach.

- **Establish civil penalties**. The report states "the penalties for manufacturing or selling an edible hemp product that does not comply with the Food and Drink Law are not substantial enough to compel compliance," and recommends "significant" civil penalties for selling regulated products without the proposed permit or failing to comply with established product standards. As a general matter, the Roundtable opposes the imposition of criminal penalties and agrees that civil penalties can be a useful tool to compel compliance. However, we urge the Task Force to utilize an escalated approach, similar to what has been implemented in New York,[3] whereby repeat offenses would result in more severe civil penalties, with the most significant being imposed after a third offense.

- **Additional U.S. Hemp Roundtable recommendations**.

    - We urge the Task Force to recommend rescinding the child-resistant packaging requirements and the 21+ age restriction that apply to all substances intended for human consumption that contain any amount of THC. As noted in our previous comments, the vast majority of states do not require child-resistant packaging for lawful hemp products, which by nature are not intoxicating and do not pose the same safety issues as adult use cannabis products. Child-resistant packaging also increases costs significantly for manufacturers and distributors. If hemp retailer permits or a similar requirement are imposed, these onerous restrictions are likely not necessary, as Virginia regulators would be able to easily access and inspect hemp retailers throughout the state and identify individual products of concern – rather than a broad mandate impacting all products that contain any amount of THC.

    - We further urge the Task Force to recommend recission of the requirement that industrial hemp extract or food containing industrial hemp extract containing THC be equipped with a label that states the product contains THC and may not be sold to a person younger than 21 years of age. Virginia is the only state that requires this label statement, and given the law already requires the label to include the total percentage and milligrams of THC in the product, it is unnecessary. Again, a reasonable framework for hemp retailer permits or

[2] Colorado Senate Bill 22-205, https://leg.colorado.gov/bills/sb22-205.
[3] 9 NYCRR § 114.17, Penalties. Failure to comply with a requirement of Article 5 of the Cannabis Law or this Part may be punishable by a civil penalty, as follows: (i) a fine of up to $1,000 for a first violation; (ii) a fine up to $5,000 for a second violation within three-years; or (iii) a fine up to $10,000 for a third violation and each subsequent violation thereafter, within a three-year period

registration and other less restrictive mechanisms would allow for regulators to identify problematic products and ensure they stay out of the hands of minor.

- Additionally, we urge withdrawal or modification of statutory language prohibiting the sale or offer for sale of any substance containing THC and intended for human consumption unless it is accompanied by a certificate of analysis ("COA") produced by an ISO/IEC 17025 accredited independent laboratory that provides the THC concentration. While we do not object to mandatory product testing or the provision of COAs to consumers and regulators, this provision appears to require that an actual COA be presented at the time of sale. We are not aware of any other state with this requirement, which places unreasonable burdens on the industry, especially retailers. We request the language be modified to permit COAs to be presented to consumers electronically, such as through a QR or other scannable code or through a website listed on the label. Nearly all states with regulatory frameworks for hemp products take this more reasonable approach.

- Although the Roundtable strongly urges the removal or modification of the requirements described above, we support a comprehensive, robust regulatory framework for hemp products. We also have no objection to reasonable testing and labeling requirements that apply to out-of-state products. We again point to New York's regulations for cannabinoid hemp products as a model for Virginia. We also recommend the Task Force consider recognizing and potentially utilizing the U.S. Hemp Authority® ("USHA") State Verification Program ("SVP") as a tool to identify compliant out-of-state manufacturers.[4] As described in the attached document, the SVP was developed to complement the USHA's efforts to provide consumers, retailers and public officials confidence in hemp and hemp extract products and was specifically designed to assist state regulators in establishing eligibility for out-of-state manufacturers. To be clear, the Roundtable does not recommend mandating SVP or other third-party certification, but we do believe it can provide added assurance of product safety and quality. Regulators could, however, provide incentives for companies that voluntarily obtain certification.

- The Task Force's Report notes that currently, certain product categories of hemp products are not regulated by the state, including topical and inhaled hemp products as well as nasal sprays, suppositories, and patches.
    - For topical products, while we do not object to Virginia regulators having oversight over these products, they do not require the same level of regulation as ingestible

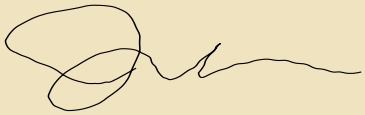
[4] The U.S. Hemp Authority® Certification Program is the hemp industry's initiative to provide high standards, best practices, and self-regulation, giving consumers and retailers confidence in hemp and CBD products.

products, in particular those that meet the federal definition of "cosmetic."[5] We urge the Task Force to recommend against labeling and registration requirements, or requiring a permit to sell topical hemp products. However, we support reasonable testing requirements for cosmetics. Notably, the FDA does not restrict the sale of CBD or other hemp-derived cosmetics, although these products must comply with all applicable safety and labeling requirements imposed under federal law.

- We recommend the Virginia Department of Agriculture and Consumer Services ("VDACS") have oversight over inhaled products. Again, we point to the New York OCM regulatory framework as a potential model.
- We request the Task Force recommend to prohibit hemp products sold as nasal sprays, suppositories, patches, or sublingual products, as such products are regulated as drugs by FDA.

The Roundtable expresses its gratitude to the Task Force for focusing on the important topic of the safe and responsible manufacture and sale of hemp products in Virginia, and we again thank the Task Force for the opportunity to submit comments.

Sincerely,



Jonathan Miller
General Counsel
U.S Hemp Roundtable
www.hempsupporter.com

[5] The FD&C Act defines cosmetics by their intended use as "articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body...for cleansing, beautifying, promoting attractiveness, or altering the appearance." 21 U.S.C. § 321(i).

2022 U.S. HEMP ROUNDTABLE

EXECUTIVE COMMITTEE

ANANDA HEMP/ECOFIBRE

CRONOS GROUP

CURALEAF

GARDEN OF LIFE

MEDTERRA

TURNING POINT BRANDS

BOARD OF DIRECTORS

AMERICAN SHAMAN

ANANDA HEMP/ ECOFIBRE

CANOPY GROWTH CORPORATION

CBDISTILLERY

CRONOS GROUP

CURALEAF

GARDEN OF LIFE

HEMP INDUSTRIES ASSOCIATION

KOI CBD

MEDTERRA

RED MESA SCIENCE AND REFINING

TURNING POINT BRANDS

U.S. HEMP AUTHORITY

VERGE AGRITECH

ZILIS

MEMBERS

ACCELERATE 360

ALLIANCE FOR NATURAL HEALTH USA*

AMERICANS FOR SAFE ACCESS*

AMERICAN HERBAL PRODUCTS ASSOCIATION*

AMERICAN SHAMAN

ANANDA HEMP/ ECOFIBRE

ANCIENT NUTRITION

ASSOCIATION OF WESTERN HEMP PROFESSIONALS*

BARLEAN'S

BLUEBIRD BOTANICALS

BOTANACOR LABORATORIES

CALIFORNIA HEMP COUNCIL*

CANOPY GROWTH CORPORATION

CBDISTILLERY

CBDMD

CONSUMER HEALTHCARE PRODUCTS ASSOCIATION*

COUNCIL FOR RESPONSIBLE NUTRITION*

CRONOS GROUP

CURALEAF

CV SCIENCES

ELIXINOL

ESQUIRE BANK

EUROFINS FOOD INTEGRITY AND INNOVATION

EVG EXTRACTS

FLEX PAYMENT SOLUTIONS

FRIENDS OF HEMP*

GARDEN OF LIFE

GVB BIOPHARMA

HARROD'S CREEK FARM

HEMP ALLIANCE OF TENNESSEE*

HEMP INDUSTRIES ASSOCIATION*

HEMPSI

HIGH TIDE

INDIGENOUS PRODUCTION TRADE ALLIANCE*

KANNACO

KANNAWAY

KENTUCKY HEMP ASSOCIATION*

KOI CBD

M&C COMMUNICATIONS

MEDTERRA

MIDWEST HEMP COUNCIL*

NATIONAL CANNABIS INDUSTRY ASSOCIATION*

NATIONAL ANIMAL SUPPLEMENT COUNCIL*

NEW LEAF DATA SERVICES

PRESENCE MARKETING

PRIORITY PAYMENT SYSTEMS

RADICLE SCIENCE

REALM OF CARING*

RED MESA SCIENCE AND REFINING

SPARTAN SWORD*

TEXAS HEMP COALITION

TURNING POINT BRANDS

UNITED NATURAL PRODUCTS ALLIANCE*

U.S. HEMP AUTHORITY*

U.S. HEMP BUILDING ASSOCIATION*

VERGE AGRITECH

VETERINARY CANNABIS SOCIETY*

VIRGINIA HEMP COALITION*

WE ARE FOR BETTER ALTERNATIVES

WISCONSIN HEMP ALLIANCE*

WYLD

ZILIS

**DENOTES NON-PROFIT ADVOCACY PARTNER*

Paid for by U.S. Hemp Roundtable, Inc., an independent, nonprofit organization exempt from federal taxation under section 501(c)(4) of the Internal Revenue Code.

www.hempsupporter.com