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Cannabis Business Association of Virginia

November 14, 2022

The Honorable Matthew J. Lohr
Secretary of Agriculture and Forestry
Commonwealth of Virginia

Public Comments: Task Force to Analyze Industrial Hemp Extracts and Other Substances
Containing Tetrahydrocannabinol (THC) Intended for Human Consumption

Dear Secretary Lohr,

We appreciate the opportunity to submit written comments to the Task Force to Analyze Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol (THC) Intended for Human Consumption (the “Task Force”). We ask that you consider these comments in conjunction with our previously submitted written comments as well as the oral testimony provided by our lobbyist, Dylan Bishop, at the Task Force’s July 7 meeting.

The Cannabis Business Association of Virginia (“CannaBizVA”) is a non-profit, trade association formed to advocate for the expansion and protection of commercial opportunities for Virginia businesses in the Commonwealth’s regulated cannabis industries. Our membership includes farmers, processors, manufacturers, retailers, laboratory testing facilities, and other ancillary businesses, and we represent their interests collectively.

While CannaBizVA generally agrees with many of central tenets brought to light and recommended by the Task Force, **CannaBizVA fervently opposes the recommendation that a hemp product’s legality should be assessed using its total THC concentration.**

Both Federal law and the Commonwealth currently define and distinguish hemp and hemp-derived products from marijuana using a Delta-9 THC scale. Accordingly, a change to a total THC standard would bring Virginia out of alignment with the Federal definition, and which would only serve to shrink Virginia’s hemp markets to a smaller scale than that which is currently permitted by the USDA and Federal courts.

In fact, the U.S. Drug Enforcement Agency (DEA) has held that in light of the language of the 2018 Farm Bill, all hemp-derived cannabinoids, as long as they are under 0.3% *total* delta 9-THC, are not controlled substances and are not illegal under federal law. In a September 2021 letter to the Alabama Board of Pharmacy, a DEA official explained, “The Controlled Substances Act, however, excludes from control ‘tetrahydrocannabinols in hemp (as defined under section



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1639o of Title 7).’ Hemp, in turn, is defined as ‘the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.’ 7 U.S.C. 1639o(1). Accordingly, cannabinoids extracted from the cannabis plant that have a delta 9-THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of ‘hemp’ and thus are not controlled under the CSA.”¹

Furthermore, a recent ruling by the U.S. Court of Appeals Ninth Circuit further supports this interpretation of the 2018 Farm Bill. According to *The National Law Review*, in a recent trademark violation case involving delta 8-THC products, “The Ninth Circuit found that the plaintiff was likely to succeed on the merits of its trademark claim “because its delta-8 THC products are not prohibited by federal law, and they may therefore support a valid trademark.” In so doing, the Ninth Circuit pointed to the plain text of the 2018 Farm Bill and found the Δ 8-THC in the plaintiff’s products appear to fit comfortably within the statutory definition of ‘hemp.’”²

Absent a change in federal law, it is clear that the current statute allows, or at the very least does not disallow, products derived from hemp as long as they do not contain a total *delta 9-THC* concentration of greater than 0.3%. Accordingly, CannaBizVA respectfully requests that this Task Force recommend that the Commonwealth use only a Delta-9 THC standard in assessing a products legality.

¹ <https://albop.com/oodoardu/2021/10/ALBOP-synthetic-delta8-THC-21-7520-signed.pdf>

² <https://www.natlawreview.com/article/weeds-thicken-making-sense-ninth-circuit-s-decision-finding-delta-8-legal-under>