



Oregon

Kate Brown, Governor

Liquor and Cannabis Commission

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December 17, 2021

Ola Lessard
President
US Hemp Roundtable
250 West Main Street, Suite 2800
Lexington, KY 40507

Jonathan S. Miller
General Counsel
US Hemp Roundtable
100 M Street, Suite 600
Washington, DC 20003

Dear Ms. Lessard and Mr. Miller:

The Oregon Liquor and Cannabis Commission ("Commission") has received comments from the US Hemp Roundtable ("Roundtable") concerning the Commission's current rulemaking related to cannabinoid limits for hemp products.^{1,2} Although the Commission ordinarily does not reply to public comments, we wanted to formally correct the assumptions made by the Roundtable. This response provides additional information about [Oregon House Bill 3000](#), the legislation approved by Oregon lawmakers that provided the framework for the Commission's [proposed rule language](#).

Much of the Roundtable's feedback inaccurately frames the Commission's draft rules as being out-of-step with legislative intent. For example:

- *"The legislative intent of House Bill 3000 was to direct OLCC to develop standards that treat these types of products as 'adult use cannabis items' and prohibit their sale in the general market."*
- *"In its Temporary Rules, OLCC **invented** a new intermediate category: Products that are not intoxicating, but have trace levels of total THC (defined as 0.5 mg or more of total THC per product, including delta-9 THC, delta-8 THC, and all other forms of THC) and can still be sold in the general market, but are subject to restrictions that mirror products like alcohol, by restricting sales to adults over the age of 21." [emphasis added]*

These statements are simply not accurate. **HB 3000** addressed two separate types of limits on cannabinoid content in hemp items:

- **Limits for sales to minors:** Sections 1 and 4 define "adult use cannabis item," direct the Commission to define the concentration of cannabinoids at which an item becomes "adult use," and prohibit the sale of adult use cannabis items to minors (under age 21). These sections became operative immediately upon passage.

¹ <https://hempsupporter.com/news/full-spectrum-hemp-and-cbn-under-threat>

² <https://hempsupporter.com/assets/uploads/US-Hemp-Roundtable-OLCC-Comments-121321.pdf>

- **Limits for hemp items generally:** Sections 6 and 17 direct the Commission to establish limits on cannabinoid content for hemp items, and prohibit selling a hemp item that exceeds these limits to a consumer. This is entirely separate from the issue of “adult use cannabis items” and sales to minors. These sections become operative on January 1, 2022.

Far from inventing a “new intermediate category,” the Commission’s draft rules bifurcate these concepts as prescribed by HB 3000.

It is reassuring to learn that the Roundtable does not believe intoxicating cannabis products should be sold at retail, or to minors. However, it is difficult to square that belief with the Roundtable’s request that the Commission modify the proposed rules to allow minors to purchase hemp edibles with 10 mg THC, hemp supplements with 30 mg THC, and hemp tinctures with 50 mg THC – levels that any reasonable person would believe to be intoxicating.

The Roundtable’s previous comments on intoxicating hemp products³ indicate that the Roundtable may have a different understanding of either the amount of THC that can legally be in hemp products, or the amount of THC that is intoxicating. The Roundtable states that: “Unlike marijuana, hemp is, by definition, not intoxicating.” In fact, hemp products may contain up to 0.3% THC under federal law, meaning a 5 gram hemp product could contain a 15 mg dose of THC. There is already a robust market for intoxicating hemp-derived products that contain less than 0.3% THC, a factor the Oregon Legislature considered during hearings on HB 3000.

Dr. Ethan Russo, former Director of Research and Development of the International Cannabis and Cannabinoids Institute, suggests that a threshold dose of THC for the average adult is 2.5 mg.⁴ The National Institute on Drug Abuse (NIDA) has established 5 mg THC as the standard unit for research, describing it as a dose that “may produce a high in both experienced and occasional users,” and mentions that a 10 mg dose might be “more relevant for people who use cannabis frequently or who use today’s high-potency products.”⁵

This means a product with 10, 30, or 50 mg THC can very easily be intoxicating, depending on how much of the product a person consumes.

Industry stakeholders have suggested the Commission consider product serving sizes for hemp THC concentration limits but not establish any total container limits. However, the Commission’s experience regulating cannabis products in the adult use marijuana market indicates that some consumers and manufacturers effectively disregard serving size limits. In Oregon’s adult use marijuana market, where edible products are currently limited to 5 mg THC per serving and 50 mg THC per container, many marijuana edible manufacturers offer products where a single small gummy or cookie contains 50 mg THC. Ostensibly these edible items contain ten servings, but it is not practical to expect consumers to divide a 10 gram cookie into 1 gram portions.

The Commission’s draft rules on hemp THC limits bear this experience in mind: A hemp edible manufacturer could make a package of ten full-spectrum hemp gummies, each containing 20 mg CBD

³ <https://hempsupporter.com/news/for-immediate-release-statement-on-marketing-hemp-products>

⁴ E.g. <https://www.hempgrower.com/article/dr-ethan-russo-1-is-a-scientifically-defensible-thc-limit-for-hemp/>; <https://doi.org/10.1016/j.ejim.2018.01.004>

⁵ <https://www.drugabuse.gov/about-nida/noras-blog/2021/05/establishing-5mg-thc-standard-unit-research>

and 1 mg THC, or they could make a single “ten serving” gummy containing 10 mg THC and no CBD. While a ten-pack of gummies may not be intoxicating to an average adult who consumes a single serving containing 1 mg THC, a single 10 mg THC gummy is certainly going to have a stronger intoxicating effect.

CBD and THC in hemp exist in proportion to one another – the more CBD, the more THC.⁶ That means full-spectrum hemp products⁷ that aim for large concentrations of CBD will also have elevated levels of THC. This makes it impossible to set a THC limit that prohibits the sale of intoxicating hemp products without also prohibiting the sale of full-spectrum hemp products. Conversely, allowing full-spectrum hemp products necessarily means a THC limit that is high enough for some intoxicating hemp products to also be sold. The Commission’s draft rules recognize the importance of continuing to allow full-spectrum hemp products to be sold to adults, but also reflect a goal to set a limit where general market hemp products contain significantly *less* THC than cannabis products available in Oregon’s adult use market.

When it comes to setting THC limits on sales to minors though, the considerations change substantially. It is one thing to allow an adult who can purchase high-THC marijuana products through a licensed adult use marijuana retailer to also purchase a hemp product that may contain an intoxicating amount of THC. It is quite another to allow a child to purchase a hemp product that may be intoxicating. That an industry group advocates for children to be able to legally purchase products containing 50 mg THC is deeply concerning.

In order to prohibit the sale of intoxicating hemp products to minors, the Commission adopted emergency rules establishing 0.5 mg THC as the threshold for a hemp product to be considered an “adult use cannabis item.” Significant consideration went into establishing this limit. The Commission’s purpose was not to establish a limit at which 50% of children would feel intoxicating effects, but rather to set a limit that would truly not be intoxicating. The limit of 0.5 mg is one-tenth of the standard unit of THC established by NIDA, and one-fifth of the dose that Dr. Russo considers to be a threshold dose for most adults.

The Commission has also received feedback expressing that children should not be purchasing *any* THC. Ultimately, the Commission determined that setting the threshold at zero would be impractical to enforce. If the limit were set to zero, a testing lab could use a method with a relatively high detection or quantification threshold to test the item and consequently “not find” THC even when a significant amount might be present. By setting the limit at 0.5 mg and requiring a certificate of analysis to show the lab can detect at that level, it provides more assurance that adult use cannabis items will not be sold to minors.

One final thought to add more context: There is an equivalent issue with products that contain small amounts of alcohol, and a threshold below which a product containing alcohol can be sold to minors. The Roundtable points to kombucha as a specific example of this. In order to be considered non-alcoholic and eligible to be sold to minors, kombucha can contain no more than 0.5% alcohol by volume. For a 12 fl oz bottle, this is equivalent to about 1.4 g alcohol. A standard unit of alcohol is 14 grams,⁸ so a

⁶ Even high-CBD, low-THC plants may produce THC in proportion to CBD at approximately a 1:20 ratio. <https://doi.org/10.1016/j.jbiotec.2018.07.031>

⁷ A full-spectrum hemp product contains CBD, THC, and other cannabinoids and naturally-occurring substances from hemp in the same proportion that they occur in the hemp plant.

⁸ <https://www.niaaa.nih.gov/alcohols-effects-health/overview-alcohol-consumption/what-standard-drink>

12 fl oz bottle of non-alcoholic kombucha may contain up to one-tenth of a standard unit of alcohol. This is on par with the limit the Commission has established for hemp products: A minor may purchase a hemp product containing up to one-tenth of a standard unit of THC.

To extend that analogy further and establish a flat percentage of THC that can be in a product sold to minors, a little math is instructive: $0.5\% \text{ alcohol} \times (5 \text{ mg THC} \div 14000 \text{ mg alcohol}) = 0.0002\% \text{ THC}$.⁹ For most products, this percentage limit would actually be significantly more restrictive than the current limit of 0.5 mg THC. For example, under this percent limit, a 1 oz tincture would be limited to approximately 0.06 mg THC. Setting a limit in milligrams, rather than as a percentage, recognizes the reality that most hemp products have smaller weights than typical non-alcoholic products, which makes a simple percentage limit on THC unnecessarily restrictive for the vast majority of products.

I am hopeful this letter provides more detail on the intent of HB 3000 and some of the rationale for the proposed administrative rules. This letter does not review every nuance or consideration supporting the proposed rules. The Commission is confident that when the Oregon Legislature passed HB 3000, it did so with the knowledge that rules would be put into place to stop the sale of hemp-based products with large amounts of THC to children. While this letter focuses on the issue of sales to minors, there are many other aspects of the bill and the proposed rules that focus on general market sales. Until there are clear standards in place for hemp products, including packaging, labeling, and traceability of test results, the Commission will follow its statutory guidance in order to protect children and ensure consumer safeguards are in place.

Respectfully,



Steve Marks
Executive Director
Oregon Liquor and Cannabis Commission

Cc:

The Honorable Kate Brown, Governor of Oregon
OLCC Commission Chairman Paul Rosenbaum and Members of the Commission
United States Secretary of Agriculture Tom Vilsack
USDA Hemp Program Chief Bill Richmond
United States Food & Drug Administration (FDA) Commissioner Janet Woodcock
FDA Senior Intergovernmental Affairs Specialist Michelle Adams
Andrew Brisbo, President, Cannabis Regulators Association
Honorable Senator Kathleen Taylor, Oregon Legislative Assembly
Honorable Representative John Lively, Oregon Legislative Assembly

⁹ The equation is $[\text{limit of alcohol by volume}] \times \frac{[\text{standard unit of THC}]}{[\text{standard unit of alcohol}]}$