



November 1, 2023

The Honorable Glenn "GT" Thompson  
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Committee On Agriculture  
United States House of Representatives  
1301 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Debbie Stabenow  
Chair  
Committee on Agriculture, Nutrition, & Forestry  
United States Senate  
328A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable David Scott  
Ranking Member  
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United States House of Representatives  
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The Honorable John Boozman  
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**Chairman Thompson, Chair Stabenow, Ranking Members Scott and Boozman, and members of the House and Senate Agriculture Committees:**

We are writing to you today to highlight the significant crisis caused by unregulated intoxicating hemp products and the 2018 Farm Bill. As you and your staff approach the final stages of drafting the 2023 Farm Bill, we urge you to address the statutory loopholes which have allowed unregulated intoxicating hemp products to proliferate across the U.S. We further urge you to clarify that states have the authority to regulate hemp products for human consumption. To that end, please find our policy and statutory recommendations detailed below.

**Background:**

After nearly two decades of planning and pilot programs through previous Farm Bill cycles, the Agriculture Improvement Act of 2018 re-legalized the agricultural production of hemp as an opportunity to allow agricultural producers across the nation to produce a new commodity with many potential opportunities for industrial value. The purpose of this policy change was always agricultural and industrial in intention, and much effort was made to make that intent clear. There would be a sharp delineation between what we would agriculturally define as hemp and its more medicinal or adult-use counterpart, cannabis (or marijuana), given that both products are derived from the same plant, Cannabis Sativa L.

With these intentions in mind, the Committees and the Congressional leaders around this effort developed legislative text for the Farm Bill that created a new legal definition for hemp. It was designed to separate this new commodity from existing restrictions that otherwise applied to the intoxicating form of the plant. Likewise, lawmakers were careful not to give either the effect nor the impression that the Committees were legalizing marijuana.

The primary substance associated with marijuana is tetrahydrocannabinol, which is commonly referred to as delta-9 THC. The definition of hemp created provided that cannabis Sativa L. plants that contained more than trace amounts of delta-9 THC, defined as 0.3% of the dry weight of the plant, would be treated as marijuana, while those under the delta-9 threshold would be treated as hemp. This seemed to provide a clear delineation between hemp and cannabis, with the intention of not permitting intoxicating products, and enabling farmers to produce this new agricultural product without being at risk of violating the Controlled Substances Act. However, as discussed below, there were several unintended consequences that developed as a result, and which today carry significant public health and safety implications for consumers.

### **Problems Stemming from the 2018 Farm Bill:**

#### A Thriving Gray Market:

In the lead up to the 2018 Farm Bill, your Committees made significant efforts to clarify intentions of empowering a new commodity segment for industrial purposes – not to legalize marijuana, intoxicating forms of the hemp plant, nor any hemp products intended for human consumption. Despite these efforts, an industry has nevertheless developed contrary to that congressional intent. Loopholes inadvertently created by the definition that legalized industrial hemp production have given life to an entirely new industry of companies that now legally – by their own interpretation – produce and market intoxicating products. These products are often as or more intoxicating than regulated marijuana, without any of the regulatory oversight. The result of the federal ambiguity is that these highly intoxicating hemp products are regularly sold online and shipped across state lines – with packaging targeting youth and almost always without meaningful age restrictions.

As the hemp industry exists currently under the language of the 2018 Farm Bill, bad actors are able to take perfectly compliant hemp (with less than 0.3% delta 9 THC in the field), extract perfectly compliant CBD, and convert that CBD using a chemical synthesis process into intoxicating products that are significantly more potent than cannabis products sold in any state-legal cannabis market in the country. These bad actors are also able to take that same compliant hemp (with less than 0.3% delta 9 THC in the field), and sell final-form manufactured products such as gummies or other edible goods with a greater weight density; allowing higher levels of delta-9 THC while seemingly remaining compliant with the 0.3% threshold.

More alarming yet, under the existing language established in the 2018 Farm Bill, once the U.S. Department of Agriculture (USDA) signs off on the plant in the field at harvest, no federal regulator has regulatory oversight of the products derived from these processes. The result is a complete lack of standards or testing for purity, potency, packaging, labeling, dosing, taxing, age-gating, interstate commerce, or postage – literally zero federal regulatory oversight. Even states which have attempted to construct stricter regulatory regimes face mounting challenges due to defendants citing federal preemption of state laws.<sup>1</sup>

As an example of how unregulated and potentially dangerous these products are, no legal cannabis market in the country allows regulated edible cannabis products to be sold at concentrations greater than 10mg of THC per dose and 100mg per package, though we regularly see intoxicating hemp products marketed with anywhere from 25mg of THC per serving to hundreds of milligrams of THC, and in some cases thousands per package. Many companies specifically tout on their product package labeling that products are compliant with the 2018 Farm Bill.

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<sup>1</sup> See e.g. Northern Virginia Hemp and Agriculture LLC, et al., The Commonwealth of Virginia, Case No. 1:23-cv-01177-LMB-IDD

To be clear, this means that the 2018 Farm Bill not only *de facto* federally legalized a form of intoxicating cannabis, but did so with none of the regulatory consumer protections or tax provisions that exist in state-level legal cannabis markets. All of this has been allowed to occur squarely under the jurisdiction and contrary to the intent of the U.S. House and Senate Agriculture Committees.

#### Non-Existent Market for Legitimate Agricultural Producers:

Congress, and the history of hemp programs over the past two decades, clearly evidence that congressional rationale for studying and legalizing hemp production was to offer row crop farmers a new crop with industrial value. After 2018, market forces quickly identified a new arbitrage opportunity. While row crop farmers waited for the USDA and individual states to promulgate rules guiding practices for production, other actors were already at work bringing CBD and cannabis-adjacent products to market.

With merely 28,000 acres planted in 2022 – it is difficult to argue that reforms to current hemp policy are truly impactful to the broader U.S. farm economy. However, if there was ever hope to grow hemp into a scalable industrial commodity truly valuable to the diversification of existing farm operations, there is currently little incentive for the traditional agricultural input providers to serve an industry of this scale. Its adjacency to intoxicants will only continue to prevent meaningful investments in research and market development if allowed to persist. The only way to develop hemp into a robust commodity with stable production for truly industrial purposes, as lawmakers once envisioned, is for Committee leaders to make the changes necessary to fully de-couple the intoxicant market from agricultural protections for the plant.

#### **Specific Flaws with Existing Definition:**

The current definition of hemp, established in the 2018 Farm Bill, set conditions for the current gray market to proliferate:

DEFINITIONS. “In this subtitle: “(1) HEMP.—The term ‘hemp’ means 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.

The language enacted in the 2018 Farm Bill had four unintended consequences. These include (1) fostering the creation of hemp synthesized intoxicants, (2) inadvertently allowing novel intoxicants into products that are not subject to any current regulation, (3) not adequately addressing the high levels of THC that can be included in consumer products under the current definition, and (4) potentially limiting states’ in regulating or limiting the sale or distribution of intoxicants within their borders through federal preemption challenges based on the Farm Bill.

##### 1. Hemp Synthesized Intoxicants:

The 2018 Farm Bill not only redefined and removed hemp itself from the scope of the Controlled Substances Act, but also “derivatives of hemp.” Absent statutory clarity further defining hemp derivatives, the private sector took derivatives to mean anything that could be made from hemp – including intoxicants produced in a laboratory through a process of converting hemp-derived cannabidiol (CBD) into multiple forms of tetrahydrocannabinol (THC), the primary intoxicant in marijuana. While typically such substances would be considered analogue drugs within the meaning of the Federal Analogue Act, and therefore be regulated as controlled substances. The uncertainty due to the Farm Bill’s definition of hemp has created a regulatory gap. Abuse of

congressional intent opened a thriving gray market for intoxicants such as delta-8 THC, delta-9 THC, HHC, and many others.

2. Not All Possible Hemp-Based Intoxicants Accounted For:

As mentioned above, the Farm Bill identified delta-9 THC as the primary intoxicant that distinguishes hemp from marijuana, and therefore based hemp's definition on the amount of delta-9 THC present in the plant. The definition states that if the plant has more than trace amounts of delta-9 THC, it must be classified as marijuana and therefore be regulated as a controlled substance. The problem with this definition is twofold:

- a. First, it overlooks the fact that delta-9 THC does not naturally appear in large amounts in the living plant. Rather, another substance— a precursor to delta-9 THC, called THCa – is found in plentiful quantities in the plant. THCa converts to delta-9 THC by applying heat, which can be done by simply smoking or vaporizing a product, or through processing prior to packaging.

This flaw was partially clarified by regulations promulgated by USDA during implementation of the bill, aligning with state regulated cannabis programs which require the use of a Total THC calculation of delta-9 THC + THC-A (with a .66% variance) to address this very issue. However, while the Total THC calculation must be used by hemp farmers when conducting compliance testing prior to harvest, final form hemp product manufacturers have no regulatory burden to USDA, and have self-determined their exemption from this standard, leaning entirely on the protection of the term “all derivatives” included in the legislative text. These manufacturers rely on the definition of hemp to intentionally ignore the regulatory safeguards designed to ensure hemp and by extension hemp products carry only a trace amount of delta-9 THC.

- b. It is also possible to derive other intoxicating substances from hemp in addition to THCa/delta-9 THC. For instance, other forms of THC such as delta-8 THC can be created in addition to novel cannabinoids such as THC-B, THCjd and THC-p which do not occur naturally in the plant and can be as much as 33 times stronger than delta-9 THC. Further, other chemicals can be created, such as HHC, which are not classified as THC but which are also intoxicating. These compounds appear in consumer products and arguably fall outside the current definition separating hemp from cannabis as the 2018 Farm Bill focuses solely on delta-9 THC.

While the USDA total THC calculation requires calculation of delta-9 + THCa, it does not account for the value of any of these other intoxicating cannabinoids.

3. Escalating Percentage Loophole:

When the Committee drew the line between hemp and cannabis based on the amount of delta-9 THC present, it set the line at 0.3% delta-9 THC by dry weight of the plant. While this serves as a demarcation point for dried plant material, the percentage figure of 0.3% has been misapplied to finished products and consumer goods, and in particular, edible food items that are infused with hemp-derived intoxicants. When applied to consumer goods, the 0.3% standard allows for substantial, at times alarming, levels of intoxicating cannabinoids, including delta-9 THC - the quantity of which may increase as product weight increases.

Nutritive values of food and beverage products are weighed in grams, while cannabinoid concentration is typically expressed in milligrams. Knowing that 1 gram = 1,000 milligrams, if a

consumer product such a standard chocolate bar weighs 50g, and since the 2018 Farm Bill definition allows 0.3% of that weight to be delta-9 THC, then according to the prevailing interpretation of the law, that chocolate bar is permitted to contain up to 150mg of delta-9 THC. This strength of dosage combined with how easy it is to consume multiple servings of these edible products within a short period of time creates a significant health risk of accidental overconsumption for consumers and those unaware of what they are consuming.

Complicating the challenge further and as mentioned earlier, there are different types of intoxicating THC variants, called cannabinoids, in addition to delta-9 THC, and these intoxicants are wholly overlooked in the federal hemp definition.

4. Assumed Federal Preemption Preventing States from Regulating Hemp Intoxicants:  
Finally, some have interpreted the hemp provisions of the 2018 Farm Bill to mean that the Farm Bill preempts states from instituting regulatory regimes or restricting sales. While it was not the intent of Congress to compel states to allow the sale of intoxicants through the Farm Bill, bad actors have taken advantage of this regulatory gray area, and states are facing numerous court challenges from those who oppose any restrictions. Challenges to intoxicating hemp product regulation based on preemption arguments have been initiated in 7 states – Indiana, Maryland, Arkansas, Virginia, Texas, New York, and Pennsylvania with more expected.

Congress must make clear that states may regulate or restrict the sale of hemp-based intoxicants without being preempted by federal law.

### **Recommendation to Realign and Address Unintended Consequences:**

Policy challenges related to hemp are complex, and it will take several steps to fully address them. However, the most important and time-sensitive of those steps is within your control and well within the authority of the Farm Bill: Close the loopholes created by the current definition of hemp established by the 2018 Farm Bill and establish a pathway for non-intoxicating products.

We propose inserting a new section, below the current definition of hemp, to read as follows:

*ADDITIONAL DEFINITION: Products in final form intended for human or animal consumption which are:*

- a. *Made or derived from hemp or hemp bi-products; and*
- b. *Contain detectable quantities of total THC and any other intoxicant that can be derived from hemp including other forms of THC; and*
- c. *Are intended to be consumed or absorbed inside the body by any means, including inhalation, ingestion, insertion, or topical application,*

*shall be excluded from the current definition of Hemp and considered marijuana as defined by 21 U.S.C 802(16)*

### Why this Solution Works:

1. This proposal protects the allowances granted to farmers, allowing legitimate agricultural and industrial hemp producers the flexibility they need to navigate the changing plant characteristics when growing in the field, while taking away the loopholes that have created the current gray market environment.
2. The recommendation makes clear that products containing intoxicants which are derived from the Cannabis Sativa L. plant cannot be defined as “hemp.” This change will clarify that

intoxicants which are chemically synthesized from hemp to the Controlled Substances Act, which we believe is consistent with original Congressional intent.

3. The proposed language removes exemption from the Controlled Substances Act not only from delta-9 THC as included in the 2018 language, but also THCa, and any other intoxicants that are derived from hemp when delineating between hemp and cannabis. In many state jurisdictions, this policy solution is referred to as “total THC.”
4. The solution we propose removes the easily manipulated dry weight percentage function from all consumer products – returning all intoxicating human and animal products derived from the Cannabis Sativa L. plant back to the Controlled Substance Act where they lived prior to 2018.
5. Because our solution is focused on final form products for human and animal consumption, we are able to protect the existing 0.3% de minimis allowance which gives flexibility to farmers in their ability to harvest plants with fluctuating THC levels and truly industrial products where intoxicating effects are irrelevant. Additionally, because this solution preserves and adds to the 2018 hemp definition, it preserves existing USDA and state-level regulations and guidance.
6. We believe that this solution opens the door to allow the FDA to step in and regulate non-intoxicating hemp consumer products under their existing authority by removing cannabis-equivalent consumer products from unregulated markets.

### **Additional Recommendations:**

The proposed modifications above represent the most urgent policy improvements needed to protect public safety and bring order to hemp markets. Closing the existing loopholes created in the 2018 Farm Bill should be considered among the most critical changes needed for the 2023 Farm Bill. Please find our secondary recommendations below, which we feel represent much needed improvements to the hemp market.

1. Congress should make clear that the limitations described above in the 2018 definition of hemp and in the proposed new section are not intended to limit states in their ability to regulate or create requirements which are more stringent than those provided under federal law or regulation when needed to protect health and safety
2. So long as a provision addressing consumer products, similar to the language we have recommended above, is included in the package, we would also be supportive of efforts by many farm and producer groups calling for an increase in the de minimis allowance for Total THC on a dry weight basis from 0.3% to 1.0%. For the same reasons, we support the Cannabis Regulators Association’s (CANNRA) recommendation for a definition and exclusion for “work-in-progress hemp extract or WHIPE,” similar to language included in Rep. Pingree’s Hemp Improvement Act of 2022 (H.R. 117-6645).

The purpose for this increase is to acknowledge that those who extract chemicals from hemp biomass are concentrating them during the process. A modest increase from 0.3% to 1.0% – when it is clearly limited to pre-consumer processes without loopholes – would be sensible given the practical requirements for those making extractions.

However, this increase in allowance can only work when hemp derivative products are first excluded from the protections afforded to hemp when they contain detectable amounts of

intoxicants, as recommended. Otherwise, raising the limit could devastatingly compound many of today's challenges with the gray market in hemp derived intoxicants.

3. Directing USDA to report how "hot" are the acres of hemp the Department orders to be destroyed for being over the 0.3% THC threshold. While this is of little priority in terms of improving the public health effects of the existing statute around hemp, this change would be helpful data for the Department to track in order to offer greater understanding of what flexibility producers actually need.
4. Ultimately, outside of the Farm Bill, ATACH believes that there exists a need for additional legislation that directs comprehensive federal reform to create a pathway for responsibly regulated and taxed cannabis and hemp-derived intoxicants for adult use. Though we recognize that this effort was never the intent of existing Farm Bill statute established in 2018.

### **Why Other Proposed Solutions Are Inadequate:**

Hemp growers and processors face a complicated set of challenges. In the years since enactment of the 2018 Farm Bill, many proposals to respond to these challenges have been offered by various agencies, members of Congress, Congressional Committees, industry stakeholders, and associations. While many of these proposals are good faith efforts to improve existing conditions, they uniformly fall short of providing a complete solution. Similarly, some stakeholders who benefit from the status quo are out-right deceptive in their proposed solutions. Below are some of the prevailing recommendations and why we strongly believe those proposals to be inadequate or otherwise misleading.

#### Common Recommendation: "Do not Address this issue through the Farm Bill this Issue and Leave It Up to FDA to Regulate"

This proposal seems like a reasonable recommendation at face value, but is more complicated in reality because the U.S. Food and Drug Administration (FDA) does not regulate products that are expressly used by consumers for intoxication. Therefore, doing so under the existing statutory definition of hemp without any change, would be contradictory to the agency's underlying core mission, and would not alone lead to meaningful regulation.

The FDA is designed to regulate food and feed ingredients, active ingredients, and devices. In the case of alcoholic beverages, FDA regulates the labeling and potential adulteration of these products, but the actual intoxicating alcohol component of the beverage is instead regulated through the Tax and Trade Bureau (TTB) via a Memorandum of Understanding (MOU) between the two agencies. This avenue is not currently available to intoxicating hemp products as these products are currently free of specific federal taxation, meaning that TTB could not be the regulator. Those who argue that the issue should just be left up to the FDA and not addressed in the Farm Bill, are essentially trying to keep in place the status quo.

The vast majority of currently marketed products derived from hemp contain some quantities of known analogues to a Schedule I controlled substance – including those with delta-8, delta-10, THCa, HHC, THCO, and even "full spectrum" CBD – all substances currently controlled under the Analogue Act<sup>2</sup>. FDA, therefore, does not currently possess the jurisdiction to regulate these products. It would need to be granted additional authority to do so by Congress. Conversely – if the language recommendation provided above were to be enacted, FDA should be able to use

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<sup>2</sup> 21 U.S. Code § 813

existing authority to regulate any non-intoxicating hemp derived products for human and animal consumption that would remain exempted from the Controlled Substances Act.

Common Recommendation: “Allow CBD and Hemp-Derived Products to be Regulated Under DSHEA”  
(Several proposals – Including legislation listed below, as well as the prevailing opinion of the House Oversight Committee, and recommended by U.S. Hemp Round Table and other associations).

DSHEA, or the [Dietary Supplement Health and Education Act of 1994](#)<sup>3</sup>, governs the regulatory pathway at the FDA for dietary supplements. ATACH supports FDA’s regulation of non-intoxicating constituents of the plant including CBD as supplements, however, allowing intoxicating products under DSHEA would undermine the dietary supplements category and public safety as a whole. The DSHEA pathway represents one of the least stringent regulatory regimes that exist within the FDA’s authority – this regulatory framework is used for products intended for human consumption with intention to “supplement” a user’s diet usually for a specific purpose. In other words, these products are regulated by the agency as “food” rather than as a “drug”, despite the pathway allowing these products to make claims on their label. However, what is particularly unique about this pathway is that FDA does not “approve” dietary supplements before they go to market or potentially ever – the agency only steps in for enforcement of these products if they find that products already on the market are either adulterated or “misbranded”. This means that these products are allowed to make label claims, a right usually reserved for active ingredients of drugs, without any of the approval process or clinical data requirements necessary for a new drug to go to market.

Allowing CBD or other hemp-derived consumer products access to this pathway without any changes in the existing definition of hemp established in 2018 would be dangerous for consumers and public safety. This change would allow all products derived from the hemp plant (the same plant from which cannabis is derived) unfettered access to retail with no science-based approval, no requirements for age restrictions, no tax burden, and no challenges to interstate commerce. Essentially, allowing hemp products as currently defined in statute, without a change to the Farm Bill, to access the DSHEA pathway would only serve to codify the existing loopholes created by the 2018 Farm Bill as outlined earlier in this letter.

Additionally – there exists no equivalent to the DSHEA pathway for the regulation of animal food. This means that granting Dietary Supplement status to hemp products would almost certainly give unabridged authority for hemp plant material or hemp-derived products intended for animal consumption to go straight to market without necessity to satisfy the requirements of the animal feed ingredient approval process, completely undermining that regulatory structure.

Multiple pieces of legislation offered over the past two Congresses would, among other changes, enact this proposal. Some of these bills include:

- [S. 2451](#) | [H.R. 4849](#) – The Hemp Access and Consumer Safety Act (Sen. Wyden | Rep. Blumenauer)
- [H.R. 1629](#) – The Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act (Rep. Morgan Griffith)

While we make the arguments above as it relates to intoxicating products, which ATACH believes should be taxed and regulated under comprehensive federal legalization, it is necessary that non-intoxicating products be given a pathway to commerce, including through the FDA.

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<sup>3</sup> CRS Report – *Regulation of Dietary Supplements: Background and Issues for Congress*; September 2021



Common Recommendation: Increase the Existing De Minimis Allowance for Delta-9 THC from 0.3% to 1.0% Without Closing the Loophole on Consumer Products

This effort is not inherently flawed in its rationale. It would be beneficial to agricultural producers to have greater flexibility in dealing with “hot” hemp on their farms. However, if nothing else changes in statute around hemp except for this allowance, this change would serve to benefit current industry bad actors exponentially more than agricultural producers by affording a much higher tolerance by which to manipulate the percentage of weight metric explained earlier in this letter. We could support efforts to increase this tolerance for hemp still in the field or in-process, only under the condition that the tolerance is for Total THC instead of only delta-9 THC, and that final-form products intended for human or animal consumption would no longer tolerate traceable levels of Total THC.

While we could be supportive of this effort as described above, it is important to note, that according to USDA, in crop-year 2022, only 691 acres of hemp were destroyed nationwide for being “hot” (and USDA data does not currently track how “hot” these destroyed plants are), raising questions about why this proposal has garnered so much interest and concern.

Common Recommendation: Suggesting that this is only a State-Level Issue, and that Congress Should “kick the can” to States Regarding If or How Intoxicating Hemp Products are Regulated

(Promoted by the Midwest Hemp Council, U.S. Hemp Roundtable, and companies such as 3Chi)

This recommendation is overtly deceptive, and unworkable under current law. Organizations such as the Midwest Hemp Council, and Indiana-based 3Chi, who produces and sells hemp intoxicants are actively pushing this rhetoric to advocate against changes to the intoxicant loophole created in the 2018 Farm Bill while simultaneously pursuing legal action<sup>4</sup> against the State of Indiana, arguing that federal protections in the 2018 Farm Bill prohibit the Indiana Attorney General from ordering<sup>5</sup> intoxicating hemp products to be subject to and therefore prohibited under the State’s Controlled Substances Act.

Those using this rhetoric often suggest that this is a “Federalism” states’ rights issue, suggesting that federal lawmakers punt decision making down to the state level as has happened with state-legal cannabis markets. This is an effort to appeal to legislators who prioritize states’ rights and those with difficult electoral challenges. However, what is often omitted by those arguing this position, is that unlike the state-level legalization of cannabis, intoxicating hemp-derived products are currently being sold nation-wide, across state lines, and with no regulatory oversight or tax implications, often undermining existing state-law. States that have opted for legalization of cannabis have started with no legal products on the market and were able to safely design a robust regulatory framework prior to the legalization of those products.

To be clear, ATACH supports the rights of states to regulate hemp products. However, we oppose the notion that Congress should stand back, allowing the producers of intoxicating hemp products to continue selling unregulated cannabis products outside the purview of regulation.

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<sup>4</sup> See 3Chi v. Rokita – [3Chi’s Amended Complaint for Declaratory Injunction](#)

<sup>5</sup> See Indiana Attorney General Official Opinion [2023-1](#) RE: *Tetrahydrocannabinol Variants and Other Designer Cannabinoid Products*

Specific Recommendations: Offered in the U.S. Hemp Round Table’s response<sup>6</sup> to the House Energy & Commerce and Senate Health Education Labor and Pensions committees’ Request for Information<sup>7</sup>.

The U.S. Hemp Round Table’s recommendations to Senate HELP and House E&C for the regulation of hemp products is misinformed and dangerous to public safety. Among other recommendations, their proposal suggests that an intoxicating 5mg of delta-9 THC per serving should be the allowable upper limit for products sans any per package limitation. U.S. Hemp Roundtable further advocates that these intoxicating products should have access to the DSHEA pathway explained earlier. This recommendation would make intoxicating cannabis products available over-the-counter, without purchase quantity limits, prior FDA approval, or meaningful age restrictions.

Proposed Legislation: [H.R. 3755](#) | [S. 980](#) – The Industrial Hemp Act of 2023

(Rep. Matt Rosendale/Rep. Chrissy Houlahan | Sen. Jon Tester/Sen. Mike Braun)

Though this legislation makes a good faith effort to improve existing challenges for hemp producers in an attempt to separate legitimate industrial-use hemp from the exploitive intoxicating hemp-derived cannabinoid marketplace, the bill still falls short in creating a long-term solution to the current absence of federal regulation. The bill preserves the existing definitional loophole for hemp-derivatives, allowing those products to still be treated as “hemp” and therefore still subject to the easily-manipulated percentage-of-weight function in the current definition. Additionally – this bill preserves an assumed federal preemption over potential state regulations of these hemp products – further tying the hands of state-level officials who wish to regulate intoxicating hemp-derived products. Though well-intentioned, this bill is antithetical to solving the existing risk to public safety, and is thoroughly at odds with the notion of a federal approach to the regulation of hemp products.

Proposed Legislation: [H.R. 6645](#) – The Hemp Advancement Act of 2022

(Rep. Chellie Pingree)

This well-intended bill makes an effort to improve regulatory conditions but fails to take into account the explosive growth of the now-massive gray market for intoxicating hemp-derived products. As explained above, we could be supportive of an increase in the THC tolerance for hemp plants in the field, but doing so without differentiating between plant material and final form products and allowing access to that increase for final form products as this bill would do, only gives more room for bad actors to manipulate the existing percentage-of-weight allowance.

Nonetheless, Section 7 of the bill, regarding “in-process hemp extract” is a provision of this bill which we believe would have a valuable benefit to producers of legitimate industrial-use hemp, and is worth inclusion in the Committee’s new Farm Bill language, but remains a lower priority than correction of existing loopholes outlined above.

Proposed Legislation: [H.R. 6134 \(117\)](#) – The CBD Product Safety and Standardization Act of 2021

(Rep. Kathleen Rice/Rep. Morgan Griffith)

This bill is very similar to those recommendations advocating for the inclusion of hemp-derived products through the DSHEA pathway, except, rather than provide access to that pathway, it instead grants hemp-derived products access to the food additive pathway. Again, the FDA is not suited to regulate intoxicants, irrespective of the pathway in question, but ATACH is supportive of non-intoxicating products being provided this opportunity.

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<sup>6</sup> U.S. Hemp Roundtable [Response to United States Congress](#) Request for Information Regarding the Regulation of Cannabidiol Products

<sup>7</sup> Bicameral Health Committee Leaders’ Bipartisan [Request for Information Regarding FDA Regulation of CBD](#)

## Conclusion:

Hemp – the exciting new agricultural commodity American farmers were promised through the signing of the 2018 Farm Bill, has failed to come to fruition in the 5 years since that bill was enacted. Instead of creating a healthy market for industrial hemp, willful misinterpretation of the legislation and congressional intent, has blown open the door to a completely unregulated gray market for intoxicants. This market jeopardizes public safety and allows bad actors to profit while providing enough statutory ambiguity to fend off much-needed federal and state legal action to protect American consumers. While congressional leaders were well intentioned in bringing agricultural producers a new opportunity to diversify their operations – the 2018 Farm Bill instead functionally legalized cannabis with no regulatory guardrails in place – all under the auspices of benefiting farmers.

The 2023 Farm Bill is critical to the viability of Rural America, the stability of the family farm, and the domestic food security of our nation. However, this year’s Farm Bill also has a crucial role to play in ensuring public safety by closing the door to unregulated, intoxicating hemp products that currently have proliferated across the nation and our communities in recent years. We call on the leaders of the House and Senate Agriculture Committees to include the solution provided above in the base text of this year’s Farm Bill and ensure its enactment into law.

Sincerely,



**Michael Bronstein**

President

American Trade Association for Cannabis & Hemp

## About ATACH:

The American Trade Association for Cannabis & Hemp (“ATACH”) is a 501(c)(6) trade association registered in Washington, DC, founded in 2014 to support and protect regulated cannabis businesses, promote consumer safety of marijuana and hemp products, and promote the expansion, protection, and preservation of businesses engaged in the state-legal trade of medical and recreational cannabis and hemp-based products.

ATACH’s Cannabinoid Council consists of hemp and cannabinoid businesses, attorneys, analytical researchers, laboratories, and former regulators, each with extensive knowledge about the hemp-synthesized intoxicant phenomenon. ATACH has a historic Memorandum of Understanding with ASTM International which seeks to develop international standards for cannabis, its associated products, and its processes, and ATACH has participated in the National Conference on Weights and Measures (NCWM) in support of adoption of the first cannabis standard, which will appear in the National Institute for Science and Technology Handbook 130 Uniform Packaging and Labeling Regulation and Uniform Regulation for the Method of Sale of Commodities. ATACH recently published an in-depth analysis of hemp-synthesized intoxicants and a set of detailed recommendations for regulators in our paper, *Toward Normalized Cannabinoid Regulation*, which is available online and submitted along with this response.<sup>8</sup>

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<sup>8</sup> <https://atach.org/wp-content/uploads/2023/06/ATACH-Paper-Toward-Normalized-Cannabinoid-Regulation.pdf>