

SUMMARY OF REVISIONS TO THE CANNABIS ADMINISTRATION AND OPPORTUNITY ACT DISCUSSION DRAFT

General Provisions

Cannabis Products Advisory Committee - The discussion draft requested comments on the Cannabis Products Advisory Committee, established under the Department of Health and Human Services (HHS) to advise federal agencies on regulatory matters related to cannabis and cannabis products. Stakeholders provided a variety of comments on the makeup and duties of the advisory committee. The introduced legislation establishes a 22-member advisory committee, made up of industry representatives (with an emphasis on socially-underrepresented stakeholders), federal and state regulators, labor union representation, and experts in public health and safety. The advisory committee will be charged with considering all matters submitted to it by the Secretary of HHS, making independent recommendations to the Secretary and other agency heads, analyzing cannabis health and safety impacts, and publishing an annual report of its activities and recommendations. Like all federal advisory committees, members will be expected to consult with a diverse set of stakeholders in representing the views of the populations they represent.

Definition of Cannabis - Stakeholders offered a variety of recommendations in response to the discussion draft's request for comment on the definition of cannabis. The existing definition of cannabis (termed 'marihuana' in the Controlled Substances Act) faces a number of challenges related to the existing definition of "hemp." Under the discussion draft, the terms "cannabis" and "cannabis product" excluded hemp, as defined in section 297A of the Agricultural Marketing Act of 1946. The definition of hemp was established in 2018, generally as any part or derivative of the plant *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent by dry weight. Under regulations, the U.S. Department of Agriculture (USDA) has determined that this THC amount is calculated as the sum of delta-9 THC in a sample and a portion of the non-intoxicating tetrahydrocannabinolic acid (THCA) that can be converted to delta-9 THC through decarboxylation or combustion.

Members of the hemp industry have raised concerns that the existing testing methodology that takes into account THCA content results in an allowable THC threshold below a commercially practicable amount. Other stakeholders have raised concerns that existing law's reference to delta-9 THC concentration fails to account for different types of THC that can have a similar effect on the user, such as hemp-derived delta-8 THC and delta-10 THC, which already exist in the marketplace. Stakeholders have also raised concerns that the dry weight measurement standard in existing law may create situations where industry members may be able to manipulate the amount of allowable THC by increasing the overall weight of a cannabis product, thereby avoiding tax and public health requirements.

The introduced legislation refines the definition of “hemp,” and consequently “cannabis” by taking into account the total THC in a cannabis product, rather than just delta-9 THC. The legislation also modifies the allowable amount of THC to provide separate allowances for plant material and extracts. For plant material, hemp is any cannabis plant material with a total THC content of 0.7 percent on a dry weight basis or less. For extracts, concentrations, and other cannabis preparations, a product only qualifies as hemp if the total THC concentration of an article does not exceed 1 milligram of total THC per 100 grams on a dry weight basis. The Secretary of Health and Human Services may also include or exclude one or more cannabinoids from this definition, as appropriate.

The legislation further clarifies that while THC derived from the cannabis plant is descheduled under the Controlled Substances Act (CSA), synthetic cannabis and other non-cannabis-derived THC are not subject to automatic descheduling. The legislation requires that the Attorney General initiate a review of the applicable CSA schedules for such non-cannabis-derived THC substances within one year of enactment, and reschedule those substances as appropriate, pursuant to the CSA.

Federal Employee Drug Testing - Stakeholders submitted a significant number of comments related to drug testing of federal employees. Currently, federal regulations and Executive Order 12564 direct the heads of federal agencies to implement drug testing programs for federal employees, including testing for cannabis. The introduced legislation provides that for purposes of Executive Order 12564, cannabis shall not be treated as an illegal drug. An exception allows continued testing in the case of law enforcement officers, or federal employees determined to have significant involvement in national security, the protection of life and property, public health, and safety. In addition, the legislation follows the discussion draft in continuing to authorize testing certain individuals related to commercial transportation.

Definition of State - Stakeholders offered a variety of suggestions to clarify the definition of “state” in a number of provisions to properly address the District of Columbia, territories, and possessions. The introduced legislation modifies the definition of “state” in a number of places to clarify the application of those provisions.

Native American Tribes - Stakeholders submitted a number of comments related to the application of various provisions to tribal governments and tribal entities. The introduced bill makes a number of conforming amendments related to tribes; provides that various governmental agencies must engage in good faith, meaningful, and timely consultation with Native entities; and provides dedicated funding under certain programs related to tribal governments or tribal entities.

Appropriations and Opportunity Trust Fund - The discussion draft deposited excise tax revenues into the Opportunity Trust Fund established under the CAO, and provided direct appropriations to certain programs based on specified percentages. Stakeholders have raised concerns that such trust fund mechanisms may delay the delivery of social equity funds and assistance to new or operating businesses because it can take a number of years for a trust fund to accumulate the necessary excise tax revenue. In order to accelerate the availability of funds, the introduced bill specifies funding levels for each program as a direct appropriation from the Treasury General Fund and requires the Secretary of the Treasury to reimburse the General Fund from revenues in the CAO Opportunity Trust Fund. A similar reimbursement model exists under present law with respect to other trust funds.

Funding levels throughout the bill were generally determined based on consultation with the Congressional Budget Office, or based on technical assistance provided by the appropriate committees of jurisdiction, and were in many cases based on existing funding for similar programs. The legislation is intended to fully offset the cost of these programs through cannabis excise tax revenues and other associated revenues.

Highway Safety Provisions

The discussion draft included a number of provisions relating to the prevention and detection of cannabis-impaired driving. A significant number of stakeholders provided comments and guidance on the most effective methods to address these issues. The introduced legislation includes the following provisions:

Cannabis-Impaired Driving Research - Because cannabis remains illegal at the federal level, very little field research has been done in the United States on the effects cannabis has on drivers. There is a scientific consensus that cannabis has some impairing effect on drivers, but questions remain about what those effects are and their level of severity. This provision directs the National Highway Traffic Safety Administration (NHTSA) to research multiple areas, including collecting data on the number of cannabis-impaired drivers through a national roadside survey, as well as answering a number of questions about how cannabis and polyuse of cannabis affect driver behavior and driver ability.

Department of Transportation Cannabis-Impaired Driving Prevention Programs - States across the country will need guidance on how to best prevent cannabis-impaired driving. Additionally, NHTSA and many state Departments of Transportation run drunk driving prevention campaigns on a regular basis. This provision would direct NHTSA to create educational materials on “best practices” for preventing cannabis-impaired driving that can be distributed to states. Additionally, this section directs NHTSA to carry out campaigns intended to prevent cannabis-impaired driving, including a campaign specifically targeted at drivers under the age of 21. This

section also requires NHTSA review the effectiveness of the cannabis-impaired driving efforts by analyzing whether a national campaign or an activity carried out by a state under the proposed State Cannabis-Impaired Driving Prevention Grant Program was effective at changing driver behavior and decision-making.

State Cannabis-Impaired Driving Prevention Grant Program - This provision provides funding to states to support preventative measures for cannabis-impaired driving including enforcement, education, and data collection. Efforts may include training of public safety personnel to detect cannabis-impaired driving and high-visibility enforcement efforts, high-visibility enforcement campaigns, and efforts to improve testing for cannabis after a serious crash. This provision also incentivizes states to adopt a cannabis open container prohibition. At least 5 percent of the funds in this section must be used to improve toxicology testing laboratories that can test for cannabis.

National Cannabis Impairment Standard - This provision requires the U.S. Department of Transportation to create a standard for cannabis-impaired driving that can be adopted by the states within three years, unless the Secretary is unable to create a standard in three years due to lack of available research. If a rulemaking has not been completed in three years, the Secretary must update Congress every two years regarding the feasibility of creating such a standard.

Justice, Immigration, and Enforcement Provisions

Criminal Penalties for Cannabis Possession - The discussion draft included a felony charge for the distribution or possession of ten or more pounds of cannabis without a federal permit or the required state proof of payment of taxes, punishable by a fine of not more than \$10,000 and up to five years in prison. Stakeholders provided feedback indicating that a fairer sentencing regime would include an intermediary misdemeanor sentence before the felony charge. The introduced legislation changed the weight quantity to qualify a person for felony cannabis distribution or possession charge under the section from 10 pounds to 20 pounds. It added a misdemeanor charge for people possessing between 10 and 20 pounds of cannabis, punishable by up to one year in prison and/or a \$50,000 fine. People convicted of illegally possessing 20 or more pounds of cannabis would be subject to a sentence of up to five years in prison and/or a \$100,000 fine. These changes ensure that the fines are greater than the value of any illegally diverted cannabis.

Resentencing and Expungement Process - This section provides that a court shall automatically, after a sentencing review, expunge each federal cannabis conviction, vacate any remaining sentence, and resentence the defendant as if this law had been in place prior to the original sentencing. Previously, a court would have been required to conduct a sentencing hearing to consider a motion to expunge.

Expungement Exception - The discussion draft included an exception to the expungement eligibility for people who, as a part of their cannabis sentence, had received an aggravating factor pursuant to 3B1.1(a) of the United States Sentencing Guidelines. The introduced version directs federal courts to consider mitigating factors before barring a person from receiving a sentence and conviction expungement. Specifically, a person who received an aggravating role adjustment in their original sentence would not be eligible for expungement, unless a federal court conducting the sentencing review finds mitigating factors, including the age of the person at the time of arrest, conviction, or adjudication, the individual's role in the prior offense, and whether it was the person's first federal cannabis offense.

Immigration Provisions - The discussion draft included provisions ensuring that cannabis could not be considered a controlled substance for purposes of immigration laws, but did not set up a mechanism by which a person who had received a deportation order based on a cannabis-related offense could rescind that deportation order.

The introduced version enables a noncitizen who has received a deportation order based on a cannabis-related offense to file a motion to reconsider that decision. If the motion to reconsider is filed within 30 days of the removal order, the motion may allow for cancellation of the deportation order.

Hiring and Training Local Law Enforcement - The introduced version recognizes that enforcing cannabis-related laws will continue to be an evolving challenge for state and local law enforcement agencies. As the federal government decriminalizes cannabis, illicit cannabis production will continue in various and changing forms. To help state and local law enforcement keep their communities safe from traffickers involved in unlawful cannabis production, the introduced version creates a new grant program for smaller law enforcement departments to hire officers, investigators, and community outreach specialists to combat illicit cannabis production. It directs the Attorney General to develop education programs and technical assistance for these agencies, and creates a grant program to pay for this training.

Small Business Administration Provisions

The discussion draft established two programs to be implemented by the Small Business Administration (SBA), following similar provisions proposed in the House-passed MORE Act. The Cannabis Opportunity Program would provide funding to eligible states and localities to make loans to assist small businesses in the cannabis industry owned by socially and economically disadvantaged individuals. The Equitable Licensing Grant Program would provide funding to eligible states and localities to implement cannabis licensing programs that minimize barriers for individuals adversely affected by the War on Drugs. To be eligible for these SBA grants, states and localities must take steps to create an automatic process to expunge criminal

records for cannabis offenses and violations for individuals under criminal supervision for cannabis offenses.

The introduced legislation makes a number of technical clarifications to these provisions. In addition, it expands eligibility for the Cannabis Restorative Opportunity Program to provide loans and technical assistance to any small business owned and controlled by socially and economically disadvantaged individuals operating in an eligible state or locality. It also requires GAO to conduct an annual study of the Cannabis Restorative Opportunity and Equitable Licensing Grant Programs and report to Congress.

Finally, it establishes a new 10-year intermediary lending pilot program in which SBA would make direct loans to eligible intermediaries that in turn make small business loans to startups, businesses owned by individuals adversely impacted by the War on Drugs, and socially and economically disadvantaged small businesses. SBA would also be required to make grants to intermediaries in the program for the purpose of providing marketing, management, and other technical assistance to borrowers.

Public Health Provisions

The discussion draft included a number of provisions related to public health and research. Because of its Schedule I status under the CSA, public health research relating to cannabis has been severely hampered in the past, despite the fact that a significant number of Americans consume cannabis products today under both medical and adult-use programs. It is critical that policymakers and the public have a clear understanding of the public health challenges and opportunities with respect to cannabis. The introduced bill seeks to make up for lost time in cannabis research by robustly funding these efforts.

It is also critical that federal health regulators have the tools necessary to address public health challenges, and to ensure that cannabis products are as safe as possible and to restrict youth access. The introduced bill takes into account many of the comments received related to these issues, and builds on the discussion draft by clarifying and expanding on these public health and research policies.

Supporting cannabis research - Stakeholders have emphasized the lack of rigorous research on cannabis and its health effects, many of which have stemmed from the current scheduling of cannabis and limitations on the cannabis available for research. The discussion draft established grants to support research on the short- and long-term health effects of cannabis, which remains in the introduced legislation. The introduced legislation also includes several additional provisions to support, expand, and coordinate cannabis research by directing the Centers for Disease Control and Prevention (CDC) and National Institutes of Health (NIH) to conduct

research on cannabis and establishing entities to coordinate research across NIH and the federal government at large. The introduced legislation further directs HHS to increase the availability and diversity of cannabis products for research purposes.

Supporting public health and preventing cannabis use by minors - The discussion draft legalizes a cannabis market for individuals ages 21 and above. The introduced legislation includes additional provisions to prevent and reduce cannabis use among minors and other public health challenges associated with cannabis, such as driving while impaired. These provisions include launching national media campaigns to educate the public, awards to states and nonprofits for prevention and intervention programs, directing CDC to support surveillance and other evidence-based activities, and restricting the marketing of cannabis products to minors.

Clarifying FDA responsibilities - The discussion draft directed the Food and Drug Administration (FDA), through a new Center for Cannabis Products, to regulate cannabis products. The introduced legislation builds out FDA responsibilities, such as by specifying the types of issues FDA standards for cannabis products should address. The introduced legislation further clarifies that industry will be able to continue to market cannabis products that are also food, provided all applicable FDA requirements for food are met. In addition, the legislation establishes transition periods for cannabis products and medical cannabis already regulated by states in order to ensure the continued availability of such products during the transition to the FDA regulatory framework.

Education Infrastructure Provisions

The discussion draft requested comments on options to steer research funding to colleges and universities, and in particular, whether research funding should be prioritized for Historically Black Colleges and Universities (HBCUs) and other institutions associated with historically disadvantaged communities. Stakeholders submitted a number of comments in response.

The introduced legislation builds on the expressed interest in the discussion draft by authorizing robust funding for cannabis research that will help to provide significant public health and safety benefits. The legislation establishes a new competitive program for institutions of higher education to develop or enhance the necessary cannabis research infrastructure and requires the Secretary of Education (ED) to give priority to minority-serving institutions (MSIs), including HBCUs, and under-resourced institutions of higher education. Necessary infrastructure for cannabis research can include equipment, cultivating cannabis, construction or upgrading of laboratory facilities, and storage and security needs, among other uses. This program will help HBCUs and other MSIs to enhance their infrastructure to conduct research on cannabis benefits.

Labor Provisions

Similar to provisions relating to alcohol and tobacco, the discussion draft required a producer, processor, or wholesaler of cannabis products to obtain a permit from the Treasury Department before commencing business, conditioned on compliance with all cannabis laws. Violations of such laws may result in suspension or revocation of a permit, based on the severity of the violation. The introduced bill adds a requirement that a federal permittee comply with certain wage and labor laws, including the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act (OSHA). Permittees who have violated such laws are required to notify the Secretary of the Treasury within 30 days of a finding of a violation. Coordination rules require the Department of Labor and National Labor Relations Board to coordinate with the Department of Treasury in establishing suspension and revocation guidelines for such violations and in enforcing those provisions.

Workplace Safety - The introduced legislation includes a new section on workplace health and safety. Included in this new section are requirements for OSHA and National Institute of Occupational Safety and Health (NIOSH) to jointly issue guidance for cannabis industry employers, including indicating existing OSHA standards that apply to cannabis industry employers. The introduced legislation promotes workplace safety training for at-risk and hard to reach workers by including cannabis as a targeted topic for Susan Harwood OSHA training grants. The introduced legislation provides additional funding for NIOSH required studies on how legalization impacts the health and safety of workers.

Grants for community-based education, outreach, and enforcement with respect to the rights of workers in the cannabis industry - The introduced legislation creates a grant program, administered by the Department of Labor, to provide funding for public or private nonprofit organizations to educate workers and employers in the cannabis industry of their rights under federal, State, and local civil rights, labor, and employment laws and connect and refer workers to additional services to assist them in pursuing their rights. Grant funding is available for not more than three years, and each grant is capped at \$300,000.

Veterans Provisions

The discussion draft required the Department of Veterans Affairs (VA) to offer medical cannabis recommendations to veterans pursuant to state medical cannabis programs. The introduced legislation refines this provision to require the VA, no later than 180 days after enactment of this Act, to update all applicable regulations, guidance, memoranda, and policies to authorize physicians and healthcare providers to provide medical cannabis recommendations regarding participation in cannabis programs authorized under federal and state law.

The introduced legislation also requires the VA to carry out a series of clinical trials on the effects of medical cannabis on the health outcomes of veterans diagnosed with chronic pain and post-traumatic stress disorder.

Tax and Operations Provisions

Cannabis Operations - The introduced legislation includes a number of additional conforming amendments and clarifications related to licensed cannabis operations, specifically:

- Under the discussion draft, all licensed cannabis businesses were required to pay taxes every two weeks and maintain a surety bond for the potential excise tax liability. The introduced legislation removes the requirement to maintain a bond for any cannabis business that had less than \$100,000 in excise tax liability in the prior year and reasonably expects excise tax liability in the current year to be below such amount. The provision also provides for quarterly excise tax filing for licensees with less than \$100,000 in excise tax liability, and annual filing for licensees with less than \$10,000 in excise tax liability. A related provision establishes that cannabis excise tax liability on cannabis product inventory represents a first lien by the federal government.
- Present law establishes special authority and limitations for Treasury officials responsible for alcohol and tobacco excise tax collection. Among other things, these rules prohibit any Treasury official responsible for collecting excise taxes from having an interest in a regulated alcohol or tobacco business. The introduced legislation incorporates conforming amendments to apply consistent treatment for Treasury officials with respect to cannabis operations.
- The introduced bill clarifies that the Treasury Department shall be responsible for cannabis anti-diversion enforcement, and expands requirements that Treasury study the effect of disparate state cannabis excise tax rates on diversion and noncompliance.
- Stakeholders submitted comments noting that the fair trade practices rules applicable to cannabis producers and wholesalers may be construed to conflict with certain state laws intended to provide equity or other assistance under state social equity programs. The introduced bill incorporates rules similar to rules currently applicable to permitted malt beverage producers and wholesalers, and provides that in the case of certain fair trade practices limitations, such limitations will only apply if a similar limitation exists under state law.

Cannabis Excise Tax and Administration - Stakeholders offered feedback on the use of “THC measurable cannabis products” in the discussion draft for purposes of determining the tax

applicable to non-plant material. The introduced legislation revises the operation of the cannabis products excise tax to remove the concept of “THC measurable cannabis products.” Instead, after the five-year phase-in period, the rules generally apply a weight-based tax determination for unprocessed cannabis plant material, and a THC content-based tax for any cannabis product that is an extract, concentration, or other derivative. The introduced legislation also contains a number of clarifications to prevent avoidance of cannabis or other excise taxes, specifically:

- Revising the existing definition of tobacco rolling papers and cigarette tubes to include any rolling paper or tube intended for use in a cannabis cigarette.
- Providing that in the case of any tax recalculated under the constructive price rules (meant to prevent manipulation of tax in non-arm’s-length transactions), any additional tax assessed may be collected by either party to the transaction.

Banking, Housing, and Community Development Provisions

The bill removes cannabis from the schedule of controlled substances, meaning that cannabis-related financial transactions and services would no longer be proceeds from an unlawful activity. To clarify that cannabis is not an illegal substance and minimize confusion among financial institutions, the bill requires the Financial Crimes Enforcement Network (FinCEN) to update its guidance or issue new regulations that: (1) ensure that it is consistent with the purpose and intent of the Act to decriminalize cannabis; (2) specifies how to facilitate the deposit and movement of cash held by cannabis-related legitimate business or service provider; and (3) does not inhibit financial services to a cannabis-related legitimate business or service provider in the United States. The section also preserves FinCEN’s authority to require financial institutions to submit Suspicious Activity Reports, as appropriate. It would also require the Federal Financial Institution Examination Council to develop uniform examination procedures for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers consistent with FinCEN’s updated guidance.

Communities affected by the War on Drugs and low- and moderate-income communities disproportionately lack access to financial services and capital, face barriers to job opportunities in the financial services sector and discrimination in financial services. In order to reinvest in these communities, the bill would encourage financial institutions to provide financial services to small or minority-owned businesses. The bill would provide additional funding to Community Development Financial Institutions and as well as make additional investment in minority depository institutions to provide these organizations with the capital necessary to reach small and underserved businesses and consumers. In addition, individuals affected by the War on Drugs face challenges accessing housing and economic opportunities, which can lead to high housing cost burdens, rates of homelessness, and reduced opportunities to become homeowners

and create generational wealth for their families. The bill directs the Secretary of Housing and Urban Development to establish a grant program to provide communities whose residents have been disproportionately affected by the War on Drugs with additional funding to address the housing, economic, and community development needs of residents affected by the War on Drugs.

This bill would expand employment opportunities at banks and credit unions by reducing barriers to employment based on past minor criminal offenses, including that criminal offenses that have been expunged, sealed, or dismissed is not a bar to be eligible to work for an insured bank or credit union.

The bill would prohibit financial institutions from discriminating against an individual on the basis of race, color, religion, national origin, and sex, and ensure individuals are able to enforce the anti-discrimination provisions in court. The bill would also prevent financial institutions from denying financial services to someone simply because of a past conviction for a non-violent cannabis offense.