

West Virginia Department of Agriculture

Kent A. Leunhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 28, 2023

MAG Industries, Ltd.

Attn: Ms. Mairi Mull Martin, Legal Counsel

Via E-Mail to mairi@mag.industries & By Publication (www.sos.wv.gov)

RE: Response to Public Comment from MAG Industries, Ltd. (WVDA's Proposed Changes to W.Va. CSR § 61-30-1, *et seq.* relating to Select Plant-Based Derivatives)

Dear Ms. Martin & To Whom It May Otherwise Concern:

I am writing in reply to your comment, received on July 28, 2023, at 9:29am, EST. Thank you for taking the time to submit the above-mentioned correspondence. I will address the three (3) matters which I have identified from your correspondence below.

First, regarding the modification of our analysis threshold: after careful consideration of your comments, we will be maintaining the current 20% standard for hemp product labels. While much time was spent in consideration of and in formulating the proposed change to 10% from our initial threshold of 20%, we also recognize the respective needs of those (*e.g.*, industry/industries) involved in this process.

At the heart of the regulations discussed herein lies our fundamental intent to help foster the growth of hemp, kratom, and other select plant-based derivative industries' business in this state to allow for an already-thriving industry to flourish. After all, agriculture plays a fundamentally significant part in all realms, and more specifically to this issue, agriculture has a critical role in promoting the economic growth of our great state.

That said, it is important to note that we are constitutionally obligated to provide safe, healthy products; therefore, we must seek to ensure that any product(s) under the umbrella of our regulatory authority which are sold to West Virginia consumers are, indeed, what they claim to be. Given that the nature of the product(s) discussed herein and the broad range of consumer goods therewith do have the potential to be marketed and sold as a health or medicinal product, and are currently marketed and sold as such, we must take all possible measures to strike a balance between the above-noted constitutional/regulatory obligations and our commitment to furthering economic growth and prosperity.

In further consideration of our duty to protect the citizens of this state, we believe that it is necessary to tighten this threshold to be in line with the standard which our nationally renowned (ISO 17025 accredited) laboratory considers to be the proper, scientifically accurate standard to best ensure quality levels and safety in monitoring the content of **all** items and products regulated by the West Virginia Department of Agriculture (hereinafter "WVDA").

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We will thus allow for the 20% to remain in place as the standard for hemp product labels through January 2025. Our decision to retract the proposed change from 20% to 10% and the revised provision of the above-specified timeframe should provide all types of registrants with ample time to comply with the requirements, to make changes internally, and/or to accommodate the change however otherwise necessary.

To address your second point, I will reiterate my statement concerning our constitutionally mandated duties to ensure the safety of West Virginia consumers. This duty applies to all that we do, both in the oversight of quality levels as relevant to any given product(s), as well as the standard(s) to which the product(s) under our purview are held. We believe that the labeling requirements act to ensure that we uphold our obligations to West Virginia citizens; and further, to accommodate the transition in labeling standards, we have allotted for as much flexibility as we can with the measures currently in place.

If there are more specific concerns, please call our Regulatory Division at the telephone number listed on this letterhead to speak with one of WVDA's highly qualified employees, each of whom is specialized in their respective field(s). I suggest that you call or email any specific questions or needs so that we can best assist you with further inquiries and can more easily answer any future questions that may arise about product labeling requirements.

I will note, however, we do find our requirements to be on par with the various other forms of basic warning labels, which, usually as mandated by law or regulation, are attached to certain varieties of consumer products which are intended to be marketed or sold as medicinal or dietary items, or which have potential risks or health implications otherwise warranting such labeling.

Finally, as to the third point (your request for clarification), it matters not that the manufacturer is based elsewhere (outside of West Virginia), as the products they make still land in the hands of this state's consumers. Thus, it is not sufficient that the distributor alone registers with WVDA. A manufacturer providing products must register, too. Simply put, an entity or individual seeking to provide (or currently providing) products with an endpoint to West Virginia consumers – *in any capacity* – must also register.

Again, thank you for your input and I hope this has provided you with the answers and clarification needed.

Sincerely Yours,

A handwritten signature in cursive script that reads "Lora Greer Walker". The signature is written in dark ink and is positioned above the typed name and title.

Lora Greer Walker, Esq., General Counsel
West Virginia Department of Agriculture

