



July 28, 2023

Ms. Jodee Martin
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
Email: rulescomments@wvda.us

RE: Public Comment on Proposed Rule 61 CSR 30

Dear Ms. Martin,

On behalf of MAG Industries Ltd., which is a wholesale distributor and manufacturer of registered plant-based derivative products sold within the State of West Virginia, I write you today to provide public comment on the Department of Agriculture's ("Department" or "DOA") proposed legislative rule, WV CSR § 61-30-1, *et seq.*, relating to select plant-based derivative products.

As a WV DOA registered manufacturer and wholesaler of industrial hemp products, we appreciate the Department's efforts to implement the provisions of S.B. 220 from this past regular legislative session. The proposed legislative rule effectively builds upon the Department's existing industrial hemp product regulations for regulation of other hemp-derived cannabinoid and kratom products. Based on our experience and operations in both West Virginia and other regulated states, we would offer a few suggestions or points of clarification for the WV DOA to consider as it moves forward with the proposed rule.

First, proposed modifications to WV CSR §61-30-8.10 would provide that a hemp product label is misbranded when Department analysis finds that the claim is above or below 10% of the cannabinoid amount declared on the label. This is a change from the WV DOA's current 20% standard for misbranding.

As written, we believe that the proposed 10% standard could be too narrow. There are a variety of reasons as to why the amount of cannabinoid found in a hemp-derived product could vary from the amount initially determined and declared on a label. For instance, certain cannabinoids may break down over time, particularly if their storage conditions – which, notably, the manufacturer cannot control after sale – are less than ideal. Further, recent scientific literature¹ suggests that some variability persists in hemp testing, meaning that the results of the Department's analysis could differ somewhat from that used to label the product even if no actual change has occurred.

¹ See, e.g., Azwell et al., *Variation among hemp (Cannabis sativus L.) analytical testing laboratories evinces regulatory and quality control issues for the industry*, *Journal of Applied Research on Medicinal and Aromatic Plants*, Oct. 2022. Available at:

https://www.researchgate.net/publication/364142625_Variation_among_hemp_Cannabis_sativus_L_analytical_testing_laboratories_evinces_regulatory_and_quality_control_issues_for_the_industry (last visited Jul. 28, 2023).

Given these factors and the potentially serious consequences of “misbranding,” we would recommend that the Department either maintain the current 20% or alternatively provide a broader window than the proposed 10%.

Second, the Department has proposed modifications to WV CSR §61-30-8.14 for purposes of product label warnings. In clarifying the labels that must appear on any product, the proposed legislative rule removes “(or more restrictive)” from the labeling requirements. This language contemplated that a registered manufacturer or wholesaler could include on its hemp-derived product labels language that was actually more restrictive than the labeling requirements provided for in §8.14. As a manufacturer and wholesaler of hemp derived cannabinoid products regulated in multiple states, MAG Industries (and other wholesalers for that matter) must often conform its warning labels to multiple state regulatory schemes. As such, we would recommend that the Department maintain some sort of flexibility with its labeling requirements so that a more restrictive warning label would suffice so long as it includes warnings that are equivalent to the proposed requirements of §8.14.

Finally, we would seek one point of clarification from the Department regarding the applicability of both the proposed legislative rule and the corresponding emergency rule. Understanding that WV CSR §61-30-4.10 exempts the registration of kratom products until January 1, 2025, it would be helpful if the Department could provide additional guidance as to how the distributor/seller registration process (as outlined in WV CSR §61-30-6) will work for those distributing or selling any kratom products prior to January 2025. In particular, if a distributor such as MAG Industries is registered with the WV DOA, would that satisfy the registration requirements such that the manufacturer of the kratom products distributed need not also separately register? In other words, if a kratom product manufacturer does not directly sell into West Virginia, is it sufficient that the distributor of such products registers with the WV DOA or does the manufacturer also need to register?

We thank you for your time and consideration of these comments, as well as the Department’s overall efforts to implement the regulatory framework for all hemp and kratom products. To the extent that you have questions regarding any of these suggestions, or would like to discuss them further, please do not hesitate to contact me.

Respectfully Submitted,



Mairi Mull Martin
Legal Counsel
MAG Industries Ltd.