

July 10, 2025

Jodee Martin  
West Virginia Department of Agriculture  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
E-mail: [rulescomments@wvda.us](mailto:rulescomments@wvda.us)

**Re: Written Comments Opposing Proposed Amendments to Legislative Rule  
61CSR30**

Dear Ms. Martin:

I am writing on behalf of Holistic Alternatives Recovery Trust, Inc. ("HART"), a national nonprofit organization advocating for science-based policy, regulatory transparency, and access to safe, plant-based alternatives to opioids and other pharmaceuticals. HART closely followed the enactments of S.B. No. 220 in 2023 and S.B. No. 679 in 2024, which together legalized kratom products under the Select Plant-Based Derivatives Regulation Act: Kratom. HART applauds the efforts of West Virginia lawmakers and the West Virginia Department of Agriculture ("Department") in developing proposed amendments to 61CSR30, which is the legislative rule promulgated under those laws.

To be clear, HART agrees with appropriately regulating plant-based derivative products to ensure they are not unsafe or attractive to children. However, some of the proposed amendments to 61CSR30 will have the opposite effect. Specifically, the proposed amendment to 61-30-11 (section 11.2.a.2) goes too far by broadly restricting 7-hydroxymitragynine ("7-OH") products. Although 7-OH is a naturally occurring alkaloid in kratom extract, 7-OH products are different from kratom products in important ways, including because 7-OH products generally do not contain any amount of mitragynine or other, sometimes-dangerous ingredients found in kratom products.

Under the proposed amendment, 61-30-11 would expand the a Class I flagrant violation to also include:

Hemp products that contain more than the THC content authorized by law, 7-hydroxymitragynine products over 2 percent and non-naturally occurring/synthetic products.

We recommend that the proposed amendment be revised.

First, the proposed amendment is ambiguous because the phrase "7-hydroxymitragynine products" is not defined under West Virginia law or elsewhere in the other proposed amendments to 61CSR30. It is not clear which products would be considered "7-hydroxymitragynine products" under 61-30-11 or whether any exceptions would apply. Again,

because 7-OH is a naturally present alkaloid in kratom extract, *all* kratom extract products contain some amount of 7-OH and conceivably could be considered a 7-OH product under the proposed amendment. The indefiniteness of the phrase “7-hydroxymitragynine products” would therefore lead to uncertain, and unintended, regulatory consequences.

Second, relatedly, the proposed amendment to 61-30-11 does not indicate which ingredient or substance “7-hydroxymitragynine products” are restricted to “2 percent” of. Does the restriction mean that 7-OH products are limited to 2 percent of 7-OH, or are they restricted to 2 percent of something else?

Third, the proposed amendment to 61-30-11 is further ambiguous because the word “synthetic” is not defined. Accordingly, manufacturers and sellers are left to guess as to whether their products are “synthetic” or not.

We think this confusion and uncertainty can be easily avoided with minor revisions. We recommend the following revised language:

Hemp products that contain more than the THC content authorized by law, kratom products that contain more than 28mg of 7-hydroxymitragynine per serving, 112mg of mitragynine per serving, and 150mg of kavalactones per serving, and non-naturally occurring/fully synthetic products.

These recommended changes are consistent with the enabling statutes’ focus on kratom and kratom products, as opposed to 7-OH products generally. The changes better reflect how kratom and kratom products are marketed to consumers, which typically is based on milligrams per serving or per container, not percentages of derivative ingredients. Moreover, nothing in West Virginia code section 19-12F-5—the authority cited for the proposed amendments to 61CSR30—directs the Department to impose a 2 percent limit, as opposed to a limit based on milligrams per serving. Finally, adding the word “fully” before “synthetic” will ensure that 7-OH products, which are manufactured from naturally occurring kratom alkaloids, are not treated as unlawful and can continue to be purchased and used by the West Virginians who rely on them.

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HART is grateful to the Department for focusing on the important topic of regulating plant-based derivatives. Our team is available to collaborate with the Department so that the issues discussed above are resolved for the benefit of 7-OH businesses and consumers across West Virginia. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Miller', with a long horizontal flourish extending to the right.

Jonathan Miller  
General Counsel  
Holistic Alternatives Recovery Trust, Inc.

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