



Senate Majority Leader Chuck Schumer
322 Hart Senate Office Building
Washington, DC 20510

Senator Cory Booker
717 Hart Senate Office Building
Washington, DC 20510

Finance Chairman Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

September 1, 2021

Re: The Cannabis Administration and Opportunity Act (CAOA) Discussion Draft

Dear Senators Schumer, Booker, and Wyden,

Thank you for your commitment to ending the unscientific and anti-American policy of marijuana criminalization as well as the opportunity to weigh in on the discussion draft of the Cannabis Administration and Opportunity Act.

This long-awaited proposal is comprehensive and includes many of the criminal justice reforms provided in the Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act, which passed the House of Representatives last December, and provides ample deference to the laws already in place in the majority of states that have already legalized marijuana for either medical or adult use.

At NORML, our main priority is to ensure that Americans who choose to responsibly consume cannabis are no longer discriminated against under the law. With one in eight Americans choosing to consume on a semi-regular basis¹, including nearly one in four veterans², we must end the practice of arresting over 500,000 Americans each year³, and denying countless others employment, housing, and other civic rights.

¹ <https://news.gallup.com/poll/284135/percentage-americans-smoke-marijuana.aspx>

² <https://www.legion.org/veteranshealthcare/239814/survey-shows-veteran-households-support-research-medical-cannabis>

³ <https://norml.org/blog/2020/10/01/fbi-marijuana-arrests-decline-year-over-year-but-still-outpace-arrests-for-all-violent-crimes/>

To that end, the public stands behind your efforts on reform. Never in modern history has there existed greater public support for repealing the nation's nearly century-long experiment with marijuana prohibition.

Quinnipiac University, [April 2021](#)

Question: Do you think that the use of marijuana should be made legal in the United States, or not?

- **Overall: 69% Yes – 25% No**
- Democrat: 78% Yes – 17% No
- Republicans: 62% Yes – 32% No
- Independents: 67% Yes – 28% No

Gallup Polling, [Nov. 2020](#)

Question: Do you think the use of marijuana should be made legal, or not?

- **Overall: 68% Yes – 32% No**
- Democrat: 83% Yes – 16% No
- Republicans: 48% Yes – 52% No
- Independents: 72% Yes – 27% No

Pew Research Center, [April 2021](#)

Question: Which comes closer to your view about the use of marijuana by adults?

- 60% It should be legal for medical AND recreational use
- 31% It should be legal for medical use ONLY
- **8% It should NOT be legal**

Pew Partisan Breakdown:

- Only 12% of Republicans say marijuana should NOT be legal
- Only 5% of Democrats say marijuana should NOT be legal

Over the last six weeks, we solicited feedback from thousands of marijuana policy reform supporters from every state in the union. The following responses pertain to some of the most commonly discussed elements in the proposed draft of your effort:

How important is it to you that expungement be included in a final package?

- 60% Very important
- 13% Somewhat important
- 23% No expungement, no deal
- **Total: 96% Important**

How important is it to end discriminatory metabolic THC pre-employment and random testing?

- 60% Very important
- 8% Somewhat important
- 30% No testing or no deal
- **Total: 98% Important**

How important is interstate commerce to you?

- 56% Very important
- 17% Somewhat important
- 19% No interstate trade, no deal
- **Total: 92% Important**

We hope that you will take these positions into consideration as you navigate this process moving forward. It is critical that federal reform influence states and localities to implement best practice policies that:

- Restore the rights of those who have been held back by previous convictions,
- No longer restrain an individual's ability to find gainful employment because of their choice to responsibly consume cannabis, and
- Ensure that states reform their licensing programs to promote local ownership and give small businesses the ability to reach potential customers beyond state borders.

The public supports and the overwhelming majority of states already have policies that are more thoughtful than criminalized prohibition.

In closing, 'Reefer Madness' era rhetoric has dominated the mentality of federal cannabis policy since the days of Harry Anslinger, when justified criminalization with statements such as "Marihuana influences Negroes to look at white people in the eye, step on white men's shadows and look at a white woman twice."

For too long, the criminalization of cannabis has been a tool used to disrupt communities and foster distrust of law enforcement.

It is our sincere hope that your team will be successful in collaborating with your colleagues and other good-faith stakeholders to ensure that the impending shift in federal policy takes great strides toward rectifying this situation by advancing comprehensive reform that is centered in science, evidence, and rational thought.

We look forward to continuing to work with you to that end.

Sincerely,

Justin Strekal
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September 1, 2021

National Organization for the Reform of Marijuana Laws Formal Feedback for Cannabis Administration and Opportunity Act

In response to the July 14th request for stakeholder comment by Senate Majority Leader Chuck Schumer, Finance Committee Chairman Ron Wyden, and Senator Cory Booker on their discussion draft for a future Cannabis Administration and Opportunity Act, NORML has provided the following responses.

These comments are not meant to be construed as representing the totality of perspectives needed to be considered for federal policy reform when it comes to the issue of governing a post-prohibition America, but rather as targeted feedback in response to the questions for which these Senate leaders posed.

SECTION 1

The Sponsoring Offices request comments on the new definition of “cannabis,” including comments on—

The appropriate way to measure the potency of cannabis and cannabis products; The interaction between the definition of “cannabis” and the definition of “hemp;”

NORML maintains that consumers require consistent and accurate potency testing and labeling in order to promote consumer safety and responsibility. States already require such testing and labeling, though these requirements are not consistent from jurisdiction to jurisdiction, nor is any universal oversight provided for state testing labs. To address this issue, federal agencies ought to collaborate with state regulators to create and implement a core set of universal, minimum standards, as well as provide some level of regulatory oversight to state-licensed testing labs.

The interaction between the definition of “cannabis,” “cannabis product,” and FFDC A drugs containing cannabis;

NORML maintains that consumers require consistent and accurate product labeling. The definitions of “cannabis,” “cannabis product,” and FFDC A drugs containing cannabis must be well defined and well understood by consumers.

The appropriate classification and regulation of synthetically-derived THC;

Pharmaceutically manufactured THC and THC derivatives are arguably under purview of FDA.

Conforming amendments and interactions relating to the descheduling of cannabis and establishing a new definition outside of the Controlled Substances Act.

NORML maintains that the continued classification of cannabis as a Schedule I controlled substance is scientifically and morally disingenuous. Moreover, having cannabis classified in the Controlled Substances Act in any schedule undermines the intent of this bill -- which is to delegate the primary authority over cannabis policy to state governments.

Therefore, we agree with and deeply support the sponsors' commitment to cannabis' long overdue removal from the CSA so that it may be regulated in a manner similar to alcohol and tobacco, both of which are not scheduled substances within the CSA.

*** * * The Sponsoring Offices also request comments on agency responsibilities, including—**

The appropriate division of responsibilities between FDA, TTB, and ATF, including ways to increase coordination between agencies and ways to reduce duplication of administrative and compliance burdens;

To date, every regulated market has been designed to be self-sustaining. State regulators address matters of manufacturing, licensing, marketing, potency, and safety. In general, these regulatory schemes have been largely working as policymakers and the public intended and have sufficiently addressed matters with respect to good manufacturing practices and product safety. While many hurdles due to federal prohibition have hindered these marketplaces from operating as efficiently as they otherwise would, the descheduling of cannabis under the CAO will provide greater flexibility for states to implement additional policies that will maximize their abilities to oversee a safe and responsible adult-use marketplace.

While there certainly is a role for FDA, TTB, and ATF to play in the future of a post-prohibition America -- particularly with respect to interstate commerce, labeling, and marketing -- it is important that these federal agencies do not undermine the regulations already in place in legal states. In some instances, these regulated access programs have been in place for over two decades and both patients and the public -- not to mention licensed retailers and manufacturers -- have become reliant upon them. New federal regulatory oversight must not unduly interfere with the state-licensed production and distribution of cannabis in these existing markets, nor should it limit future state governments from possessing a wide range of latitude to explore and implement their own best practices.

The agency that most seems appropriate to take the principal role in liaising with the state regulatory programs is TTB, as they already serve in the federal clearinghouse for similarly structured craft beer and wine industries, which are most analogous to the state-specific nature of the cannabis industry.

NORML largely recommends that the system for federal oversight of cannabis mirrors that of alcohol, with most of the authority delegated to TTB and ATF, with a minor role for the FDA.

Appropriations requests for various agencies involved in cannabis administration in order to ensure that those agencies have the necessary tools and resources to effectively carry out new responsibilities;

It is NORML's view that tax rates placed on cannabis be sufficient to provide the necessary funding to ensure a safe, responsible, and inclusive industry as well as to provide financial incentives to state and local governments to review and expunge past records and/or to implement other restorative criminal justice reforms. Both the MORE Act and CAO A call for the creation of a new federal agency, the Office of Cannabis Justice, in addition to efforts coordinated by the Small Business Administration to promote small and medium-size businesses' ability to compete in the emerging marketplace. NORML agrees with the expressed goals of these agencies but remains concerned that over-inflated taxation levels may perpetuate the illicit market.

Whether FDA regulation of cannabis products should be funded through a user fee program or other funding model.

NORML supports treating cannabis in a manner that is largely consistent with the regulation of alcohol products, whereas the FDA retains the ability to, in consultation with ATF and TTB to develop comprehensive ingredient labeling regulations with respect to distilled spirits, wine and malt beverages pursuant to the Federal Alcohol Administration Act which regulations will be in consonance with the Federal Food, Drug, and Cosmetic Act and regulations promulgated thereunder, among other roles to promote public and consumer health.

SECTION 2

The Sponsoring Offices believe cannabis reform must protect the rights of states that choose to legalize cannabis, as well as those that choose not to. Strong anti-diversion rules are necessary to ensure cannabis produced and sold in legal states is not illegally trafficked into other states with the purpose of circumventing state-level laws relating to the sale, production, or taxation of cannabis. The Sponsoring Offices request comments on states' rights and anti-diversion provisions, including—

The appropriate quantitative thresholds regarding contraband cannabis;

The federal government should not set thresholds for contraband cannabis as it pertains to adult possession for personal consumption. For other similar products, these decisions are largely left up to state governments. While we agree that guardrails need to be in place to prevent diversion from legal programs into states that retain prohibition, it seems that would largely be achievable without an arbitrary weight designation.

If the bill sponsors and other legislators are insistent that a standard is set, the current standard for which this would most reasonably be compared would be to the personal possession and transportation of tobacco, which currently stands at 10,000 cigarettes or 50 cartons.

If we apply a similar metric of 10,000 marijuana cigarettes, assuming 0.5 grams per unit, this would equate to 5,000 grams, or 175.4 ounces, or 10.96lbs.

The sponsoring offices have set a standard at 10 lbs, which would be consistent with the above principle.

The appropriate penalties for violations of anti-diversion provisions;

It would be inappropriate to perpetuate criminal penalties for relatively minor violations given the entrenched nature of the current illicit market's general behavior, which has for decades existed to meet the consumer demand for cannabis in the US.

Diversion provisions should at their core be focused to best promote the transition of the unregulated market to a legal one, not to assign criminal records to those simply addressing a market demand where consumers' legal access is unavailable or severely limited.

Diversion provisions should focus only on businesses and large-scale operators who are knowingly diverting very large quantities of cannabis directly from a state-licensed business to a

state that retains prohibition. Minor offenses are currently being addressed by state governments and those charges should remain under their jurisdiction.

Effective coordination between federal and state law enforcement and tax administrators relating to diverted cannabis;

As state programs continue to develop and evolve, it is critical that coordination be maintained, and federal agencies provide the appropriate deference and latitude to states as they continue to improve their programs.

The interaction between state primacy regarding cannabis regulation, and the need for interstate consistency for product standards and regulation, including any responsibilities that should be reserved explicitly for states or the federal government;

As we transition from isolated state consumer marketplaces toward a post-prohibition America with the interstate commerce of cannabis products, NORML believes the approach taken by the sponsoring offices to defer to states as the primary regulators and licensors of the emerging market, while prohibiting interference in interstate commerce between harmonized marketplaces, is the appropriate balance. This can help ensure best practices continue to be developed while creating opportunities for compliant businesses and promoting state-level reforms that foster open and competitive marketplaces that prioritize local and diverse ownership.

In consultation with state policymakers and other stakeholders, a timeline should be established for consistent labeling standards and other relevant aspects across the country to be enforced by state regulators.

Rules relating to interstate commerce involving cannabis, including state-level taxation and interactions with state-level distribution systems.

A major factor that influences the overall burden of a cannabis tax has historically been the 280E penalty. While the Sponsoring office's proposal ameliorates that issue, the proposed solution of replacing it with a marginal tax rate structure of 12.5%-25% has the potential to increase the cost of cannabis sold to consumers at retail, the result of which can have the unintended consequence of perpetuating the diversion of consumers into the illicit market.

It would be appropriate for the sponsoring offices to, as NORML outlines in Section 6, further evaluate lowering the rates and expand on the tax scale to bring the liable burden for small and medium-size operators down even further, to maximize their ability to compete both within the licensed, legal marketplace and with the illicit, unregulated status quo.

When considering the maximum tax rates licensed businesses will face, it is important to note that many are already dealing with multiple levels of taxation (state, local, etc) and the federal tax rate should be set at a reasonable level to ensure these businesses can be successful despite their tax burden and keeps the cost to the consumer at reasonable levels, or else you risk seeing diversion of consumer spending going back into the tax-free illicit market.

NORML suggests a progressive tax structure based on the revenue that would meet the needs to fund regulation, oversight, and other provisions of the CAO, while not being too onerous on consumers and businesses.

SECTION 3

In addition to the request for comment above relating to trafficking in contraband cannabis, the Sponsoring Offices request comment on the retail sale age and quantity restrictions, including—

Whether additional programs or resources are needed to aid states in enforcing a minimum age requirement or quantitative retail limitations,

States that currently engage in regulating a legal cannabis marketplace have largely demonstrated that they are well-positioned and equipped to be the principal regulators of authority here. State-level review of these businesses through unannounced spot checks revealed near-universal compliance by all businesses in regards to ID check requirements. There is little reason to believe this would not continue and current success likely supports the ability for states to be able to oversee age requirements themselves with little federal intervention or oversight.

The interaction between state minimum age laws and use of medication containing cannabis by minors,

While it is reasonable to have a national age limit for the adult use of cannabis, as Canada has set at 19, it would be an overreach of federal power to limit the ability for patients under the age of 21 to be denied access to cannabis if recommended by their physician. Therefore, having an exception for patients under the age of 21 is both appropriate and necessary.

The federal government largely leaves decisions regarding personal health and medication/treatment choices to be made by an individual and their physician, regardless of age. An exception to minimum age laws would allow doctors to continue to make the best decisions for their patients.

Guidance on existing best practices by cannabis-legal states regarding minimum age enforcement,

In the states that have reformed their marijuana laws and implemented an adult-use consumer marketplace, efforts have already been created by state regulatory bodies to conduct routine spot checks to ensure that requirements to check ID's are made.

In 2021, the Insurance Institute for Highway Safety and the University of Chicago [conducted](#) undercover efforts to assess whether retail cannabis facilities would service pseudo-underage buyers who failed to show proof of age. All 47 of the randomly selected retailers denied the patrons entry.

In 2019, the Journal of Studies on Alcohol and Drugs reported on investigators' assessment as to whether licensed retail cannabis facilities would sell to pseudo-underage buyers who failed to show proof of age in Colorado and Washington, the first states to have legalized adult-use cannabis.

Researchers [reported](#), "Compliance with laws restricting stores to selling recreational marijuana to individuals 21 or older presenting a valid ID was high. ... Refusal rates exceeded those for alcohol."

They concluded: "The high compliance in this study suggests that recreational marijuana stores may not be selling directly to underage youth on premises very often. ... There are several explanations for this high compliance. Regulators in both states worked with the industry, performed compliance checks, and penalized stores that failed. Store management may have closely monitored store personnel and checked that they complied with age and ID regulations because licenses are valuable and revenues are sizable. The recreational marijuana industry also may want to avoid any appearance that they are selling to minors to avoid increased federal scrutiny and controls."

Correspondingly, state-specific and national data regarding patterns and trends in underage consumption have largely failed to justify the concerns raised by opponents that legal markets will undermine youth prevention efforts.

According to the National Center for Education Statistics [report](#) entitled "Marijuana Use and Illegal Drug Availability," May 2021:

“The overall percentage of students who reported using marijuana at least 1 time during the previous 30 days in 2019 was not measurably different from the percentage in 2009 (21 percent).... There was no measurable difference between 2009 and 2019 in the percentage of students who reported that illegal drugs were made available to them on school property.”

Further, according to a [report](#) published in the Journal of Adolescent Health entitled “Recreational marijuana legalization and adolescent use of marijuana, tobacco, alcohol,” 2020:

“Youth Risk Behavior Survey data from 47 states from 1999 to 2017 assessed marijuana, alcohol, cigarette, and e-cigarette use among adolescents (14-18+ years; N = 1,077,938). Associations between RML (recreational marijuana legalization) and adolescent past-month substance use were analyzed using quasi-experimental difference-in-differences zero-inflated negative binomial models. ... Controlling for other state substance policies, year and state fixed effects, and adolescent demographic characteristics, models found that RML was not associated with a significant shift in the likelihood of marijuana use. ... Results suggest minimal short-term effects of RML on adolescent substance use, with small declines in marijuana use.”

The interaction between state minimum age laws and limitations regarding non face-to-face transactions (discussed further in Sec. 501 of the draft),

It is reasonable to require an ID check for delivery situations as are currently the rules in place for local delivery of alcohol products by private companies (services such as GoPuff, Instacart, among others). States like Massachusetts and others have demonstrated that they are well positioned to implement their own delivery marketplaces.

The appropriate quantitative thresholds regarding the limit on retail sales of cannabis.

States have led the way with experimentations on this matter and they continue to do so. These policies often differ between jurisdictions. At this time, NORML believes it would be inappropriate for the federal government to impose universal limits of this kind.

If the Sponsoring offices feel so compelled that there must be a standard, it would be appropriate to implement one at the same level as the lawful possession standard, at a proposed 10 lbs.

SECTION 4

The Sponsoring Offices believe that cannabis research should be robustly funded and encouraged and that such research will provide significant public health and safety benefits. The Sponsoring Offices request comment on research, training, and prevention, including—

The annual and long-term funding needs for such efforts;

NORML acknowledges the necessity for funding and believes that public health and safety should be top priorities. NORML also believes that repairing the harms of prohibition should be a top priority and defers to stakeholders who would be carrying out those actions on the manner of funding needs.

Whether programs can be designed to steer research dollars to Historically Black Colleges and Universities and other institutions associated with historically disadvantaged communities;

NORML acknowledges the importance of including this provision and defers to stakeholders who work with HBCU's and historically disadvantaged communities.

Additional areas that may benefit from research, including agriculture, environmental protection, worker health and safety, and other areas.

NORML acknowledges the importance of agricultural and environmental protections as well as the protections of workers' rights to a safe and healthy workplace and defers to the expertise of stakeholders with experience in these areas to find solutions rooted in the evidence we see in legal jurisdictions.

It is critical that these aspects be assessed with a clear evaluation of the emerging data. For example, multiple reports have been published recently establishing that off-the-job cannabis use is not positively associated with elevated rates of occupational accidents or injuries.

The Journal of Group & Organizational Management recently published a report entitled Altered states or much to do about nothing? A study of when cannabis is used in relation to the impact it has on performance, where authors [reported](#):

“Although it is common for organizations to screen employees and applicants for substances including cannabis and for politicians and societal leaders to make sweeping claims about cannabis, there is virtually no empirical research exploring cannabis use in relation to the modern workplace. ... To address this gap in organizational and societal knowledge, we proposed a

temporal-based cannabis framework that predicts relationships between three different forms of cannabis use (before, during, and after work) and five forms of workplace performance. ... [C]ontrary to commonly held assumptions, not all forms of cannabis use harmed performance. In fact, after-work cannabis use did not relate to any of the workplace performance dimensions. This finding casts doubt on some stereotypes of cannabis users and suggests a need for further methodological and theoretical development in the field of substance use.”

You can read our database of published reports pertaining to legalization and its impact on the workplace [here](#).

SECTION 5

The Sponsoring Offices are aware of additional proposals in the U.S. House of Representatives to expand the Opportunity Trust Fund programs to include SBA technical assistance and loans to socially and economically disadvantaged business owners outside of the cannabis industry. The Sponsoring Offices request comment on similar and additional Opportunity Trust Fund programs, including—

Expansions similar to those proposed in the House bill to include SBA technical assistance and loans to socially and economically disadvantaged business owners outside of the cannabis industry;

NORML does not suggest a specific model but defers to stakeholders who work directly on behalf of impacted individuals and their ability to participate in the economy, both the emerging legal cannabis marketplace and the American economy more broadly.

Grants to certain business owners to offset administrative and compliance costs associated with the provisions of this Act.

NORML believes that it is appropriate to use a portion of the tax revenue generated for programs to support impacted individuals and small business owners to be able to enter and compete in the emerging legal industry. We further deeply appreciate the leadership of House Small Business Committee Chairwoman Nydia Velazquez and the committee staff, Rep. Barbara Lee, Rep. Dwight Evans, the Cannabis Regulators of Color Coalition, The Parabola Center, the Minority Cannabis Business Association, and the National Cannabis Industry Association’s leadership on these issues and defer to their input.

SECTION 6

The Sponsoring Offices request comment on cannabis excise tax provisions, including—

The appropriate sales or production threshold for the small producer credit;

While NORML does not take a specific position on the thresholds required for the small producer, we believe that it would be appropriate to apply a significantly lower level of taxation on smaller companies and recipients of social equity licenses while a higher level of taxation can be applied to larger producers to serve as a deterrent from accelerated consolidation of the emerging marketplace.

The Marijuana Opportunity, Reinvestment, and Expungement Act -- previously passed by the US House of Representatives and endorsed by Vice-President Harris -- included an initial applicable tax rate at 5%, scaling up to 8% over the period of 5 years. It would be worth the Sponsoring office's consideration to have further expanded on the tax scale to bring the liable burden for small and medium-size operators even further below the proposed 12.5% after a refundable credit for those making less than \$20,000,000 per fiscal year.

By having a significantly lower rate for smaller and medium-sized operators, the benefits are threefold:

- To maximize their ability to compete within the licensed, legal marketplace against the larger and more well-financed corporate entities,
- To maximize their ability to compete with the illicit, unregulated legacy market,
- To further incentivize local and diverse ownership with a healthy competitive marketplace that produces better consumer and market outcomes.

Appropriate anti-double-benefit rules regarding the small producer credit, including rules related to substantial processing;

NORML supports efforts that make it easier for small businesses to be able to operate efficiently and defers to small producers for their experience and expertise.

The proper manner to measure potency of a cannabis product and which products should be subject to a per-THC content tax rather than a purely weight-based tax;

NORML believes that taxes on cannabis should be developed in a manner that will promote market efficiencies and not unduly burden small and locally owned operators. In order to do so, we support continued outreach by the Sponsoring offices to small, medium, and equity operators for input on this matter.

The appropriate entity and methodology for measuring the prevailing price of cannabis for purposes of setting annual rates of tax;

NORML defers to experts and stakeholders when it comes to assessing the methodology and measurement of prevailing price, however, in regards to the annual rate, it is crucial for any aspect of the economy to have certainty. This is why, as we noted above, the effective tax rate for smaller operators should be as low as possible in order to ensure their ability to have the ability to compete simultaneously with the unregulated legacy market and the larger operators.

Whether certain small producers should be eligible for quarterly or annual tax payments, similar to the rules applicable to small alcohol producers;

NORML supports efforts that make it easier for small businesses to be able to operate efficiently and defers to small producers for their experience and expertise.

Considerations related to the non-application IRC 280E, including transition rules and interactions with tax incentives for activities that may have occurred while a business was subject to the limitation on credits and deduction;

While NORML does not take a direct position on this issue, it would be appropriate to consider retroactivity application fair taxation for, at least, existing small businesses.

Additional conforming amendments to other parts of tax law, including the definition of tobacco rolling papers tubes and interactions with the alcohol and tobacco tax regimes.

Advertising:

NORML has previously [proposed](#) regulatory controls which seek to limit youth exposure to adult-use cannabis-related advertising and marketing as well as efforts to not incentivize advertising cannabis products through the tax code, through the non-deductibility of marketing expenses related to the emerging legal cannabis industry.

Medicinal Tax Exemption:

Over three dozen US states and territories currently authorize and regulate patient marketplaces for lawful medical cannabis programs. The overwhelming majority of states do not levy taxes on prescription drugs, and given that millions of Americans have received authorizing recommendations from state-licensed physicians, it would be appropriate to exempt medical marijuana programs from the federal tax regime and only subject the adult-use markets to the excise tax.

SECTION 7

The Sponsoring Offices believe reducing barriers to entry is a crucial component of restorative justice. At the same time, allowing illegal operators to maintain a cannabis permit while repeatedly and intentionally violating the law does a disservice to those cannabis entrepreneurs that pay their taxes and comply with public health and public safety laws. The Sponsoring Offices request comment on the establishment and permitting provisions, including—

The appropriate balance to strike between reducing barriers to entry, while preventing illegal operations that may engage in cannabis diversion, tax evasion, or threaten public health and safety;

NORML believes that previous cannabis offenders should be provided deference for entry into the emerging legal market. This does not absolve any business or individual from abiding by state and federal laws relating to operating a legal cannabis business, but we should not assume past charges indicate an individual's propensity to commit crimes when operating in the newly legalized marketplace. Currently, states have demonstrated they have the ability to confirm the legal compliance of their businesses and to identify and penalize those who break pertinent laws or regulations.

Appropriate criteria for the waiver of a qualifying offense with respect to a permit application; Additional recommendations on streamlining the permitting and establishment process involving multiple government agencies; and

NORML acknowledges the efforts and successes of state regulators being the principal actors to date and believes that those who are in compliance with state programs should be recognized for their state compliance.

The operation of the permitting transition rule for entities already in operation as well as those that may commence business shortly after enactment.

Efforts should be made to ensure there is no disruption of the currently active state-legal marketplaces. Barriers for small and medium-sized businesses to ensure they are in federal compliance should be minimal.

SECTION 8

The Sponsoring Offices request comment on provisions relating to the operations of cannabis production facilities, including whether certain small cannabis producers should be exempt from the requirement to maintain a bond, similar to the exception in current law for small alcohol producers.

NORML believes that small producers, personal cultivation, and state medical facilities should be exempt from bond requirements. Nonprofits and other organizations providing medical cannabis for free or at a reduced cost to low-income individuals should be exempt from bonds to ensure that they remain able to provide vital services to low-income individuals.

SECTION 9

The Sponsoring Offices request comment on whether some or all cannabis products should be required to undergo premarket review before marketing and, if so, which cannabis products and the evidentiary standards for any proposed premarket review pathways.

Premarketing review is appropriate in the case of products containing novel cannabinoids not normally found in natural cannabis – for example, Delta-10 THC, THC-O Acetate. Products currently sold on state markets without evident problems should be grandfathered similar to “old” drugs under FDCA.

SECTION 10

The Sponsoring Offices have not specified responsibilities or membership of the Advisory Committee and request comments on—

Criteria for Advisory Committee membership to ensure diverse viewpoints and policy priorities are properly represented;

NORML believes that it is imperative to have a wide array of voices represented on the Advisory Committee and that members be held to the highest standards of ethics when offering proposals to ensure that their recommendations are evidence-based.

For generations, cannabis policy in America has been rooted in both explicit and implicit racism, and too often those who dominated the narrative have used scare tactics and pseudo-science to justify building a system of oppression that has resulted in the arrest or incarceration of millions of Americans.

The Advisory Committee should consist of at least one of the following:

- Public health experts
- Consumer advocates
- Medical cannabis experts and advocates
- Small business leaders
- Former regulators who have demonstrated success at fostering an environment friendly to market access for small businesses
- Former unregulated operators who have since transitioned to the legal market
- Environmental health experts
- Criminal justice reform experts

Roles and responsibilities of the Advisory Committee;

The Advisory Committee can play a key role in ensuring that there are pathways and support for small businesses that seek to enter this emerging legal industry. We also must ensure opportunities for wealth generation, gainful employment, ownership by members of impacted communities, as well as reasonable and rational consumer protections and product safety.

Never in American history has there been an economic opportunity quite like this moment, with an entrenched consumer base representing a massive illicit market that is now transitioning to a legal one. The potential for job creation, community development, and revenue production should be embraced and fostered-- guided by experienced expert voices that truly wish to see these new American experiments succeed.

The role of the Advisory Committee in agency consultation, including the administrative and rulemaking process.

NORML recommends that an explicit period of time be set which no rule can go into effect any sooner than after the Advisory Committee has had time to review and propose their expertise for any suggested changes. Be that time period 30, 60, 90, or more days, there should be a minimum.

SECTION 11

The Sponsoring Offices believe that robust enforcement against commercial bribery and uncompetitive practices is critical to ensure that small and independent businesses have an equal footing in the marketplace. In addition, consistent labeling and disclosure rules serve to protect the public and prevent misleading practices by market participants. The Sponsoring Offices request comments on cannabis administration and trade practices enforcement, including—

Ways to reduce compliance costs for small businesses while ensuring that market participants comply with necessary labeling and trade practice rules;

NORML recommends a regulatory structure that fits the needs of consumers without creating undue burdens. To accomplish this goal, regulators can look to existing industries (e.g. bakeries) for analogous regulations. NORML also recommends authorizing state regulatory latitude to prevent existing and future small businesses from competing with larger entities who will be able to comply at a lesser cost. Finally, a uniform federal labeling regulation will reduce compliance costs as businesses will only need to produce one label for all states.

Whether additional rules may be necessary to prevent uncompetitive practices, and the interactions with trade practice rules administered by other agencies, including the Federal Trade Commission;

NORML recommends explicitly authorizing state regulatory latitude to allow local businesses to compete against large companies with the ability to produce and ship products at much lower rates, and limiting how much of the market one actor may own or control to prevent corporate domination of the market. NORML also recommends the creation of an anti-monopoly task force composed of federal, local, and state agencies with expertise in enforcement of antitrust laws to allow for the swift transfer of information between states and the prevention of anti-competitive practices.

Transition rules to address cannabis products that already exist in the marketplace or those introduced in the marketplace, including before TTB and FDA issue regulations or other guidance;

NORML recommends that transition rules should aim to provide clarity and consistency while preventing further criminalization. Until such a time when TTB and FDA can issue consistent and navigable regulations, state level regulatory bodies will continue to ensure that products are required to be labelled with basic safety information including potency and ingredients.

Design of the track and trace regime to prevent cannabis diversion while minimizing compliance burdens; and Whether and how a single federal track and trace regime could replace the various, complex, state-based seed-to-sale tracking systems.

For the present, the federal government should defer to state track-and-trace regimes. Changing from state to federal systems is a complex and costly undertaking and may ultimately be unnecessary.

SECTION 12

The Sponsoring Offices request comment on additional, general, and unspecified items, including—

The necessary funding levels and resources for agencies to carry out the purposes of this Act; The necessary amounts appropriated for grants to carry out the purposes of this Act;

NORML does not take a position on this issue but deeply appreciates the recognition that the revenue generated from this emerging legal industry should be reserved for efforts to undo the harms that the senseless and racially disproportionate harms that the government and law enforcement agents have inflicted upon millions of otherwise law-abiding Americans during marijuana's prohibition.

Consideration of transition rules and effective dates;

NORML believes that careful consideration must be taken to ensure that transition rules are crafted to prevent unintended criminalization, as experience shows that implementation of regulations and taxation can be a complicated and lengthy process.

NORML further believes that prohibition has adversely affected Americans for far too long and undue delay in development of these rules and their implementation will only serve to further delay the respect of the civil liberties of Americans who choose to consume cannabis.

Interactions with state and local laws; Interactions with international obligations and treaties; Interactions and additional considerations regarding hemp;

The single convention treaty provisions regarding cannabis cultivation and distribution are outdated and incompatible with U.S. free-market and private enterprise principles. They need to be amended or revoked, and their current status should not delay the US revising its domestic policies.

Additional opportunities to expand restorative justice and access to capital for historically-disadvantaged entrepreneurs; and

NORML maintains that restorative justice and access to capital for disadvantaged entrepreneurs should be a priority for the sponsors. However, NORML defers to the expertise of experienced stakeholders on the matter for policy guidance.

Any other areas of concern to stakeholders, federal agencies, members of Congress, and state and local regulators.

Regarding Drug Testing Policies:

Those who engage in the use of cannabis while away from the job [do not constitute any legitimate workplace safety threat](#). In fact, the available science says just the opposite. According to an exhaustive [review](#) of over 10,000 scientific studies, published by the US National Academy of Sciences, Engineering, and Medicine in 2017, “There is no or insufficient evidence to support ... a statistical association between cannabis use and ... occupational accidents or injuries.”

Furthermore, the tests themselves do not possess the ability to determine whether or not someone who tests positive for cannabis is actually under its influence, or even whether or not they have consumed it within the past few weeks or even months. Rather, conventional drug screens for cannabis simply detect the presence of inert, non-psychoactive byproducts (a/k/a metabolites) that may linger in bodily fluids for extended periods of time. That is because carboxy THC, unlike most other drug metabolites, is fat-soluble. As a result, scientific papers have documented the presence of these metabolites [for over 100 days](#) following the date of last cannabis exposure – long after any intoxicating effects of the substance have worn off. In fact, even the US Department of Justice [acknowledges](#), “A positive test result, even when confirmed, only indicates that a particular substance is present in the test subject’s body tissue. It does not indicate abuse or addiction; recency, frequency, or amount of use; or impairment.”

In short, suspicionless cannabis testing in the workplace, such as pre-employment drug screening, is not now, nor has it ever been, an evidence-based policy. Rather, these discriminatory practices held in the codification of the 1986 Executive Order 12564, a holdover from the zeitgeist of the 1980s ‘war on drugs.’ It is time for federal workplace policies to adapt to this new reality and to cease punishing employees for activities they engage in during their off-hours that pose no workplace safety threat.

Regarding Advertising Restrictions

NORML further suggests review and examination of the practices implemented in Canada regarding restrictions of advertising practices to inform these decisions in the United States.