



Principles for Cannabis and Intoxicating Hemp

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Preamble

The past decade has given rise to an extremely confusing situation where intoxicating products made from cannabis or hemp (as defined in the 2018 federal Farm Bill) have become prevalent in the market, yet often lack, in fact or in practice, regulatory oversight necessary for such socially sensitive products. The Brewers Association views the current *status quo* as chaotic and unsustainable and urges federal and state lawmakers to enact legislation establishing clear and transparent regulatory structures that protect the public while offering a responsible pathway for commerce in cannabis and hemp products. As Brewers Association members are increasingly participating in the intoxicating hemp market as well as competing for shelf space and occasions with these intoxicants, the Brewers Association accordingly announces the ten points below as its guiding principles when examining legislation and regulation of cannabis and intoxicating hemp products.

1. Intoxicants require a comprehensive and robust federal and state regulatory framework:

- Since the repeal of Prohibition, federal and state laws, as well as regulatory authorities, have established a synergistic framework for regulating the alcohol beverage industry. This system has evolved and will continue to evolve, but a federal-state partnership lies at its core.
- The current status quo for cannabis and intoxicating hemp products undermines federal-state cooperation. In the case of cannabis, federal law precludes a functioning regulatory structure by clinging to prohibition. In the case of intoxicating hemp products, federal law has de-criminalized such products without providing any regulatory oversight.

2. Regulatory systems for intoxicants require sufficient resources and the political will to enforce the laws' requirements:

- Prohibition breeds black markets, and one of the great potential benefits of legalization is channeling economic activity into a safer, regulated, and taxed market.
- The post-Prohibition regulatory structure for alcohol beverages successfully employed both incentives for alcohol producers and sellers to “go legal” and rigorous enforcement against lawbreakers to confine illicit alcohol to a tiny slice of the market.
- Today’s state-legal cannabis markets have yet to demonstrate an ability to supplant the black market substantially. Legal systems need both to avoid over-regulation and taxation that make the licit market unattractive and impose meaningful penalties to deter the temptation of unscrupulous producers and sellers to remain in the black market.

3. Intoxicants should not be marketed or sold to children:

- Universal age restrictions have successfully mitigated the impact of underage drinking since the repeal of Prohibition.
- While every state legal regime for cannabis includes a system for age restrictions, intoxicating hemp products are subject to no age restrictions in many states, putting children at risk.

4. Comprehensive regulatory systems for intoxicants should make distinctions among products to discourage overconsumption:

- Beginning with the dawn of alcohol control systems, federal and state laws have comprehensively regulated beer, wine, and distilled spirits, but made distinctions to discourage consumers from choosing products with the highest potential for overconsumption.
- Legal systems for cannabis and intoxicating hemp products also should regulate comprehensively but find ways to nudge consumers towards favoring products with less potential for overconsumption and abuse.

5. Regulatory systems should be calibrated and adjusted to promote and preserve competition:

- Alcohol beverage regulatory systems have sought to preserve and promote competition. For example, so-called "tied-house" laws severely restrict the ability of dominant producers or distributors to exclude competitors from retail locations.
- Regulatory systems also should be calibrated to avoid becoming barriers to rigorous competition by, for example, erecting standards that only the largest companies can comply with.
- While today the cannabis and intoxicating hemp market remains fragmented, lawmakers should erect regulatory systems before concentration, whether in production, distribution, or retailing, becomes acute. Those systems should preserve rigorous competition at all levels and protect the ability of new firms to enter the market.

6. The production of intoxicants should be regulated to ensure production in safe and sanitary conditions:

- Alcohol beverages are produced in facilities subject to regulation by both the federal Food & Drug Administration (FDA) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), minimizing incidents of dangerous products reaching consumers, as happens in some other countries.
- Cannabis and intoxicating hemp products should be subject to a similar national system of regulations to protect the health and safety of consumers.

7. Intoxicants should be labeled in a way that empowers consumers to know the source and important attributes of the product:

- Dating back to 1935 TTB has promulgated federal regulations to adequately inform consumers of the identity and quality of most alcohol beverages. Products not covered by TTB labeling regulations are subject to those of FDA. Those regulations have and continue to develop as consumers and products evolve but have served the public well and created a national disclosure baseline.
- Cannabis and intoxicating hemp products need a similar framework to set a baseline for the benefit of all U.S. consumers of such products. Today's federal vacuum undermines the market and too often leaves consumers in the dark.

8. Intoxicants should not be marketed using health claims unless those claims have undergone rigorous study, like the FDA drug approval process:

- From the “patent medicines” of the 19th century through to today, unscrupulous marketers have tried to sell intoxicants as “miracle drugs” using unproven claims and misleading suggestions.
- The framers of the post-Prohibition regulatory system for alcohol wisely recognized this danger and prohibited alcohol producers and sellers from making unsubstantiated health claims.
- Cannabis and intoxicating hemp products must be subject to similar scrutiny, with health claims prohibited unless they meet extremely rigorous standards like those employed by the FDA to evaluate drug claims.
- Cannabis and intoxicating hemp products should not be included in the “dietary supplement” loophole to federal food and drug laws.

9. Alcohol beverage licensees should be allowed to compete in the emerging new market for cannabis and intoxicating hemp products.

- Existing alcohol licensees possess experience with responsibly producing, distributing, and/or retailing a socially sensitive intoxicant.
- While a regulatory regime for cannabis or intoxicating hemp need not limit itself to participation by alcohol licensees, alcohol licensees' experience makes them excellent candidates to participate in this new category responsibly.

10. If excise taxes are imposed on alcohol, then other intoxicants should be subject to a reasonably proportionate excise tax to achieve similar policy goals:

- While the Brewers Association does not support excise taxes in principle, beer has been subject to excise taxation since the repeal of Prohibition. Policymakers must calibrate such taxes so that they raise revenue without becoming so onerous that they facilitate the black market.
- Where policy makers chose to impose excise taxes on alcohol, then other intoxicants should be subject to excise taxes calibrated to be reasonably proportionate to those imposed on alcohol.