



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE

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Transmitted via email
Industrialhemp@alaska.gov

July 10, 2023

Robert Carter
Division of Agriculture
5310 South Bodenbug Spur
Palmer, Alaska 99645

Re: Public Comment: Proposed Changes to
Industrial Hemp Program Regulations, 11 AAC 40.

Dear Mr. Carter:

Thank you for the opportunity to comment on proposed changes to the state regulations governing the Division of Agriculture's Industrial Hemp Program. As the Office responsible for overseeing the legal, adult-use cannabis market in Alaska, the Alcohol and Marijuana Control Office (AMCO) well understands that both of our programs are regulating the cultivation, manufacturing, and sale of *cannabis sativa l.* Our programs have both attempted to combat the proliferation of highly intoxicating hemp products intended for human or animal consumption. The regulations the Hemp Program offers go a long way toward closing an unintended loophole. For this reason, they have our Office's broad support.

We provide our support for the addition of 11 AAC 40.400(d), suggest a conforming amendment to 11 AAC 40.520(b)(3), and raise one concern regarding the proposed reductions to registration and product fees. We leave the remaining proposed changes unaddressed because they are specific to the hemp program and not to AMCO's operations.

We support the proposed 3 AAC 11 AAC 40.400(d). This regulatory change appropriately restricts the Division of Agriculture from endorsing and approving an industrial hemp product intended for human or animal consumption that:

contains delta-9 THC or a non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form.

Once adopted. This regulation will prevent the proliferation of products containing delta-9 THC as well as the new growing market of synthetic cannabinoids. It also prohibits manipulating other naturally occurring cannabinoids into more potent products.

We recommend one change to 11 AAC 40.520(b)(3) to conform with this prohibition. The current proposed change permits notice of violation solely for products containing any delta-9 THC. We believe it is your intent that notices of violation would also issue if a product contained ."any non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form."

As a final matter, the regulations packet asserts that these regulations have no financial impact on any other state agency. At present, AMCO and through a memorandum of understanding, AMCO is enforcing hemp plan regulations, particularly paying attention to prohibited products and unregistered retailers. We note fees for registrations and endorsements are greatly reduced in the proposed 11 AAC 40.100. If the State Hemp Plan can enforce of its regulations without our assistance under these reduced fees, we have no objection. If AMCO's services are requested, we recommend the memorandum of understanding be amended to adequately fund our Office's enforcement efforts on behalf of the Hemp Plan. This may require an amendment to the fee schedule support that effort.

Thank you for the opportunity to provide public comment. We look forward to continuing to work with the Division to strengthen the agricultural market for cannabis, diversify our state's economy, and better protect Alaskans.

Respectfully,

Joan M. Wilson
Director

cc: Nicholas Miller, Chair, Marijuana Control Board
Julie Sande, Commissioner DCEED
Micaela Fowler, Deputy Commissioner DCEED

The introductory language of 11 AAC 40.020(a) is amended to read:

(a) A person may not produce industrial hemp in the state unless the person has obtained an industrial hemp registration from the division to participate in the Alaska Industrial Hemp [PILOT] Program. The division will issue the following classes of industrial hemp registrations for participation in the program under this chapter:

...

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078
AS 03.05.076

The section heading to 11 AAC 40.040 is changed to read:

11 AAC 40.040. Registration [INITIAL REGISTRATION] term, renewals, and submission dates.

11 AAC 40.040(a) is amended to read:

(a) Except as set out in 11 AAC 40.060, an industrial hemp registration is valid **for 12 consecutive months** from the date it is issued [UNTIL JANUARY OF THE FOLLOWING YEAR].

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.050(a) is amended to read:

(a) An applicant for registration in the Alaska Industrial Hemp [PILOT] Program must file an application on a form that the division prescribes.

The introductory language of 11 AAC 40.050(c) is amended to read:

(c) An application for registration in the Alaska Industrial Hemp [PILOT] Pilot Program must be signed by

...

11 AAC 40.050(d) is amended by adding a new paragraph read:

(4) the applicant has not been convicted of a felony described in AS 03.05.076(a)(3)(A) or (B); for purposes of this paragraph,

(A) a conviction is any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged;

(B) a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions; and

(C) where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this paragraph;

((Publisher: To account for the addition of paragraph (4), please delete "and" from the end of (a)(2). Additionally, at the end of (a)(3), change the period to a semicolon and insert "and" following the punctuation.)))

11 AAC 40.050(f) is amended to read:

(f) All fees, including non-refundable application fees, registration fees, and, if applicable, industrial hemp product endorsement fees set out in 11 AAC 40.100 must be paid **before the division will approve an application for a registration or an endorsement** [AT THE TIME OF SUBMITTAL OF AN APPLICATION].

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.060(a) is amended to read:

(a) An application for renewal of an industrial hemp registration must be filed on a form that the division prescribes, with the information and documents described in this section. A renewal application for a registration must be postmarked or received by the division not later than **15 calendar days** [DECEMBER 15 OF THE CALENDAR YEAR] before the **end of the applicant's** registration term.

11 AAC 40.060(c) is amended to read:

(c) **Unless** [UNTIL] the division makes **an earlier** [A] decision on a timely filed renewal application, **a current** [THE PRIOR YEAR] registration remains valid **for 90 calendar days after the end of the applicant's registration term** [AFTER JANUARY 1].

11 AAC 40.060(e) is amended to read:

(e) **Before the division approves a renewal application, all** [ALL] fees, including non-refundable application fees, registration fees, and, if applicable, industrial hemp product endorsement fees set out in 11 AAC 40.100 must be paid [AT THE TIME OF SUBMITTAL OF A RENEWAL APPLICATION].

11 AAC 40.060(f) is amended to read:

(f) If an applicant applies for renewal of more than one class of registration, a separate application **must be submitted** and all required fees **for each class** must be **paid before the division will approve the application** [SUBMITTED FOR EACH CLASS OF REGISTRATION]. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.070(b) is amended to read:

(b) Not later than 30 **calendar** days after receipt of the request, an applicant must submit any additional information requested by the division.

11 AAC 40.070(d) is amended to read:

(d) The division will grant or deny an application for registration or endorsement subject to 11 AAC 40.400 - 11 AAC 40.420 not later than 60 **calendar** [BUSINESS] days after sending an applicant written notice that the application is complete. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.080(b)(2) is repealed and readopted to read:

(2) the renewal application is postmarked or received by the division less than 15 calendar days before the end of the applicant's registration term as required under 11 AAC 40.060(a);

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.090
AS 03.05.076 AS 03.05.079

11 AAC 40.100 is amended to read:

11 AAC 40.100. Fee schedule. The division will charge fees as follows:

- (1) non-refundable application fee for **each annual** [A] registration: **\$50** [\$100];
- (2) non-refundable application fee for **each annual** [A] renewal registration: \$50;
- (3) annual registration fee for a grower: **\$100** [\$200];
- (4) annual registration fee for a processor that creates a product not intended for human or animal consumption: **\$50** [\$250];
- (5) annual registration fee for a processor that creates a product intended for human or animal consumption: **\$250** [\$750];
- (6) annual registration fee for a retailer: **\$50** [\$300];
- (7) **annual** endorsement fee for each industrial hemp product subject to 11 AAC 40.400 - 11 AAC 40.420: **\$25** [\$100];
- (8) transportation permit issued under 11 AAC 40.710: **\$25** [\$50];
- (9) modification of product endorsement: **\$25** [\$100];
- (10) modification of registration: **\$25** [\$50];

(11) sampling fee under 11 AAC 40.275(e) and 11 AAC 40.290(b) for the division or the division's representative to collect samples from harvest of industrial hemp: **\$100** [\$200];

(12) testing of seeds of wild, landrace, or unknown origin under 11 AAC 40.220: \$1,200. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.210(b)(1) is amended to read:

(1) grow approved varieties of industrial hemp seeds or propagules received from registered growers in the Alaska Industrial Hemp [PILOT] Program, without written approval from the division;

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.230(b)(2)(A) is amended to read:

(A) a registered grower with the Alaska Industrial Hemp [PILOT] Program;

11 AAC 40.230(b)(2)(B) is amended to read:

(B) a source registered or licensed with a different [INDUSTRIAL HEMP PILOT PROGRAM OPERATING IN ACCORDANCE WITH 7 U.S.C. 5940 (SEC. 7606 OF THE AGRICULTURAL IMPROVEMENT ACT OF 2014) OR A] United States Department of Agriculture approved industrial hemp program authorized under 7 U.S.C. 1639p (sec. 10113 of

the Agricultural Improvement Act of 2018); or

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.040 AS 03.05.076
AS 03.05.027 AS 03.05.050 [AS 03.05.077]
AS 03.05.030

11 AAC 40.240(d) is amended to read:

(d) Hemp may not be grown on property owned by or leased from a person who is ineligible to participate in the Alaska Industrial Hemp [PILOT] Program under 11 AAC 40.030 or whose registration is suspended or revoked. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.245(1) is amended to read:

(1) the title, "Alaska Industrial Hemp [PILOT] Program";

11 AAC 40.245(3) is amended to read:

(3) contact information for the Alaska Industrial Hemp [PILOT] Program in the Division of Agriculture. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.250(a) is amended to read:

(a) Not later than **30 calendar** [20] days after seeding, direct sowing, or replanting of hemp seeds and propagules, a registered grower must submit to the division, by mail or electronic mail, a planting report on a form prescribed by the division.

11 AAC 40.250(d) is repealed:

(d) Repealed ___/___/___.

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.265 is amended to read:

11 AAC 40.265. Initial pre-harvest report. A registered grower shall inform the division by mail or electronic mail of a projected harvest date for an industrial hemp crop **not later than** [AT LEAST] 30 calendar days before the projected harvest. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.275(e) is amended to read:

(e) The registrant shall be responsible for the cost of sampling, as set out in 11 AAC 40.100(11) [, AND FOR THE COST OF TESTING]. Any sample taken by the division for testing is property of the division. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

AS 03.05.040

11 AAC 40.285(a)(1) is amended to read:

(1) a registered grower shall harvest a tested lot not later than 15 **calendar** days after the division's sample collection date;

11 AAC 40.285(a)(2) is amended to read:

(2) if conditions do not allow the registrant to harvest not later than 15 **calendar** days after the sample collection, the division may order additional testing of the lot or provide written authorization to harvest the crop by a specific date, with or without further testing being required.

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 [AS 03.05.077]AS 03.05.079
AS 03.05.076

11 AAC 40.295(a) is amended to read:

(a) A registered grower must submit to the division, by mail or electronic mail, a post-harvest report on a form prescribed by the division, not later than **90 calendar** [60] days after receiving sampling results from the division.

11 AAC 40.295(c) is amended to read:

(c) For lots stored on site, the disposition information described in (b)(4) and (5) of this section must be submitted not later than 60 **calendar** days after disposition. (Eff. 4/4/2020,

Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.305(a)(8) is amended to read:

(8) receive compensation for processed industrial hemp or industrial hemp products from a processor or retailer registered under 11 AAC 40.300 - 11 AAC 40.335 or **11 AAC 40.500 - 11 AAC 40.525** [11 AAC 40.500 - 11 AAC 40.530].

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.050 [AS 03.05.077]
AS 03.05.040 AS 03.05.076

11 AAC 40.320(a) is amended to read:

(a) For any processed hemp [PRODUCT] intended for human or animal consumption, each batch [OF PRODUCT] shall be tested in accordance with 11 AAC 40.600 - 11 AAC 40.665 [, FOR

- (1) CANNABINOID CONCENTRATION AND PROFILE;
- (2) RESIDUAL SOLVENTS;
- (3) MICROBIALS;
- (4) PESTICIDES; AND
- (5) HEAVY METAL CONCENTRATIONS].

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.050 [AS 03.05.077]
AS 03.05.030 AS 03.05.076 AS 03.05.079
AS 03.05.040

11 AAC 40.325 is repealed and readopted to read:

11 AAC 40.325. Test results. The division will notify the registered processor in writing of test results of any solvents, heavy metals, microbials, or pesticides found during testing. (Eff. 4/4/2020, Register 234; am __/__/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 AS 03.05.079
AS 03.05.040 [AS 03.05.077] AS 03.05.090
AS 03.05.050

11 AAC 40.335 is amended to read:

11 AAC 40.335. Production reports. (a) A registered processor shall submit a completed production report for each registration term **not later than 20 calendar days** [ON OR] before **the expiration of the registration term** [MARCH 1 OF THE FOLLOWING REGISTRATION YEAR].

(b) The report must contain

- (1) the quantity of the industrial hemp processed;
- (2) the type and quantity of products produced;
- (3) identification of the lot and batch numbers processed; **and**
- (4) the disposition of all raw and processed industrial hemp [; AND
- (5) DOCUMENTATION OF ALL PERSONS WHO ACQUIRED RAW

INDUSTRIAL HEMP OR PROCESSED INDUSTRIAL HEMP OR INDUSTRIAL HEMP PRODUCTS, EITHER WITH OR WITHOUT COMPENSATION, FROM THE REGISTRANT]. (Eff. 4/4/2020, Register 234; am __/__/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.400(a) is amended to read:

(a) Before being [TRANSPORTED IN THE STATE OR] offered with or without compensation to a consumer **in the state**, any industrial hemp product processed beyond its raw form and intended for human or animal consumption must be endorsed by the division.

11 AAC 40.400(b) is repealed and readopted to read:

(b) An endorsement for a hemp product subject to 11 AAC 40.400 - 11 AAC 40.420 is valid for 12 consecutive months from the date of approval. Unless the division makes an earlier decision on a timely filed application to renew an endorsement, a current endorsement remains valid for 90 calendar days after the end of the endorsement term.

11 AAC 40.400(c) is amended to read:

(c) The division will provide a written endorsement for each approved product [OR PRODUCT LINE].

11 AAC 40.400 is amended by adding a new subsection to read:

(d) The division may not endorse an industrial hemp product that contains delta-9-THC or a non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form. (Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 AS 03.05.090
AS 03.05.030 [AS 03.05.077] AS 03.05.100

The section heading to 11 AAC 40.405 is changed to read:

11 AAC 40.405. Application for endorsement or renewal of endorsement.

11 AAC 40.405(a) is amended to read:

(a) An application for endorsement **or renewal of endorsement** of an **industrial** [INTRODUCTORY] hemp product intended for human or animal consumption must be on a form prescribed by the division and must include

(1) a color copy of the product's proposed label;

(2) a copy of the **certificate of analysis for** [LABORATORY TEST RESULTS, IF APPLICABLE, OF] each **industrial hemp** product [OR BATCH OF PRODUCT]; **and**

(3) [A COPY OF

(A) THE PROCESSOR'S REGISTRATION UNDER THIS CHAPTER;

(B) PROOF THAT THE HEMP PRODUCT WAS GROWN UNDER AN INDUSTRIAL HEMP PILOT PROGRAM OPERATING UNDER 7 U.S.C. 5940 (SEC. 7606 OF THE AGRICULTURAL IMPROVEMENT ACT OF 2014) OR UNDER A UNITED STATES DEPARTMENT OF AGRICULTURE APPROVED INDUSTRIAL HEMP PROGRAM, AUTHORIZED UNDER 7 U.S.C. 1639p (SEC. 10113 OF THE AGRICULTURAL IMPROVEMENT ACT OF 2018); OR

(C) A LAWFUL INTERNATIONAL SOURCE'S WRITTEN AUTHORIZATION FROM THE DIVISION;

(4) A COPY OF THE TERPENE ANALYSIS IF REQUIRED UNDER 11 AAC 40.630(c); AND

(5)] submission of the endorsement fee set out in 11 AAC 40.100(7).

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.415 is repealed:

11 AAC 40.415. Hemp product sizing. Repealed. (Eff. 4/4/2020, Register 234; repealed ___/___/___, Register ____)

11 AAC 40.420(a) is amended to read:

(a) Processed industrial hemp products intended for human or animal consumption must be labeled with the following:

- (1) the product name;
- (2) [A BATCH NUMBER FOR THE PRODUCT;
- (3) AN EXPIRATION DATE;]
- (4)] the total quantity of the product by weight or volume;
- (3)** [(5)] the serving size or recommended dose; **and**
- (4)** [(6)] a list of all ingredients [;
- (7) THE INDUSTRIAL HEMP PILOT PROGRAM OR AUTHORIZED

INTERNATIONAL INDUSTRIAL HEMP SOURCE FROM WHICH THE INDUSTRIAL HEMP ORIGINATED; AND

(8) IF THE PRODUCT CONTAINS ANY DELTA-9-THC, THE STATEMENT "WARNING: CONTAINS THC"]].

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 AS 03.05.076 AS 03.05.079

AS 03.05.030 [AS 03.05.077] AS 03.05.100

11 AAC 40.500 is amended to read:

11 AAC 40.500. Retailer registration required. A person may not receive compensation for processed industrial hemp or processed industrial hemp products from a consumer in the state, unless the person has obtained a retailer registration from the division in compliance with this chapter or is operating under a registration subject to **11 AAC 40.500 - 11 AAC 40.525** [11 AAC 40.500 - 11 AAC 40.530]. (Eff. 4/4/2020, Register 234; am ___ / ___ / ____, Register ___)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.505(b)(2) is amended to read:

(2) **obtain a registration for each store or location where industrial hemp products are offered for sale** [DISPLAY, IN AN AREA VISIBLE IN OR OUTSIDE EACH RETAILER LOCATION, THE OFFICIAL ALASKA INDUSTRIAL HEMP PILOT PROGRAM PLACARD PROVIDED BY THE DIVISION];

11 AAC 40.505(c) is repealed:

(c) Repealed ___ / ___ / ____.

(Eff. 4/4/2020, Register 234; am ___ / ___ / ____, Register ___)

Authority: AS 03.05.010 AS 03.05.050 [AS 03.05.077]
AS 03.05.040 AS 03.05.076

11 AAC 40.510 is amended to read:

11 AAC 40.510. Retailer registration application. In addition to the information set out under 11 AAC 40.050, an applicant for a retailer registration must submit the following:

(1) a description of the type of store or operations of the retailer; **and**

(2) a location [OR LIST OF LOCATIONS] of the retailer where industrial hemp will be offered for retail sales [; AND

(3) A LIST OF INDUSTRIAL HEMP PRODUCT TYPES INTENDED TO BE SOLD BY THE RETAILER]. (Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.520(b)(2) is amended to read:

(2) is not [PACKAGED AS REQUIRED BY 11 AAC 40.415 OR] labeled as required by 11 AAC 40.420;

11 AAC 40.520(b)(3) is amended to read:

(3) contains **any** [GREATER THAN 0.3 PERCENT] delta-9-THC; or (Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.050 AS 03.05.079
AS 03.05.030 AS 03.05.076 AS 03.05.090
AS 03.05.040 [AS 03.05.077]

11 AAC 40.530 is repealed:

11 AAC 40.530. Retailer reports. Repealed. (Eff. 4/4/2020, Register 234; repealed ___/___/___, Register ___)

11 AAC 40.600 is repealed and readopted to read:

11 AAC 40.600. Compliance with 11 AAC 40.600 - 11 AAC 40.665. A registered hemp retailer may not sell, give, distribute, transfer, or offer to sell, any industrial hemp product unless the product has satisfied the requirements of 11 AAC 40.600 - 11 AAC 40.665. (Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078
AS 03.05.076

11 AAC 40.605(a) is amended to read:

(a) The division or a testing facility authorized by the division shall test industrial hemp and industrial hemp products to verify compliance with this chapter, perform investigations, compile data for the **Alaska** Industrial Hemp [PILOT] Program, and address public health and safety concerns.

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078
AS 03.05.076

11 AAC 40.610(a) is amended to read:

(a) Any industrial hemp or industrial hemp product, before being offered for compensation or offered without charge, must have samples drawn from the entire harvest lot [OR PROCESSING BATCH, AS APPLICABLE,] and submitted to the division or an authorized testing facility as one test sample.

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ____)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078
AS 03.05.076

11 AAC 40.615 is repealed:

11 AAC 40.615. Sample size for a processed hemp batch. Repealed. (Eff. 4/4/2020, Register 234; repealed ___/___/___, Register ____)

11 AAC 40.620 is repealed:

11 AAC 40.620. Samples for test batches of pre-packaged hemp products. Repealed. (Eff. 4/4/2020, Register 234; repealed ___/___/___, Register ____)

11 AAC 40.625(a) is amended to read:

(a) The division will establish a minimum weight or volume of [PROCESSED INDUSTRIAL HEMP OR] industrial hemp products and direct the designated testing facilities to apply those standards for every type of test conducted.

11 AAC 40.625(b) is amended to read:

(b) The division will also establish a standard number of samples required to be included in each batch of [PROCESSED HEMP OR] hemp products for every type of test conducted in compliance with 11 AAC 40.630 - 11 AAC 40.640.

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078
AS 03.05.076

11 AAC 40.630(a) is amended to read:

11 AAC 40.630. Cannabinoid [AND TERPENE] potency. (a) All industrial hemp grown, processed, or made available for retail sales will be tested by the division or an authorized testing facility for delta-9-THC [, AND MUST TEST AT OR BELOW 0.3 PERCENT].

11 AAC 40.630(b) is amended to read:

(b) All processed industrial hemp products intended for human or animal consumption must also undergo a cannabinoid [POTENCY] test that must at least determine the concentration of tetrahydrocannabinol, cannabidiol, cannabichomene, cannabigerol, cannabichromene, and cannabidivarin, including acid forms.

11 AAC 40.630(c) is repealed:

(c) Repealed. ___/___/____. (Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 AS 03.05.076 AS 03.05.078
AS 03.05.030 [AS 03.05.077]

11 AAC 40.635 is amended to read:

11 AAC 40.635. Methodology for testing delta-9-THC levels in raw industrial hemp.

(a) Raw industrial hemp collected by the division or an authorized representative of the division for sampling will be tested for a quantitative determination of **total THC**.

(b) For purposes of this section, "total THC" is the value determined after the process of decarboxylation that expresses the potential total delta-9-THC content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post- decarboxylation value of THC may be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. This test calculates the total potential THC in a given sample.

(c) In this section,

(1) "decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound;

(2) "THCA" means THC-acid [DELTA-9-THC BY A METHOD TO BE APPROVED IN WRITING BY THE DIVISION]. (Eff. 4/4/2020, Register 234; am

___/___/___, Register ___)

Authority: AS 03.05.010 AS 03.05.076 AS 03.05.078
AS 03.05.030 [AS 03.05.077]

11 AAC 40.640(a) is amended to read:

(a) Industrial hemp products intended for human or animal consumption shall be tested or screened for the contaminants listed and may not exceed the following permissible levels:

(1) residual solvents:

Solvent	Parts Per Million (ppm)	Product to be tested
Acetone	< 500	<u>Products developed from extracted</u> [EXTRACTED] concentrates
Benzene	<u>1</u> [0]	
Butanes	< 500	
Chloroform	<u>2</u> [< 1]	
Cyclohexane	< 500	
Heptane	< 500	
Hexane	<u>18</u> [0]	
Isopropanol	< 500	
Methanol	< 500	
Pentanes	< 500	
Propane	< 500	
Toluene	<u>53</u> [0]	
Xylenes (m, p, o-xylenes)	< 217	

(2) microbials (bacterial, fungus):

Substance	Acceptable limits per gram	Product to be tested
Shiga Toxin Escherichia coli (STEC) – bacteria	Less than 1 colony forming unit (CFU/g)	Hemp [OR HEMP] products intended for human consumption, <u>excluding</u> <u>topicals</u> [; WATER AND FOOD-BASED CONCENTRATES]
Total Yeast and Mold Count (TYMC)	Less than <u>10,000</u> [1] colony forming unit (CFU/g)	
Salmonella species – bacteria	Less than 1 colony forming unit (CFU/g)	
Aspergillus fumigatus, Aspergillus flavus, Aspergillus niger-fungus, Aspergillus terreus	Less than 1 colony forming unit (CFU/g)	

(3) mycotoxins:

Substance	Acceptable limits per gram	Product to be tested
Total Aflatoxin B1, B2, G1, G2	< 20 parts per billion (PPB)	Hemp [OR HEMP] products intended for human consumption, <u>excluding topicals</u> [;
Ochratoxin A	< 20 parts per billion (PPB)	

		WATER AND FOOD-BASED CONCENTRATES]
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(4) pesticides:

Substance	Detection Limits (Parts Per Million, PPM)	Product to be tested
Abamectin	< 0.07	Hemp [OR HEMP] products intended for human consumption [; WATER AND FOOD-BASED CONCENTRATES]
Azoxystrobin	< 0.02	
Bifenazate	< 0.02	
Etoxazole	< 0.01	
Imazalil	< 0.04	
Imidacloprid	< 0.02	
Malathion	< 0.05	
Myclobutanil	< 0.04	
Permethrin	< 0.04	
Spinosad	< 0.06	
Spiromesifen	< 0.03	
Tebuconazole	< 0.01	

(5) metals:

Substance	Acceptable Limits Per Gram [BASED ON INTENDED USE]	Product to be tested
Metals (Cadmium, Arsenic, Lead, Mercury)	<p>[INHALED OR AUDITED PRODUCT: SMOKE HEMP FLOWERS OR VAPE CONCENTRATES]</p> <p>Lead – Max Limit: < 500 ppb [0.5 PPM]</p> <p>Arsenic – Max Limit: < 1,500 ppb [0.02 PPM]</p> <p>Cadmium – Max Limit: 500 ppb [0.02 ppm]</p> <p>Mercury – Max Limit: 3,000 ppb [<0.1 PPM]</p> <p>[TOPICAL AND/OR TRANSDERMAL]</p> <p>[LEAD – MAX LIMIT: < 10 PPM]</p>	Hemp [OR HEMP] products intended for human consumption [; WATER AND FOOD-BASED CONCENTRATES]

	[ARSENIC – MAX LIMIT: < 3 PPM]	
	[CADMIUM – MAX LIMIT < 3 PPM]	
	[MERCURY – MAX LIMIT < 1 PPM]	
	[ORAL CONSUMPTION OR AUDITED PRODUCT: RECTAL OR VAGINAL ADMINISTRATION]	
	[LEAD- MAX LIMIT: < 1 PPM]	
	[ARSENIC – MAX LIMIT: < 1.5 PPM]	
	[CADMIUM – MAX LIMIT: < 0.5 PPM]	
	[MERCURY – MAX LIMIT: < 1.5 PPM]	

11 AAC 40.640 is amended by adding a new subsection to read:

(c) The results of the testing or screening required in this section shall be reported to the division on a certificate of analysis that was completed not more than 12 months before the date the application for endorsement is postmarked or received by the division. (Eff. 4/4/2020,

Register 234; am ___/___/____, Register ____)

Authority:	AS 03.05.010	AS 03.05.050	[AS 03.05.077]
	AS 03.05.030	AS 03.05.076	AS 03.05.078

11 AAC 40.650(a) is amended to read:

(a) Any registrant that is notified by the division or the division's representative that a **hemp product** [TEST BATCH] failed a contaminant or potency test shall immediately discontinue offering for sale any industrial hemp products associated with the failed test [BATCH].

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority:	AS 03.05.010	AS 03.05.050	[AS 03.05.077]
	AS 03.05.030	AS 03.05.076	AS 03.05.078

11 AAC 40.655(b) is amended to read:

(b) If electing to retest, a registrant must either

(1) submit new test samples complying with 11 AAC 40.600 - 11 AAC 40.665 from the same failing **product** [BATCH] to the division or authorized testing facility that performed the original test; or

(2) submit the new test samples complying with 11 AAC 40.600 - 11 AAC

40.665 from the same failing **product** [BATCH] to a different testing facility approved by the division and available to conduct the retest.

11 AAC 40.655(c) is amended to read:

(c) If the sample passes the potency or a required contaminant testing under (b) of this section, the division may elect to submit the industrial hemp product for a third testing at the division's expense. If the division does not elect a third testing, the lot or batch from which the sample came must have the identifying number modified with the addition of the letter "X" at the end or the previous identifier. Afterwards, the hemp or hemp products associated with each test [BATCH] may be transferred or further processed in compliance with this chapter.

(Eff. 4/4/2020, Register 234; am __/__/__, Register ____)

Authority: AS 03.05.010 AS 03.05.050 [AS 03.05.077]
AS 03.05.030 AS 03.05.076 AS 03.05.078

11 AAC 40.660(a)(2)(A) is amended to read

(A) registered with the Alaska Industrial Hemp [PILOT] Program under this chapter;

(Eff. 4/4/2020, Register 234; am __/__/__, Register ____)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]
AS 03.05.050

11 AAC 40.710(a) is amended to read:

(a) Except as described in (b) of this section, a person subject to or registered under this

chapter may not transport industrial hemp [OR INDUSTRIAL HEMP PRODUCTS] without a transportation permit issued by the division. A transportation permit only authorizes industrial hemp to be transported from one registrant to another registrant or from one property of a registrant to another property of a registrant.

11 AAC 40.710(c) is amended to read:

(c) A transportation permit will be issued to a registered grower [OR REGISTERED PROCESSOR] only after sampling has validated that **the** [THAT] hemp is no more than 0.3 percent delta-9-THC.

(Eff. 4/4/2020, Register 234; am ___/___/____, Register ____)

Authority: AS 03.05.010 [AS 03.05.077] AS 03.05.078

AS 03.05.076

11 AAC 40.800(4) is amended to read:

(4) with three **calendar** days' notice to the registrant, inspect records documenting the sale or transfer of industrial hemp or industrial hemp products;

11 AAC 40.800(5)(B) is amended to read:

(B) any cannabis **with delta-9-THC over 0.3 percent** or cannabis product **for human consumption containing** [WITH] delta-9-THC [OVER 0.3 PERCENT], subject to this chapter, and found to violate a condition of this chapter;

11 AAC 40.800(6) is amended to read:

(6) direct the movement, reconditioning, or destruction of any industrial hemp, industrial hemp product, [OR] cannabis **with delta-9-THC over 0.3 percent,** or cannabis products **for human consumption containing** [WITH] delta-9-THC [OVER 0.3 PERCENT] declared to be a public nuisance as permitted by AS 03.05.050 or 03.05.076;

11 AAC 40.800(7) is amended to read:

(7) issue notices of violations and civil fines, or issue stop orders for violations of this chapter, including to persons who are not registered or permitted to participate in the Alaska Industrial Hemp [PILOT] Program;

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority:	AS 03.05.010	AS 03.05.076	AS 03.05.090
	AS 03.05.040	AS 03.05.078	AS 03.05.100
	AS 03.05.050	AS 03.05.079	

The introductory language of 11 AAC 40.810 is amended to read:

11 AAC 40.810. Suspension. The division may temporarily suspend, for up to 60 **calendar** days, a registration, endorsement, or permit issued under this chapter if the registrant is alleged to have

...

(Eff. 4/4/2020, Register 234; am ___/___/___, Register ___)

Authority:	AS 03.05.010	AS 03.05.076	[AS 03.05.077]
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The introductory language of 11 AAC 40.820 is amended to read:

11 AAC 40.820. Revocation. In addition to temporary suspension, the division may revoke a registration, permit, or endorsement and prohibit participation in the Alaska Industrial Hemp [PILOT] Program for a period of up to five years if the registrant

...

(Eff. 4/4/2020, Register 234; am. ___/___/___, Register ___)

Authority: AS 03.05.010 AS 03.05.076 [AS 03.05.077]

11 AAC 40.910(1) is amended to read:

(1) "Alaska Industrial Hemp [PILOT] Program" means the [PILOT] program operated by the division to study, **promote, and regulate** the growth, cultivation, or marketing of industrial hemp as permitted under **AS 03.05.010 and 03.05.076** [AS 03.05.077];

11 AAC 40.910(2) is amended to read:

(2) "applicant" means a person who submits an application to participate as a registrant in the Alaska Industrial Hemp [PILOT] Program;

11 AAC 40.910(7) is amended to read:

(7) "cannabinoid" means any **hemp-derived phytocannabinoid** [OF THE CHEMICAL COMPOUNDS THAT ARE THE ACTIVE CONSTITUENTS OF THE CANNABIS PLANT];

11 AAC 40.910(8) is amended to read:

(8) "cannabis" means all parts of **any** [THE] cannabis **species** plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts;

11 AAC 40.910(9) is amended to read:

(9) "CBD"

(A) means naturally occurring cannabidiol;

(B) does not include synthetic cannabidiol;

11 AAC 40.910(12) is amended to read:

(12) "consumer" has the meaning given in AS 45.50.561, but excludes registrants or persons who should be registered, but are not, in the Alaska Industrial Hemp [PILOT] Program;

11 AAC 40.910(14) is amended to read:

(14) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration **determined by a post-decarboxylation chemical analysis** [, THE PRIMARY INTOXICATION COMPONENT OF CANNABIS];

11 AAC 40.910(15) is repealed:

(15) repealed ___ / ___ / ___;

11 AAC 40.910(30) is amended to read:

(30) "industrial hemp product" or "hemp product" means an item **in its final form** derived from all parts and varieties of **a** [THE] Cannabis **species plant** [SATIVA L. CONTAINING NOT MORE THAN 0.3 PERCENT DELTA-9-THC];

11 AAC 40.910(42) is amended to read:

(42) "prohibited variety" means a variety or strain of cannabis excluded from the Alaska Industrial Hemp [PILOT] Program;

11 AAC 40.910(48) is amended to read:

(48) "registered retailer" means a person [IN THE STATE] authorized by the division to receive compensation for, or offer for free, industrial hemp or an industrial hemp product after registration, and, if applicable, a product endorsement, to a consumer **in the state**;

11 AAC 40.910(49) is amended to read:

(49) "registrant" means a person possessing one or more industrial hemp registrations issued by the division under the authority of this chapter, **AS 03.05.010, and 03.05.076** [AND AS 03.05.077];

11 AAC 40.910(50) is amended to read:

(50) "registration" means an instrument permitting an applicant to participate in the Alaska Industrial Hemp [PILOT] Program subject to its terms and the provisions of this chapter;

11 AAC 40.910 is amended by adding new paragraphs to read:

(59) "certificate of analysis" means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed;

(60) "not more than 0.3 percent" means not more than 3,000 parts per million on a dry weight basis of raw industrial hemp;

(61) "ppb" means parts per billion. (Eff. 4/4/2020, Register 234; am ____/____/____, Register ____)

Authority:	AS 03.05.010	AS 03.05.050	[AS 03.05.077]
	AS 03.05.030	AS 03.05.076	AS 03.05.100

APPENDIX C-1: Additional Regulation Notice Information

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Natural Resources
2. General subject of regulation: Industrial hemp
3. Citation of regulation (may be grouped): 11 AAC 40.020 - 11 AAC 40.910
4. Department of Law file number, if any: 2023200171

5. Reason for the proposed action:

- Compliance with federal law or action (identify): _____
- Compliance with new or changed state statute
- Compliance with federal or state court decision (identify): _____
- Development of program standards
- Other (identify): _____

6. Appropriation/Allocation: Agriculture / Agricultural Development [OMB Component Number] 455

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0.00
 Another state agency: \$0.00
 A municipality: \$0.00

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>24</u>	Subsequent Years	
Operating Cost	\$ <u>0</u>	\$ <u>0</u>	
Capital Cost	\$ <u>0</u>	\$ <u>0</u>	
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>	
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>	
1004 General fund	\$ <u>0</u>	\$ <u>0</u>	
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>	
Other (identify)	\$ <u>0</u>	\$ <u>0</u>	

APPENDIX C-1: Additional Regulation Notice Information

9. The name of the contact person for the regulation:

Name: Robert Carter
Title: Agonomist 3
Address: 5310 S. Brodenburg Spur, Palmer, AK 99645
Telephone: (907)745-4469
E-mail address: industrialhemp@alaska.gov

10. The origin of the proposed action:

Staff of state agency
 Federal government
 General public
 Petition for regulation change
 Other (identify): _____

11. Date: _____ Prepared by: _____

[signature]

Name (printed): Bryan Scoresby

Title (printed): Director

Telephone: (907)761-3867