

MEMORANDUM

State of Alaska
Department of Law

TO: Marijuana Control Board DATE: August 10, 2021

FROM: Joan M. Wilson *Jmw* FILE NO.: JU2015200511
Assistant Attorney General
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Section SUBJECT: Product Endorsements –
Flavor Variations

I. SUMMARY

You have asked whether 3 AAC 306.525, approval of concentrates and marijuana products, and the applicable statutory and regulatory definitions of marijuana products permits the approval of a marijuana product with minor flavor variations.

The Board has authority to determine what is a marijuana product so long as its determination falls under the statutory definition of marijuana products and the regulatory definition of edibles and edible products. Nothing about these definitions restrict the board from allowing flavor deviations in products. The parameters around this advice should be case specific. For example, the flavor variation should not come from the marijuana itself. The Board should also be consistent with its interpretations.

II. DISCUSSION

3 AAC 306.525 requires that a marijuana product manufacturing facility, including a concentrate facility, "must obtain the board's approval for each product it will manufacture for sale or transfer." For purposes of these regulations, marijuana products has the meaning given at AS 17.38.900(15). These include:

concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use of consumption, such as, but not limited to, edible products, ointments, and tinctures."

No other definition, such as the definition of edibles at 3 AAC 306.990(16) or the definition of marijuana infused products at 3 AAC 306.990(27), impacts flavor

differentiation, unless, of course, it is the marijuana source itself causing the variation in flavor.

The form used for new products is AMCO's MJ-16. It requires manufacturing licensees to submit a separate completed copy of this form and a separate fee "for each product or concentrate." The form itself requires a description of ingredients for each product. Ingredients is not defined.

There is no statutory or regulatory restriction that prevents the Board from interpreting what an ingredient is. As such, the Board has the leeway to take a variety of approaches. For example, the board can take determine that orange flavor and cherry flavor are two different ingredients and that separate approvals are required for each flavor. Or the Board can determine the ingredient itself is "added flavor, including orange and cherry." The most important quality is consistency in application.

III. CONCLUSION

The Board has the regulatory authority to determine what a marijuana product is, so long as it is consistent with the statutory definition. That discretion would permit the Board to determine what ingredient is and allow a single product to come in a variety of flavors. The flavor variation cannot be due to the marijuana itself. The Board should be consistent in its determinations. No regulatory changes are required to enact or continue to enact this practice.