Municipal Clerk's Office
Approved
Date: February 7, 2023

Submitted by: Assembly Members Rivera and Cross
Reviewed by: Assembly Counsel's Office
For reading: February 7, 2023

ANCHORAGE, ALASKA
AR No. 2023-39

A RESOLUTION OF THE ANCHORAGE ASSEMBLY ADVOCATING FOR STATE LEGISLATION FURTHER REGULATING THE HEMP INDUSTRY AND PROTECTING ALASKAN YOUTH.

WHEREAS, the State of Alaska and the Municipality of Anchorage began regulating the marijuana industry in 2016, with both regulatory structures providing for the taxation of the industry; and

WHEREAS, many of the regulations were created to protect children from getting access to intoxicating substances, including AMC subsections 10.80.510A.4.b and 10.80.510.A4.c, which prohibit manufacturing or selling marijuana products which "closely resembles familiar food or drink items including candy," or "is packaged to look like candy, or in bright colors or with cartoon characters or other pictures or images that would appeal to children;" and

WHEREAS, the State of Alaska began regulating hemp in 2021 through the passage of Senate Bill 27 which created the State Department of Agriculture – Industrial Hemp Pilot Program; and

WHEREAS, industrial hemp is not a specifically regulated use in Title 21 of the Anchorage Municipal Code, but the Planning Department has indicated it would fall under the "commercial horticulture facility" definition in AMC section 21.05.050A.1, currently has no specific standards, and is a permitted use by right in the B-3 and I-1 and I-2 zoning districts; and

WHERAS, due to the federal distinction between hemp and marijuana, both of which are derived from *Cannabis sativa L*., many hemp products in Alaska are imported from the Lower 48 and other countries which may have questionable regulatory and safety requirements; and

WHEREAS, the federal definition of hemp has created a loophole in the "dry weight" calculation, which allows manufacturers to add frosting, sugar, or other additives to manipulate this calculation leading to highly intoxicating levels of Delta-9-Tetrahydrocannabinol (Delta-9-THC), in hemp products; and

WHEREAS, the federal definition of hemp includes all isomers, which is leading to the synthetic production of Delta-9-THC and other synthetic intoxicating cannabinoids; and

WHEREAS, hemp products are often targeted towards children, products designed to look exactly like common snacks including; "Stoney Patch" gummies, Stoned Oreos, Dank Cheetos, or other deceptive packaging; and

WHEREAS, on June 29, 2022, the Alaska Marijuana Industry Association, and on June 30, 2022, the Alaska Marijuana Control Board, sent a letter to Governor Dunleavy raising concerns regarding the hemp industry and intoxicating hemp products; and

WHEREAS, in response, Governor Dunleavy created an Advisory Task Force on Recreational Marijuana, which on January 13, 2023, provided 15 recommendations, many of which center on further regulation of the hemp industry; and

WHEREAS, on January 16, 2023, a letter was sent to U.S. Senator Lisa Murkowski with suggestions regarding the upcoming reauthorization of the Agricultural Improvement Act, i.e. “Farm Bill,” including recommendations to assist with federal regulation regarding the hemp industry; and

WHEREAS, state regulations adopted by the Alaska Department of Natural Resources at Title 11, Chapter 40 of the Alaska Administrative Code contain some restrictions on packaging and labeling hemp products but lack any language prohibiting product design, packaging or labeling that appeals to children similar to the marijuana product restrictions; and

WHEREAS, state legislation on hemp regulation has yet to be introduced in the current session; and

WHEREAS, retailers that are selling intoxicating hemp derived THC products are circumventing the local retail marijuana sales tax regulations in AMC chapter 12.50 or use and packaging regulations in AMC chapter 10.80; and

WHEREAS, these highly intoxicating hemp products are readily available in local stores and minors are able to purchase them without showing ID; now, therefore,

THE ANCHORAGE ASSEMBLY RESOLVES AND SUPPORTS

The Governor and State Legislature to work together to create state legislation or direct that regulations be proposed to further regulate hemp products, including their design, packaging and labeling, and ensure Alaska’s youth do not have ready access to highly intoxicating hemp products.

PASSED AND APPROVED by the Anchorage Assembly this 7th day of February, 2023.

Suzanne LaFrance

Chair

ATTEST:

Barbara A. Jones

Municipal Clerk

MUNICIPALITY OF ANCHORAGE

Assembly Information Memorandum

No. AIM 41-2023

Meeting Date: February 7, 2023

From: **ASSEMBLY MEMBERS RIVERA AND CROSS**

Subject: **AR 2023-39: A RESOLUTION OF THE ANCHORAGE ASSEMBLY ADVOCATING FOR STATE LEGISLATION FURTHER REGULATING THE HEMP INDUSTRY AND PROTECTING ALASKAN YOUTH.**

For the Assembly's consideration; please see the documents referenced below related to the subject and goals of AR 2023-39:

- Weltzin, J. and Emmett, B., Task Force on Recreational Marijuana Co-Chairs, "*Alaska Cannabis Tax Reform; Regulating Intentionally Intoxicating Hemp and Tetrahydrocannabinol Products and Recommendations for Industry Improvement, Viability and Parity*," January 13, 2023. (*See* https://www.muni.org/Departments/Assembly/SiteAssets/Pages/Community%20and%20Economic%20Development%20Committee/Advisory%20Task%20Force%20on%20Recreational%20Marijuana%20Report.FInal.1.13.23.pdf , *accessed February 6, 2023*)
- Letter from Nicholas Miller, Chair, Alaska Marijuana Control Board, to Governor Michael Dunleavy, June 30, 2022, regarding delta-9 THC, with attached Letter from Alaska Marijuana Industry Association to Governor Dunleavy, June 29, 2022. (*See* https://www.muni.org/Departments/Assembly/SiteAssets/Pages/Community%20and%20Economic%20Development%20Committee/MCB%20Letter%20to%20Governor%20Dunleavy%20Delta-9%20THC.6.30.22.Final.pdf , *accessed February 6, 2023*)
- Memorandum from Alaska Marijuana Industry Association, Board of Directors, to Senator Lisa Murkowski, *Re: Intoxicating Hemp Edibles – Background for Discussion with Senator Murkowski*, January 16, 2023. (*See* https://www.muni.org/Departments/Assembly/SiteAssets/Pages/Community%20and%20Economic%20Development%20Committee/Hemp.pdf , *accessed February 6, 2023*)

Prepared by: Assembly Counsel's Office
Respectfully submitted: Felix Rivera, Assembly Member
District 4, Midtown
Kevin Cross, Assembly Member
District 2, Chugiak, Eagle River, JBER

GOVERNOR'S ADVISORY TASK FORCE ON RECREATIONAL MARIJUANA REPORT TO THE HONORABLE GOVERNOR MIKE DUNLEAVY

ON BEHALF OF THE TASK FORCE ON RECREATIONAL MARIJUANA
CO-CHAIRS JANA WELTZIN & BRANDON EMMETT | JANUARY 13, 2023

Alaska Cannabis Tax Reform; Regulating Intentionally Intoxicating Hemp and Tetrahydrocannabinol Products and Recommendations for Industry Improvement, Viability and Parity.

Executive Summary

The Advisory Task Force on Recreational Marijuana (Task Force) was created by Alaska Governor Mike Dunleavy through Administrative Order No. 339 on September 22, 2022. Pursuant to this Administrative Order, the Task Force is commissioned to review current marijuana tax and fee structures, regulations applicable to marijuana operators, and to provide recommendations for improvements to the Office of the Governor. Specifically, the Task Force was requested to (1) model potential changes to the existing tax structure applicable to recreational marijuana businesses, while noting potential revenue impacts to state and local governments and to existing recreational marijuana businesses; (2) identify opportunities to foster collaboration between recreational marijuana businesses and State government; and (3) analyze the recreational marijuana program and the industrial hemp program for purposes of providing recommendations to enhance public safety.

The Task Force included broad representation from regulators, cultivators, manufacturers, retailers, and public members. The Task Force was designed to bring together a variety of voices and perspectives to consider recommendations for industry viability and improvement. The Task Force is represented by 13 voting members. Three voting members who are State of Alaska officials, and ten voting members who are not state officials. These individuals are identified below:

- Brandon Emmett | Co-Chair | Licensed Marijuana Product Manufacturer | Good Titrations
- Jana Weltzin, Esq. | Co-Chair | Public Member | JDW Counsel LLC
- Joan Wilson, Esq. | State of Alaska Dept. of Commerce | Director, AMCO (as designated by Department of Commerce & Economic Development Commissioner Julie Sande)
- Brian Fechter | State of Alaska Dept. of Revenue | Deputy Commissioner (as designated by prior Department of Revenue Commissioner Lucinda Mahoney)
- Rob Carter | State of Alaska Division of Agriculture | State Agronomist (as delegated by prior Department of Natural Resources Acting Commissioner Akis Gialopsis)
- Nick Miller | Chair Marijuana Control Board | Alaska Buds

- Leif Abel | Licensed Standard Cultivator | Greatland Ganja
- David Pruhs | Municipal Member | Mayor, City of Fairbanks
- Frank "Dru" Malone | Licensed Limited Cultivator | Lightning Strikes Organics
- Ryan Tunseth | Licensed Retailer | East Rip
- Sam Hachey | Industry Member at Large | Tanana Herb Co
- Gary Evans | Industry Member at Large | Grass Station 49
- Aaron Stiassny | Industry Member at Large | Uncle Herbs[1]

On an accelerated schedule due to the date of commissioning, the Task Force met on six different occasions between December 2022 and January 2023 to develop these findings and recommendations. Task Force meeting documents are available for review on the Alaska Alcohol & Marijuana Control Office (AMCO) website. The Task Force utilized the following goals and guiding principles when creating its recommendations:

- *Ensure consumer protection and safety.*
- *Promote fair participation by industry/market participants.*
- *Create a thriving business environment that grows Alaska's work force for the present and future of the Alaska cannabis industry (including both recreational marijuana and industrial hemp).*
- *Create statutory and regulatory authority for AMCO to exercise jurisdiction over hemp and hemp products (as described herein).*
- *Develop clear recommendations and guidance that consider opportunities for alignment with other State, Federal, and/or international standards where appropriate.*
- *Request appropriate discretion to various State agencies for rule-making authority to effectuate changes in federal laws, marketplace evolution, and to aid in creation of a tax system that is determined by the market value of cannabis vs. a static, weight-based tax system as originally proposed in effectuating legislation.*

The Task Force has developed purposeful recommendations regarding the current marijuana tax structure in Alaska. Pertinent to an issue challenging all states that are grappling with the influx of intoxicating hemp products unintentionally permitted under the Agricultural Improvement Act of 2018[2] (colloquially known as the Farm Bill), the Task Force has also made thoughtful recommendations for the sale and control of hemp-derived products and synthetically derived or chemically converted THC isomers. In each case these products may cause a person to become intoxicated when used.

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[1] The Task Force would also like to extend a special thank you to the following individuals who provided outstanding administrative and legal support to the Task Force: Kevin Higgins, Esq. | State of Alaska Dept. Of Law, Senior Asst. Attorney General; Maya Ali | State of Alaska Dept. of Commerce, AMCO; and Bailey Stuart | Stuart Consulting.

[2] AGRICULTURE IMPROVEMENT ACT OF 2018, PL 115-334, December 20, 2018, 132 Stat 4490.

There is no dispute that the cannabis landscape is evolving and changing very rapidly. Nor is the State of Alaska alone in addressing the numerous challenges that have emerged as recreational marijuana and industrial hemp (referred to in this report collectively as *Cannabis sp.*) grow as industries. Thirty-five to forty states and territories have legalized *Cannabis sp.* in one form or another. At least five of those states have formed similar task forces to address these challenges.[3] As such, it is apparent that the dynamic nature of emerging cannabis issues requires long-standing focus and collaboration. It is for this reason that we also recommend to the Governor that this Task Force remain commissioned through the 33rd Legislature to provide the Governor's Office input not only as it develops its statutory priorities, but on additional issues and concerns as they develop. We are humbly eager and willing to continue to serve the State in this capacity.

Historical Background

On November 4th, 2014, Alaska became the third state in the United States to legalize the production and sale of adult-use marijuana. Marijuana had been sold in Alaska illegally for many years before this date, but its purchase or sale came with many consequences, most particularly, criminal prosecution. While a black market for marijuana no doubt existed in Alaska, legalization provided the opportunity for those interested in either producing or consuming adult-use marijuana to do so in compliance with state law. The market for marijuana grew.[4] Individuals who currently used marijuana were given broader access to it. Pursuant to AS 17.38 and 3 AAC 306, recreational use sales began in October 2016.

Central to the ballot initiative that legalized the production and sale of marijuana is a $50 per ounce excise tax.[5] This tax is levied on licensed cultivators at the time of sale of the plant to marijuana manufacturers or licensed retail stores. Not unlike alcoholic beverages, marijuana was considered a "demerit good" (that is, one that came with potential societal costs) at the time of legalization. The imposition of this high rate of tax was intended to offset any potential public health or public safety costs that marijuana legalization might cause. The current tax is allocated to the general fund (25%), recidivism reduction fund (50%) and marijuana education and treatment fund (25%).[6] Marijuana license fees are used to fund the AMCO office. At its current market rate of sale, the excise tax paid ranges between 24% and 50% of the value sold.[7] In Alaska under this regressive tax structure, cultivators currently pay $800 in tax alone for every pound of marijuana sold. The current average price for a pound of marijuana in the continental United States is

[3] These states include Colorado, Oregon, Maryland, Washington, and Virginia. Each of these reports may be accessed on AMCO's website on AMCO's website/ Task Force on Recreational Marijuana page.

[4] Alaska Economic Trends, The Cannabis Industry Matures (Dec. 2022).

[5] AS 43.61.010(a).

[6] AS 43.61.010(f).

[7] Prices found on LeafLink, an online recreational marijuana marketplace used frequently by Alaskan Marijuana businesses. Can be cross referenced by data available in METRC, Alaska's seed to sale tracking software.

$961 per pound.[8] In June 2022 the average price per pound was $699 in the State of Oregon.[9] Once marijuana cultivation is legalized nationally (and one might state this has already occurred with the unregulated proliferation of intoxicate hemp products), there will be no way for Alaskan farmers to compete.

Since inception but accelerating as market prices drop, the flat rate excise tax on cultivators has proven to be overly burdensome. If it continues unchanged, it will create a situation where Alaskan cultivators will not be viable, especially upon federal legalization. Cultivators are going out of business, choosing not to renew their licenses, and the State has seen a $2.6 million dollar tax delinquency rate.[10] Because only Alaskans may legally participate in the regulated adult-use marijuana industry, it is Alaskan businesses, employees, and families that are on the losing end.

Adding to this complexity is the national legalization of industrial hemp under Farm Bill of 2018, referenced above. Ready for a new economic market and as legalized by the Alaska State Legislature, Alaska adopted its federally approved industrial hemp program in early 2021.[11] Although intended to create and foster an additional agricultural commodity, the implementation of the Farm Bill has created the unfortunate unintended consequence of legally proliferating the sale of intoxicating industrial hemp products. Alaska was the first State to fully recognize this consequence when its Department of Natural Resources, Division of Agriculture limited the amount of intoxicating delta-9 THC that may be in products,[12] but it lacked and continues to lack the enforcement capacity to respond to unlawful sales of those prohibited products.

For purposes of analysis and central to the recommendations in this report, is the understanding that both industrial hemp, as regulated by one department of the State of Alaska, and recreational use marijuana, as regulated by another department of the State of Alaska, are the same plant. They collectively are *Cannabis sp*. As such, throughout this report is an intentional effort by this Task Force to instead refer to Marijuana and Hemp as Cannabis species, or *Cannabis sp*. In addition to providing a euphoric "high" many Alaskans might enjoy, this plant also has many other applications, including food, textiles, building materials, and drug compounds. Under the current hemp regulations, hemp retailers and manufacturers can sell up to 50 mg of delta-9 THC (the primary intoxicant in marijuana) per package.[13] Unless the methods of processing

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[8] As of the time of this report. Current data can be found at U.S. Cannabis Spot Index.

[9] The Oregon Cannabis Market: A Case Study in Oversupply. U.S. Cannabis Spot Index

[10] https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/Minutes/2022/12.12/Tab9.pdf

[11] Under state law provisions, "industrial hemp" means the plant Cannabis sativa L. and any part of that plant, including its seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis. AS 03.05.100.

[12] 11 AAC 40.415.

[13] 11 AAC 40.415.

or extraction are prohibited by the State's Hemp Plan,[14] other potentially intoxicating cannabinoids can be produced and sold legally to Alaska consumers without any age restrictions. This causes disparate and confusing sets of regulations as well as potential access to minors.

The state of Alaska currently has two regulatory systems for not only the same plant, but for an identical quantity of the same intoxicating compound. The marijuana statute requires a hefty excise tax and Marijuana regulation is strict. Hemp statutes require no taxes and hemp regulations are minimal. Additionally, hemp regulations and its applicable statutes have no age restriction, meaning that currently a person of any age can purchase potentially intoxicating industrial hemp infused products legally in the State of Alaska. This is not sustainable for Alaska's industry. Nor is it in the best interest of the public's health and safety.

Adding to this complexity and the proliferation of intoxicating hemp products is the above-described federal and state definition of industrial hemp, which quantifies THC content (and hence qualification as hemp or recreational marijuana) *on a dry weight basis*. That distinction implausibly makes it possible for hemp-derived delta-9 THC products to flourish. According to some interpretations of the Farm Bill, only 0.3% of a chocolate bar's dry weight can consist of THC. Using that calculation, a manufacturer could technically pack *150 milligrams* of delta-9 THC derived from hemp into a 50-gram chocolate bar. This would still be legal under the Farm Bill. [15] By comparison, Alaska's recreational marijuana market permits no more than 10 milligrams of delta-9 THC per serving and 100 milligrams per package.[16] Individuals under the age of 21 are not permitted in marijuana retail stores.[17]

To summarize, the State Hemp Plan is hampered by this federal definition and clever industrial hemp entrepreneurs who have taken advantage of this federal loophole. Where other States do not limit the amount of delta-9 THC that may be in hemp products, Alaska does (although some of these products are just as intoxicating as those in the legal adult-use marijuana market). The Alaska State Hemp Plan has approved 1,850 hemp products for sale in the State of Alaska. Upon additional review for purposes of this analysis, the State Hemp Plan rescinded its prior approval of 6 products that exceeded the regulatory limitation of not more than 50 milligrams of delta-9 THC per package. Of the remaining 1,844 products,

[14] 11 AAC 40.315

[15] Other hemp products can contain significant amounts of delta-9 as summarized in this table:

Delta-9 Thc Concentration per Industrial Hemp Product Utilizing the 0.3% D9 THC as a function of weight		
	Product Weight	**Milligrams of D9 THC**
Single Gummy	2 grams	6 milligrams
Cracker	20 grams	60 milligrams
Chocolate Bar	50 grams	150 milligrams

[16] 3 AAC 306.560.

[17] 3 AAC 306.310.

700 products were made with industrial hemp extracts that contain higher levels of delta-9 THC, although below the 50 milligrams of delta-9 THC and less than 0.3 percent delta-9 THC. Of those 700 hemp products, all but three product lines contained moderate levels of delta-9 THC (ranging between 0.25 to 2.28 milligrams per serving and no more than 24.8 milligrams per package). The three product lines containing higher levels of delta-9 THC contained between 4.68 milligrams per serving and 15.66 milligrams per serving. Again, the legal limit for recreational use marijuana products in Alaska is 10 milligrams per serving.[18]

Notwithstanding state regulation, hemp-derived products well in excess of 15.66 milligrams per serving are also readily available online – again, with no age restrictions, no requirement for child resistant packaging, no taxation, and limited regulatory oversight. The State Hemp Plan does not have the enforcement capability and AMCO arguably does not have the jurisdiction or the enforcement bandwidth to prevent or mitigate these online sales. While it may be difficult to bring enforcement actions against these online vendors, it is not impossible, and if these products were captured properly in regulation and taxation, state agencies such as the Department of Revenue and the Department of Law Consumer Protection Unit would be able to bring a level of enforcement that currently does not exist.

While the Governor has commissioned this Task Force to address a variety of issues that this report does not yet address, the combination of an immobile tax floor that is crippling the cultivation industry, as well as the emergence of hemp-derived intoxicating products undercutting the regulated market has ripened the need to address these issues now. The Governor was wise to recognize these problems. As such, we respectfully submit the following recommendations as proposed and adopted at the Task Force meetings held on January 9th and 12th, 2023.[19] The recommendations are written and ranked in order of priority, as surveyed by Task Force members.

Task Force Recommendations

(1) Address tax changes with short and long-term solutions to provide immediate relief to cultivators who are unfairly encumbered with the industry's entire tax burden and to create a long -term tax structure that will increase the Alaska tax base to include out-of-state businesses who benefit from the Alaskan marketplace and to spread the tax burden to all marketplace participants.

The Task Force recommends that the current tax structure be changed in two strategic stages to provide immediate economic relief and promote long-term growth and sustainability of the cannabis industry in Alaska.

[18] 3 AAC 306.560. .

[19] On both occasions, the Task Force was well over quorum and had representatives from all sectors with the exception of the local government seat. Unfortunately, the local government representative's schedule conflicted with available times for the majority of the Task Force members. We would welcome him providing comments on this report directly to the Office of the Governor. Dissenting votes on all recommendations are described in subsequent footnotes.

Stage One of Tax Reform Recommendation:[20] The Task Force recommends that AS 43.61.010 be amended to reduce the current static weight-based excise tax on cultivators to 25% of the current rate. This is subject to the understanding that the second prong of tax reform would be forthcoming and implemented by the Department of Revenue. Notwithstanding the forgoing, any cultivators that currently owe excise taxes to the state of Alaska would still be required to honor those obligations in full.

Stage Two of Tax Reform Recommendation:[21] The Task Force recommends transition from a weight-based excise tax to a statewide 3% sales tax at the retail level for all *Cannabis sp.* products intended for human consumption. In recognition of additional expenses that fall upon the State of Alaska with product importation, the Task Force further recommends that all *Cannabis sp.* products that are imported into the State of Alaska, through the distributor license type described in Recommendation 4, are taxed at a 10.5% upon distribution within the State of Alaska.

Justification for Stage One – Currently, marijuana cultivators are being taxed at a rate that equates to a 24 to 50% tax rate depending on market fluctuation and type of good sold. The price per pound of marijuana is not expected to increase to levels that once permitted absorption of a $50 per ounce excise tax. It is not possible for cultivators to bear such an exorbitant tax rate and remain viable. As described by industry members of the Task Force, many cultivators have had to slash their work force in half or more to stay in business. This loss of jobs in a growing sector of the economy severely and negatively impacts the marijuana industry and the State of Alaska. Immediate relief as fast as statutory amendment will permit is needed to avoid further irreparable damage. If possible, we request the Governor to explore declaring an economic emergency to provide more immediate relief.

Justification for Stage Two – Justification for Stage Two is to create parity and equitable treatment of all Cannabis sp.-based products. The 3% tax would span across all Cannabis sp. products, regardless of where they are produced or sold.[22] *It widens the tax base and removes the centralized taxation currently placed only upon the cultivators. Regarding the 10.5% importation tax, recreational marijuana and industrial hemp products are all required to go through a myriad of tests to ensure safety for consumers.*[23] *This type of review by governmental agencies has a cost. Hundreds of government employee staff hours are spent on ensuring safety of these products and currently the only products that bear any type of taxation burden are ones that are locally produced. It is proper and fair to ensure equality. Thus, the importation tax is necessary to offset the increased burden on regulators.*

Many states have implemented taxes on out-of-state products and withstood constitutional challenges, provided that a State's valid purposes for the differentiated tax rate outweigh the burden on interstate

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[20] *The short term was motioned by Gary Evans seconded by Jana Weltzin, unanimous vote.*

[21] *Stage Two Tax Reform was motioned by Brandon Emmett and seconded by Sam Hachey, unanimous vote.*

[22] See Department of Revenue Marijuana Tax Change Analysis on AMCO's website/ Task Force on Recreational Marijuana page. https://www.commerce.alaska.gov/web/amco/TaskForceonRecreationalMarijuana.aspx

[23] By implementing an import tax and providing a mechanism to quantify these types of products, local governments that have a cannabinoid tax system may also benefit from an increased tax base.

commerce. In the Cannabis sp. industry, this burden is met. Many states do not have the same testing requirements or the same scrutiny over ingredients put into Cannabis sp. Products as Alaska does. For example, in California there was an epidemic of "popcorn lung" that was attributed to cannabis vape pens due to certain chemicals contained in pens.[24] *Additionally, some states do not have heavy-metal testing requirements or allow certain amounts of contaminants that our state prohibits due to health and safety concerns. For example, our current Hemp Plan requires pesticide testing;* [25] *some state hemp plans do not. The higher tax rate on out-of-state produced plants and product is necessary to ensure proper testing and confirm importations are not harming Alaska's unique environment, invasive to local flora and fauna, or harming consumers. It is further recommended that Department of Environmental Conservation provide testing and spot testing for products coming into the state to further ensure the safety of the products entering the market.*

(2) Redefine Marijuana and Hemp as one plant - *Cannabis sp.*[26]

The Task Force recommends that the statutory definition codified at AS 17.38.900(10) be amended to change the term "*marijuana*" to "*Cannabis sp.*" and that *"Cannabis sp.*" be defined to include "all species of the Cannabis plant and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not."

The Task Force further recommends amendment to the statutory definition of industrial hemp codified at AS 03.05.100 in a similar fashion. The term "industrial hemp" will change to "Cannabis *sp*." *Cannabis sp.* will also be defined to include all species of the Cannabis plant and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not.

Justification – As explained previously, hemp and marijuana are the same plant. The only difference is the concentration of delta-9 THC. However, that difference becomes immaterial with the interpretation of the Farm Bill of 2018 that ingredients outside of the plant matter can be calculated into the 0.3% delta-9 THC dry weight basis limit for defining hemp. Therefore, the Task Force finds it prudent and forward-thinking to define the two plants as what they are – the same – and to base regulation on intent of the

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[24] 11 AAC 40.410.

[25] Pesticides that are commonly used in some states (and banned in other states) on cannabis products can be deadly. For example, Eagle 20 was a commonly used pesticide and fungicide and still is in some states. Eagle 20's active ingredient is myclobutanil. Myclobutanil can release hydrogen cyanide gas when it is heated or burned, which can be harmful to human health. It can cause breathing difficulties, headaches, and in high enough concentrations, it can be fatal. Eagle 20 is specifically prohibited to be used in Alaska on cannabis sp. Plants, but in other states, it is legal for use. This is one of many examples of why the burden on interstate commerce is greatly outweighed by the local government interest in protecting Alaskans.

[26] *This recommendation was moved by Rob Carter and Seconded by Brandon Emmett. The motion passed unanimously by the Task Force on January 9, 2023.*

products made from the plant Cannabis sp. This will create parity and will remove the illogical treatment of plants that are scientifically the same.

(3) Create one regulatory authority over *Cannabis sp.*

The Task Force recommends that *Cannabis sp*. (whether industrial hemp or adult-use marijuana or any other species of the genus) be regulated by one state board and one state agency. This includes regulatory jurisdiction over the production, growing, manufacturing, retailing, importation, exportation, and intrastate distribution of *Cannabis sp*. To achieve this aim, the Task Force recommends AS 17.38 be amended to provide AMCO and the Marijuana Control Board jurisdiction over all Cannabis *sp.* The Task Force also recommends changing the Alcohol & Marijuana Control Office (AMCO) to the Alcohol & Cannabis Control Office (ACCO) and the Marijuana Control Board (MCB) to the Cannabis Control Board (CCB). [27] Further, the Task Force recommends amending AS 17.38.080 to restructure the Control Board to include: a person familiar with plant production/organic chemistry/plant pathology and an additional industry seat. The seven-member Board would be composed as follows: (1) cannabis industry seat one; (2) cannabis industry seat two; (3) one public seat not engaged in the cannabis industry or a representative from a local government or community council; (4) one rural seat; (5) one public safety seat; (6) one public health seat; and (7) one plant production/organic chemistry/plant pathology seat.[28]

Justification – As outlined in Recommendation Number 2, the definition of marijuana and industrial hemp is recommended to be redefined, Centralizing regulatory authority over all Cannabis sp. and Cannabis sp. derived products will simplify the overlapping existing regulatory structure, provide mechanisms to protect consumer public health and safety, create a centralized flow of product approvals, and responsive regulations that treat intoxicating products as intoxicating (this would include age-restriction requirements, child resistant packaging, etc. and treating non-intoxicating products more like regular food and drink products).

In addition, there reasonably should be a person on the Control Board with plant specific and/or scientific knowledge. This membership will provide the Control Board a better understanding of plants within cannabis sp. and allow for the thoughtful creation of regulations that adequately address health and safety concerns, while still promoting and expanding business opportunities.

It is anticipated that creating a one-plant regulatory system will create a more business friendly environment, better protect public health and safety, prepare the Alaska Cannabis sp. marketplace for impending Federal legalization, create more business opportunities, and promote economic diversity for Alaska.

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[27] *This recommendation was moved by Brandon Emmett and Seconded by Sam Hachey. The motion passed unanimously by the Task Force on January 9, 2023.*

[28] *This recommendation was moved by Brian Fechter and Seconded by Sam Hachey. The motion passed unanimously by the Task Force on January 9, 2023, This recommendation was moved by Brian Fechter and Seconded by Sam Hachey. The motion passed unanimously by the Task Force on January 9, 2023*

(4) Authorize the creation of a distribution license in statute. [29]

The Task Force recommends that AS 17.38 by amended to create a cannabis wholesale distributor license for all Cannabis *sp.* and Cannabis *sp.* product imported into Alaska with the number of licenses and regulations to be determined by ACCO with substantial public input.

Justification – The intent of this recommendation is to create businesses that are versed in the applicable regulations, testing requirements, and taxing requirements for Cannabis sp. and Cannabis sp. products. During the Task Force discussions on this topic, Division of Agriculture representative Rob Carter voiced concern about the flood of hemp derived products into Alaska and the resulting inability to maintain tracking and traceability. The latter is especially important for verifying testing requirements to ensure safety of products and to effectively recall products when necessary, because there are hundreds, if not thousands, of out-of-state companies supplying the Alaskan marketplace with hemp-derived products. Once the Federal government legalizes recreational marijuana, the number of products will multiply indefinitely. Having a license type that products can be funneled though, similar to an alcoholic beverage distributor's licenses, to verify certificates of analysis (commonly referred to as "COAs"), tax collection, and ensure traceability for recall purposes is vital to the health and safety of Alaskan consumers.

(5) Collaborate across multiple state agencies to implement changes.[30]

The Task Force recommends that the newly formed ACCO and the Department of Natural Resources, Division of Agriculture (DoA) work in conjunction for the regulation of all *Cannabis sp*. cultivation. Cannabis *sp.* cultivation should be regulated in a manner more similar to how the DoA regulates hemp cultivation currently. Though setting requirements for cultivation is recommended to remain with ACCO and the CCB, they should set those requirements with *strong deference* to the recommendations from DoA.

Justification – The intent of this Task Force recommendation is to treat Cannabis sp. cultivation more as agriculture cultivation, with the specific plant knowledge expertise contained in our Alaska Div. of Agriculture to ensure the Alaska cultivation sector is not unduly burdened with regulations and unnecessary oversight that stifles cultivators and limits the sustainability of cultivators in the Alaskan marketplace. It is important that cultivation facilities, both outside growing and indoor growing facilities, be promoted to flourish in Alaska. The Task Force recommends this for many reasons, such as economic diversity, preserving and promoting Alaska's valuable cash crop of Cannabis sp. production, and ensuring we have a vibrant agriculture industry that can pivot to food production if necessary.

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[29] *This recommendation was moved by Jana Weltzin and Seconded by Sam Hachey. The motion passed unanimously by the Task Force on January 9, 2023.*

[30] Th*is recommendation was moved by Rob Carter and Seconded by Leif Abel. The motion passed with an 8-3 vote by the Task Force on January 9, 2023.*

(6) Amend the criminal definition of Marijuana.[31]

The Task Force recommends that the criminal statutory definition of marijuana codified at AS 11.71.900(15) be amended to match the above-proposed definition of *Cannabis sp.* A similar change should be made throughout AS 17.38, 11.71, and 3 AAC 306, changing any reference to marijuana or hemp to *Cannabis sp.*

In addition to prosecutorial authority, it is further recommended to add additional enforcement powers to DOR, as were proposed in CSHB337(L&C) in the 29th legislature. These include: (1) A tax as a civil penalty for marijuana in possession more than the number of plants allowed for personal use. This is intended as a deterrent to unlicensed grow operations and should be $50 per immature plant and $200 per mature plant as well as seizure of the plants; (2) Secondary liability for unlicensed product. If a retailer is found to possess marijuana for which no legal provenance can be proven, that product should be subject to seizure as well as a tax penalty of twice what the tax would be on comparable legal product. For purposes of this penalty, DOR should be empowered to determine the value of comparable product; and (3) Authority for DOR to examine the books etc. of marijuana businesses as part of a tax investigation.

Justification – This change will create uniformity throughout the laws that govern the Cannabis sp. plant – maintaining varying definitions for the same plant creates illogical outcomes and unnecessary confusion.

(7) Extension of Taskforce or Similar Committee.

The Task Force respectfully recommends that Governor Dunleavy extend the Task Force through the Thirty Third Legislature so it may continue to provide input to the Governor's Office and the Legislature as the recommendations identified in this report evolve and are conceptually debated, discussed, and implemented.[32] Additionally, if extended, the Task Force respectfully recommends the Governor consider adding a hemp-specific industry member to the Task Force who is not also a marijuana licensed industry member. [33]

Justification – The Task Force recommends this extension so it may provide additional recommendations specific to all issues identified in Administrative Order No. 339. In addition, the extension is requested due to the complex nature of the evolving marketplace, the particular expertise that will be needed to implement recommendations, and the intertwining nature of the reality of federal regulation, including

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[31] *This recommendation was moved by Leif Abel and Seconded by Ryan Tunseth. The motion passed unanimously by the Task Force on January 9, 2023.*

[32] *This recommendation was moved by Sam Hachey and Seconded by Leif Abel. The motion passed unanimously by the Task Force on January 9, 2023.*

[33] *This recommendation was moved by Joan Wilson and Seconded by Sam Hachey. The motion passed unanimously by the Task Force on January 12, 2023.*

proposed national legalization and how it will interplay with our Alaska marketplace. Moreover, it is anticipated that the Legislature will need substantial education, information, and a source of trusted information when considering any bill that includes some or all of the recommendations proposed in this report. The Task Force members are committed to continuing our work to provide verified and statistically supported information and to advocate, as State law may permit, for the marketplace reforms contemplated by the Task Force's recommendations. Moreover, the Task Force would benefit from the input of a hemp-only industry member, as the hemp industry could be impacted by this Task Force's recommendations.

(8) Amend AS 17.38.121 to allow for license limits and create a twelve-month moratorium on new licenses once recreational marijuana is federally legalized.[34]

The Task Force recommends that AS 17.38.121 be amended to create a new subsection (g). As newly codified there, the MCB (or renamed CCB) may limit the number of licenses based on the public interest. In addition to this recommendation, the Task Force recommends that upon federal legalization or decriminalization of marijuana, the Control Board shall immediately issue a mortarium for twelve months on any new licenses (any license in initiated status or further stage in the application process shall be allowed to move forward). During this twelve-month moratorium, the Control Board shall analyze the industry and in its discretion may authorize more licenses.

Justification – The purpose of this recommendation is to give the Control Board the authority to limit or freeze issuance of licenses. Currently the State of Alaska has a residency requirement on licenses. There is strong reason to believe that, at Federal Legalization, this prohibition will be unconstitutional, because of the provisions that exist within the Dormant Commerce Clause. There is also strong reason to believe that preventing out-of-state products from being sold in Alaska will also be unconstitutional for the same reason.

The limitation and moratorium are recommended to prohibit quick takeover of the Alaska cannabis industry. The concern is that very large and well-funded companies could essentially monopolize and consolidate the market and license pool or destroy it all together. Alaska's cannabis licensees are mostly comprised of small, family-owned businesses that were self-funded and built on the backs of hardworking Alaskans from across the state. It is expected Alaskan cultivators and manufacturers will not be able to compete with out-of-state and multi state operators. This is in part because cost of power and resources are too high, and the Alaska climate does not provide for a viable outdoor flowering cycle. This expected erosion will hit our cultivators first, and the hardest. Losing agriculture and viable herb or other garden square footage is not in the best interest of the State and further erodes our ability provide for food security in the event that these facilities needed to switch over to a different agricultural commodity. This represents production real estate and jobs that we want to maintain in the State of Alaska.

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[34] *This recommendation was moved by Jana Weltzin and Seconded by Rob Carter. The motion passed with an 8-2 vote by the Task Force on January 9, 2023.*

The issue of license limits or a moratorium is debatable. However, the intent of this recommendation is not to mandate license caps. Instead, it provides the Control Board the authority to do so. It further provides the Control Board and ACCO the requited time to focus on implementing changes that will be needed at federal legalization.

(9) Reallocate funding collected through cannabis taxation.[35]

The Task Force recommends that the Control Office (whether AMCO or ACCO) be funded in part through cannabis licensing fees and through excise taxes collected on *Cannabis sp.* The Task Force further recommends that collected taxes be redesignated with up to 33% of the proceeds from the cannabis taxes to the Control Office to increase its budget to handle the additional workload; up to 33% to the currently functioning marijuana education and treatment fund; and up to 33% to the undelegated General Fund.

Justification – The purpose of this recommendation is to realign the tax allocation currently being collected by the State of Alaska. Primarily this removes allocation to the Recidivism Reduction Fund. Previous allocation had 50% of the tax collected going to the Recidivism Reduction Fund, which was intended to provide for programs aimed at reducing repeat criminal offenders. With the SB 91 repeal, the Task Force respectfully submits that the programs the fund was expected to support do not exist. Moreover, utilizing cannabis excise taxes to arrest and house offenders furthers the stigma that marijuana causes certain and costly criminal-justice ills. This recommendation adds additional allocation to the Control Office as well as the Marijuana Education and Treatment fund. It further adds additional allocation (from 25% to 33%) directly to the General Fund.

(10) Allow for product transfers between all license types.[36]

The Task Force recommends AS 17.38.070(a)(1-5) be amended to remove (2-5) and replace them with a new paragraph that permits the purchase, delivery, or transfer of marijuana and marijuana products (or all *Cannabis sp.* if Recommendation 2 is followed) to another licensed cannabis facility. To ensure this recommendation does not create unintended loopholes or conflicts with other sections of regulation, the Task Force requests further overview by the Control Office, the Department of Revenue, and the Department of Law.

Justification – The purpose of this recommendation is to address an unintended consequence of current law that does not allow for plant or product returns for rejected or revoked transactions or for returns in the event of product recalls. Currently when a product moves from the manufacturer to the retailer, there is no ability to move the product back to the manufacturer or cultivator. The intent of this prohibition was

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[35] *This recommendation was moved by Brian Fechter and Seconded by Brandon Emmett. The motion passed unanimously by the Task Force on January 9, 2023.*

[36] *This recommendation was moved by Ryan Tunseth and Seconded by Leif Abel. The motion passed unanimously by the Task Force on January 9, 2023.*

to ensure that there were seed-to-sale traceability. The problem with this approach is that it is wasteful and does not allow for the full value of a product to be captured. Seed-to-sale traceability will remain in place. This will reduce waste within the industry and allow businesses more flexibility over inventory management and better ability to protect consumer safety. Evaluation is needed with the traceability provider METRC as well as the Department of Revenue to ensure that the proper tabulation of taxes owed can be accommodated.

(11) Amend the annual registration & renewal requirement.[37]

The Task Force recommends AS 17.38.200 be amended to remove "an annual" within this section, thereby permitting biennial licenses similar to those that are applicable to alcoholic beverage licensees. The language as amended would read: "45 to 90 days after receiving an application or renewal, the board shall issue a registration to the applicant, unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.190 or the board is notified by the relevant local government that the applicant is not in compliance with ordinances and regulations made pursuant to AS 17.38.210 and in effect at the time of application.

Justification – The justification for this is twofold: First, requiring annual renewal requirements in statute creates a massive amount of annual workload for Control Office staff. The annual requirement does not appear to be promoting health and safety of consumers,[38]and seems to amount only to increasing bureaucratic delays, burden on state agencies, and burden on the industry with limited upside. Second, alcoholic beverage licenses are not renewed annually; they are renewed biannually. The Task Force sees no justification to require recreational marijuana licenses to be treated differently than alcoholic beverages licenses.

(12) Increase the legal sale & possession limits.[39]

The Task Force recommends that AS 17.38.020(1) be amended to replace the existing one-ounce limit for possession with a six-ounce limit. Any further adjustment of purchase limit authority should be delegated to the Control Board.

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[37] *This recommendation was moved by Ryan Tunseth and Seconded by Dru Malone. The motion passed unanimously by the Task Force on January 9, 2023.*

[38] *Joan Wilson does not concur with this conclusion as to not promoting health and safety of consumers. In her estimation, the data supporting this conclusion is lacking. She does concur that there should be parity between alcoholic beverage and marijuana licensees with a two-year renewal period.*

[39] *This recommendation was moved by Brandon Emmett and Seconded by Gary Evans. The motion passed unanimously by the Task Force on January 9, 2023. Joan Wilson was not present for this vote and does not at present concur absent consultation with the Department of Health and the Department of Law for unintended public health or public safety consequences. Ms. Wilson also submits that local governments may and do limit the number of alcoholic beverages that may be sold or possessed to individuals, even off the road system, by entering into memoranda of agreements with local package stores.*

Justification -- The one-ounce limit discriminates against rural citizens of Alaska who live off the road system – there is no state statutory limit on alcoholic beverage possession limit; it does not make sense to penalize a consumer who is a rural citizen to restrict them to one ounce on their person.

(13) Do not impose age restrictions on non-intoxicating hemp derived products.[40]

Unlike the above recommendations for action, the Task Force does not recommend requiring age restrictions for purchasing products that contain only the following cannabinoids: CBD; CBG; CBC; CBN; and wellness products to be further defined and articulated by the Control Board with substantial public input.

Justification – These four cannabinoids are utilized for medical purposes and assist patients, who are often under the age of 21, with their medical ailments. It is not the intent of the Task Force to restrict access to these products in any additional manner. However, because of the need for the state to ensure the safety of these products, we do recommend the Cannabis sp. tax be imposed on all Cannabis sp. derived products, including these cannabinoids.

(14) Provide in-state ability to test adult-use marijuana for heavy metals and pesticides in light of inability to lawfully transport marijuana out-of-state for testing.[41]

The Task Force recommends that the Department of Environmental Conservation analyze how to develop a cost-effective and in-state means to test all *Cannabis sp.* for heavy metals and pesticides. Options include expanding the services of state-run laboratories, offering funding incentives to private laboratories, and/or exploring opportunities with the University of Alaska to further develop laboratory capabilities.

Justification – Absent federal legalization or decriminalization of recreational marijuana, marijuana samples may not be shipped out-of-state to test for prohibited pesticides or heavy metals. Industrial hemp, a federally lawful agricultural product, may be shipped. This results in yet another dichotomy between the treatment of industrial hemp and recreational marijuana when both commodities are the same plant. At present, the cost for in-state testing for pesticides and heavy metals is prohibitive.[42] To best protect the health of Alaskans, the Task Force recommends that in-state alternatives be developed. The Task Force believes the Department of Environmental Conservation is best tasked and skilled to do so.

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[40] *This recommendation was moved by Leif Abel and Seconded by Sam Hachey. The motion was passed unanimously by the Task Force on January 9, 2023.*

[41] *This recommendation was moved by Joan Wilson and Seconded by Sam Hachey. This motion was passed unanimously by the Task Force on January 12, 2023.*

[42] Costs of cannabis testing compliance: Assessing Mandatory Testing in the California Cannabis Market.

15) Create a pathway for inclusion of Alaska's education system in the cannabis industry.[43]

The Task Force recommends AS17.38 be amended to provide that post-secondary education establishments shall have the authority to invest in research and educational programs related to cannabis production, growth, economics, business, testing, and scientific exploration. For clarity, if a post-secondary education establishment elects to engage in the sale of cannabis products, it shall carry a valid applicable cannabis license to do so.

Justification - In the absence of research components in cannabis law or regulation in Alaska, post-secondary institutions in Alaska cannot utilize existing licensing and regulations to provide research-based programs and curricula. This is contrary to educational opportunities available for all other agricultural products. In every state, post-secondary research and education and university-based agricultural-extension services are available to develop, support, and promote industry. Amending current law to provide the same opportunity for cannabis cultivation and production will support this growing agricultural sector and the cannabis industry as a whole. It adds the additional benefit of educating a new and expanding Alaskan workforce.

Conclusion

The Advisory Task Force on Recreational Marijuana commends Governor Dunleavy for recognizing the significant issues impacting the State's cannabis industry. His focus upon a debilitating tax rate and the need to protect public safety and Alaskans as a whole by better aligning the State's industrial hemp and recreational marijuana programs evidences his understanding of the most prominent and time-sensitive threats. These recommendations are provided to redress these time-sensitive issues. Additional recommendations are provided to promote economic growth and respond to public health and/or safety challenges so the industry and its regulators may best serve Alaskans. We welcome the Governor's review and respectfully thank him for this opportunity to build a stronger, better, and safer Alaska.

[43] *This recommendation was moved by Rob Carter and Seconded by Aaron Stiassny. The motion passed unanimously by the Task Force on January 9, 2023.*

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

June 30, 2022

Transmitted via email
jill.schaefer@alaska.gov

The Honorable Michael Dunleavy
Governor
State of Alaska
Alaska State Capitol Building, Third Floor
Juneau, AK 99801

Dear Governor Dunleavy,

By now you are in receipt of the attached letter dated June 29, 2022 from the Alaska Marijuana Industry Association ("AMIA"). It does well to explain the danger hemp-derived, delta-9 THC products pose to Alaskans, particularly our children. As the letter states, the AMIA presented those concerns to the Marijuana Control Board at its public meeting on June 29, 2022. We write to echo those concerns and to outline an approach your administration can take to ameliorate them, both on an immediate and long-term basis.

As the AMIA has described, industrial hemp and recreational marijuana are the same plant, *cannabis sativa l*. Because of the low quantity of intoxicating delta-9 THC in the plant (below .3 percent) the Farm Bill of 2018 legalized industrial hemp on a national basis. So long as it is regulated under a federal, state, or tribal plan, industrial hemp can be grown, harvested, and turned into other products. Those products may enter interstate commerce, including being shipped to Alaska. Unfortunately, out-of-state hemp producers have managed to take advantage of the legalization of industrial hemp by creating potentially harmful, intoxicating, high-THC-per-serving products. Those hemp-based products are primarily unregulated, wholly untaxed, and readily available to children.

Alaska has one advantage most states do not. Its State Hemp Plan regulates not only industrial hemp, but industrial hemp products. This means an industrial hemp product may not lawfully be sold in the State of Alaska unless: (1) the product is sold by a registered retailer; and (2) the product holds a product endorsement from the State Hemp Plan. The hemp endorsement goes a long way to control the quality of the industrial hemp product. But the endorsement is available under DNR regulations, even if the product contains a high level of THC per serving. This has to do with a "dry weight" calculation we can explain in greater detail later. The only thing to know for sure is the industrial hemp products containing large levels of delta-9 THC per serving can be

endorsed by DNR and legally sold in Alaska. Because this product was largely unforeseen, the industrial hemp regulations did not set per-serving limitations.

By way of example, marijuana products approved by this board can have no more than 10 milligrams of delta-9 THC per serving. Some DNR endorsed, hemp-derived delta-9 products have 15 milligrams per serving. Unlike the adult-use marijuana products (which may be sold only in licensed stores and which also must satisfy strict packaging and labeling restrictions), hemp-derived, delta-9 THC products may be sold in gas stations, grocery stores, and shopping mall stalls. We have no doubt you understand what a danger this can pose to Alaska children.

The Marijuana Control Board can propose many solutions for keeping these products either out of the state or away from children. But in our estimation these solutions will require commissioner to commissioner to Attorney General level discussions. Therefore, we respectfully request that you require the Commissioners of Natural Resources, Commerce, and Health and a representative from the Attorney General's office to meet to coordinate the actions of the respective departments. AMCO's Director Joan Wilson has and can work with the Department of Natural Resources Agricultural Director and State Hemp Plan Manager to finalize regulations (we request issued on an emergency basis) that will at least limit how many milligrams of delta-9 THC may be in an individual serving of an industrial hemp product. That limit will be at a level that is not intoxicating. Packaging and labeling restrictions may also be enhanced.

In addition, AMCO's Director has and can work with the Department of Health and the Department of Law's Consumer Protection Unit to develop a consumer advisory alerting parents to the proliferation of this product in Alaska, particularly through unregulated internet sales that do not verify age of the buyer.

Once the more imminent threats are redressed, this Board also requests legislation to put all intoxicating or impairing hemp products under its jurisdiction and not the Department of Natural Resources State Hemp Plan. The latter is better geared to address the growing of the plant than the consumer safety of products produced from the plant.

In conclusion, we are honored to serve on the Marijuana Control Board. We recognize an imminent threat and request immediate action as detailed above. We are available for any and all discussions.

Sincerely,

/s. Nicholas Miller/

Nicholas Miller
Marijuana Board Chair

(Adopted by a vote of 4-0 of the Marijuana Control Board on June 30, 2022)
cc: distribution list included in email submission

June 29, 2022

The Honorable Michael Dunleavy, Governor
State of Alaska
Alaska State Capitol Building, Third Floor
Juneau, AK 99801

Via email: angela.hull@alaska.gov

Dear Governor Dunleavy:

The Alaska Marijuana Industry Association (AMIA) needs to bring to your attention an emergent public policy situation with regards to the State of Alaska Department of Agriculture - Industrial Hemp Pilot Program. Specifically, our concern is with the Industrial Hemp Program's approval of intoxicating hemp-derived products that are being endorsed without age restrictions and outside the scope of the State of Alaska Statute AS 17.38

To understand the gravity of this, we thought it would be useful to provide some basics on the plant we call Cannabis Sativa L. as follows. There is only one plant from which all cannabis products come from. The terms "Marijuana" and "Hemp" were actually created by law to separate Cannabis Sativa L plants that test either above or below 0.3% delta-9-tetrahydrocannabinol or Delta-9-THC. If the plant tests above 0.3% Delta-9-THC, it is "marijuana" and if it tests below, it is "hemp"

"Rope not Dope"

Delta 9 -THC is one of the approximately 160 known cannabinoids found in the plant, however; most notably it is the main psychoactive cannabinoid, or in other words, the one that gets you high. It is what we in the marijuana industry strive to produce and track and test for. It is what you limit in our edibles to consumers and it is why our product is tracked through METRC through its production lifecycle, until it is sold in licensed stores to consumers over 21.

The 2018 Farm Bill purported to de-schedule and legalize "hemp" and its derivatives. Clearly, Mitch McConnell, the driver of the bill, did not intend to permit intoxicating products to be legalized. Rather, the bill was meant to address issues with the nation's hemp farmers, who were making products for industrial use and certain non-intoxicating cannabinoids like CBD. Unfortunately, the drafters did not understand the science behind the plant, and did not specifically address the extraction process, leaving inventive and aggressive players to turn the rope into dope so to speak.

Currently in Alaska, products with Delta 9 – THC and other intoxicating cannabinoids derived from hemp are proliferating into the unregulated market due to the Farm Bill's misunderstood metric for differentiating "hemp" from "marijuana". Specifically, the bill requires growers to test their crop for Delta9-THC levels within 15 days of harvest. If the plants register Delta 9 -THC levels in excess of 0.3%, the plant is "marijuana", and if below, "hemp."

Notably, this test is only required on a dry weight basis. In order for cannabis to be considered hemp it must contain less than 0.3% Delta 9 -THC on a dry weight basis. Unregulated hemp manufacturers are interpreting this to be applied to extracts and end-products, like gummies, which, on a percentage dry weight basis, contain a host of other additives, like gelatin, sugar, oils and in some cases unsafe materials. This creates a situation where 0.3% dry weight of a plant does not equate to 0.3% of the total weight of a gummy.

In short, consumers are being sold loosely regulated cannabis products that are highly intoxicating due to levels of Delta 9 -THC and other intoxicating cannabinoids, like Delta 8, 10 and 6 -THC because of this error in testing standard.

We understand that the industrial hemp program in Alaska has some quality requirements in place. However, these requirements are not nearly as rigorous or regulated as Alaska's marijuana program. Importantly, what is not accomplished, perhaps because statute didn't allow the express consideration, is age restrictions to purchase, safe child resistant packaging, and product design that ensures consumption by minors is not encouraged. This is an immediate public safety concern.

The other missing piece to the industrial hemp program is taxation, while we are taxed and burdened with regulations, this obvious unfairness leaves many of us in the recreational market wondering what the validity of our current regulatory environment really is.

Also noteworthy, it should be considered that if this continues, the Division of Agriculture will have also sanctioned onsite consumption of intoxicants pretty much anywhere: the sidewalk, the playground, the park, near sensitive use areas, and obviously in the places where it is sold. Imagine that the local gas station becomes the after school hangout where kids are getting high off of 50mg delta 9 gummies. This is a reality that could happen.

We can't amend the Farm Bill but we can protect our citizens. A similar movement has taken place across the country with over 20 states prohibiting the manufacture and sale of intoxicating hemp derived cannabinoids outside of the regulated marijuana program.

We are counting on you to do the right thing for Alaska and its citizens, including its children. We are counting on you to immediately advise the Commissioner of DNR and the Commissioner of DCCED together with Director Wilson and Director Schade and Mr. Carter to meet and discuss immediate resolution in the form of emergency regulations at DNR or guidance such as a cease and desist directive through executive power that, until this is sorted out, can get these candies out of the hands of children.

At a minimum the Department of Law can issue a “Consumer protection Advisory” to warn Alaskans about this intoxicating and largely unregulated product in our market.

We are understanding and sympathetic that the Plant Materials Center is severely under-resourced. We believe that AMCO and the Dept. of Agriculture can and should work together. The Dept. of Agriculture has elements of their program that we really envy, things like pesticide and heavy metals testing. They can reflect cannabis’s therapeutic value, something we are prohibited from doing. And, they have access to financial services, loans, and agricultural scholarships. They are also familiar with the development and application of standards for grading agricultural products. All of these things are items we need in our industry and we very much respect.

It is unfortunate that this type of communication clouds the overall realization that; we have the same plant being regulated by two different entities. THC content is fundamental to understanding why we have two different entities regulating the same plant, and where the line should be very clearly drawn.

And to simplify what we could foresee being the long term solution, AMCO’s Marijuana Board should regulate all aspects of intoxicating Cannabis Sativa.

Thank you,

Ryan Tunseth, President
On behalf of
AMIA Board of Directors

cc: Commissioner Corri Feige, DNR
Commissioner Julie Sande, DCCED
Members, Marijuana Control Board, AMCO, DCCED
Director Joan Wilson, AMCO, DCCED
Director David Shade, Division of Agriculture, DNR
Rob Carter, Agronomist, Division of Agriculture, DNR

Attachments & Links:

SCREENSHOT OF DEPT. OF AGRICULTURE PRODUCT APPROVAL

DEPT. OF AGRICULTURE APPROVED PRODUCTS AS OF 5/24/22
https://plants.alaska.gov/hemp/pdf/resources/Alaska%20Industrial%20Hemp%20Endorsed%20Product%20List.pdf

EXAMPLE OF DEPT. OF AGRICULTURE APPROVED PRODUCT
https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:4174ba36-8b5e-3724-aaad-11903e01ddff

DC Circuit Court Ruling on Enforcement of “hot” hemp.
https://www.duanemorris.com/alerts/hot_hemp_remains_hot_topic_still_within_deas_enforcement_discretion_0622.html

Product-Line Endorsement Approval Notice

Applicant Name	GWM Distribution (Liquid Gummies)
Physical Address	320 Robinson Avenue Newburgh, New York 12550
AIH Registration Number	**E_10122**
Product-Line Endorsed	Gummies
Date of issuance	3/21/2022

The Alaska Division of Agriculture does hereby grant the registration for these industrial hemp products. They shall be officially registered through the expiration date listed below, unless cancelled for due cause prior to that.

INDUSTRIAL HEMP PRODUCT LINE REGISTRATION

No.	Product Name	Type (Edibles, topicals, ingestible)	Certificate of analysis	Expires
1.	Liquid Gummies Delta-9 Sample Pack Gummies 45mg- 3ct.	Edible (gummy)	QR Code	03/21/2023
2.	Liquid Gummies Delta-9 Sativa Sample Pack Gummies 45mg- 3ct.	Edible (gummy)	QR Code	

LIQUID
GUMMIES™
-45MG-
DELTA-9
THC
NATURAL AND ORGANIC
SATIVA VARIETY PACK
LEMON HAZE / BANANA KUSH /
SUPER SOUR DIESEL
45MG DELTA-9 | 3 PIECES PER BAG | 1 OF EVERY FLAVOR
15MG DELTA-9 + 3.75MG CBD PER GUMMY

To: Office of Senator Lisa Murkowski
From: Alaska Marijuana Industry Association, Board of Directors
Date: January 16, 2023
Re: Intoxicating Hemp Edibles –
Background for Discussion with Senator Murkowski

We wrote this memo in a question-and-answer style to help break down this complex issue into a digestible format. This is a very complicated issue, so please feel free to ask hard questions and we will come to the table with our best and brightest industry leaders.

Attached is a presentation titled "Terpen Belt - Pam Epstein - MCB presentation" that was given to Alaska Marijuana Control Board that visually outlines the issue as well.

What are the differences between "Hemp", "Marijuana", and "Cannabis"?

"Cannabis" is the general term for the plant species *Cannabis sativa* L., and all of the products that are derived from that plant species. "hemp" and "marijuana" are classifications of cannabis based on the Agricultural Improvement Act of 2018 (*i.e.*, the "Farm Bill") that stipulates that cannabis that has less than 0.03% Delta 9 THC (on a dry weight basis) is considered hemp, and anything that contains greater than 0.03% Delta 9 THC is considered marijuana.

Thus, hemp and marijuana are both considered "cannabis" because they are simply the same plant (i.e., *Cannabis sativa* L.). The difference between hemp and marijuana isn't scientific. Rather it is an arbitrary classification of a single plant species into two categories based on a legislative distinction that created a cut point based on the concentration of one cannabinoid – Delta 9 THC.

What is Delta-8 THC and Delta-9 THC?

Delta-8 THC is a psychoactive cannabinoid found naturally in the cannabis plant in very small amounts. Delta-8 THC can also be created synthetically. However, the safety of processes for creating synthetic Delta-8 THC are still not well understood. This is one of the reasons that Alaska's Division of Agriculture has banned synthetically derived cannabinoids, such as synthetic Delta-8 THC, in Alaska's Hemp Program.

Delta-9 THC is the naturally occurring intoxicating cannabinoid of the cannabis plant that occurs in higher concentrations. It is the most notable compound in the cannabis plant that produces a "high" and is what people are usually referring to when they talk about THC. Marijuana-derived Delta-9 THC is psychoactive, federally illegal, and banned in several states. Hemp-derived Delta-9 THC is chemically the same molecule with the same effects, but it lies in a regulatory grey area due to ambiguity in the 2018 Farm Bill.

How are hemp derived THC deltas made?

The 2018 Farm Bill that defined and legalized hemp created a loophole for production of intoxicating products. Hemp producers have been able to create products that have intoxicating effects normally considered a characteristic of marijuana by synthesizing and/or concentrating compounds such as delta-8 THC, delta-10 THC, HHC, or THC-O acetate (all intoxicating compounds derived from cannabis).

For example, because Delta-8 THC occurs naturally in very small amounts, the Delta-8 THC you find in commercial products is usually synthetically made from hemp-derived cannabidiol (CBD) through a process known as isomerization. All hemp derived Delta-8 THC products are manufactured by some form of chemical conversion.

Another example is Delta-9 THC derived from hemp. Hemp derived Delta-9 THC is made from one of two methods. The first method to obtain Delta-9 THC from hemp is by extracting and concentrating the Delta-9 THC from the hemp plant itself. Even though a hemp plant contains less than 0.03% Delta-9 THC by definition, large scale cultivation paired with sophisticated extraction processes allows the Delta-9 THC to be concentrated into oil that can be greater than 90% Delta-9 THC. This potent oil can be used to create intoxicating products normally seen in the marijuana markets, with hemp producers arguing that it is still a hemp product. The Delta-9 THC from hemp is the exact same compound that is found in marijuana (again, because it is the same plant species). Another way to create Delta-9 THC is through the chemical conversion called "isomerization,". This is the same as Delta-8 explained above, where manufacturers convert hemp-derived cannabinoids into Delta-9 THC using poorly studied chemical processing techniques.

Fully synthetic cannabinoids are illegal under the DEA, but it is unclear if that law applies to hemp-derived isomers, which has added to the loophole. Given the isomerization technique entails changing the cannabinoids from their initial condition, some individuals think it should be interpreted as illegal.

Sounds like hemp can get you high. How are these products seemingly legal and sold to America's Youth?

Just like some think it is illegal, some claim hemp derived Delta-8 and Delta-other cannabinoid isomers are legal at the federal level because of certain loopholes, and they are emboldened by a lack of legislation and enforcement to the contrary.

The 2018 Farm Bill defined hemp as containing less than 0.3 percent Delta-9 THC. That created a loophole at the federal level for products containing higher amounts of Delta-8 or Delta-9 THC, as long as they come from cannabis that does not have more than 0.3 percent Delta-9 THC based on dry weight.

This has allowed Delta-8 THC vape pens, and a large line of edible products that include THC-O, HHC, and Delta-10 THC without any potency limits.

Because of the ambiguity in the Farm Bill language, hemp producers are taking liberty to create products such as edibles with no limits on intoxicating substances such as Delta-8 THC, THC-O, HHC, Delta-10 THC, etc. Hemp producers are also infusing edibles with natural and synthetic Delta-9 THC that exceed Alaska's Recreational Marijuana Program, where the total THC per serving is 10 mg Delta-9 THC, and the total package limit is 100 mg Delta-9 THC. These hemp derived intoxicating edibles are often brightly colored, and can imitate popular non-infused treats (see three attachments titled "Product example 1, 2 & 3"). These products are clearly appealing to children and teenagers, and can be purchased online and shipped to your home without age gating. For example, one product currently endorsed under Alaska's Hemp Program are actual Oreo Cookies that have been sprayed with hemp derived cannabinoids and repackaged. Almost all of the manufacturing of intoxicating hemp products happens in the lower 48, and is then shipped up to Alaska.

Why is it controversial?

This is in conflict with federally-illegal but state-legal adult-use and medical state regulatory programs which control the cultivation, manufacture, testing, sale, and taxation of intoxicating cannabis products.

Currently all state medical and recreational marijuana industries are very tightly regulated. For example, there is absolutely no sales to minors permitted. By contrast, a 12--year-old child can buy a hemp-derived product legally often at a gas station or over the internet.

Perhaps the loose hemp rules and unenforced loopholes should inspire that the existing adult-use and medical marijuana markets experience some regulatory relaxation. But in the meantime, the loophole in the Farm Bill is an advantage to hemp manufacturers willing to operate in the grey areas of regulations. This is creating both an unfair business landscape and a potentially dangerous public health situation. The federal inaction is sending a message that perhaps THC is not at all dangerous to children. Research on the effects of cannabinoids on the developing brain of an adolescent suggests differently. Further, if there is no legislative action to fix the loopholes created by the Farm Bill, then we should expect it to continue to cause a crisis in the well-regulated recreational and medical marijuana industries. Eventually, it will lead to the failure of the regulated adult-use and medical markets, which will be replaced by the lightly regulated hemp market.

There is also a line of thought that because many of the intoxicating cannabinoids in the hemp market are synthetically made and not well regulated, there are safety concerns. Both the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA) note that there have been increased calls to poison control centers regarding Delta-8 THC, claiming adverse events requiring medical care and sometimes hospitalization.

How does this issue affect Alaskan consumers?

Many Alaskan consumers, like many consumers across the nation, are unaware of this issue. Most think of hemp as non-intoxicating and thus are unaware that hemp products can cause intoxicating effects. This can lead to consumers becoming unintentionally intoxicated when consuming hemp products. For consumers that are aware of the issue, many of them will be attracted to the less regulated products because they are untaxed and cheaper due to the lack of regulatory costs.
Further, most Alaskan parents are unaware that their children can purchase intoxicating hemp products because there are no age restrictions, and no packaging warning or child resistant requirements. Thus, individuals under 21 years of age are easily able to source intoxicating products.
Lastly, many of these products are being produced in unregulated or lightly regulated facilities that are outside of Alaska. Any testing that is done is also generally done geographically outside of the state of Alaska, and therefore outside of Alaska's regulatory oversight (testing requirements are light to non-existent, depending on how the hemp product is sourced).

How does this issue affect Alaskan businesses?
The Marijuana Industry has become a bright spot in Alaska's economy, generating thousands of jobs and millions in tax revenue for state and local governments. However, because the marijuana industry is not on equal footing with hemp producers, Alaska's Marijuana Industry is facing an existential risk. Alaskan marijuana licensees (mostly mom and pop operations), are competing with an untaxed product that is largely being created, tested, and imported from out of state with a fraction of the regulatory

oversight. Thus, the hemp program has circumvented the regulatory, tax, and safety guardrails that Alaskan's have put in place since the 2014 ballot measure.

Up until now, Alaskan businesses have built their marijuana businesses on a solid regulatory framework that was designed to protect consumers and benefit the people of Alaska. This industry is now at risk of being completely disrupted by a hemp industry that does not require the same level of public safety consideration, nor any taxation at the state or local levels. If the loopholes created by the Farm Bill are not closed, there will be an exodus of jobs and businesses to the lower 48. Many Alaskan businesses will be supplanted by out-of-state hemp businesses which do not have to provide consumer protections or tax dollars to the state of Alaska.

The ask to Alaska's federal representatives?

Simply put, the federal government needs to change the definition of "industrial hemp" in the Farm Act.

In 2022, a three-judge panel of the Ninth Circuit Court of Appeals ruled (attachment titled: Hemp Industries Association v. Drug Enforcement Administration) that federal law does not explicitly prohibit the manufacture and sale of Delta-8-THC products, regardless of how they are manufactured, as long as the products are initially sourced from either hemp or a cannabinoid extracted from hemp. While the Court failed to weigh in on whether it was the explicit intent of Congress to legalize such products, it acknowledged that if the 2018 Farm Act inadvertently created a loophole, "then it is for Congress to fix its mistake."

Although the issue that we have identified can be somewhat solved within our state borders, there is a public safety threat that only the federal government can attempt to correct. That threat is the e-commerce sales of these intoxicating hemp derived edibles to Alaskan youth, who can easily order these products online to be delivered to their door.

The current definition *should* be fine if it is revised to be more narrowly defined. Currently, it is not being interpreted correctly by the hemp industry, and it is not being enforced upon by the Federal Government.

Currently hemp is defined as:

"the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 1639o(1).

Our simple recommendation is to remove [all derivatives, isomers, acids, salts, and salts of isomers] and add a statement to effectively prevent the artificial conversion of natural cannabinoids into synthetic compounds. Our suggested definition would read:

"the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and extracts that do not undergo chemical change to derive the cannabinoids, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."

This would not hurt the CBD industry because it would still explicitly allow extracts.

Isomerization would then be prohibited as it completely modifies the cannabinoid from its original structure as a hemp plant. The DEA seems pretty clear on the legality of synthetic cannabinoids.

The edibles are the main problem at this stage. The 0.3% should be determined at the extract level/plant level only, and not the final product (*e.g.*, gummy or cookie) level. This is how it is currently written in the definition of hemp in the farm bill, but has not been enforced.

Lastly, the marijuana industry still is hurting from the lack of access to safe banking and agricultural loans. Meanwhile, many large hemp producers are well banked and have even started this competing industry with government loans. The state legal operators in our market have played by the rules, abode by strict regulations and prohibition against selling to minors while seemingly sanctioned competitors have flourished with government money.

We do not want the hemp industry to fail, in fact we have advocated for hemp to be legalized alongside us. Who is to say that these innovative methods of creating THC won't very well be the future of the cannabis plant, but the lack of parity in the current law is not just shaking Alaska's mom and pop recreational operators, but it creates an immediate public safety threat to our youth.

Governor Dunleavy recently created and instructed the Marijuana Tax Task Force (info here) to look into Alaska's cannabis marketplace and make recommendations with regards to taxes, and most any other issue. The task force identified the hemp issue and speak to in the enclosed report which you may find informative.

Thank you for considering our request and making time to meet with us. We look forward to working together to make sure our children are safe and our Alaskan Cannabis market is economically sustained.

Enclosures:

Terpen Belt - Pam Epstein - MCB presentation.pdf
Product example 1.pdf
Product example 2.pdf
Product example 3.pdf
JDW6.28.2022 hemp public comment.pdf
AMIA to Dunleavy 6.29.22 on Delta 9 THC.pdf
MCB Letter to Governor Dunleavy Delta-9 THC.6.30.22.Final.pdf
KTUU 12.7.22 - Intoxicating hemp edibles found in Anchorage stores.pdf
AMCO Advisory 12.30.22 – ProhibitedUseSaleUnendorsedHemp.pdf
hemp letter Denali Fire - to ANC Assembly.pdf
Advisory Task Force on Recreational Marijuana Report.Final.1.13.23.pdf