



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