



**ADVISORY NOTICE RE: PROHIBITION OF SALE OF CERTAIN INDUSTRIAL HEMP PRODUCTS INTENDED FOR HUMAN OR ANIMAL CONSUMPTION**

This advisory notice is to remind you that it is unlawful to offer with or without compensation to a consumer in Alaska an industrial hemp product that is intended for human or animal consumption that contains delta-9-THC or is otherwise not endorsed by the Division of Agriculture, 11 AAC 40.400. Endorsement. It is also unlawful to offer for compensation industrial hemp or industrial hemp products without being registered or permitted to participate in the Alaska industrial hemp program, 11 AAC 40.500. Retailer Registration Required.

This notice applies to many forms of hemp product to include gummies, chocolate bars, tinctures, capsules, beverages, vaping, raw flower, and any dermally applied topical product. It also applies to pet products. It does not matter if the product was endorsed before November 2023. Products containing delta-9-THC may not be sold to a consumer in Alaska.

Under 11 AAC 40.520(b)(3), “[t]he Division may issue a notice of violation and a stop order for any processed hemp product intended for human or animal consumption from a registered retailer if the hemp product contains any delta-9-THC.”

Under 11 AAC 40.900(13), “‘consumption’ means any method of ingestion of or application to the body, including eating, drinking, inhaling, absorbing, or injecting[.]”

Under 11 AAC 40.900(56), “delta-9-THC” means delta-9-tetrahydrocannabinol concentration determined by a post-decarboxylation chemical analysis [.]”

Under 11 AAC 40.400(a), “[b]efore being offered with or without compensation to a consumer, any industrial hemp product processed beyond its raw form and intended for human or animal consumption must be endorsed by the division.”

Under 11 AAC 40.400(d) “[t]he division may not endorse a product that contains delta-9-THC or a non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form.”

Under 11 AAC 40.500, “a person may not receive compensation for processed industrial hemp or processed industrial hemp products from a consumer in the state, unless the person has obtained a retailer registration from the division in compliance with this chapter or is operating under a registration subject to 11 AAC 40.500 - 11 AAC 40.525.”

Alaska prohibits delta-9 THC and non-naturally occurring hemp-derived cannabinoids, that is, fully synthetic cannabinoids that are human-made and created in a laboratory setting. In addition to banning artificial cannabinoids, the prohibition extends to semi-synthetic cannabinoids that are

created from naturally present compounds (typically CBD) in cannabis plant material and then further modified through chemical reactions to arrive at the final compound.

The following table provides an overview of illegal (prohibited) and legal (permitted) cannabinoids. Industrial hemp products offered for sale must align with this list. Failure to do so is unlawful and enforcement action may be taken.

| <b>Illegal (Prohibited)</b><br><b>*List is not exhaustive</b>           | <b>Legal (Permitted for sale)</b>   |
|---|---|
| <b>Delta-9 THC even if less than 0.3%.</b>                              | Any hemp product with THC removed (as indicated on final product certificate of analysis (COA). |
| <b>Delta-8 THC delta-8 THC-O-acetate sourced from industrial hemp</b>   | CBD Isolate   |
| <b>Delta-10 THC delta-10-THC-O acetate sourced from industrial hemp</b> | CBG Isolate   |
| <b>Delta-6 THC delta-10-THC-O acetate sourced from industrial hemp</b>  | Broad-spectrum products   |
| <b>THCA sourced from industrial hemp</b>                                |   |
| <b>THCV sourced from industrial hemp</b>                                |   |
| <b>THCP sourced from industrial hemp</b>                                |   |
| <b>HHC sourced from industrial hemp</b>                                 |   |
| <b>HHCP sourced from industrial hemp</b>                                |   |
| <b>Synthetic or lab-created cannabinoids</b>                            |   |

Broad-spectrum and isolate based products with the delta-9-THC removed (as indicated on final product certificate of analysis, COA) may still be offered for sale in the state but must carry an endorsement with the division before being offered for sale. Non-endorsed hemp products must be removed from store shelves immediately and all sales must cease.

**To enforce its regulations,** the Division of Agriculture may, among other things:

- issue notices of violations and civil fines, or issue stop orders to any person who violates the 11 AAC 40.010 – 11 AAC 40.910;
- control, seize, quarantine, embargo, or direct the destruction of an industrial hemp product not in compliance with 11 AAC 40.010 – 11 AAC 40.910;

- suspend, revoke, or deny registrations, endorsements, or permits;
- cooperate and communicate with the Marijuana Control Board, the Department of Public Safety, or any other peace officers, and, as permitted under AS 03.05.090, refer violations of this chapter to a peace officer for criminal prosecution.

### **SPECIAL NOTE REGARDING THCA**

Per the Drug Enforcement Agency:

In regards to delta-9 THCA, Congress has directed that, when determining whether a substance constitutes hemp, delta-9-THC concentration is to be tested “using post-decarboxylation or other similarly reliable methods.” 7 U.S.C. 1639p(a)(2)(A)(ii), 7 U.S.C. 1639q(a)(2)(B). The “decarboxylation” process converts delta-9-THCA to delta-9 THC. Thus, for the purposes of enforcing the hemp definition, the delta-9-THC level must account for any delta-9-THC in a substance.

**Accordingly, cannabis-derived delta-9-THCA does not meet the definition of hemp under the CSA because upon conversion for identification purposes as required by Congress, it is equivalent to delta-9 THC.**

A person not licensed by the Marijuana Control Board commits the crime of misconduct involving a controlled substance in the fourth degree, a class C felony (AS 11.71.040) if the person delivers or possesses with the intent to deliver one ounce or more of delta-9 THCA, or misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (AS 11.71.050), if the person delivers or possesses with the intent to deliver any amount of delta-9-THCA.

Unlawful sales of THCA will be pursued jointly by the Alaska Division of Agriculture and the Alcohol and Marijuana Control Office through all available lawful measures, including coordination with the State of Alaska, Office of Special Prosecutions and Appeals and federal authorities based in our State.