



VIRGINIA  
**HEALTHY**  
ALTERNATIVES ASSOCIATION

November 14, 2022

The Honorable Matthew J. Lohr  
Secretary of Agriculture and Forestry  
Commonwealth of Virginia

Public Comments: Draft Final Report of the Task Force to Analyze Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol (THC) Intended for Human Consumption

Dear Secretary Lohr,

Thank you for the opportunity to submit written public comments to the Task Force to Analyze Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol (THC) Intended for Human Consumption regarding its draft final report shared in the November 7 meeting. I appreciate the opportunity to provide this input, and while I gave public comments at the task force's July 7 meeting and also submitted written comments to the task force previously, I am thankful for the chance to follow up and expand on those comments now that the task force has shared a draft final report.

I am the President of the Virginia Healthy Alternatives Association (VHAA) and the owner of a small business called VGI Brands. We employ around 30 people in Chesterfield County. The VHAA was formed to ensure that every Virginian has access to healthy alternatives to the products offered by large pharmaceutical companies, and we represent a wide range of members in the hemp products industry.

### **Legality of Hemp Products**

The VHAA agrees with the majority of the recommendations of the task force, which we are pleased to see touch on many of the ideas that our organization has been discussing and sharing with policymakers. Ideas such as coordinated regulation, permit requirements, civil penalties, and regulating restaurant sales would all be good public policy changes. However, my organization has a different view of how to assess a product's legality.

Hemp and hemp-derived products have been fully federally legal since the passage of the 2018 Farm Bill. Although some in the industry contend that this legality was never meant to apply to certain novel cannabinoids, courts around the nation have found that the language in the bill does

allow for these products. Entrepreneurs around Virginia and the entire United States have used this legality to create a brand new industry that meets a very real consumer demand.

In my last written comments, I shared official positions of both the U.S. Drug Enforcement Agency (DEA) and the Ninth Circuit U.S. Court of Appeals which confirm this legal reality. And both Virginia's industrial hemp laws and its marijuana laws reference these federal laws, including a reference to delta-9-tetrahydrocannabinol.

The standard should be the same in Virginia as it is according to the U.S. DEA: is the product derived from hemp? To change the Code of Virginia to include certain hemp-derived products as marijuana would confuse consumers and, more importantly, make criminals out of Virginians who have been operating a perfectly legal, legitimate business for the past several years.

### **Importance of Regulation**

Novel cannabinoids, such as delta-8-THC, themselves pose no greater public health risk than any other traditionally extracted and manufactured cannabinoids. And this work group heard in its first meeting that delta-8 THC derived from hemp-extracted CBD is chemically indistinguishable from delta-8 THC extracted straight from a hemp plant.

These products only become a problem when they are unregulated.

The VHAA agrees with Task Force Chairman and Chief Deputy Secretary Slaybaugh's comments in the introduction to the report that "it has become clear that unregulated cannabis products are a great cause for concern." Unregulated, untested, mislabeled, and improperly packaged products are a significant public health risk. Bad actors in this space intentionally break copyright and trademark protection law and confuse consumers about what their products contain. These bad actors often produce their products without health and safety standards.

All of these are reasons why the Commonwealth should place these products, including those containing THC, under an appropriate regulatory scheme. Outlawing or banning the *legal* sale of any class of these federally legal products will only result in their *illicit* sale. These products are here, being sold in every corner of Virginia. They are in high demand by consumers, who are often looking for a lower cost, often milder effect, and legal alternative to the illicit adult use marijuana market. We should protect these consumers and allow those responsible actors, including farmers, processors, and retailers across the Commonwealth, to serve them in a regulated way.

### **Consumer Demand**

As mentioned above, consumers may have many reasons for seeking and purchasing hemp-derived cannabinoid products, including for wellness purposes. According to a recent peer-reviewed academic study published in the *Journal of Cannabis and Cannabinoid Research*,

consumers have sought out these products as an alternative to both traditional pharmaceutical drugs and traditional delta-9-THC products.<sup>1</sup>

This study found that, “participants considered delta-8-THC superior to pharmaceutical drugs,” and that “delta-8-THC provided the relaxation and pain relief associated with delta-9-THC, with somewhat less euphoria and less difficulty with short-term memory, difficulty concentrating, altered sense of time, anxiety, and paranoia.”<sup>2</sup>

There are obvious differences in the various products and their effects, and it is clear that consumers have discovered these hemp-derived, federally legal, and lower cost products to be desirable.

### **Comments on Recommendations**

Overall, this report contains several recommendations that could be effective measures to protect and educate consumers; however, we remained significantly concerned by the idea of changing the definition of marijuana within the Code of Virginia to criminalize and outlaw hemp-derived products which have maintained federally legal status since 2018.

As I mentioned in our previous written comments, VHAA strongly disagrees with the Virginia Department of Agriculture and Consumer Services’ (VDACS) interpretation of current state law regarding the sale of delta-8-THC and other hemp-derived novel cannabinoids. These products have had a legal status for several years and consumers have found them to be effective and desirable alternatives to pharmaceutical products or traditional marijuana (which still remains explicitly illegal to sell for adult-use).

Any further criminalization of hemp-derived products would mean the loss of consumers’ ability to legally find products they have come to rely on, and it would also mean the loss of opportunity for Virginia’s hemp farmers and hemp products businesses.

The other recommendations listed in this report are predominantly positive, but if hemp-derived THC products are outlawed or restricted further, we would have significant concern with several of them. For example, the idea of requiring some sort of permit to sell these products, both inhalable and edible, is something that VHAA has expressed support for in previous comments and in numerous conversations with legislators. More control and knowledge about who is selling these products would be a good thing, and regulations about the required information to be provided to consumers could help protect and educate them.

However, this would only be feasible if retailers are actually allowed to sell those products which consumers are demanding. The same goes with other recommendations, such as the Virginia Department of Health (VDH) addressing those products sold in restaurants or the increased ability for any regulator to impose civil penalties.

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<sup>1</sup> Kruger, Daniel J., and Jessica S. Kruger. “Consumer Experiences with Delta-8-THC: Medical Use, Pharmaceutical Substitution, and Comparisons with Delta-9-THC.” *Cannabis and Cannabinoid Research*, X, no. X, 2021.

<sup>2</sup> Kruger, Daniel J., and Jessica S. Kruger. “Consumer Experiences with Delta-8-THC: Medical Use, Pharmaceutical Substitution, and Comparisons with Delta-9-THC.” *Cannabis and Cannabinoid Research*, X, no. X, 2021.

Finally, VHAA also supports the idea of consolidating all cannabis regulation under one coordinated regulatory and enforcement structure, and we support ensuring this agency has the appropriate funding, staffing, and support it needs to effectively carry out its mission. At this point, VHAA does not have a position on exactly where this structure should sit within state government, but the Cannabis Control Authority (CCA) seems to have the base and outline of a structure to implement such a charge.

### **2023 General Assembly Outlook**

This past year, our organization was encouraged to see several policies for which we advocated end up in the final language that passed the 2022 General Assembly in HB 30 regarding hemp-derived products containing THC, including 21 and over sales restrictions, child resistant packaging, clear labeling and testing requirements, intellectual property protections, and restrictions on advertising to children.

We will continue to advocate not only for these products to remain on the shelves in a safely regulated manner, but we also desire additional requirements that will further ensure the safety of these products and earn the trust of consumers across the Commonwealth. Some examples of these additional requirements are below:

- require batch number, place of manufacture, and expiration date on all hemp-derived products
- require full panel lab testing of all consumable products
- require lab reports to be in a format that cannot be altered
- require each retail establishment, wholesale supplier, and manufacturer to be licensed, with licensing fees to be scaled based on sales volume or some other similar metric
- require customer service number on label
- require large warning label on each package with the emergency call number and particular warning language. For example, this could read, “WARNING: THESE PRODUCTS CONTAIN THC DERIVED FROM INDUSTRIAL HEMP. THESE PRODUCTS ARE INTENDED FOR USE BY ADULTS 21 YEARS OF AGE AND OLDER. KEEP OUT OF REACH OF CHILDREN. CONSUMPTION OF THC IMPAIRS COGNITION AND YOUR ABILITY TO DRIVE AND MAY BE HABIT FORMING. THC SHOULD NOT BE USED WHILE PREGNANT OR BREASTFEEDING. EFFECTS OF HEMP DERIVED PRODUCTS MAY BE DELAYED UP TO TWO HOURS. PLEASE USE EXTREME CAUTION.”

Thank you once again for the opportunity to provide public comments. We look forward to fully reviewing the final report from this task force once it is published. These issues are extremely complex, but we are confident that Virginia can craft a positive solution for the future—one that both protects and informs consumers and that allows the hemp and hemp products industry to flourish.

Sincerely,

Yan Gleyzer, VHAA President