

Task Force to Analyze Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol Intended for Human Consumption

Capitol Building ~ 1000 Bank St, House Room 1 ~ Richmond, VA 23218

November 7th, 2022 11:00am – 12:00pm

Access Live Stream: [Live Stream link](#)

- I. Welcome.....Secretary Matthew Lohr
- II. Roll Call.....Deputy Secretary Parker Slaybaugh
- III. Overview of the Task Force’s Draft Report.....Deputy Secretary Parker Slaybaugh
- IV. Announcement of Open Public Comment.....Deputy Secretary Parker Slaybaugh
- V. Adjournment

** Public comment will not be received during this meeting**

**Written public comment will open following adjournment and will remain open until November 14th at 5:00 p.m. **

Task Force Participating Agencies		
Secretary of Agriculture and Forestry	Secretary of Public Safety and Homeland Security	Secretary of Health and Human Resources
Department of Agriculture and Consumer Services	Office of the Attorney General	Department of Health
Department of Forensic Science	Cannabis Control Authority	Board of Pharmacy
Virginia State Police	Department of General Services, Division of Consolidated Laboratory Services	Commonwealth's Attorneys' Services Council

Report of the Task Force to Analyze and Make Recommendations Regarding Whether Any Statutory or Regulatory Modifications are Necessary to Ensure the Safe and Responsible Manufacture and Sale of Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol that are Intended for Human Consumption in the Commonwealth

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Report of the Task Force to Analyze and Make Recommendations Regarding Whether Any Statutory or Regulatory Modifications are Necessary to Ensure the Safe and Responsible Manufacture and Sale of Industrial Hemp Extracts and Other Substances Containing Tetrahydrocannabinol that are Intended for Human Consumption in the Commonwealth

Author

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Legislative Mandate

15th enactment of Item 4-14 of the 2022 Appropriation Act

Executive Summary

As required by the 15th enactment of Item 4-14 of the 2022 Appropriation Act, the Secretary of Agriculture and Forestry, in conjunction with the Secretary of Public Safety and Homeland Security and Secretary of Health and Human Resources, established a task force to analyze and make recommendations regarding whether any statutory or regulatory modifications are necessary to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing tetrahydrocannabinol that are intended for human consumption, orally or by inhalation, in the Commonwealth. The Secretary of Agriculture and Forestry is required to report the findings and recommendations of the task force to the Governor and the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on General Laws by November 15, 2022.

As required by the 15th enactment of Item 4-14 of the 2022 Appropriation Act, the Secretary of Agriculture and Forestry, in conjunction with the Secretary of Public Safety and Homeland Security and Secretary of Health and Human Resources, established a task force to analyze and make recommendations regarding whether any statutory or regulatory modifications are necessary to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing tetrahydrocannabinol (THC) that are intended for human consumption, orally or by inhalation, in the Commonwealth.

The task force was required to focus on the current and recommended statutory and regulatory framework for the various isomers, salts, and salts of isomers of THC and to include representatives from the Department of Agriculture and Consumer Services, the Office of the Attorney General, the Department of Forensic Science, the Cannabis Control Authority, and other stakeholders as determined by the Secretary of Agriculture and Forestry. The task force consisted of the following members:

- Matthew J. Lohr, Secretary of Agriculture and Forestry (ex-officio member)
- Parker Slaybaugh, Chief Deputy Secretary of Agriculture and Forestry (Chairman)
- Maggie Cleary, Deputy Secretary of Public Safety and Homeland Security
- James Williams, Deputy Secretary of Health and Human Resources
- Erin Williams, Senior Policy Analyst, Virginia Department of Agriculture and Consumer Services
- Ryan Davis, Program Manager, Office of Dairy and Foods, Virginia Department of Agriculture and Consumer Services
- Joshua Humphries, Office of the Attorney General
- Richard Schweiker, Office of the Attorney General
- Linda Jackson, Director, Virginia Department of Forensic Science
- Jeremy Preiss, Acting Head, Chief Officer – Regulatory, Policy, and External Affairs, Virginia Cannabis Control Authority
- Caroline Juran, Executive Director, Virginia Board of Pharmacy
- Kristin Clay, Policy Analyst Senior, Office of Environmental Health Services, Virginia Department of Health
- Daniel Wilson, First Sergeant, Virginia State Police
- Julia Gunderson, First Sergeant, Virginia State Police
- Shane Wyatt, Virginia Department of General Services, Division of Consolidated Laboratory Services
- Elliot Casey, Commonwealth's Attorneys' Services Council

The Secretary of Agriculture and Forestry is required to report the findings and recommendations of the task force to the Governor and the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on General Laws by November 15, 2022.

Chairman's Introduction

Since the passage of the General Assembly's budget, the topic of industrial hemp extracts has been a major item of discussion. From the many hours of meetings and conversations I have participated in, both as a part of the work of this task force and in my role as Chief Deputy Secretary of Agriculture and Forestry, it has become clear that opinions of stakeholders, regulators, and individual consumers vary greatly.

It has also become clear that unregulated cannabis products are a great cause for concern. Recent data from the National Capitol Poison Center show an alarming increase in calls related to pediatric exposure to cannabis edibles. In 2020, the Center, whose service area includes Loudoun, Fairfax, Arlington, Fauquier, Prince William, and Stafford, received 68 calls related to pediatric cannabis exposure. Within the first three quarters of 2022 alone, the Center has already received 157 calls related to pediatric

cannabis exposure. This report will summarize additional equally alarming data presented by the Blue Ridge Poison Center during one of our task force meetings.

Despite the varying opinions held by industry stakeholders, regulators, and consumers, there do seem to be areas where consensus can be reached with at least an overwhelming majority.

1. Protecting consumers, especially children, from dangerous products is paramount.
2. Copycat candy products should be banned from sale, and stiff criminal penalties should exist for anyone manufacturing, selling or distributing those products in the Commonwealth of Virginia.
3. Regulation of some form of THC products intended for human consumption should exist.

However, opinions greatly vary on the benchmark for such regulations.

Through this report, it is my goal to dive deeper in to these three areas of consensus. Furthermore the goal of this Task Force is to provide data and research for members of the General Assembly to consider while debating potential legislation during the 2023 General Assembly Session.

The biggest topic of debate and the toughest question for members of the General Assembly to answer is where to draw the proverbial line in regards to which products should be legal and which products should be illegal. To answer this question, I believe members of the General Assembly would be wise to consider the advice offered by the U.S. Hemp Roundtable, which prides themselves as being the “hemp industry’s leading national advocacy organization.”

Jonathan Miller, representing the U.S. Hemp Roundtable, during the taskforce’s August 9th meeting testified, “We want to draw a real distinction here between non-intoxicating hemp and intoxicating products.” Mr. Miller further testified that he advocated for the 2014 and 2018 federal Farm Bill and shared during that process “the underlying theme was that hemp was non-intoxicating and that marijuana and adult use cannabis was intoxicating.”

From my time studying this issue over the past 10 months and from my time serving as Chairman of this taskforce, I believe that is an important distinction. While the U.S. Hemp Roundtable says they do not oppose the sale of adult use cannabis, this taskforce was not charged with studying or making recommendations about the retail sale of adult use cannabis. What it was charged with was to “analyze and make recommendations regarding whether any statutory or regulatory modifications are necessary to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing tetrahydrocannabinol (THC).”

With that charge, with expert testimony offered by the hemp industry’s leading national advocacy organization and with the knowledge that, as of the publishing of this report, the retail sale of adult use cannabis is not legal in the Commonwealth, I believe it is the charge of this taskforce to advise the General Assembly on the best way to distinguish between legal, non-intoxicating hemp products and illegal, intoxicating cannabis products and the regulatory framework that aids in enforcement. The debate of whether cannabis should be legalized in the Commonwealth is a question left up to the General Assembly, and one that this taskforce takes no position on.

Background

The federal Agricultural Act of 2018, which was enacted on December 20, 2018, includes numerous industrial hemp-related provisions that, in part, allow for the commercial production of industrial hemp. The 2018 Farm Bill defined "hemp" and removed hemp from the definition of "marihuana" in the federal Controlled Substances Act. The definition of “hemp” establishes that, for a cannabis plant to be “hemp,” the plant must not have more than 0.3 percent delta-9 THC on a dry weight basis. The definition explicitly states that all derivatives, extracts, and cannabinoids of “hemp” are also considered “hemp.” “Industrial hemp,” which is used interchangeably with “hemp,” is defined in Virginia’s Industrial Hemp

Law as “any part of the plant *Cannabis sativa*, including seeds thereof, whether growing or not, with a concentration of tetrahydrocannabinol that is no greater than that allowed by federal law.” “Industrial hemp” includes an industrial hemp extract that has not completed all stages of processing needed to convert the extract into a hemp product.

The 2018 Farm Bill’s hemp provisions were the result of advocacy in support of hemp fiber and grain production opportunities. Congress established the delta-9 THC limit in the definition of hemp to allow for the production of hemp fiber and grain but to maintain the prohibition on production of intoxicating cannabis, and, at the time the legislation was enacted, delta-9 THC was the primary cannabinoid known to have an intoxicating effect.

Since the enactment of the 2018 Farm Bill, the U.S. hemp industry’s interest in growing hemp for its fiber or grain shifted to an interest in growing high-CBD varieties of hemp for edible and inhaled product production. Within the past few years, a portion of the hemp product industry has further shifted to the production of edible and inhaled THC products using hemp-derived CBD; however, the primary type of THC in these products is not delta-9 THC, but instead delta-8 THC or delta-10 THC, among others. Delta-8 THC has an intoxicating effect similar to that of delta-9 THC, the cannabinoid in marijuana that produces a “high”; however, the legal status of delta-8 THC is gray given its connection to hemp, which was removed from the federal Controlled Substance Act by the 2018 federal Farm Bill. A delta-8 THC product has a delta-9 THC concentration that is less than 0.3 percent but typically has a delta-8 THC concentration that is intoxicating.

During the 2021 Session of the General Assembly, legislators expressed concern with the presence of unregulated delta-8 THC products on the market in Virginia. However, no legislation addressing delta-8 THC was considered during the 2021 Session of the General Assembly. Delta-8 THC is typically chemically synthesized from cannabidiol (CBD) that has been extracted from hemp. Similar concerns were expressed during the 2022 Session of the General Assembly, ultimately resulting in the insertion of language into the 2022 Appropriation Act in response to these concerns. In addition to the 15th enactment establishing the task force, the 14th enactment of Item 4-14 of the 2022 Appropriation Act (enactment) made the following statutory changes related to cannabis:

Virginia Food and Drink Law

The enactment amended the Virginia Food and Drink Law to direct the Board of Agriculture and Consumer Services to adopt regulations that require that any industrial hemp extract or food containing an industrial hemp extract that contains THC be equipped with a label that states (i) that the industrial hemp extract or food containing an industrial hemp extract contains THC and may not be sold to persons younger than 21 years of age, (ii) all ingredients contained in the industrial hemp extract or food containing an industrial hemp extract, (iii) the amount of such industrial hemp extract or food containing an industrial hemp extract that constitutes a single serving, and (iv) the total percentage and milligrams of THC included in the industrial hemp extract or food containing an industrial hemp extract and the number of milligrams of THC that are contained in each serving.

Virginia Cannabis Control Act

The enactment amended the Virginia Cannabis Control Act (VCCA) to establish a Class 3 misdemeanor for possession of more than four ounces to one pound of marijuana on one’s person or in public and excludes possession in one’s residence from this criminal penalty. The enactment excluded possession in one’s residence from the existing felony for possessing more than one pound of marijuana on one’s person or in any public place. The enactment amended the VCCA to establish that a person who cultivates marijuana for personal use who fails to (i) ensure that a marijuana plant is not visible from a public way, (ii) take precautions to prevent unauthorized access by a person younger than 21 years of age, or (iii) attach to each marijuana plant a tag including certain information is subject to a civil penalty of no more

than \$25.

Virginia Consumer Protection Act

The enactment amended the Virginia Consumer Protection Act (VCPA) to prohibit the sale of or offering for sale a substance intended for human consumption, orally or by inhalation, that contains THC to a person younger than 21 years of age. The enactment amended the VCPA to prohibit the sale of or offering for sale any substance intended for human consumption, orally or by inhalation, that contains THC, unless such substance is (i) contained in child-resistant packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less than 1/16 of an inch, (a) that the substance contains THC and may not be sold to persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such substance that constitutes a single serving, and (d) the total percentage and milligrams of THC included in the substance and the number of milligrams of THC that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International Organization of Standardization by a third-party accrediting body, that states the THC concentration of the substance or the THC concentration of the batch from which the substance originates. Additionally, the enactment amended the VCPA to prohibit the manufacture, offering for sale at retail, or retail sale of an industrial hemp extract, food containing an industrial hemp extract, or substance containing THC that depicts or is in the shape of a human, animal, vehicle, or fruit. Finally, the enactment amended the VCPA to prohibit the selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains THC and, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a product intended for human consumption other than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or distribute such substance.

Task Force Meetings

The task force convened two meetings during summer 2022 to analyze and make recommendations regarding whether any statutory or regulatory modifications are necessary to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing THC that are intended for human consumption, orally or by inhalation, in the Commonwealth. The meetings were held on July 7, 2022, and August 9, 2022.

July 7, 2022

The first meeting of the task force was held July 7, 2022, in Richmond. Deputy Secretary of Agriculture and Forestry Slaybaugh provided an overview of the task force's responsibilities and requirements pursuant to the Virginia Freedom of Information Act as well as an overview of the responsibilities of and charges for the task force.

Staff from the Virginia Department of Forensic Science (DFS) provided an overview of the legislative history of marijuana and hemp in the Commonwealth, the different types of tetrahydrocannabinols, and relevant legal implications. DFS also provided a general explanation of the process commonly used to synthesize delta-8 THC from cannabidiol that was extracted from hemp and explained that a laboratory test cannot determine whether THC is natural or synthetic.

Staff from the Virginia Department of Agriculture and Consumer Services (VDACS) provided an overview of the cannabis-related efforts of VDACS's Food Safety Program and a comparison of how New York, Oregon, and Colorado, three states previously mentioned as model examples by hemp industry stakeholders, regulate hemp-derived cannabinoid products.

At the conclusion of these presentations and questions from the task force, the task force received

comments from the public, both in-person and virtually, for approximately one hour. Many individuals commented on a letter VDACS distributed to food manufacturers, retail food establishments, and registered industrial hemp processors regarding industrial hemp extracts intended for human consumption and delta-8 THC products. Generally, those who provided comment expressed an interest in producing, selling, or consuming delta-8 THC products. Some individuals explained the benefits they or their customers have experienced from consuming hemp-derived products or delta-8 THC products. Some individuals urged the task force to consider a regulatory framework that would not prohibit the production or sale of any THC isomer or derivative.

Please see Appendix 1 for the meeting agenda, the PowerPoint presentations used by DFS and VDACS, and a complete transcript of the meeting, including the public comment period. Written comments were also accepted for this meeting and are both included in Appendix 1 and available using the following link: https://hodspeak.house.virginia.gov/meetings/12814/public_comments.

August 9, 2022

The second meeting of the task force was held August 9, 2022, in Richmond.

The director of the Blue Ridge Poison Center (“Poison Center”), Dr. Christopher Holstege, provided information regarding recent emergency calls related to cannabinoid consumption and spoke about trends he has observed as delta-8 THC products have become more widely available, including an increase in pediatric THC exposure cases. The Poison Center serves a region of approximately 3 million Virginians and works with a network of 42 hospitals in Central and Southwest Virginia. Dr. Holstege explained that, in 2018, the Poison Center received 79 calls related to THC exposure. In 2021, the Poison Center received 217 calls related to THC exposure, 88 of which were related to delta-8 THC, and, by July 31, 2022, the Poison Center had already received 175 THC exposure calls, 52 of which were related to delta-8 THC. Of the 140 calls related to delta-8 THC that the Poison Center has received since the beginning of 2021, 127 patients were able to be treated in an emergency department, while 19 patients required admission to a non-critical care unit and five patients required admission to a critical care unit. Dr. Holstege opined that delta-8 THC product packaging that mimics candy packaging has contributed to the increase in pediatric THC exposure cases he has observed.

Counsel for the U.S. Hemp Roundtable, Jonathan Miller, provided an overview of the regulation of hemp-derived cannabinoid products nationally. The U.S. Hemp Roundtable is a coalition of businesses and organizations committed to safe hemp and cannabidiol (CBD) products. Mr. Miller explained that compounds such as delta-8 THC and delta-10 THC were not prevalent or considered during the development of the federal legislation authorizing the production of hemp in the U.S., which ultimately defined hemp using its delta-9 THC concentration. Mr. Miller advised that the U.S. Hemp Roundtable supports closing the current THC-related loophole and redefining hemp, in part, as cannabis with a Total THC concentration of no more than 0.3 percent. The U.S. Hemp Roundtable offered that intoxicating cannabis-derived products should only be sold via adult-use cannabis channels, while non-intoxicating cannabis-derived products should not be subject to age restriction. Mr. Miller advised that the U.S. Hemp Roundtable recommends a state-led commission to study cannabis-derived products to identify appropriate standards for evaluating whether a product is intoxicating rather than regulating all products with any amount of THC in the same way.

VDACS staff provided a comparison of the regulation of hemp-derived cannabinoid products in additional states mentioned during the public comment period from the July 7 meeting as well as other neighboring states. Please see Appendix 2 for the meeting agenda and PowerPoint presentations. Written comments were also accepted for this meeting and are both included in Appendix 2 and available using the following link: https://hodspeak.house.virginia.gov/meetings/12847/public_comments.

Additionally, prior to the August 9 meeting, Deputy Secretary Slaybaugh asked task force members, in conjunction with their relevant stakeholders, to consider the following questions:

- *What items or issues dealing with industrial hemp extracts and other substances containing THC do you feel are not adequately addressed by Code or regulations?*
- *What obstacles does your agency/department face when it comes to enforcement of laws relating to hemp extracts and other substances containing THC?*
- *Are there other statutory issues that would be helpful for the Task Force to request clarity on from the General Assembly?*

Feedback from the hemp industry received by VDACS

To ensure that the hemp industry had ample opportunity to provide feedback in response to these questions, VDACS scheduled six one-hour virtual listening sessions for interested Registered Industrial Hemp Growers, Processors, and Dealers. Please see Appendix 3 for the listening session information. Forty-eight individuals attended the virtual listening sessions. Another 15 individuals submitted written comments in response to the questions VDACS posed. VDACS asked the industry to provide feedback on what, if any, requirements were appropriate to ensure the safe manufacture or sale of industrial hemp extracts or substances containing THC that are intended for human consumption orally or by inhalation.

Generally, those who commented expressed support for testing, packaging, and labeling requirements for both orally consumed and inhaled products containing THC and for required good manufacturing practices for manufacturers of these products. Many urged the task force to be mindful of the costs associated with testing and suggested testing be required at the step in the manufacturing process that will ensure a safe product. From the discussion had during some of the listening sessions, it appears possible that the appropriate place in the manufacturing process to test for contaminants may be different, depending on the product.

Many also expressed the importance of consumer education regarding these products as well as the importance of the retailer being knowledgeable about the products offered sale, with some suggesting the state should license retailers and some suggesting employees of retail locations should have required training. VDACS also heard comments that regulators, policy makers, and local government officials would benefit from more information regarding hemp and hemp products.

Those who provided comment were divided over whether synthetic cannabinoids should be used in orally consumed and inhaled products containing THC. Some expressed that, if the manufacturing process and the product ultimately meet established requirements, then those products should be permissible for sale. Some expressed preference for producing natural, organic, or minimally-processed products. Some expressed dismay over the impact that some intoxicating products have had on the industry's reputation.

Many expressed desire to see out-of-state manufacturers of these products containing THC regulated in the same way as Virginia manufacturers, with some attendees suggesting that only Virginia-produced products should be allowed for sale in Virginia. Generally, those who spoke in support of reasonable regulations for the products also emphasized the importance of requiring compliance by all manufacturers - both in and out of state.

Feedback from Virginia Board of Pharmacy

The Virginia Board of Pharmacy provided the following in response to these questions:

- The scope of VDACS’s regulatory authority of hemp products should be expanded beyond orally ingested food and drink to include topical hemp products and inhalants (currently there is no regulatory oversight for these product formulations).
- An expansion of scope should also include authorization to regulate hemp products shipped in from out-of-state, similar to Board of Pharmacy authority to regulate nonresident pharmacies and nonresident wholesale distributors, to create parity and ensure all products sold in Virginia comply with Virginia’s standards.
- Clarification from the Office of the Attorney General is needed regarding whether the sale of delta-8 THC, including product intended to be inhaled, is a violation of the Virginia Consumer Protection Act and if any enforcement gaps exist.
- While delta-8 THC is approximately 25 percent less potent than delta-9 THC, it produces a similar high and should be regulated in a similar manner for public protection.
- How does the producer, public, and regulator know definitively the content and concentration of a hemp product if there is no certificate of analysis? Articles in the media have highlighted false lab reports associated with certain hemp products. Uniform product end testing is important for public protection. Tests required of the medical cannabis products would seem to be appropriate for hemp products.
- Consider the appropriateness of child-resistant packaging for multi-dose containers if a single unit contains a low dose of THC but an accidental ingestion of multiple doses could create harm for children.
- It is important to understand the relationship between the terms “milligrams” and “percent” and to use the terms correctly to ensure gaps don’t exist in public safety.

Considerations for Future Regulation Offered by Individual Task Force Members

While the task force did not take formal action with respect to recommendations at its August 9 meeting, the following suggestions regarding future statutory or regulatory modifications to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing THC that are intended for human consumption, orally or by inhalation, in the Commonwealth were offered by individual task force members during the August 9 meeting:

Product Standards

- Consider whether restrictions such as age restrictions or packaging restriction on those THC products that only contain a small amount of THC should be reduced or eliminated. This could include removing certain restrictions on these products as long as such products are in child-safe packaging.
- Regulate out-of-state THC products so that these products are required to meet the same requirements as those THC products produced or sold in the Commonwealth.
- Clarify the definition of THC as it is used throughout various chapters in the Code of Virginia.
- Take the weight of a THC product into account along with the percentage of THC in such product.
- Require that the labeling requirements be as clear as possible so that laboratories know exactly what to test for. Approaching this from a food safety inspection type of program with regular inspections

may be a good way to go about this.

- Testing an extract is good, but an extract in an oil that is then mixed into a final product like a gummy does not always result in consistent concentration among products.
- If a product's packaging allows a child to consume multiple servings of the product at one time, package requirements may be appropriate even if the individual serving contains a low amount of THC.
- A standard for one type of hemp product containing cannabinoids is not always appropriate as a standard for a different type of cannabinoid-containing product, and appropriate standards may vary within a product category.

Regulatory Framework

- Clarify whether any statutory provisions related to THC products applicable to food manufacturers, food distributors, and retail food establishments also apply to restaurants and other food establishments regulated by the Virginia Department of Health when THC is added to a food.
- Authorize an agency to regulate inhalants. Currently, there is no regulatory oversight for these product formulations.
- Consider adding a civil penalty for those businesses or entities that violate provisions in statute or related regulations pertaining to the sale of THC products.
- The diversity of hemp products that now contain cannabinoids presents regulatory challenges both in identifying the appropriate regulator and in the need for product specific standards. VDACS regulates the manufacture of some hemp products, such as the manufacture of food and beverage products intended for human consumption, while the manufacturers of products that are inhaled or topically applied are not currently regulated by an existing state agency.
- Multiple state agencies regulating cannabis production and product manufacturing could lead to regulatory challenges. Cannabis regulators and states with multiple cannabis regulatory agencies, including those states with hemp, medical cannabis, and adult-use cannabis programs, have mentioned that this structure results in a cumbersome and confusing system for both the regulators and industry.
- The task force should remember the range of products that contain cannabinoids and the expertise needed to appropriately regulate those products.
- Establish protections from marijuana-related charges for employees for the Department of Law when they are in possession of a substance containing THC in the performance of their duties.

Enforcement

- Need to establish what a laboratory is supposed to do with respect to handling or storing a hemp product that, when tested, is determined to be marijuana.
- Consider and recommend a process to better link any criminal investigation related to THC products with the potential to bring such a case to a Commonwealth's Attorney office.
- Refine the definition of "industrial hemp extract" and "derivative" as these terms are used in relation

to the definition of “marijuana” throughout Code of Virginia.

- Consider criminal penalties that reflect mental culpability (i.e., require “knowing”).
- Develop a technology solution for real-time access by Virginia State Police to the hemp grower, processor, and dealer registration information collected by VDACS.
- Enhance authority and resources for investigations of possible violations of the THC-related prohibited practices established in the Virginia Consumer Protection Act.

While outside the scope of the task force, the following recommendations also were suggested by individual task force members during the August 9 meeting:

- May want to also address other methods of THC consumption beyond just inhalation or ingestion (e.g., topicals, nasal sprays, lubricants, transdermal patches, suppositories, etc.).
- Authorize an agency to regulate topical THC products. Currently, there is no regulatory oversight for these product formulations.

Recommendations

Upon consideration of the information and opinions presented during the task force meetings and in the written comments received following each meeting, it is clear that statutory amendments are necessary to eliminate intoxicating cannabis-derived products from unregulated retail channels in Virginia. There is no single legislative solution that will address the sale of intoxicating cannabis-derived products. The task force suggests that (i) assessing a product’s legality using its Total THC concentration, (ii) coordinating cannabis regulation and enforcement, (iii) requiring a permit to sell certain hemp products, (iv) establishing significant civil penalties, and (v) addressing the sale of edible hemp products in restaurants should all be included when considering statutory amendments to ensure the safe and responsible manufacture and sale of industrial hemp extracts and substances containing THC that are intended for human consumption, orally or by inhalation.

Assess a product’s legality using its Total THC concentration

Currently, the Code of Virginia directs DFS to assess the delta-9 THC concentration of a substance alleged to be marijuana. For the Commonwealth to more effectively address the proliferation of edible and inhaled products that contain isomers of THC, such as delta-8 THC, the Code of Virginia must provide that a substance’s total THC concentration, and not just delta-9 THC, determines whether the substance is marijuana. Amendments to the definitions of relevant terms, including “marijuana” and “tetrahydrocannabinol,” should ensure the terms are consistently defined throughout the Code.

Coordinated cannabis regulation and enforcement

Currently, multiple executive branch agencies regulate cannabis production or support the agencies that regulate cannabis production, including the Virginia Board of Pharmacy, the Virginia Cannabis Control Authority, VDACS, DFS, the Virginia Department of General Services - Division of Consolidated Laboratory Services, and the Office of the Attorney General. The Commonwealth needs a coordinated regulatory and enforcement structure that can provide consistent oversight and enforcement to all sectors of Virginia’s cannabis industry, including those producing and selling currently unregulated inhaled hemp products. This coordinated effort should include a law enforcement division and serve to consolidate the

Commonwealth’s cannabis expertise. Additionally, resources will need to be allocated to coordinating agencies.

Require a permit to sell certain hemp products

Edible and inhaled hemp products that are consumed much like marijuana products pose a risk to Virginians, most notably to children, when offered for sale without restriction. Requiring that a retailer of these types of hemp products obtain a permit before offering these products for sale will assist the regulating agency and law enforcement in determining whether a sale of a hemp product is compliant with the law and will reduce the availability of unregulated products. A retail permit requirement will likely reduce the occurrence of cannabis-related “pop up shops.” Additionally, a retail permit requirement will also enable the regulatory agency to monitor the ways in which a permitted retailer markets its hemp products. This will likely assist in reducing consumer confusion that can occur when a hemp product is sold in a manner or from a location that could imply that the product is able to treat a medical condition. During a task force meeting, concern was expressed regarding the sale of intoxicating cannabis-derived products from a pharmacy counter. Consideration should be given as to whether restrictions on the location from which a pharmacy may sell hemp products are necessary. Additionally, the authority of the regulatory agency to deny, suspend, or revoke a retail permit will discourage retailers from selling non-compliant or even illegal products.

A more robust regulatory structure could require that, in addition to a retail permit, edible and inhaled hemp products be subject to product standards, batch testing, and sampling by the regulatory agency. Additionally, the regulatory agency or a policy board should have the authority to establish appropriate product standards and serving size recommendations.

Establish civil penalties

Currently, the penalties for manufacturing or selling an edible hemp product that does not comply with the Food and Drink Law are not substantial enough to compel compliance. The agency responsible for regulating the manufacture and sale of both these products and inhaled hemp products should be authorized to levy a significant civil penalty for selling a product without the proposed retail permit and for manufacturing or selling a product that does not comply with established standards.

Address the sale of edible hemp products in restaurants

While the Food and Drink Law, the provisions of which VDACS administers, addresses the manufacture and sale of industrial hemp extracts intended for human consumption, the Virginia Department of Health’s (VDH) authority to license and regulate restaurants does not explicitly include authority to address the sale of edible hemp products or other substances containing THC. VDH should have authority to establish regulations it deems necessary to address the sale of substances containing THC.

APPENDIX 1

DRAFT