



Alcohol & Marijuana Control Office MEMORANDUM

TO: Members of the Marijuana Control Board
FROM: AMCO Staff
DATE: October 14, 2021
RE: Drinkables

Introduction

At the MCB's direction staff engaged in collective research of the MCB's recent deliberations and decisions regarding marijuana beverages commonly called "drinkables" packaged in a 2-fluid-ounce-size ("fl oz").

Recognizing that questions regarding the regulation of marijuana beverage products are universal, staff researched other jurisdictions for background on regulation to include fluid ounce/size ratios and categories. This Memorandum provides a snapshot as of late September 2021. Marijuana beverage products are referred to herein as "drinkable(s)" and any law, statute, regulation or ordinance unless for Alaska will be denoted as "rule(s)." Information is derived from several jurisdictions and sources including some jurisdictions that are medical marijuana only. That distinction is apparent. If a jurisdiction is mentioned by name that is not intended to say that other jurisdictions not mentioned do not have the same or similar rule.

Though drinkables have been around objectively for some time they are new or at least uncommon to many. As such, jurisdictions while providing rules for THC levels of edibles and providing for beverages or liquid in general, have not yet set any specific limits as to upper or lower fluid ounce/size ratios and types of drinkables. Instead, jurisdictions have opted for their existing general labeling/packaging and product manufacturing rules for edibles in general to govern all drinkables. Discussions in this area by most regulators now show a recognized need to address the following in some greater detail:

- (1) the type of drinkable product such as mixing from concentrate or mixing from powder, those designed to be added to a beverage, multi-serving-size or single-size mini, etc.;
- (2) properly delineating what a serving is on the drinkable packaging;
- (3) properly delineating the measurement of an actual serving on the drinkable; and,
- (4) the safety packaging and labeling of the drinkable.

Alaska Regulations

In Alaska, drinkable products fall under “Article 5 - Marijuana Product Manufacturing Facilities” at (3 AAC 306.500 through 3 AAC 306.570). There are no pending regulations projects that address drinkables. Alaska shares similar if not exact rule language as to THC levels of edibles and overall package size and particulars as some other jurisdictions. As mentioned, drinkable specific ratios are not always addressed. Relevant excerpts of Article 5 have been placed at the end of this Memorandum for reference.

MCB Action

At an MCB meeting early this year there was a discussion about the previous approval or non-approval of drinkables in 2fl oz bottles. There was an expressed desire by members for consistency and a comment reflecting it could have been a mistake if 2fl oz bottles were approved prior.

June 2020 MCB Meeting: The MCB denied two product revisions of adding a 2fl oz bottle option with a total of 50mg THC to already approved drinkable products for Petrichor LLC, License #18493 based on potential for over-consumption. From the MCB minutes: Director Klinkhart summarized the memo. Grant Anderson, licensee, is present. Changes to three products. Bruce S. moves to approve. Nick M. seconds. Questions and discussion about serving sizes 2oz bottle and over-consumption. Licensee says it is up to the consumer to be responsible. Bruce S. concerned with small bottle – board hasn’t established a reference point or guidance. Bruce S. also clarifies that the products have been approved in larger sizes – this is just for the 2oz bottle. Bruce S. amends the motion to approve the changes excluding the 2oz size. Nick M. seconds. None opposed, motion carries.

Tundra Brewing LLC, License #23736 has an approved 2fl oz bottle option for their *Splash* drinkable product. But the licensee says that it is intended to be added to a beverage and the bottle contains 10mg THC total, as opposed to 50mg THC.

AMCO has seen a large amount of tincture/syrup/elixir products that have been approved with small bottle sizes (1fl oz or 2fl oz) with a total of 50mg THC, but most have a dropper to help determine the serving size. There is however a product called, *Symple Syrup* for Enlighten Extracts that does not have a dropper, but instead has the demarcations on the bottle itself (1fl oz & 2fl oz bottle sizes with no more than 50mg THC). Additionally, there is a product called, *Moose Milk Creamer* for Stoney Moose Kitchens that has small bottle options. This product the licensee presents is to be added to coffee or tea or the like and it has 5-10mg THC total. Stoney Moose Kitchens also has a product called *Moose Milk* with a 2fl oz bottle option, with a total of 10mg THC.

2021 MCB Meetings: The minutes for the January, March-April and June 2021 meetings related to small bottle size are provided here (Not all entries are drinkables as such).

January 6-7, 2021:

- *Fast Acting Nano Breath Spray:* a liquid edible product in the form of a spray. The size of bottle is 2ml. Three spray pumps equal 5mg of THC. The entire 2ml bottle is 50mg THC with 30 servings. - Licensee has now increased to 10/100 per the change in regulation.

- *Fast Acting Nano Drink Additive*: a liquid edible with the same serving/mg and bottle size as Fast Acting Nano Breath Spray. - Licensee has now increased to 10/100 per the change in regulation.

March 31-April 1, 2021:

- *Bombshell Bloody Jane's*: a liquid edible in the form of a juice. The size of the bottle is 10fl oz. The serving is 1fl oz containing 5mg THC. The full bottle is 50mg THC containing 10 servings.
- *Bombshell Herb Balsamic Vinaigrette Dressing & Marinade*: a liquid/saucy edible. The size of the bottle is 10fl oz. The serving is 1fl oz containing 5mg THC. The full bottle is 50mg THC containing 10 servings.
- *Bombshell Holiday Gravy*: a liquid edible in the form of gravy. The size of the bottle is 10 fl oz. The serving is 1fl oz containing 5mg THC. The full bottle is 50mg THC containing 10 servings.

June 23-24, 2021:

- *Hashade Shooter* (Cannabis infused lemonade): a liquid edible. The original request for this product was 2fl oz bottle, containing 10 servings, one serving being 5.66g (.2fl oz) with 5mg of THC per serving. The total THC content of the bottle was 50mg. Note: this was approved with the condition that the bottle not contain more than 25mg of THC total. The board did this to “be consistent” with what the board had done before in other 2fl oz bottles. The licensee is requesting for this product’s THC to be increased to the 10/100 per regulation.

October 2021:

Numerous product applications for drinkables are on the Agenda currently before the MCB.

Approaches of Other Jurisdictions

In other locations, some rules, are for the most part, are similar to Alaska regulations. As expected however there are those that are also quite different. For example, there are rules that prohibit any drinkable that would need to be refrigerated. For some, this prohibition extends to the production of any infused edible product that requires any type of temperature control for storing the product. In contrast, Alaska and Massachusetts have ice cream as a currently approved edible. Others have multi-serving juice drinks that require refrigeration after opening.

There are product development processes for product manufactures that want to produce any drinkable. This process requires that the licensees submit the proposed production process plan for the beverages to include stability studies to ensure the shelf life that the drinkable will be sold for is accurate. Most drinkables across jurisdictions is in the form of a single serving. Limits for a servings size of a drinkable in the recreational market mostly vary from 5mg to 10mg of total THC per serving and no more than 50mg or 100mg of total THC contained within the product package if it contains more than one serving. Manufactures must submit plans to market a drinkable with more than one serving to include stability study results proving the product maintains integrity

even after it has been opened several times and some of the product has been removed from the container.

At least one jurisdiction requires the licensee to select from an approved bottle/container line for products. Others do not allow the mingling of fluid ounce (fl oz) measurements and, for example, milliliters (ml) unless another rule provides for or mandates a ml measurement.

There are rules that only allow single serving drinkables no matter what the fluid ounce of the drinkable. The drinkable has the common 10mg THC maximum. This single serving only approach is supported because it reportedly eliminates consumer confusion, renders products reliable, removes half of the stability studies because of no multi-serving sizes, and is simply easier for all. The added recognition that some major beer companies now producing several single serving non-alcoholic beer drinkables is seen as an overall standard of drinkables. This standard easily allows a consumer to simply count one serving as one drinkable despite the size. Only the amount of THC need be found on the label similar to finding the ABV on the label of an alcoholic beverage such as a beer or a wine cooler.

Most medical marijuana jurisdictions or those with recreational and medical consider drinkables the same as other edibles. A maximum THC Content is usually is 50 mg. per dose. This is Ohio's rule for medical marijuana:

To be eligible for sale by a dispensary:

(A) Edible liquids containing multiple portions, or doses, of medical marijuana shall be packaged in a structure that uses a single mechanism to achieve both child-proof properties and accurate pouring measurement of portions, or doses. The measurement component shall be included within the child-proof cap or closure of the bottle and cannot be a separate component.

(B) No single portion or dose of medical marijuana in the following forms shall exceed fifty milligrams of THC:

(1) Oil, tincture, capsule, or edible form for oral administration; and

(2) Patches for transdermal administration.

(C) Each portion or dose of medical marijuana shall be clearly demarked in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single portion or dose.

(D) Each portion or dose of medical marijuana shall contain not less than ninety-five per cent or no more than one hundred-five per cent of the concentration of total THC, THCA, CBD, or CBDA indicated on the label.

(Rule 3796:8-2-06 (B) Ohio Administrative Code)

In Maine a medical marijuana edible has no THC limit. For an adult use (recreational) side single-serving drinkables the limit is no more than 10mg of THC. As in other jurisdictions the drinkable must be packaged in a child-resistant container, an aluminum or metal can with a stay tab mechanism opening or a bottle with a metal crown cork style bottle cap. Multiple-serving drinkables that contain more than 10mg of THC but no more than 100 mg of THC must: be packaged in a child-resistant container compliant with 16 C.F.R. Part 1700 (2018) that has a resealing cap or closure; and include a measuring device such as a measuring cap or dropper with the package containing the marijuana-infused liquid edible product; hash marks on the bottle or

package do not qualify as a measuring device. Drinkables bundled into a larger marketing or sales layer is permissible so long as the total amount of THC per marketing layer does not exceed 100mg.

There are rules of limits for edibles of 50mg THC in the package and 5mg to 10mg THC per serving. The serving size limits for all cannabis products is by the package size. This in an effort to not encourage licensees to create larger and more potent offerings to circumvent the established limits.

Drinkable labels can have markings to show the serving size, although most jurisdictions try to discourage this unless the licensee has more sophisticated manufacturing and labeling equipment that can provide accurate measurement/dosage. Product manufacturers are usually asked to use a common household measuring device like a ¼ cup or tablespoon followed by the ml of the serving because household measuring devices are not uniform. Most would like to see specific limits on product type not a generic limit for all edible products. Other jurisdictions do have tinctures as non-potable solutions can have up to 1,000 mg. THC in the package mostly with a maximum size of 4fl oz. Mixing Imperial measurements with Metric measurements in most cases however is frowned upon unless another rule mandates it.

As mentioned in the Introduction above, many jurisdictions classify drinkables simply as an edible within their rules, for example, Oregon shows no differentiation based on the edible product types while conversely, Colorado's rules do provide for such drinkable distinctions.

Conclusion

Research reflects that like Alaska many jurisdictions are seeing new types and an overall increase in drinkable product approval requests. Many jurisdictions may not have the rules needed to fully address all requests. Consistent with the MCB's concern regarding 2fl oz size bottles, the protentional for over consumption related to fluid ounce/size ratios is a shared substantial concern. Single serving size only rules are seen to be a simplifying, safe and reliable approach, but most jurisdictions have already approved a vast array of multi-serving drinkables. How one would adopt such a change at this point is not unachievable but could be problematic. Addressing upper or lower fluid ounce/size ratios limits for all types of drinkables within the product approval process is timely and essential for all jurisdictions.

Alaska regulation excerpts

3 AAC 306.505. Marijuana product manufacturing facility privileges (a)

Except as provided in 3 AAC 306.515, a licensed marijuana product manufacturing facility, including a marijuana concentrate manufacturing facility, is authorized to (1) purchase marijuana from a marijuana cultivation facility or from another marijuana product manufacturing facility; (2) extract marijuana concentrate in compliance with 3 AAC 306.555; (3) manufacture, refine, process, cook, package, label, and store marijuana products approved under 3 AAC 306.525, including (A) marijuana concentrate; or (B) any product intended for consumption or use on the body that is comprised of marijuana and other ingredients, including edible products, ointments, salves, patches, or tinctures;

3 AAC 306.510. Acts prohibited at marijuana product manufacturing facility

(a) A licensed marijuana product manufacturing facility, including a licensed marijuana concentrate manufacturing facility, may not

(2) sell marijuana, marijuana concentrate, or a marijuana product that is not manufactured, packaged, and labeled in compliance with 3 AAC 306.500 - 3 AAC 306.570;

(4) manufacture or sell any product that (A) is an adulterated food or drink; (B) closely resembles a familiar food or drink item including candy; or (C) is packaged to look like candy, or in bright colors or with cartoon characters or other pictures or images that would appeal to children.

(c) In this section, "closely resemble" or "look like" means the product or its packaging has a shape, color, markings, or decorative patterns that are familiar to the public from a widely distributed branded food product, so that the marijuana product could reasonably be mistaken for that branded product, especially by children.

3 AAC 306.520. Application for marijuana product manufacturing facility license

(3) in the applicant's operating plan required under 3 AAC 306.020(c), a description of (A) the equipment and solvents, gases, chemicals, and other compounds used to create concentrates and the processes to be used; (B) each marijuana product the applicant intends to process at this location; the product description must include the color, shape, texture, ingredients and standard production procedure to be used and the additional information required for product approval in 3 AAC 306.525; (C) the packaging to be used for each type of product; (D) sample labels showing how the labeling information required in 3 AAC 306.570 will be set out; and (E) the applicant's plan for disposal of waste. Approval of concentrates and marijuana products (a) A marijuana product manufacturing facility, including a marijuana concentrate manufacturing facility, must obtain the board's approval for each product it will manufacture for sale or transfer to another licensed marijuana establishment. The board will not approve a product that is prohibited under 3 AAC 306.510(a)(4). (b) An applicant for a marijuana product manufacturing facility license may request the board's approval of its intended products with a new license application by including, in its operating plan (1) a photograph, drawing, or graphic representation of the expected appearance of each final product; and (2) the proposed standard production procedure and detailed manufacturing process for each product. (c) A licensed marijuana product manufacturing facility may at any time submit a new product approval request to the board on a form the board prescribes along with the fee required under 3 AAC 306.100(c). (d) A licensed

marijuana product manufacturing facility shall keep its ingredient list and potency limits for any food product containing marijuana on file at the marijuana product manufacturing facility's licensed premises. The ingredient list and potency limits for any product manufactured at the facility must be made available for inspection on request by the director, or an employee or agent of the board.

(d) A marijuana product manufacturing facility shall account for any variance in the quantity of marijuana or marijuana product the facility received, and the quantity the facility sold, transferred, or disposed of. 3 AAC 306.545. Health and safety standards (a) A marijuana product manufacturing facility shall comply with the health and safety standards set out in 3 AAC 306.735, 18 AAC 31 (Alaska Food Code), if applicable, and any local kitchen-related health and safety standards for retail food establishments. (b) In addition to inspection by the director or an employee or agent of the board, a marijuana product manufacturing facility is subject to inspection by local safety officials . . .

3 AAC 306.535. Restricted access and storage areas (a) A marijuana product manufacturing facility shall conduct any extraction or product manufacturing operation in a restricted access area in compliance with 3 AAC 306.710.

(c) Any area where marijuana or a marijuana product is stored must be moisture- and temperature-controlled and protected from pests and vermin.

3 AAC 306.550. Required laboratory testing (a) A marijuana product manufacturing facility shall provide a sample of each marijuana product manufactured at the facility to a licensed marijuana testing facility and may not sell or transport a marijuana product until all laboratory testing required under 3 AAC 306.645 has been completed.

3 AAC 306.560. Potency limits per serving and transaction for edible marijuana products A marijuana product manufacturing facility may not prepare a marijuana product with potency levels exceeding the following, as tested in compliance with 3 AAC 306.645: (1) for a single serving of a marijuana product, not more than 10 milligrams of active tetrahydrocannabinol (THC) or Delta 9; (2) in a single packaged unit of a marijuana product to be eaten or swallowed, not more than 10 servings or 100 milligrams of active THC or Delta 9; the THC content must be homogenous, or evenly distributed throughout the marijuana-infused product.

3 AAC 306.565. Packaging of marijuana products (a) A marijuana product manufacturing facility shall observe the potency limits set out in 3 AAC 306.560 in packaging each product for resale by a retail marijuana store. (b) A container or

packaging for any edible marijuana product produced by a marijuana product manufacturing facility may not have any printed images, including cartoon characters, that specifically target individuals under 21 years of age. In addition, the packaging must (1) protect the product from contamination and may not impart any toxic or damaging substance to the product; and (2) if the marijuana product contains multiple servings, be designed so that the marijuana product itself has markings or demarcations clearly delineating each serving of the product; for liquid marijuana products with multiple servings, the packaging must indicate the number and size of individual servings.
