



MEMORANDUM

TO: The Marijuana Control Board

DATE: August 17, 2023

FROM: Joan M. Wilson

RE: Director's Report

Introduction

This report details AMCO activities from the last regular meeting of the Marijuana Control Board ("Board") on June 1 – 2, 2023, to the present.

Licensing

Ms. Sawyer and Ms. Craig will provide the Board updated statistics on the licensing queue. However, I am happy to report that the oldest new or transfer application in the queue was filed in mid-June. This is a reduction from a four-month wait to a two-month wait. We won't stop here.

Ms. Sawyer and Ms. Craig will provide separate statistics on the queue applicable to license renewals. As of this date of writing, we are still within the grace period of receiving late applications. As I write, approximately fifty licensees have not yet renewed. Based on metrics from the prior two years, we expect that number to reduce to approximately 10 licenses that will not be renewed.

Following this board meeting, a third licensing examiner will be trained on new and transfer applications. It is my hope that this additional person will continue to reduce the length of the queue, with this caveat. When AMCO's new online licensing system goes live for alcoholic beverage licensees (likely this September) all examiners will need to be assigned to alcohol for a period of time. This is because over two thousand licensees will need to claim their licenses on the new system and AMCO will be required to validate those claims before an alcoholic beverage licensee can file for any license action. A majority of those licensees will also be required to apply for licenses and endorsements to continue what is now permissible activities under their current licenses.

The online licensing system for marijuana licensees is in development, expected to be completed by this October. You have my commitment that AMCO will apply the same level of license examining support once the online system goes live for marijuana licensees. If the Board would like, I am happy to give a demonstration of the licensing system as it has been developed for alcoholic beverage licensees to the Board. The marijuana system will be comparable.

As a final matter and as stated in Ms. Sawyer’s report, we are requesting a decision from the Board that identifies whether an intent to lease or unsigned draft lease is sufficient to deem an application complete for Board review. Ms. Sawyer will provide various examples for your consideration and guidance.

Enforcement

Chief Hoelscher and Investigator Johnson will update the Board on new developments within the Enforcement Unit. Please see a related request for a regulations project.

Please also see the enclosed letter to Cookies regarding their unlawful sales of THCA products in the State of Alaska.

Regulations

Ms. Serezhenkov will review the regulations tracking sheet with the Board. A number of projects are before the Board.

In addition, an issue has arisen with our recruitment of Special Investigator 1’s that could be remediated by a regulatory project. As you are aware, under AS 17.38.131:

The director and the persons employed for the administration and enforcement of [AS 17.38] may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of criminally punishable provisions of this chapter, regulations of the board, and other criminally punishable laws and regulations.

This Board has granted each of its investigators the powers of peace officers. The commissioner of public safety has concurred. Because of the nature of these positions, including the authorized carrying of firearms, AMCO has always required that candidates for these positions must meet Alaska Police Standards Council (“APSC”) requirements for certification as a police officer and be subject to a psychological examination as a condition of hire.

The Department of Administration Classification Unit is now – for the first time -- instructing AMCO that it cannot require these as a conditions of hire, unless “required by state or federal law or regulation to perform the duties prescribed.” The Department of Administration asserts that absent an express requirement, we cannot require it of our candidates, even though we need

investigators to enforce the criminally punishable provisions of AS 04 and carry firearms. We are requesting a regulatory project to require both APSC certification and psychological examination as a condition of employment.

Last, I am also aware that the Alaska Marijuana Industry Association may be requesting a complete update of the entire chapter of marijuana regulations (3 AAC 306). We are close to completely a similar rewrite of all alcoholic beverage regulations and have the experience to take on a project this large, should be the board request it.

Intoxicating Hemp Products

The public comment period for the Division of Agriculture's proposed regulations addressing intoxicating hemp products has closed. The letters from the Board Chair and me are attached to this report. The regulations are now before the Division and the Commissioner of Department of Natural Resources for review. I hope to give you an update on the status of the regulations at the board meeting.

The Division of Agriculture and AMCO Enforcement have conducted joint enforcement inspections under the current hemp regulations. Chief Hoelscher will address suggestions for improvement. I also recommend requesting a reimbursable services agreement for any additional enforcement support AMCO provides.

Tax Matters and Waivers

AMCO continues to file accusations to revoke or suspend licenses based on late payment of taxes. When we have done so, most of the licensees have paid the deficiency or entered into payment plans with the Department of Revenue. This is why you have seen certain withdrawals of accusations.

As part of that process, AMCO and license holders attempted to enter into waivers of confidentiality that permit the Department of Revenue to communicate with our office regarding a licensee's compliance with a payment plan. The Department of Revenue is still requesting changes to these waivers. We will meet again with the Department to incorporate those change (we have yet to know whether a future licensee will object to it). Once this issue is resolved, we will work with the Department of Revenue's to adapt a limited waiver to be applicable at the time of next year's renewal seasons. However, the Department of Revenue is reconsidering whether its current process (absent waivers) is sufficient to get the Board the information it requires. It is my hope that at this upcoming meeting we will be able to determine whether that is the case or whether a regulatory project to include waivers at the time of renewal should continue. If the latter, we will have a draft of those regulations to you at your next regularly scheduled meeting in November (well in advance of renewal season)

Pesticide Testing

This topic has long plagued the Board, AMCO, and licensees. To ensure that marijuana is grown free of prohibited pesticides, Ms. Sawyer, Investigator Bankowski, and I are putting together a

working group with the two laboratories, a selection of interested licensees, and up to two board members to discuss: (1) procedures for in-state testing of soil and water; (2) prohibitive costs for testing; and (3) removing the residency requirement for these licenses to permit Outside financial support. We will report back on this effort at the November Board meeting.

In addition, the Board requested representatives from both licensed labs in Alaska to attend the August meeting so it can offer the Board guidance and its thoughts on all issues related to cannabis testing (including potential testing for pesticides). You will see this discussion, which will include an EHL representative, is included on the agenda for this Board meeting.

DEC Food Permit Renewal

Chair Miller noted a discrepancy between new retail store licensees operating outside the Municipality of Anchorage not requiring DEC food permits in certain situations, yet the Department of Environmental Conservation is still requesting renewals from some licensees.

We requested guidance from DEC. According to its representative, the operable regulations requiring food permits, 18 AAC 31 (attached) have not changed. Marijuana retail stores are still considered “market food establishments.”

Perhaps a reason for lack of uniformity is that an individual store might qualify for an exemption under 18 AAC 31.012. In any case, representatives of DEC’s EHL can revisit whether an exemption applies to individual licensees. They will require information about the name of facility, the name of its operator, and the city where they facility is located. Contacts for the laboratory can be found [here](#).

Exterior Window Pick-Up

The regulations permitting walk-up or drive-through exterior window pick-up for retail marijuana stores became effective August 13, 2023. AMCO Licensing and Enforcement has met as a team to revise its forms and process for handling these requests. These forms will be brought to you for approval at this meeting. There are a number of security and local government approval concerns that will require your guidance. In addition, the Board should consider whether it should delegate authority to approve the exterior window pick-up with the Director or leave it to the Board.

Roberts Rules of Order

I understand the Board will be considering whether to adopt the Roberts Rules of Order at its August meeting. Please also consider the impact, if any, of Mr. Higgins statement that the Department of Law cannot serve as legal counsel on questions of its interpretation. We await your decision on this matter and will provide board members copies of the rules should it elect to adopt them.

Marijuana Control Board Sunset Audit

Unless extended by the Legislature, the Marijuana Control Board is due to sunset June 30, 2024. To advise the Legislature on whether the Board should be extended, the Legislative Budget and Audit Committee, Division of Legislative Audit is conducting an audit as required by AS 44.66.050(a). This audit focuses on whether the Board and AMCO are achieving statutory and regulatory objectives set out in AS 17.38 and 3 AAC 306.

Legislative Budget and Audit has nearly completed its field review. We expect to receive draft findings in September. There no doubt will be deficiencies. AMCO will benefit from the guidance and take the remedial measures necessary to ensure this Board is achieving all statutory and regulatory objectives, including protecting public health and safety.

Conclusion and Next Meeting

I welcome your comments and questions about any matter addressed in this memorandum,

The next regularly scheduled meeting of the MCB Board is November 15-16, 2023, in Sitka, Alaska. At the meeting, the Board will set its meeting dates and locations for calendar year 2024.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West Seventh Avenue, Suite 1600
Anchorage, Alaska 99501
Main: 907.269.0350

Transmitted via email
Industrialhemp@alaska.gov

July 10, 2023

Robert Carter
Division of Agriculture
5310 South Bodenburg Spur
Palmer, Alaska 99645

Re: Public Comment: Proposed Changes to
Industrial Hemp Program Regulations, 11 AAC
40.

Dear Mr. Carter:

Thank you for the opportunity to comment on proposed changes to the state regulations governing the Division of Agriculture's Industrial Hemp Program. As the Office responsible for overseeing the legal, adult-use cannabis market in Alaska, the Alcohol and Marijuana Control Office (AMCO) well understands that both of our programs are regulating the cultivation, manufacturing, and sale of *cannabis sativa l.* Our programs have both attempted to combat the proliferation of highly intoxicating hemp products intended for human or animal consumption. The regulations the Hemp Program offers go a long way toward closing an unintended loophole. For this reason, they have our Office's broad support.

We provide our support for the addition of 11 AAC 40.400(d), suggest a conforming amendment to 11 AAC 40.520(b)(3), and raise one concern regarding the proposed reductions to registration and product fees. We leave the remaining proposed changes unaddressed because they are specific to the hemp program and not to AMCO's operations.

We support the proposed 3 AAC 11 AAC 40.400(d). This regulatory change appropriately restricts the Division of Agriculture from endorsing and approving an industrial hemp product intended for human or animal consumption 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.

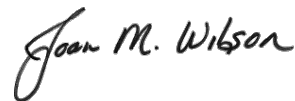
Once adopted, this regulation will prevent the proliferation of products containing delta-9 THC as well as the new growing market of synthetic cannabinoids. It also prohibits manipulating other naturally occurring cannabinoids into more potent products.

We recommend one change to 11 AAC 40.520(b)(3) to conform with this prohibition. The current proposed change permits notices of violation solely for products containing any delta-9 THC. We believe it is your intent that notices of violation would also issue if a product contained any non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form.

As a final matter, the regulations packet asserts that these regulations have no financial impact on any other state agency. At present, AMCO, through a memorandum of understanding with the Division, is enforcing hemp plan regulations, particularly paying attention to prohibited products and unregistered retailers. We note that fees for registrations and endorsements are greatly reduced in the proposed 11 AAC 40.100. If the State Hemp Plan can enforce of its regulations without our assistance under these reduced fees, we have no objection. If AMCO's services are requested, we recommend the memorandum of understanding be amended to adequately fund our Office's enforcement efforts on behalf of the Hemp Plan.

Thank you for the opportunity to provide public comment. We look forward to continuing to work with the Division to strengthen the agricultural market for cannabis, diversify our state's economy, and better protect Alaskans.

Respectfully,



Joan M. Wilson
Director

cc: Nicholas Miller, Chair, Marijuana Control Board
Julie Sande, Commissioner DCEED
Micaela Fowler, Deputy Commissioner DCEED



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Re: Public Comment: Proposed Changes to
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Dear Mr. Carter:

Thank you for the opportunity to comment on proposed changes to the state regulations governing the Division of Agriculture's Industrial Hemp Program. The Marijuana Control Board met on July 10, 2023, to consider these proposed regulations and unanimously agreed to submit this letter in support.

The Marijuana Control Board is established to control the cultivation, manufacture, and sale of marijuana in the state. The Marijuana Control Board well understands that both of our programs are regulating the cultivation, manufacturing, and sale of *cannabis sativa l.* Our programs have both attempted to combat the proliferation of highly intoxicating hemp products intended for human or animal consumption. The regulations the Hemp Program offers go a long way toward closing an unintended loophole. For this reason, they have the Marijuana Control Board's broad support.

We provide our support for the addition of 11 AAC 40.400(d), suggest a conforming amendment to 11 AAC 40.520(b)(3), and raise one concern regarding the proposed reductions to registration and product fees. We leave the remaining proposed changes unaddressed because they are specific to the hemp program and not to AMCO's operations.

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As a final matter, the regulations packet asserts that these regulations have no financial impact on any other state agency. At present, the Alcohol & Marijuana Control Office (AMCO) through a memorandum of understanding, is enforcing hemp plan regulations, particularly paying attention to prohibited products and unregistered retailers. We note that fees for registrations and endorsements are greatly reduced in the proposed 11 AAC 40.100. If the State Hemp Plan can enforce its regulations without AMCO's assistance under these reduced fees, we have no objection. If AMCO's services are requested, we will request AMCO's Director to amend the memorandum of understanding to adequately fund AMCO's enforcement efforts on behalf of the Hemp Plan.

Thank you for the opportunity to provide public comment. We look forward to continuing to work with the Division to strengthen the agricultural market for cannabis, diversify our state's economy, and better protect Alaskans.

Sincerely,

/s. Nicholas Miller/


Nicholas Miller
Marijuana Control Board
Chair



THE STATE
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GOVERNOR MIKE DUNLEAVY

Department of Commerce,
Community, and Economic
Development

ALCOHOL AND MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

August 17, 2023

Transmitted via email
rod@cannabisbusiness.law

Cookies(thca.cookies.co)
c/o Rod Knight, Esq.
81 Walnut Street, Suite 201
Asheville, North Carolina 28801

Re: Prohibited Sales-- THCA flower and related products in
Alaska

Dear Mr. Knight:

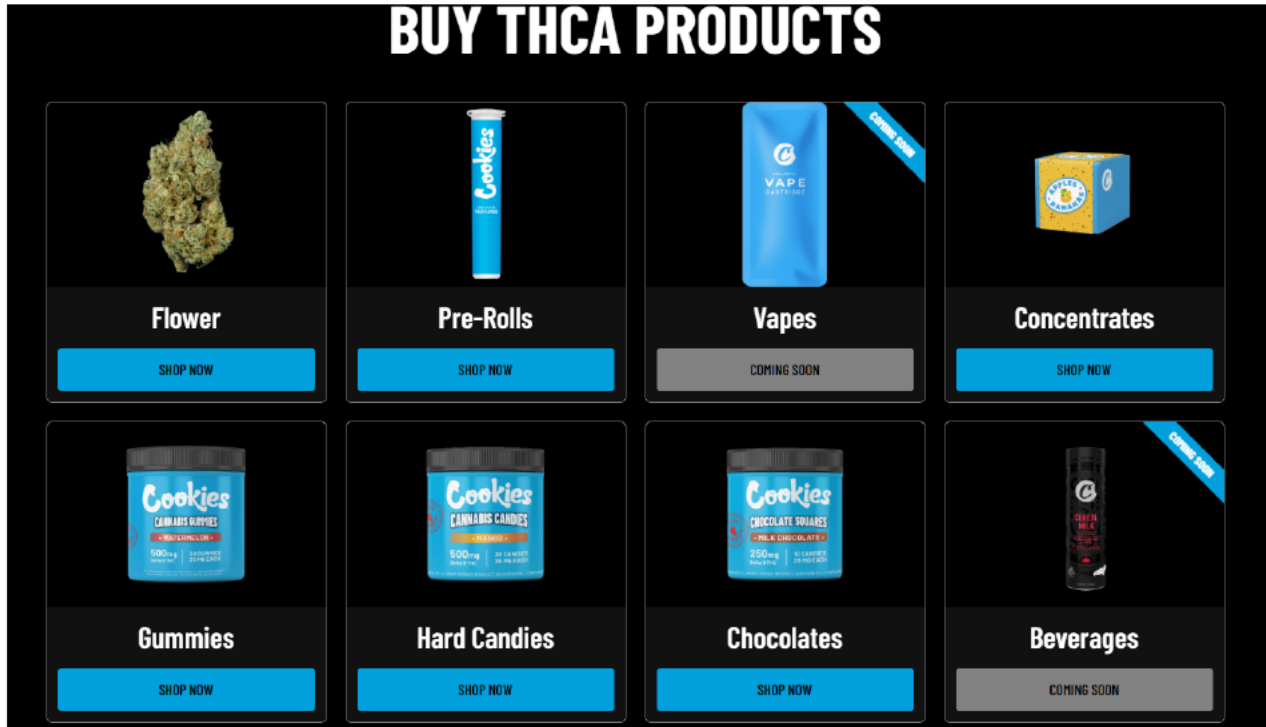
Due to the decentralized nature of Cookies(thca.cookies.co), I am contacting you as its legal counsel. Cookies advertises for sale and does sell "direct to your mailbox" THCA products, including flower, pre-rolls, concentrates, gummies, hard candies, and chocolates to Alaskan consumers.

From its [website](https://thca.cookies.co):



[continued]

Also from its website:



The State of Alaska prohibits the sale of *cannabis sativa l.* that does not meet the definition of hemp, unless sold from an Alaska licensed marijuana establishment. AS 17.38.070. Per the Drug Enforcement Agency,

In regards [sic] 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.

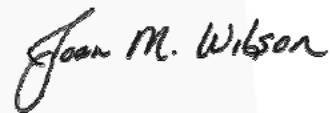
Cookies is not licensed in the State of Alaska.¹ Absent such licensure, it is committing misconduct involving a controlled substance in the third degree should it deliver THCA flower and products to individuals under 19, a Class B felony (AS 11.71.030), or misconduct involving a controlled substance in the fourth degree, a Class C felony (AS 11.71.040), should it deliver to individuals over nineteen.

Please inform your client: **Cookies is hereby demanded to cease and desist the sale of any and all THCA flower and THCA flower products in the State of Alaska immediately.**

Violation of this demand will be pursued 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.

Please direct all responses to me as the Director of the Alaska Alcohol & Marijuana Control Office.

Sincerely,



Joan M. Wilson, Esq.
AMCO Director

cc: James C. Hoelscher, AMCO Enforcement Chief
Nicholas Miller, Chair, Marijuana Control Board
Bryan Scoresby, Director, Division of Agriculture
Robert Carter, Agronomist III, Alaska Hemp Program
Phil Czapla, Agronomist II, Alaska Hemp Program
Kevin Higgins, Senior Assistant Attorney General (Civil Division)
John Darnall, Senior Assistant Attorney General (Criminal Division)

¹ In addition, it is a violation of Alaska's industrial hemp program to operate without a hemp registration or sell unendorsed products. AS 03.05.076. I have confirmed with the hemp program that cookies is not registered and its products are not approved. Further, the Division of Agriculture has proposed regulations that would prohibit the sale of any hemp-derived products intended for human or animal consumption that contain any amount THC:

<https://dnr.alaska.gov/ag/akpmc/hemp/pdf/resources/Notices/Draft%20Regulations%20approved%20for%20notice.pdf>.