



MEMORANDUM

TO: Nick Miller, MCB Chairman

DATE: Friday, January 14, 2022

FROM:  James Hoelscher, Enforcement Supervisor

RE: Transportation Memo

The board made the following determinations regarding transports.

- MCB February 2017 – Discussion regarding transportation of marijuana, Regulations Project opened to define language to give Enforcement Guidance
- March 27, 2018, Enforcement report – Brought concerns to board of newly adopted regulation and requested clarification.
- April 6, 2018 – Discussion surrounding Transportation, MCB Chairman Springer requested a transportation discussion be held during the May 2018 meeting and requested licensees and public submit comments for review.
- June 13, 2018 Meeting – Transportation discussion – Board agreed that statute change was needed to allow “back flow” transfers.
- July 2018 – Advisory issued with Flow chart of transfers
- February 2019 – Board moved to open a transportation regulation, with “back flow” issued to be addressed
- March 2021 – Reissued advisory stating that the previous flowchart is still valid.

I could not locate an opened regulations project regarding the requested transportation regulation from February 2019.

The flowchart is based on AS 17.38.070 Lawful operation of marijuana-related facilities and direction/input from the board and our attorney.

AS 17.38.070(a)(2)(3)(6) Lawful operation of marijuana-related facilities(Retail)

AS 17.38.070(b)(2)(3)(4)(5)(6) Lawful operation of marijuana-related facilities(Cultivation)

AS 17.38.070(c)(2)(3)(4)(5)(6) Lawful operation of marijuana-related facilities(Manufacturing)

AS 17.38.070(d)(1)(2)(3) Lawful operation of marijuana-related facilities(Testing)

James Hoelscher states that the regulation regarding transportation is very clear. He asks the Board if a licensee should be able to pick up marijuana and marijuana product from a cultivator. He states that he feels that they should.

Mark Springer states that he does not have a problem with a licensee transferring product that is being transferred to its establishment.

Brandon Emmett states that he feels that licensees who aren't bad actors should be able to transfer and transport marijuana as they see fit.

James Hoelscher states that it creates an issue with tax that would need to be sorted out by the licensees. He additionally states that the existing language in 3 AAC 306.750 only allows a retail marijuana store to transport marijuana to another retail marijuana store, and that a regulation change would be required in order to allow any other type of transfer.

Harriet Milks agrees that the requirements are clear.

Loren Jones asks if there is a method of providing a guidance document until a regulation change is completed.

Harriet Milks states that that would not be ideal, as it would be a de facto regulation.

James Hoelscher, Mark Springer, and Peter Mlynarik discuss the confusion about whether a licensee can be an agent for another licensee.

Brandon Emmett motions to open a regulations project to define the language here to give clear guidance to enforcement.

Mark Springer seconds the motion.

Peter Mlynarik clarifies that this would clarify all transportation for retailers, cultivators, and third parties.

Sara Chambers informs the Board that it could publicly notice in advance, if it desires, requests for suggestions for information to help staff draft language. She also states that the Board could consider directing the Director to have staff focus its efforts on things other than writing notices of violation for this type of action.

Harriet Milks states that because of the federal administration, the Board needs to be vigilant in creating and enforcing a robust set of regulations.

Peter Mlynarik states that it seems like the staff has an idea of the direction it wants to take and wouldn't need input from the outside.

Mark Springer agrees and states that it is the head of enforcement's duty to prioritize the efforts of his team.

Harriet Milks asks for clarification on whether the Board would like to use the scoping method.

The Board agrees that they would like to get this out as soon as possible.



MEMORANDUM

TO: Marijuana Control Board

DATE: March 27, 2018

FROM:  James Hoelscher, Enforcement Supervisor

RE: Enforcement Report, Marijuana

AMCO Enforcement has received numerous requests from local law enforcement agencies for training on Title 4 and Title 17.38. In order to provide current, clear, consistent, and accurate information, we have started working on a syllabus this past week and plan on having a completed syllabus with instructional material completed prior to the end of April. In addition to the syllabus for Law Enforcement, we have identified a need for a syllabus for the general public to help educate them on Title 17.38 laws, focusing on the role of AMCO, approved products, minors, public consumption, and locating resources.

It is my belief that having more informed law enforcement, licensees, and the general public will help enhance the public's health and safety while strengthening our ability to work collaboratively with various stakeholders on enforcing our regulations, Title 4, and Title 17.38.

We are continuing to work with Department of Health and Social Services, Tobacco Enforcement, to reinstate our compliance/shoulder tap program. The memorandum of understanding between both departments is currently under review. In the interim, we have partnered with the Air Force, Office of Special Investigations, on conducting compliance checks. We hope to continue to build and foster these relationships to achieve our shared goal of compliance with law.

Alcohol & Marijuana Current Stats, as of March, 23, 2018

Investigations – 111 (89 Urban – 22 Rural)
Alcohol Walk-throughs - 75
Alcohol Inspections – 24 (2 Rural)
Alcohol NOV's -61 (46 of these NOV's were change of ownership)
Alcohol Advisory Notices – 7
Alcohol Permits reviewed - 200
Marijuana Walk-throughs - 30
Marijuana Inspections – 43 (31 Urban - 12 Rural)
Marijuana NOV's - 4
Marijuana Advisory Notices - 13
Marijuana Background Conducted (MJ-18) - 8
Marijuana Handler Cards Issued – 526
Compliance Checks/Shoulder Taps – 5
Criminal Charges - 2
Enforcement Calls/Requests/General Enforcement Email – 2,367



Suggested legislative requests for amendments to AS 17.38:

Indemnification for Marijuana Purchases by persons under the age of 21 for the purpose of compliance checks and shoulder taps.

Title 4 allows for persons under the age of 21 to assist in the enforcement of alcohol with indemnification:

- AS 04.16.049(f) Access of persons under the age of 21 to licensed premises
A person under 21 years of age does not violate this section if the person enters or remains on premises licensed under this title at the request of a peace officer, if the peace officer accompanies, supervises, or otherwise observes the person's entry or remaining on premises, and the purpose for the entry or remaining on premises is to assist in the enforcement of this section.

AS 17.38.070. Lawful operation of marijuana-related facilities and 3 AAC 306.750. Transportation

Enforcement has recently received numerous questions regarding transport and transfer of marijuana and marijuana products. The Statute clearly defines how marijuana and marijuana product are to be delivered and received from each respective license type.

The new transport regulation made it so a licensee, an agent, or an employee can transport marijuana or marijuana product to a licensed establishment. While this may have simplified things, it has caused some confusion regarding transport of marijuana and/or marijuana product because a large number of licensees assumed that this gave *carte blanche* on transports and reasons for transports with disregard or ignorance of the statute and of their own license type permissions and restrictions. Another issue is that the old transport regulation allowed for transfers/transports between retail license holders but this permission is absent the statute and is not allowed in our current regulations.

I am seeking clarification on two specific areas:

- “Backflow” transports - What reason(s), if any, would be allowed for a retailer or product manufacturer to return product to a cultivator? Request guidelines on what would be allowed for “backflow” between licensees and customers returning marijuana or marijuana product back to retailer.
 - We have received requests, ranging from product not selling out after an extended amount of time, to mold, and to quality of marijuana or marijuana product.
- Can a retailer transfer to another retailer? ***Requesting boards interpretation and for the board to request the Legislature for an amendment to AS 17.38.070(a)***

*****See attached Chart***



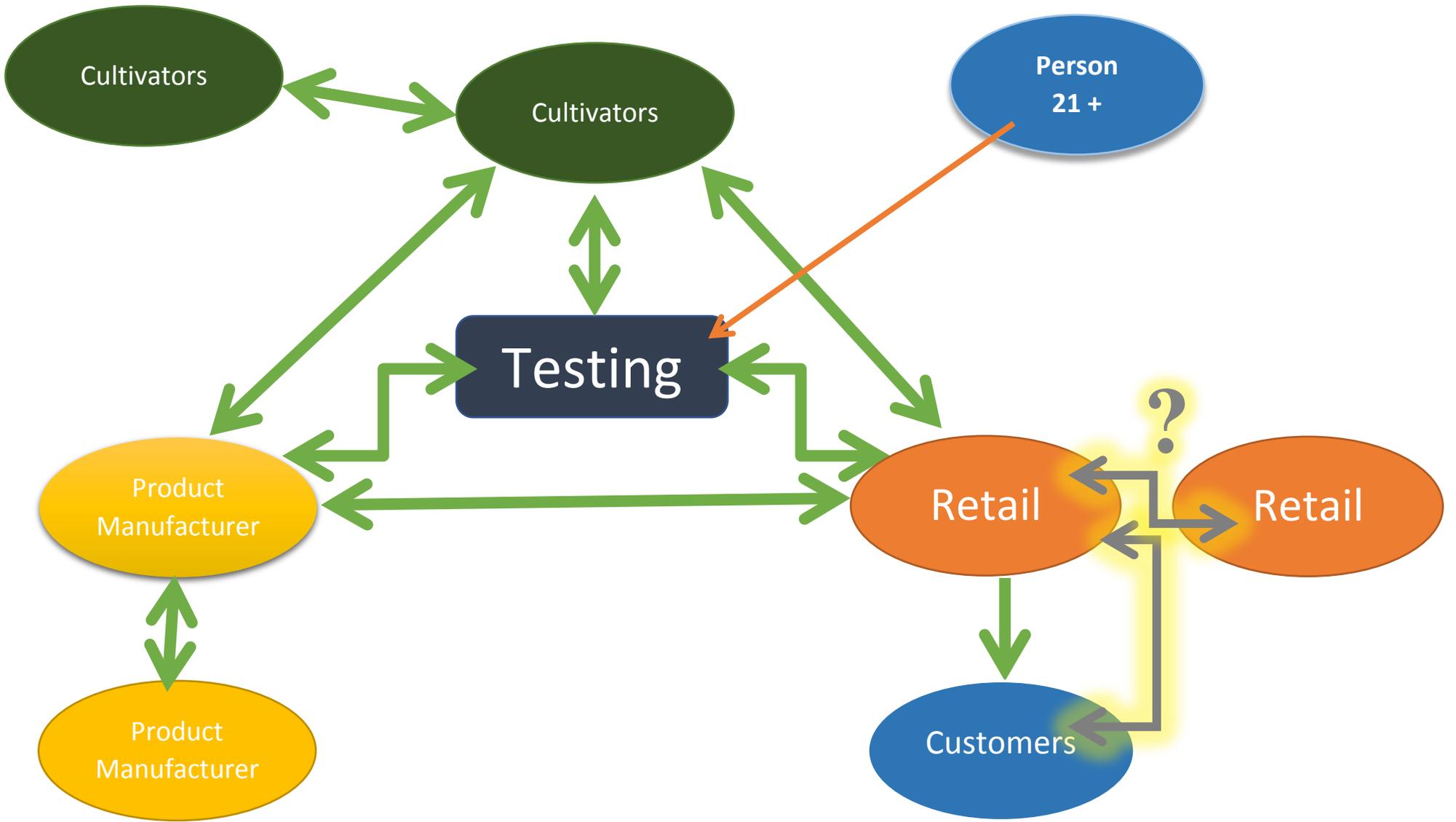
Proposed Regulations Projects:

3 AAC 306.460(a). Samples

- (a) A marijuana cultivation facility may provide a free sample of marijuana to a retail marijuana store if packaged in a sample jar containing not more than three and one-half grams of marijuana and protected by a plastic or metal mesh screen to allow customers to smell the product before purchase.
- This section appears to be in the wrong area, as it should apply to article 3 (retailers) and it is only located in article 4 (cultivation), unless “customers” references another licensee who would be purchasing the marijuana. I recommend a regulation change to put sample jar requirements in the retail store regulations in article 3 to cover security as well as types of jars permitted.

3AAC 306.555(d)(1) Production of marijuana concentrate

- Cultivators are producing kief Kief is defined as a concentrate and production of concentrate is prohibited by cultivators.
- The last direction from the board says that it is ok to do that if it happens “naturally,” the cultivators are not purposely separating kief, and it is tested separately for potency. Without any regulatory language exempting this, the direction given is in contradiction with current regulation.



Marijuana Control Board
Meeting Minutes
April 6, 2018
Second Judicial District
Aurora Inn Meeting Room
302 Front Street
Nome, Alaska

● **ADMINISTRATION**

A. Call to Order 9:00am

● **ENFORCEMENT BRIEFING**

A. Enforcement Supervisor's Report 9:01am TAB 71

James Hoelscher updates the Board on enforcement matters, including future training of law enforcement on Title 04 and 17.38, the status of the compliance check program, and enforcement statistics. He recommends that the Board request the legislature to amend AS 17.38 regarding indemnification for marijuana purchases by persons under the age of 21 for the purposes of compliance checks and shoulder taps.

James Hoelscher asks for clarification regarding transportation issues. Specifically, he requests guidelines on what would be allowed for "backflow" – return of marijuana to a cultivator from a retailer or a product manufacturer, or customers returning marijuana or marijuana product back to a retailer – and whether or not a retailer can transfer to another retailer. He cites AS 17.38.070(a).

*Nick Miller states that when the Board amended the (transportation) regulation, that it was not intending to make things more difficult than what they were. He adds that he feels that the Board could make this clear by policy.
Brandon Emmett states that he concurs.*

Mark Springer requests that a transportation discussion be added to the May agenda, and he invites licensees and the public to submit comments on this issue to the marijuana mailbox for the Board to review at that meeting.

James Hoelscher states that his intent is to immediately write an advisory regarding weighing marijuana upon receipt from another licensed facility. He reads that 3 AAC 306.730(b) and states that the receiving licensee should also be responsible for weighing the received marijuana and marijuana product to verify the weights are relatively correct. He and Board members discuss difficulties in weighing prepackaged marijuana.

James Hoelscher proposes that the Board open a regulations project to add the language regarding samples and sample jar requirements that are currently found in 3 AAC 306.460(a), to Article 3 (retailers), to cover security as well as types of jars that are permitted.

The Board members and staff discuss the current language and whether or not the current language is in the appropriate section of regulation. The Board members request that the staff bring draft clarifying regulatory language to the June meeting.

James Hoelscher informs the Board that cultivation facilities are still producing kief, currently defined as a concentrate, and production of concentrate is prohibited by cultivators. He adds that the last direction from the Board was that it is okay for cultivators to do this if it happens “naturally”, and not purposefully, and that it is tested separately for potency.

The Board members and staff discuss the fact that this issue is currently with the testing committee.

James Hoelscher and the Board members discuss licensee perception of enforcement, and setting future enforcement priorities.

B. Notices of Violation Issued and Licensee Responses **10:03am** **TAB 72**

James Hoelscher states that almost every meeting during the past three meeting, he has presented the Board with an NOV for odor complaints for license 10310. He adds that they spend a substantial amount of time investigating odor complaints.

*Brandon Emmett moves to suspend the rules to take up license 14020 Frog Mountain, LLC.
Nick Miller seconds the motion.
Motion carries unanimously.*

● **NEW MARIJUANA CONCENTRATE MANUFACTURING FACILITY APPLICATIONS**

B. License #14020:	Frog Mountain, LLC	10:08am	<u>TAB 60</u>
Licensee:	Frog Mountain, LLC		
Premises Address:	9779 Totem Bight Road Ketchikan, AK 99901		
Local Government:	Ketchikan Gateway Borough		

*Brandon Emmett moves to approve license 14020 Frog Mountain, LLC with delegation.
Nick Miller seconds the motion.*

Harold Haynes, applicant, and Jason Pfeifer, consultant, identify themselves for the record and answer Board questions.

Jason Pfeifer states that the Ketchikan Gateway Borough requested that they change their waste disposal section of the operating plan to state that it will be treated as regular solid waste and will not be incinerated.

Mark Springer states that will be added to the delegation.

*Loren Jones moves to approve all of the products.
Brandon Emmett seconds the motion.*

Mark Springer requests that a financial report be provided at least every couple of meetings, which would include the amount of licensing fees that have been allocated to local governments.

Harriet Milks speaks to the Board about the passage of Senate Bill 63 – the indoor smoking bill. She states that the bill allows local governments’ to have input over whether indoor smoking is allowed.

Mark Springer requests that a copy of the bill be provided in the Board members’ legal books.

Nick Miller asks whether the bill allows for local governments to opt out.

Harriet Milks states that it does.

The Board members discuss the possibility of having a third party expert review the applications for testing facility licenses.

● ENFORCEMENT BRIEFING

A. Enforcement Supervisor’s Report

1:48pm

TAB 3

James Hoelscher updates the Board regarding enforcement travel, a syllabus for training for local law enforcement agencies, enforcement statistics, and the status of the compliance check and shoulder tap program. He states that whenever a regulation has been unclear to enforcement, he has brought the question to the director(s), and then to the AAG for guidance, when necessary; if the issue is still unclear, then it has been brought to the Board for guidance.

Mark Springer asks whether enforcement staff have been able to equip vehicles with lights and sirens, and to obtain other materials and resources necessary to carry out their jobs.

James Hoelscher states that he and the director have been working on equipping vehicles and getting other materials.

Mark Springer requests that the enforcement staff be provided with whatever physical resources they need in order to execute their duties.

B. Transportation Discussion

2:08pm

James Hoelscher reads transportation regulations to the Board, and asks whether a vehicle that is transporting marijuana is considered to be an extension of the licensed premises, and whether enforcement powers would extend to that vehicle. He raises concerns about the lack of security requirements in the current Alaska transportation regulations.

Loren Jones states that all edible products that are sold in Juneau arrive on a plane, and are most likely carried in a backpack. He states that he agrees with Mr. Hoelscher’s concerns, but that the Board needs to consider the transportation issues caused by the topography and geography of the state.

Mark Springer states that the extension of the licensed premises to the transportation vehicle seems legitimate to him, and that he would not be opposed to a regulation project that fleshes out transportation rules pertaining to that.

Loren Jones asks what a travel manifest would look like when marijuana has to be transported on a plane.

James Hoelscher states that he can bring redacted copies of transport manifests to the next meeting that would show how it's done. He adds that if a licensee has access to the internet, that it could change the transport manifest if a situation occurs when it needs to be updated.

James Hoelscher states that enforcement has been very consistent in saying that another person (who is not a licensee, employee, or agent) can be present in a vehicle during transport, as long as that person is 21 years of age or older and understands what is going on in that vehicle. He asks whether particular scenarios would be acceptable to the Board. He states that he thinks that if a licensee is on the road system and ends up in a scenario that in which it would have to stay overnight somewhere, that perhaps there should be a regulation project that would require the marijuana to be in a locked box.

James Hoelscher states that in his opinion, a faulty marijuana product that gets returned to a retail store should be required to be destroyed by the retail store, and not by the product manufacturer.

Nick Miller states that from a retail perspective, it is important that a retail store be able to move the marijuana somewhere, either to a product manufacturer or back to the cultivator, if it is not (selling).

James Hoelscher states that the statute does not allow for marijuana to be transferred from a retail store back to a cultivator.

C. Notices of Violation Issued and Licensee Responses **2:42pm** **TAB 4**

James Hoelscher states that if there's an NOV for which the staff would like there to be additional Board action, that it will be brought to the Board in the form of an accusation.

● **BREAK** **2:45pm**

● **ENFORCEMENT BRIEFING**

C. Notices of Violation Issued and Licensee Responses **3:08pm** **TAB 4**

Erika McConnell reiterates Mr. Hoelscher's comment that if there's an NOV for which the staff would like there to be additional Board action, that it will be brought to the Board in the form of an accusation.

Advisory Notice

(3AAC 306.805)

Date: 7-17-18

Licensee:

DBA:

License #/Type: All Marijuana Licensees

Address:

This is a notice to you as licensee that an incident has occurred or a defect is noted that could result in a violation of a statute, regulation or municipal ordinance.

Note: This is not an accusation or a criminal complaint.

Please see attached flowchart that shows the flow of marijuana in compliance with our statutes and regulations. Any deviation from the flowchart is not supported by statute, regulation or the MCB. You must request approval for "backflow" transports from amco.enforcement@alaska.gov and/or the Director.

Regulations allow for transportation by a licensee, an agent or an employee of the licensee, however it remains the responsibility of the originating licensee until it is received at the receiving marijuana establishment and accepted in the marijuana tracking system. For example, a retailer can do the transport from a cultivator as long as the cultivator created the manifest and assumes responsibility of all requirement in regulations.

Your attention is directed to Lawful operation of marijuana-related facilities; AS 17.38.070(a)(2)(3)(4)(5)(6), (b)(2)(3)(4)(5), (c)(2)(3)(4)(5)(6) & (d)(2)(3): Transportation; 3 AAC 306.750: Business records; 3AAC 306:755: Retail marijuana store privileges; 3AAC 306:305: Acts prohibited at retail marijuana store; 3AAC 306.310: Standard marijuana cultivation facility: privileges and prohibited acts; 3AAC 306.405: Limited marijuana cultivation facility: privileges and prohibited acts; 3 AAC 306.410: Marijuana product manufacturing facility privileges; 3AAC 306.505: Acts prohibited at marijuana product manufacturing facility; 3AAC 306.510: Marijuana testing facilities: privileges and prohibitions; 3AAC 306.610.

Issuing Investigator: J. Hoelscher

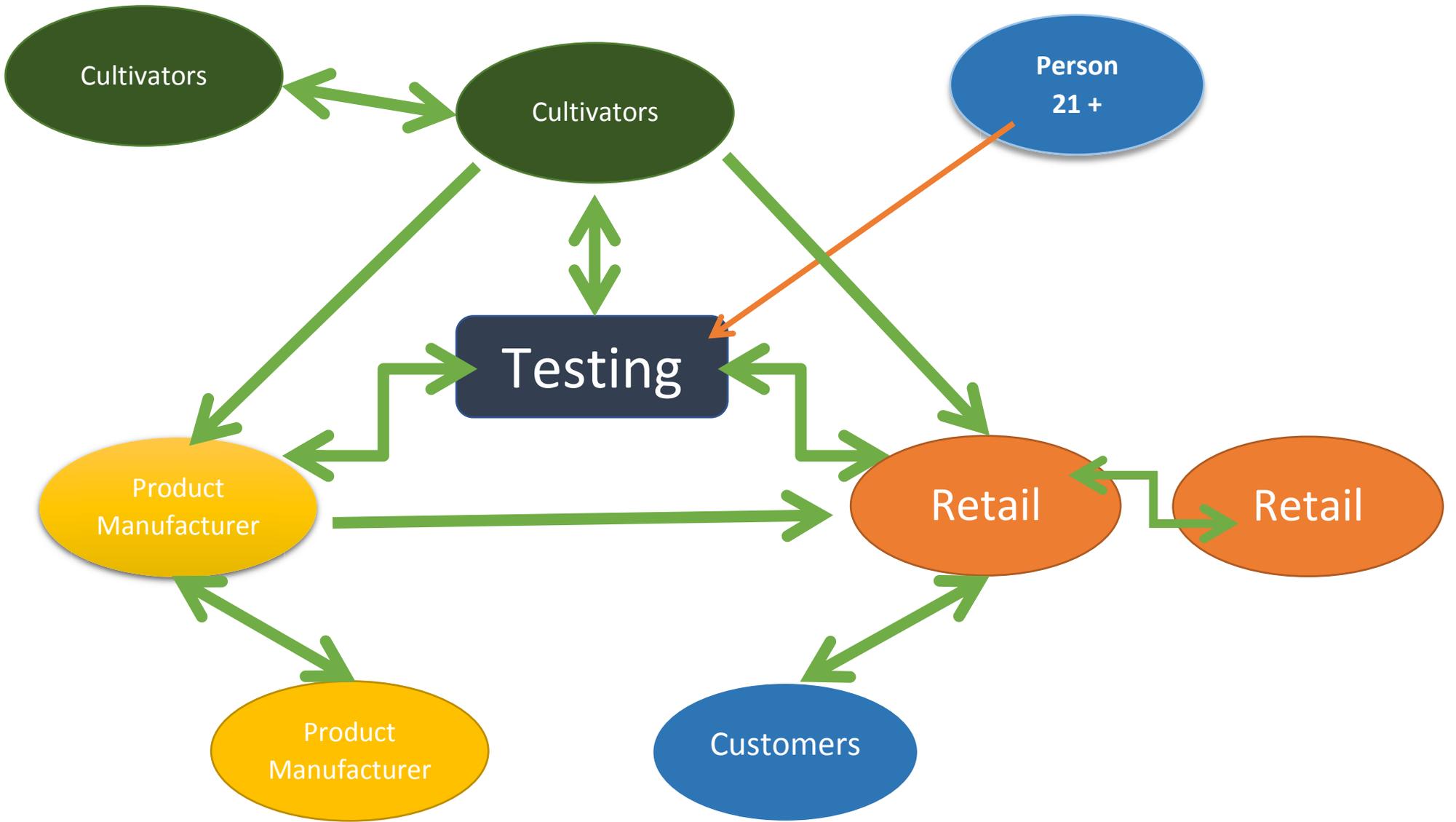
Received by:

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Delivered VIA: Email

Date:



Erika McConnell stated that the event permit was a legislative request, and discusses the fact that a new permit or license may not be created by the board.

Brandon Emmett moves to open regulation project to make additional changes to the regulations for "Onsite Consumption".

Nick Miller seconds the motion.

Brandon Emmett states that the regulation should be changed for places without a local government, and the ability to have a non-smoking onsite consumption endorsement.

All in favor, none opposed, motion carries.

Brandon Emmett moves to open regulations project titled "Packaging and Labeling".

Nick Miller seconds the motion.

Brandon Emmett states that it is necessary to address the packaging and labeling in relation to other states best practices, particularly in situations such as pre-rolls and other ambiguous situations regarding what is "packaging" a product.

Mark Springer states that he wishes to hold effort on staff's part until information is attained on other state's best practices regarding this matter.

None opposed, motion carries.

Mark Springer states that he would like to *tighten up handler permit revocation, that public notice of revocation will be given, and that the board should consider the revocation of a handler permit at the request of a licensee.*

Brandon Emmett so moves.

Nick Miller seconds the motion.

None opposed, motion carries.

Brandon Emmett moves to open a regulations project titled "Transportation".

Brandon Emmett states that this is particularly important for larger businesses and the businesses that have a larger distribution base. It's important to addressing hubs, driving requirements and finding a way to facilitate commerce. He references a broker or hub license or finding a way to have a license as currently written to operate like a hub. He finds this to currently be a significant risk to public safety and the back flow issue should be addressed.

Nick Miller seconds the motion.

None opposed, motion carries.

Brandon Emmett moves to open regulations project "Retesting".

Nick Miller seconds the motion.

Brandon Emmett states that this is an important matter to growers and that it should be at least discussed.

Advisory Notice

(3AAC 306.805)

Date: 3-23-2021

Licensee:

DBA:

License #/Type: All Marijuana Licensees

Address:

This is a notice to you as licensee that an incident has occurred or a defect is noted that could result in a violation of a statute, regulation or municipal ordinance.
Note: This is not an accusation or a criminal complaint.

Enforcement has received several questions and reports that marijuana retail stores are transferring marijuana to product manufacturers and concentrate manufacturers. This is not permitted by statute. Please see advisory language below and attached flow chart issued in July of 2018 that is still valid today.

Please see attached flowchart that shows the flow of marijuana in compliance with our statutes and regulations. Any deviation from the flowchart is not supported by statute, regulation or the MCB. You must request approval for "backflow" transports from amco.enforcement@alaska.gov and/or the Director.

Regulations allow for transportation by a licensee, an agent or an employee of the licensee, however it remains the responsibility of the originating licensee until it is received at the receiving marijuana establishment and accepted in the marijuana tracking system. For example, a retailer can do the transport from a cultivator as long as the cultivator created the manifest and assumes responsibility of all requirement in regulations.

Your attention is directed to Lawful operation of marijuana-related facilities; AS 17.38.070(a)(2)(3)(4)(5)(6), (b)(2)(3)(4)(5), (c)(2)(3)(4)(5)(6) & (d)(2)(3): Transportation; 3 AAC 306.750: Business records; 3AAC 306:755: Retail marijuana store privileges; 3AAC 306:305: Acts prohibited at retail marijuana store; 3AAC 306.310: Standard marijuana cultivation facility: privileges and prohibited acts; 3AAC 306.405: Limited marijuana cultivation facility: privileges and prohibited acts; 3 AAC 306.410: Marijuana product manufacturing facility privileges; 3AAC 306.505: Acts prohibited at marijuana product manufacturing facility; 3AAC 306.510: Marijuana testing facilities: privileges and prohibitions; 3AAC 306.610.

Issuing Investigator: J. Hoelscher

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Email

Date:

