



MEMORANDUM

TO: Members of the Marijuana Control Board
FROM: Rick Helms
DATE: June 23, 2022
RE: AMCO Program Coordinator Report

METRC

Metrc and AMCO held user group meetings for all licensees on May 2nd and will hold another on June 24th, 2022 via the Zoom meeting platform. Inv. Bankowski will provide details on these meetings in his comments.

CANNRA Meetings

The Director and I attended the annual meeting of the Cannabis Regulators Association (CANNRA) in Olympia, WA June 8-9, 2022. I also attended the CANNRA Stakeholders meeting in Seattle, WA on June 6-7, 2022. That Stakeholders meeting had panels that included:

- An Overview of Federal Initiatives, Priorities, and Needs
- Federal cannabis policy: Coalition views on state/federal roles in a future national marketplace
- Interstate Commerce: Impacts on markets, licensing, and consumer safety
- Tax, price, and illicit market: Lessons learned and future directions
- Social and Economic Equity & Social Justice: Challenges, Opportunities, and a Reality Check.
- Achieving Social/Economic Equity in the Industry: Where are we and where do we need to be?
- Social Justice: Following through on legalization's promise
- Preventing Youth Access, Promoting Consumer Safety, & Protecting Public Health
- How Data/Tech can help future policy: Public Health, Regulatory, and Industry Data Sources
- Hemp: Emergence and Proliferation of Novel Cannabinoids – regulatory, health, and market Implications
- Standards in Cannabis Regulation: Updates on efforts to establish common standards, challenges to the work, and ways state/federal officials can help
- Regulatory Service Providers: Seed to sale and track and trace systems – Lessons learned and pathways forward
- Regulatory Service Providers: Technology Advances in Licensing and Registration systems
- National B2B and B2C Cannabis Commerce: From Data to Delivery
- A Regulator's Perspective – State regulatory alignment, differences, and challenges

Of all the associations available to AMCO for participation on the MJ side of the house, CANNRA was the one selected by AMCO to rejoin in June of 2021 (Alaska had been a member jurisdiction briefly prior).

Project Updates

1. Drive-throughs/Exterior Window Pickup

Background: Covid-19 emergency regulations issued by the MCB permitted exterior window pickup of marijuana and marijuana products from a retail store. The Board defined “exterior window pickup” as “a drive through or sliding or opening window of a marijuana retail store from which marijuana or marijuana products may be purchased without consumers entering the licensed premises.” 3 AAC 306.995(c)(2). These regulations expired with the end of the public health emergency. In public comment, licensees requested that exterior window pickup regulations be re-adopted as permanent regulations. This Board directed AMCO to hold a public discussion group to prompt comments from public attendees so that the Board could determine what action, if any, to take on the licensee’s request.

After noticing all licensees and a host of government and community groups statewide, AMCO held a public discussion session on May 16, 2022. This report briefly summarizes those comments and then identifies board options going forward.

Attendees in the public discussion spoke both in favor and against permitting exterior window pickup (as that term was previously defined) permanently.

Those in favor of exterior window pickup addressed both the economic benefits to their business model and the positive benefits to their customers. The latter included the ability to better serve elderly or infirmed customers whose physical mobility and ability to enter and stay in a retail store is limited. An additional benefit to these customers as well as others included the lack of need of these individuals to walk on icy streets or parking lots before entering a store.

Those against exterior window pickup, or at least concerned about this method of delivery, spoke about the anti-competitive nature of permitting exterior window pickup. That is, original licensees may have chosen the locations of their retail stores not considering these options and remain in locations that would not permit exterior window pickup. Newer licensees can pick a location that permits exterior window pickup, creating an unfair advantage.

Others, including AMCO staff, raised definitional and public health and safety concerns. As to definitional concerns, the Board would need to determine if the sale of marijuana or marijuana products was occurring inside the premises (the store) or outside the premises (the vehicle). The board might also need to address what is a permitted vehicle for exterior window pickup; for example, should a snowmachine, 4-wheeler, car, and motorhome be treated the same or differently.

Public health and safety concerns included: (1) potential delivery of marijuana and marijuana products to intoxicated or impaired customers; (2) diversion to individuals under 21, especially if

they are in the vehicle at the time of purchase; and (3) potential danger to staff should there be an increase in potential for theft and robbery.

In the end, the discussion was engaging. The Board now has a number of options it can take, both individually and in combination, including:

- Continuing discussions through a large discussion group or a smaller working group with recommendations for membership from this Board
- Requesting AMCO to blind survey retail store licensees for their opinions on making exterior window pickup permanent
- Closing the project if the board believes the above negative concerns cannot be ameliorating or existing law would not permit the regulations project
- Opening a regulations project to permit exterior window pickup on a permanent basis. Were the board to choose this option, AMCO staff respectfully request that the regulations project consider: (1) treating exterior window pickup as an authorized endorsement on an existing or new retail store license; (2) expanding the regulations project to permit telephonic or internet orders so customers can already have their purchases preselected upon arrival to the store; (3) addressing camera or other security needs that would promote retail store staff and customer safety; and (4) addressing, if recommended by this board, requirements for local government approval.
- Any other action or request as directed by the Board

2. Random Testing for Pesticides and Heavy Metals

Background: This Board continues to address how AMCO might implement a random testing program for pesticides and heavy metals. It has directed AMCO to hold public discussions and/or working groups on this subject. The summary of a prior discussion group is in my last report. AMCO has held an additional discussion group since the Board's last meeting. As discussed below, the AMCO, licensed cultivators, and licensed laboratories remain hampered by an inability to currently test for pesticides and heavy metals in state and a federal prohibition on shipping marijuana or marijuana products out of state for testing absent a criminal law enforcement reason for doing so.

The following summary first addresses current regulations, identifies steps taken since my last report to you, and outlines options this Board can take, including my recommendations for the same.

Current regulations pertinent to random testing of pesticides and heavy metal testing read as follows:

3 AAC 306.465. Random sampling

The board will or the director shall from time to time require a standard or limited marijuana cultivation facility to provide samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. The sample may be screened for pesticides and chemical

residues, screened for unsafe levels of metals, and used for other laboratory tests the director finds to be in the interests of the public. The marijuana cultivation facility shall bear all costs of testing under this subsection.

(b) When the board or the director orders random sampling under this section, the director shall identify a licensed marijuana testing facility to perform the testing. The marijuana testing facility shall collect the test samples. The marijuana cultivation facility shall cooperate to facilitate the collection of samples.

3 AAC 306.665. Supplemental marijuana quality testing

(a) The board or director may at any time determine that the interests of the public require random supplemental testing of marijuana or a marijuana product. When the board or director requires random supplemental testing, the board will or director shall direct the marijuana cultivation facility that produced the marijuana, or the marijuana product manufacturing facility that manufactured the product, to submit a specified sample, batch, or packaged product to a designated marijuana testing facility. The material must be packaged in a manner that ensures the marijuana testing facility will be able to confirm that it has received and is testing the correct supplemental sample.

(b) When a marijuana testing facility receives a sample for random supplemental testing under this section, the marijuana testing facility shall

(1) perform any required laboratory test the board or director requests; and

(2) report its results to

(A) the board or director; and

(B) the facility that provided the sample.

(c) A marijuana testing facility that conducts laboratory testing under this section shall bill all costs directly to the marijuana cultivation facility or the marijuana product manufacturing facility that provided the samples for testing.¹

¹ Testing sample sizes are not specifically listed in regulation, but each individual test requires a necessary sample size as follows:

Plant materials

- Metals = 1g
- Pesticides = 3g
- Mico or Mycro (each) 2g

For Concentrates

- Metals = 1g or 3 .5g cartridges
- Pesticides = 1g
- Mico or Mycro (each) 1g

Soil and H2O

- Metals and Pesticide in soil is generally 50g or 2 cups
- Metals in water is minimum 50 mL, 100 – 200 mL is preferred.

By way of history, I held two internal agency meetings during February and March 2022 and one March 2022 meeting where all current marijuana licensees of any type were invited to attend and participate by contributing their thoughts, experiences, prior discussions or information they might have on the topic, or to just to listen in. Personnel from the SOA Environmental Health Lab and the Industrial Hemp program participated.

During the work on this project, all active and operating marijuana testing facilities were polled as follows (answers are combined):

Question 1. Is your marijuana testing facility in Alaska, with current equipment, able to test samples of growing medium, soil amendments, fertilizers, crop production aids, and water from marijuana cultivations for metal content and pesticides/herbicides?

Answer: No.

One lab did state that it has some equipment to test for toxic metals and pesticides but it “has been unused for a year and would need . . . maintenance” and need to undergo a validation procedure.

Question 2. Can marijuana and marijuana products currently be screened for pesticides and metals at your lab?

Answer: No

Question 3. If you are currently not testing for pesticides and metals, once you learn that regulations will be updated to include requirements for pesticide and metals testing, please estimate a timeframe for procuring equipment, reagent and standards and performing the method validation and QA/QC necessary to bring these tests online as an offering to your customers.

Answer: Unspecified to 9-12 months. Also, comments relate that timing is determinant on staffing.

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- Pesticides in water is heavily dependent on what extraction technique the lab is using. The volume requirement can be anywhere from 100 mL to 1000 mL.

Collecting a sample amount however differs from the amount needed to test as noted above. To achieve a total representative sample by weight or volume would be greater than an amount to test. It would all depend on the size of the production lot, how many plants, etc. In a hypothetical, if sampling a grow of 100 plants, a sample could be taken from every plant if possible - a few wet grams each. The lab would dry and homogenize, then subsample from that to have a 1-gram etc. testing sample.

Testing for pesticides and heavy metals requires a commitment of a substantial outlay of funds - in the range of \$500,000 to \$1M for instruments/equipment. It is doubtful that a licensed marijuana testing facility could support such purchase with proceeds from random testing alone. Adding these tests to the testing package is seen as the way to deal with such a substantial purchase of equipment. While it is difficult to determine what a competitive testing market cost might be, testing for pesticides and heavy metals could increase the combined price an estimated \$250 - \$300 to the cost of currently submitted packages.

A possibility is to have heavy metal testing (reported as not as expensive or difficult) in six months and pesticides in a 12-month timeframe. Heavy metals could be a required test for all packages and required of the labs while pesticides are tested from randomly collected samples submitted to elsewhere.

Another option is to just have a state lab test randomly for both heavy metals and pesticides. Whatever the lab, being able to test would require a lab to: order the instruments, install and complete qualifications for instruments – with company technician on location at lab, recruit and train if necessary a chemist that can perform such analysis, validations (identify problems, adjust as needed, collect data over time – weeks, write the validation report), write protocols, create all relevant internal documents and create certificates of analysis for new methods, create sample prep and analysis training materials and tests, get approval for the methods, submit the method validation report to “DEC”/ISO, participate in an audit.

After reviewing the random and supplemental/quality testing model to comply with current regulations, it appears the resource challenges to licensed marijuana testing labs of equipment and staffing for just random testing are too great. As such, a state lab approach should be used at this time.

Under the state lab approach, AMCO staff would collect each retail sample. If permissible, the retail product “sample” would be purchased by AMCO from the retail establishment (at the retailer’s purchased cost). If not permissible, the original product manufacturer or cultivator would assume the cost or portions of the costs. EHL staff would collect the plant, water and soil, etc. samples. The cultivator would assume the costs as is currently outlined partially in regulation.

The EHL of the DEC has experience with the instrumentation and testing. Approval and funding for the Department of Environmental Conservation would be required but it would be expected that DNR would use the EHL for their hemp samples rather than ship off samples to labs outside Alaska.

Nothing herein is proposed to stop a licensed marijuana testing lab from pursuing the ability to perform heavy metal and pesticide tests too.

Staff has proposed in the past a regulation addition to provide for random testing of plant, soil and water, etc. and of retail products for heavy metals and pesticides with the EHL at the DEC

performing the tests. If the MCB approves this recommended approach, staff can begin working with the state departments involved where policy and funding decisions would need to be made.

In the end, all agency and licensee direct feedback and discussions were beneficial. The Board now has a number of options it can take, both individually and in combination, including:

- Requesting AMCO open discussions with appropriate state agencies to facilitate the random collection of water and soil from cultivators and ship it out of Alaska to be tested (a small pilot project to start)
- Open a regulations project on those agency discussions to randomly collect water and soil from cultivators and ship it out of Alaska to be tested
- Create a working group of cultivators and DEC, DNR, AMCO staff to determine from the exhaustive amount of substances exactly what to test for within the regulation
- Requesting that AMCO work with other agencies regarding the feasibility of amending current regulations to fully test by a state agency or an Alaska lab licensee.
- Any other action or request as directed by the Board