



Press Release

FOR IMMEDIATE RELEASE

COMMISSIONER'S OFFICE

No. 16-002

Contact: Cynthia Franklin
Director, Alcohol and Marijuana Control Office
(907) 269-0351
cynthia.franklin@alaska.gov

Marijuana Establishment Regulations Effective on February 21

January 25, 2016 JUNEAU – Last week, Lieutenant Governor Byron Mallott filed the marijuana establishment regulations according to the provisions of AS 44.62.040 – 44.62.120. The effective date for the regulations is February 21, 2016. The full [notice](#) is available on the [Alaska Online Public Notice System](#).

“My compliments to the Marijuana Control Board and the staff of the Alcohol and Marijuana Control Office” said Chris Hladick, commissioner of the Department of Commerce, Community and Economic Development. “This was a huge regulations project to complete on a tight timeline. The board met over a dozen times over the past six months to discuss each article of the regulations in depth, always taking public comment and the interest of the health and public safety of the citizenry of Alaska into careful consideration.”

With this substantial task completed, the board and staff will spend the next six months finalizing application forms, drafting additional regulations to allow for an onsite consumption endorsement for retail store licensees, and procuring and programming the seed-to-sale software. They also expect to accept, review, and approve the first marijuana licenses.

The regulations filing by the lieutenant governor comes after the Marijuana Control Board adopted the regulations package on November 20, 2015 and subsequently transmitted them to the Department of Law for review. The Department of Law is required to review agency regulations to determine 1) its legality, constitutionality, and consistency with other regulations; 2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section; 3) its clarity, simplicity of expression, and absence of possibility of misapplication; and 4) compliance with the administrative procedure act regulations drafting manual. Out of the almost 130-page regulations package, the Department of Law approved all licensure requirements and procedures for marijuana establishments with the exception of certain text regarding national criminal history record checks (3 AAC 306.055(a) and (b)) and the subsections regarding alternative means of testing (3 AAC 306.455(d) and 3 AAC 306.550(e)). The full Department of Law memo is available with the [filing notification](#) on the [Alaska Online Public Notice System](#).

The Alcohol and Marijuana Control Office, along with the Division of Banking and Securities, the Division of Corporations, Business and Professional Licensing, the Division of Insurance, and the Regulatory Commission of Alaska, is an agency housed within the Alaska State Department of Commerce, Community and Economic Development tasked with protecting consumers in Alaska. For additional information about the agency, please visit commerce.alaska.gov/web/amco. For additional information about the Department of Commerce, Community and Economic Development and its other agencies, please visit commerce.alaska.gov.

ATTACHED: Summary of Department of Law review of marijuana establishment regulations

###



Summary of Department of Law Review of Marijuana Establishment Regulations (3 AAC 306)

The Department of Law is required to review agency regulations to determine 1) its legality, constitutionality, and consistency with other regulations; 2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section; 3) its clarity, simplicity of expression, and absence of possibility of misapplication; and 4) compliance with the administrative procedure act regulations drafting manual. The Department of Law memo is available with the [filing notification](#) on the [Alaska Online Public Notice System](#).

The Department of Law approved all licensure requirements and procedures for marijuana establishments with the exception of certain text regarding national criminal history record checks (3 AAC 306.055(a) and (b)) and the subsections regarding alternative means of testing (3 AAC 306.455(d) and 3 AAC 306.550(e)).

The Department of Law disapproved the references to “a national criminal history record check” in 3 AAC 306.055(a) and (b) because the Federal Bureau of Investigation (FBI) requires specific authority be expressed in state statute to require fingerprinting and the use of FBI records. Because state statutory authority of this sort does not exist regarding applicants for marijuana establishment licenses, any regulation to obtain national criminal history record checks must await the legislature’s amendment of relevant state statutes.

Additionally, the Department of Law disapproved the language in 3 AAC 306.455(d) and 3 AAC 306.550(e) because it lacks standards that the Marijuana Control Board could apply in a balanced, unbiased, and consistent manner to evaluate or approve a proposed alternative means of testing. The text does not provide details regarding what constitutes a geographic location or transportation limitation, making the board vulnerable to arguments that one potential licensee received more favorable treatment than another, that the record did not support the differential treatment, and that the board’s decision in a particular case therefore was arbitrary. Furthermore, they deemed that the text could put at risk the interest of the health and public safety called for in AS 17.38.190 by encouraging a prospective marijuana establishment to locate in a place that would allow for circumvention of the standard testing requirements.