



MEMORANDUM

TO: Peter Mlynarik, Chair, and
Members of the Marijuana Control Board

DATE: November 14, 2017

FROM: Erika McConnell, Director

RE: Director's Report

OPERATIONS

Two new Occupational Licensing Examiners are scheduled to start on November 16. We are currently recruiting for a Criminal Justice Technician I to support the Enforcement Section, and will shortly be recruiting for an Administrative Assistant I to support the Licensing Section. With these four additions, AMCO will only have one vacant position, which we hope to fill early next year.

AUDITS

The preliminary legislative MCB Board audit is completed and the confidential first draft has been provided to Chair Mlynarik and the DCCED Commissioner, who have responded. The final draft will be provided to the Legislative Budget and Audit Committee before the end of the year.

I am reviewing our security policies to prepare for next year's Department of Public Safety biennial audit of non-criminal justice agencies.

TRAVEL AND CONFERENCES

A second state regulator's Cannabis Summit was held on September 25-26 in Portland, Oregon. Representatives from Oregon, Washington, Colorado, Nevada, the Canadian provinces of Alberta and Manitoba, and the Canadian government attended. Such meetings continue to enhance communication and collaboration between regulatory agencies, and work on a regulator's association continues.

On October 19-20 I attended the 3rd annual Denver Marijuana Management Symposium and presented on two panels: Social Consumption and a state overview.

TRAINING

In the middle of October, Metrc planned a trip to Anchorage and Fairbanks and offered training classes in both locations to all licensees. After only one licensee signed up, we cancelled the training classes and asked the Metrc staff to visit particular licensees who had been identified by either Metrc or AMCO as having Metrc issues. Mr. Kelly Jenkins of Metrc made eight site visits and spent several hours at each location. Many of the licensees provided feedback that this was extremely helpful to them. While we will not be able to send Metrc staff to each licensee, we encourage licensees to continue to refresh their Metrc knowledge through the trainings offered (new employees who may

use Metrc should take the new business class and others can take the advanced class) and to reach out to Metrc Support if they have questions or problems.

REGULATIONS

- **Current Regulations Projects**

Attachment 1 to this report is a regulations projects status spreadsheet.

SPECIFIC ISSUES

- **Delegation**

All delegation memos have been posted on the website, under "Board Guidance."

- **Interpretation of "Controlling Interest"**

A change in controlling interest of a license requires a transfer approved by the board (3 AAC 306.045). "Controlling interest" is defined at 3 AAC 306.990(b)(14) as follows:

"controlling interest" means ownership or control of

(A) 50 percent or more of the ownership interest or voting shares of a corporation; or

(B) less than 50 percent if a person and family members jointly exert actual control as demonstrated by

(i) making decisions for the corporation without independent participation of other owners;

(ii) exercising day-to-day control over the corporation's affairs;

(iii) disregarding formal legal requirements;

(iv) using corporation funds for personal expenses or investments, or intermingling corporation finances with personal finances; or

(v) taking other actions that indicate the corporation is a mere instrumentality of the individual;

I am seeking the board's support for the interpretation of controlling interest based on what has been standard in the office for alcohol licenses for a long time.

When examining whether or not a change of ownership is a change in controlling interest, staff considers the following:

- Has the ownership of 50% of the license changed?
- Has a person who did not used to own 50% now become an owner of 50% or more?
- Has the number of people needed to create a majority of shares changed? (Example: Person 1 owns 26%; Person 2 owns 26%; Person 3 owns 26%; and three other people own 4% each. In this scenario, any two 26% shareholders can act with a majority. They propose to change the ownership structure so that Person 1 owns 25%; Person 2 owns 25%; Person 3 owns 25%; and three other people own 5% each. Now, at least three people are needed to act with a majority.)

If the answer to any of those questions is yes for the licensee, then this is considered to be a change in controlling interest and a transfer is required.

These questions would be applied to any entity that owns the license. If the entity which owns the license is owned another entity, then a change in controlling interest in the second entity would also require approval by the board. If an entity is part owner in a license, then a change in the controlling

interest of that entity would require board approval if the entity owns a controlling interest in the license.

These considerations apply to all types of ownership structure: sole ownership, limited liability organizations, corporations, and partnerships.

This interpretation allows the board to see and approve the individual(s) who will control the license as contemplated by statute and regulation. The federal government's enforcement priorities and state statutes impose a duty on the board to make sure Alaska's marijuana industry is run by legitimate tax paying individuals and not criminal gangs.

Does the board agree with this interpretation?

- **Expiration of Newspaper Ad**

At what point does the required public notice for a license application become stale? In the alcohol program, the required public notice must be given within the 60 days immediately preceding the filing of the application (3 AAC 304.125(d)). The marijuana regulations are silent on this issue.

As an incomplete application does not "expire" without specific notice from the director providing a 90 day deadline to complete the application¹, it is possible that a public notice could be published six months or more before an application is completed. It is difficult for interested members of the public to keep track of the status of an application when the process can stretch out for such a long time after the initial public notice.

- **Products Spreadsheet**

While we have not had time to complete the products spreadsheet, I have created a "test" portion of a spreadsheet for the board's review, to ensure that we are providing the information the board desires. This will be provided to the board at the November 14 meeting. The final spreadsheet should be completed for the board by the January meeting.

- **Testing**

Through our work on the edibles testing regulation and some of the testing issues that have been raised by licensees recently, I believe a thorough examination of the testing regulations is warranted. The following issues, at a minimum, need attention:

- Evidence of significant deviation in potency testing results of same product by different labs.
- Is it time to require proficiency testing under 3 AAC 306.625?
- Do products have a 50mg THC limit (3 AAC 306.560(2)) or a 60mg THC limit (3 AAC 306.645(b)(1)(C)(i))?
- What kind of testing does concentrate created by CO2 extraction get?
- 3 AAC 306.550(b)(1) requires one product from a production lot to be tested, but (3 AAC 306.645(b)(1)(B)(iii) requires the testing for homogeneity of each serving in a multi-unit package.

¹ I have sent notice to all applications in "new" and "initiated" status that were begun in 2016 to implement their 90 day notice under 3 AAC 306.025(f) so that in 90 days, any incomplete applications can be voided, but this type of notice is a relatively low priority at this time.

- Is one product from a production lot sufficient, if the production lot has 2,000 pieces?
- If the product is infused with marijuana by injection, does each serving in a multi-unit package need to be tested?
- Is one 4g sample from a harvest batch of any size sufficient for testing?
- Is it safe to allow marijuana with aspergillus mold to be turned into smokable concentrate using any sort of extraction method?

With over a year of implementation under our belt, I think it is time to take a comprehensive look at the testing regulations and make some revisions. I recommend the board create a scoping committee, consisting of two board members, a representative from each testing lab, a couple of other licensee representatives, some DEC staff, some DHSS staff, an expert or two from the university system (assuming we can find volunteers), and AMCO staff. This committee would work to determine what improvements should be made to our testing regulations in order to address the issues raised above and best protect the public safety, health, and welfare.

● **Multiple Limited Cultivation Licenses at Same Location**

In answer to an inquiry about if we would accept two limited cultivation licenses from the same licensee at the same location (which appeared to be an effort to circumvent the Matanuska Susitna Borough's restrictions on standard cultivation facilities), I answered that that would not be allowed. I am seeking the board's guidance on how different two licensees would need to be in order to have collocated limited cultivation licenses.

BUDGET INFORMATION

Expenditures	FY17 Authorized for Marijuana*	FY17 Actual for Marijuana	FY17 Authorized for Alcohol	FY17 Actual for Alcohol
Personal Services	584,500	528,800	1,334,900	1,107,023
Travel	91,800	43,333	91,900	28,897
Services	717,000	608,093	524,804	444,360
Commodities	79,600	58,413	79,500	41,577
Total	1,472,900	1,238,639	2,031,104	1,621,858

Expenditures	FY18 Authorized for Marijuana*	FY18 Actual for Marijuana (thru Oct)	FY18 Authorized for Alcohol	FY18 Actual for Alcohol (thru Oct)
Personal Services	398,300	225,855	1,770,700	208,944
Travel	73,500	12,078	110,200	10,412
Services	509,100	51,109	763,700	19,245
Commodities	71,600	6,282	87,500	7,249
Total	1,052,500	295,324	2,732,100	245,851

*includes general fund allocation

Revenue	FY17 Authorized	FY17 Actual	FY18 Authorized	FY 18 Actual (thru Oct)
Marijuana	1,470,700	1,345,944	1,574,400	477,459
Alcohol	2,031,104	1,899,233	2,206,700	65,504

NEXT MEETINGS

The next MCB meeting is scheduled for January 24-25 in Juneau. Applications must be complete and any other documents for the board must be submitted to our office by January 5, 2018, to be on the January agenda.

STATISTICS

Sales

August	\$6,335,573
September	\$6,504,069
October	\$7,831,254

Total 2017 sales, through August 31, 2017: \$42,278,509

Taxes

July – from 46 taxpayers:	\$577,901
August – from 56 taxpayers:	\$691,303
September – from 64 taxpayers:	\$723,757

Total taxes from program inception to September 30, 2017: \$3,741,810

DOL Project Number	Topic	Date Opened by MCB	Board member point person(s)	Current Status/Notes	Date Adopted by MCB	Effective Date
JU2015200669	Omnibus Regulations			Adopted by board; filed with Lt Gov	11/20/15 Pg 23	2/21/16
JU2016200436-1	Conduct of board meetings in alcohol	2/11/16 pg 2		Adopted by board; filed with Lt Gov	7/6/16	12/28/16
JU2016200436-2	[Reserved for anticipated future work]					
JU2015201028	Onsite consumption	2/11/16		Board voted not to continue project 2/2/17	N/A	N/A
JU2016200617	Handler permits	4/27/16 pg 9		Out for public cmt 9/7/16; duplicated by Prj#165	N/A	N/A
JU2016200611	Testing	6/9/16 pg 22		signed by Lt. Gov. 6/5/17	4/5/17	7/5/17
JU2016200610	Advertising requirements	6/9/16 pg 22	Schulte	Voted out for public comment 7/8/16 and 5/15/17; comment period ended 6/30/17; vote to put out for comment failed 7/14/17	N/A	N/A
	Space planning and layout					
	Labeling and packaging			Voted out for public comment 7/8/16 and 5/15/17; comment period ended 6/30/17; on 11/14/17 agenda for reconsideration	7/14/17	
JU2016200612	Video surveillance (Schulte handout)	6/9/16 pg 22	Schulte			
JU2016200609	Participation of outside entities – residency requirements (BE handout)	6/9/16 pg 22	Emmett			
JU2016200605	Waste disposal (Springer motion)	6/9/16 pg 23	Springer	Combined with waste disposal #2	N/A	N/A
JU2016200613	Retail store notices	7/8/16 pg 16		signed by Lt. Gov. 6/22/17	4/5/17	7/22/17
JU2016200837	Requiring fingerprints for new owners	9/7/16		signed by Lt. Gov. 6/19/17	4/5/17	7/19/17
JU2016200838	What happens to existing licenses if local gov opts out by ordinance	9/7/16		signed by Lt. Gov. 6/27/17	4/5/17	7/27/17
JU2016200839	DEC approval before acceptance of license application (food safety permit)	9/7/16		signed by Lt. Gov. 6/27/17	4/5/17	7/27/17
	Advertisement; definition of “advertisement” and “logo”	12/7/16		Board took no action on proposal (2/2/17)	N/A	N/A
JU2017200165-1	Transportation	2/2/17		signed by Lt. Gov. 9/11/17	7/13/17	10/11/17
JU2017200165-2	Revocation of handler’s permit			Voted out for public comment 3/7/17; comment period ended 5/5/17; amended and voted out for public comment 7/13/17		
	Random sampling	2/2/17		Draft on 11/14 agenda		

DOL Project Number	Topic	Date Opened by MCB	Board member point person(s)	Current Status/Notes	Date Adopted by MCB	Effective Date
JU2017200542	Quality control	2/2/17		Voted out for public comment 7/14/17; posted 8/17/17; cmts due 9/29/17; on 11/14 agenda		
	Waste disposal #2					
	Notify AMCO of crime on licensed premises	5/15/17	Springer			
JU2017200548	Onsite Consumption	3/7/17		Voted out for public comment on 7/14/17; posted 8/21/17; cmts due 10/27/17; on 11/14 agenda		
JU2017200536	Plant count for new cultivators	4/5/17		Voted out for public comment 7/14/17; posted 8/15/17; cmts due 9/22/17; on 11/14 agenda		
	Require trim that is sold separately to be tested separately; kief	5/15/17	Emmett; Miller			
	Require testing licensee to notify director of significant equipment failure		Springer			
	Separation distance	4/5/17	Springer	Draft on 9/14 agenda; no action		
JU2017200477	Timing of public objections	5/15/17	Emmett	Voted out for public comment 7/14/17; cmts due 9/5/17; on 9/14 agenda	9/15/17	
	Local government jurisdiction					
JU2017200533	Revise definition of “direct or indirect financial interest” at 3 AAC 306.015(e)	5/15/17	Springer	Voted out for public comment 7/14/17; posted 8/14/17; cmts due 9/29/17; on 11/14 agenda		
	Better define “promotional activities” and “advertisement”		Mlynarik; Miller			
	Revise definition of “recreation or youth center”	5/15/17	Miller	Draft on 7/12 agenda; sent back to drawing board		
	Allow licensees to participate in trade shows	5/15/17	Emmett	Voted out for public comment 9/14/17		
	Streamline edibles testing	7/14/17	Emmett	Draft on 11/14 agenda		
	Financial background investigations	9/14/17	Jones	Draft on 11/14 agenda		
	Require corporation bylaws			Draft on 11/14 agenda		
	Multiple businesses on a lease			Draft on 11/14 agenda		
	Removal of affiliates			Draft on 11/14 agenda		
	Charging for multiple inspections	9/14/17		Draft on 11/14 agenda		
	Definition of resident	9/14/17		Draft on 11/14 agenda		
	Local gov approval of odor emissions	9/14/17	Springer	Draft on 11/14 agenda		