



MEMORANDUM

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

DATE: November 14, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Quality Control;
Waste Disposal; Notify AMCO of
Crime on Premises

Quality Control

Summary: This regulation allows licensed cultivators and product manufacturers to provide employees small samples for the purpose of quality control testing. Inventory of the provided samples must be documented and retained by the licensee, as must documentation from the employee on a form prescribed by the board.

Public Comment: Comment period 8/17/17 to 9/29/17. Public comments attached.

Recommendation: Adopt new subsection 3 AAC 306.460(d) and new section 3 AAC 306.557.

Waste Disposal

Summary: This regulation limits the waste notification that licensees are required to send to the director to be required only when the amount of waste is more than one ounce. It places all authority to approve retests and allow extraction of failed test material to the director. It changes the definition of marijuana waste and requires notification of upcoming waste disposal to be in writing rather than through the tracking system.

Public Comment: Comment period 8/17/17 to 9/29/17. Public comments attached.

Recommendation: Due to upcoming changes to Metrc and the recent request from the Department of Law regarding the packaging and labeling regulations change relating to perishable products, the changes to 3 AAC 306.660 and 3 AAC 306.740 should be amended and put back out for public comment.

Notify AMCO of Crime on Premises

Summary: This regulation requires all licensees to report to the director any unauthorized access to the licensed premises, including the reporting of theft of money or marijuana or marijuana products.

Public Comment: Comment period 8/17/17 to 9/29/17. Public comments attached.

Recommendation: Adopt addition of new subsection 3 AAC 306.715(e).

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.460 is amended by adding a new subsection to read:

(d) A licensed marijuana cultivation facility may provide a sample of marijuana to an employee of the facility, that is in possession of a valid marijuana handler card for the purpose of quality control only if:

(1) samples provided to employees for quality control does not exceed a cumulative total of one ounce per 30-day period;

(2) each sample is registered and tracked using the marijuana inventory tracking system in accordance with 3 AAC 306.730;

(3) consumption of marijuana does not occur on the licensed premises;

(4) no sample is resold to another licensee or consumer;

(5) each employee who receives a marijuana sample for the purpose of quality control completes a quality control form prescribed by the board for each sample; and

(6) the licensee maintains copies of completed forms required under (5) of this subsection in accordance with 3 AAC 306.755.

(7) marijuana that leaves the licensed premises must be packaged in opaque, resealable, child-resistant packaging and clearly marked or labeled “For Quality Control” and the packaging must be designed or constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly. (Eff. __/__/____.

Register____)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.557. **Quality Control sampling.** (a) A licensed marijuana product manufacturing facility may provide a sample of marijuana concentrate or other marijuana product to an employee of the facility, that is in possession of a valid marijuana handler card for the purpose of quality control only if:

(1) Samples provided to employees for quality control do not exceed a cumulative total set out in 3 AAC 306.355 in a 30-day period:

(2) each sample is registered and tracked using the marijuana inventory tracking system in accordance with 3 AAC 306.730;

(3) consumption of marijuana does not occur on the licensed premises;

(4) no sample is resold to another licensee or consumer;

(5) each employee who receives a marijuana sample for the purpose of quality control completes a quality control form prescribed by the board for each sample; and

(6) the marijuana cultivation facility licensee maintains copies of completed forms required under (5) of this subsection in accordance with 3 AAC 306.755.

(7) marijuana that leaves the licensed premises must be packaged in opaque, resealable, child-resistant packaging and clearly marked or labeled “For Quality Control” and the packaging must be designed or constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly. (Eff. __/__/____.

Register____)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900

3 AAC 306.660. Failed materials; retests (a) If a sample tested by a marijuana testing facility does not pass the required tests based on the standards set out in 3 AAC 306.645, the marijuana establishment that provided the sample shall

(1) dispose of the entire harvest batch or production lot from which the sample was taken; and

(2) document the disposal of the sample using the marijuana establishment's marijuana inventory tracking system; **and**

(3) notify the director in writing within 24 hours if the amount destroyed totals more than one ounce.

(b) If a sample of marijuana fails a required test, any marijuana plant trim, leaf, and other usable material from the same plants automatically fail the required test. The **director** [BOARD] may approve a **written** request, **on a form prescribed by the board,** to allow a batch of marijuana that fails a required test to be used to make a carbon dioxide- or solvent-based extract. After processing, the carbon dioxide- or solvent-based extract must pass all required tests.

(c) If a marijuana cultivation facility or a marijuana product manufacturing facility **submits a written request on a form prescribed by the board** [PETITIONS] for a retest of marijuana or a marijuana product that failed a required test, the **director** [BOARD] may authorize a retest to validate the test results. The marijuana cultivation facility or a marijuana product manufacturing facility shall pay all costs of a retest.

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.715 is amended by adding a new subsection to read:

(e) A marijuana establishment will notify the Alcohol and Marijuana Control Office as soon as reasonably practical and in no case more than 24 hours after any unauthorized access to the premises or the establishment's knowledge of evidence or circumstances that reasonably indicate theft, diversion or unexplained disappearance of marijuana, marijuana products, or money from the licensed premises. (Eff 2/21/2016, Register 217; am __/__/____, Register____)

3 AAC 306.740 Waste Disposal is amended to read:

(a) A marijuana establishment shall store, manage, and dispose of any solid or liquid waste, including wastewater generated during marijuana cultivation production, processing, testing, or retail sales, in compliance with applicable federal, state, and local statutes, ordinances, regulations, and other law

(b) Marijuana waste must be rendered unusable for any purpose for which it was grown or produced before it leaves a marijuana establishment. Marijuana waste includes

(1) marijuana plant waste, including, [ROOTS] stalks, leaves, and stems that have not been processed with solvent;

(2) solid marijuana sample plant waste in the possession of a marijuana testing facility;

(3) marijuana or marijuana product that has been deemed by the licensee unfit for sale or consumption;

(4) expired marijuana products; and

(5) other waste as determined by the board.

(c) A marijuana establishment shall

(1) in the marijuana inventory tracking system required under 3 AAC 306.730, give the board notice not later than three days before making the waste unusable and disposing of it; however, the director may authorize immediate disposal on an emergency basis; and

(2) keep a record **through the inventory tracking system** of the final destination of marijuana waste made unusable; **and**

(3) immediately notify the board in writing if requesting disposal of

(A) more than 1 gram of marijuana concentrate; or

(B) more than one ounce of marijuana or marijuana product.

(d) Marijuana plant waste must be made unusable by grinding the marijuana plant waste and mixing it with at least an equal amount of other compostable or non-compostable materials. A marijuana establishment may use another method to make marijuana waste unusable if the board approves the method in advance. Material that may be mixed with the marijuana waste includes

(1) compostable materials including food waste, yard waste, vegetable based grease or oils, or other wastes approved by the board when the mixed material can be used as compost feedstock or in another organic waste method such as an anaerobic digester with approval of any applicable local government entity; or

(2) non-compostable materials including paper waste, cardboard waste, plastic waste, oil, or other wastes approved by the board when the mixed material may be delivered to a permitted solid waste facility, incinerator, or other facility with approval of any applicable local government entity.

(e) If marijuana or a marijuana product is found by, or surrendered to, a law enforcement officer including a peace officer or an airport security officer, the officer may dispose of the marijuana or marijuana product as provided in this section or by any method that is allowed under any applicable local ordinance. (Eff. 2/21/2016. Register 217, am __/__/____, Register____)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

Marijuana Control Board,

Marijuana Control Board proposed regulations-- changes to disposal of marijuana waste, quality control marijuana, and reporting unauthorized access to a licensed marijuana facility.

Quality Control:

I am in support of adding the quality control regulations to 3 AAC 306 and would like to see the Marijuana Retail Licenses given the same ability. I think that a quality control program is necessary for success from a business stand point. For any business to maintain high standards in the products that it provides there is a need to have some way to know their products are actually quality.

I think that the one ounce limit per month is sufficient to allow for quality control and to prevent diversion since it will be such small amount and tracked. Without any diversion, I can't see how this could affect the public's health or safety.

Failed materials; retests:

I support the changes made to the failed materials section. I think the changes up to clear up what happens if a test fails.

Waste Disposal:

In this section it is being added that we must keep record through the inventory system of the final destination of waste. I am unsure as to where in the tracking system there is a spot to record the final destination. Can it be added that once marijuana is mixed and rendered unusable it is no longer considered marijuana? A new applicant might not know this is the view of the board.

In a previous meeting the board voted not to include the roots as "marijuana." Would it be possible to see that added in this so that a new licensee will know that the roots don't need a 3 day quarantine?

Bailey Stuart

From: C. Barret Goodale
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Comments Regarding Proposed Regulation Changes
Date: Monday, August 21, 2017 4:49:53 PM

AMCO,

Below are my comments regarding the proposed changes to the regulations. please see comments in RED.

Thank you,
C. Barret Goodale

3 AAC 306.740 Waste Disposal is amended to read:

(a) A marijuana establishment shall store, manage, and dispose of any solid or liquid waste, including wastewater generated during marijuana cultivation production, processing, testing, or retail sales, in compliance with applicable federal, state, and local statutes, ordinances, regulations, and other law

(b) Marijuana waste must be rendered unusable for any purpose for which it was grown or produced before it leaves a marijuana establishment. Marijuana waste includes

- (1) marijuana plant waste, including, stalks, leaves, and stems that have not been processed with solvent;
- (2) solid marijuana sample plant waste in the possession of a marijuana testing facility;
- (3) marijuana or marijuana product that has been deemed by the licensee unfit for sale or consumption;
- (4) expired marijuana products; and
- (5) other waste as determined by the board. Register_____,_____2017 DEPARTMENT OF COMMERCE, COMMUNITY AND EC. DEV. 5

(c) A marijuana establishment shall

(1) in the marijuana inventory tracking system required under 3 AAC 306.730, give the board notice not later than three days before making the waste unusable and disposing of it;

According to **3 AAC 306.740 section B Marijuana waste must be rendered unusable for any purpose for which it was grown or produced before it leaves a marijuana establishment.** If we remove leaves, the intended purpose of said leaves where to photosynthesize and produce sugars to be used in the other developing portions of the plant. Therefore, upon the removal of the leaf from the plant it is immediately rendered unusable for its intended purpose. In such a case, how do we keep from rendering this "Waste" as usable for three days prior to it being destroyed in order to stay in compliance under 3 AAC 306.730? **METRC is our inventory tracking system. METRC does not have an option to report waste generated by a plant that is in the vegetative state. METRC does not have an option for reporting waste from flowering plants that are not harvested. This regulation is worded so that it is impossible to comply.** Furthermore, this regulation is in direct conflict of another regulation. 3 AAC 306.735 section 4 subsection B states that a "Marijuana" establishment should prevent attracting pests. Storing plant material that has been removed from a plant is in direct conflict with Integrated Pest Management (the most effective and ecologically sound form of pest management backed by the DEC). By storing detached plant material for three days an environment is created for bacteria and mold to grow and multiply. It is important to keep a facility free of damaged plant material to prevent unwanted organisms. This regulation is in direct conflict of GAP (Good Agricultural Practices). The top priority of regulations should be to protect the consumer, and this regulation is in direct opposition of that priority. **however, the director may authorize**

immediate disposal on an emergency basis; and

(2) keep a record through the inventory tracking system of the final destination of marijuana waste made unusable; **There is no option in METRC for reporting the final destination under the report waste function. This regulation is worded so that it is impossible to comply.** and

(3) immediately notify the board in writing if requesting disposal of (

A) more than 1 gram of marijuana concentrate; or

(B) more than one ounce of marijuana or marijuana product.

(d) Marijuana plant waste must be made unusable by grinding the marijuana plant waste and mixing it with at least an equal amount of other compostable or non-compostable materials. A marijuana establishment may use another method to make marijuana waste unusable if the board approves the method in advance. Material that may be mixed with the marijuana waste includes (1) compostable materials including food waste, yard waste, vegetable based grease or oils, or other wastes approved by the board when the mixed material can be used as compost feedstock or in another organic waste method such as an anaerobic digester with approval of any applicable local government entity; or (2) non-compostable materials including paper waste, cardboard waste, plastic waste, oil, or other wastes approved by the board when the mixed material may be delivered to a permitted solid waste facility, incinerator, or other facility with approval of any applicable local government entity.

From: steve@greatnortherncannabis.com
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Comments on Proposed Regulations - Waste Disposal and Quality Control
Date: Saturday, September 09, 2017 7:16:16 PM

September 9, 2017

Marijuana Control Board

Peter Mlynarik, Chair

Mark Springer

Loren Jones

Brandon Emmett

Nicholas Miller

Alcohol & Marijuana Control Office

550 West Seventh Avenue, Suite 1600

Anchorage, Alaska 99501

RE: Proposed 3 AAC 306.460; 3 AAC 306.557; 3 AAC 306.660; 3 AAC 306.740; 3 AAC 306.715 –
Waste Disposal, Quality Control

Dear Sirs:

Great Northern Cannabis, Incorporated (GNC) is an Alaska corporation with approximately 40 full- and part-time employees, and 25 Alaskan shareholders from a wide variety of backgrounds. We currently own and operate a cultivation facility and a retail store. We thank you for the opportunity to comment on the proposed regulations for waste disposal and quality control.

GNC supports the proposed regulations regarding quality control. While we concur that form retention described in 3 AAC 306.460 (d) (5) & (6) appropriately mirrors record retention requirements in 3 AAC 306.755, we think it affords the board an opportunity to revisit those requirements. Specifically, we think it appropriate to reduce on-premises retention from six to three months and archived retention from three to two years. We further think record retention should be revisited on a regular basis with an eye toward migrating all record retention to the inventory tracking system.

In general, GNC is also supportive of the regulatory changes related to waste disposal with the following caveats:

1. Because the inventory tracking system (METRC) is updated in real-time we do not support the added written notifications in 3 AAC 306.660 (a) (3) and 3 AAC 306.740 (c) (3). If such notification for the director and/or board is deemed to be in the public

interest then the inventory tracking system should be configured to provide such notification. Indeed, electronic notification would be more efficient in that a written notification submitted on a Friday evening may be received timely but not noted by staff until the following Monday.

2. We would respectfully request that 3 AAC 306.715 be modified to include local police departments as a proxy for AMCO. Depending on the nature of an incident and the level of required response it is easy to envision circumstances when law enforcement might be notified but an additional notification to AMCO might slip through the cracks for more than 24 hours. Given the potential level of disruption to business operations adding a possible AMCO enforcement action seems excessive.

Thank you again for the opportunity to comment on these proposed changes. We would be happy to answer questions and participate in any rule-drafting discussions.

Best regards,

Steve Brashear

Chairman & CEO

Great Northern Cannabis, Inc.

Marijuana Control Board,

Marijuana Control Board proposed regulations-- changes to disposal of marijuana waste, quality control marijuana, and reporting unauthorized access to a licensed marijuana facility.

Quality Control:

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Chris Farris

Marijuana Control Board,

Marijuana Control Board proposed regulations-- changes to disposal of marijuana waste, quality control marijuana, and reporting unauthorized access to a licensed marijuana facility.

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Caleb Saunders

Public comment from R.C. Tinderbox

3 AAC 306.460 and 3 AAC 306.557 new subsections allowing marijuana licensees to give small amounts of marijuana to employees for quality control testing.

(A) We feel this is a very important aspect of the cultivation process, our employees can let us know how the effects of the strain are, the quality of the flower, if it burns clean and if it is a strain we should continue to grow in our facility or start a new one.

3 AAC 306.405(a) (8) begin initial operations at the time of preliminary inspection with up to 12 mature, non-flowering plants, designated and used as mother plants; any number of immature plants; and any number of seeds.

(A) We feel this is the best for the initial inspection with one exception, the definition of the mature plant should at least be 36" in height, the reason for this is all plants have different growth structures, a lot of growers remove the lower portion of the plant because it does not get proper light penetration, thus reducing the amount of live foliage that is usable for taking clones, you would have a plant that was naked possibly up to 18" with no room for new growth.

3 AAC 306.405(b) (6) introduce marijuana or marijuana product, including plants and seeds onto the licensed premises from any outside source after the initial preliminary inspection, as acquired from another licensed cultivation facility and accounted for in the marijuana cultivation facility's marijuana inventory tracking system as required under 3 AAC 306.730.

(A) We feel this a direct conflict with AS 17.38.070 which reads: (b) Notwithstanding any other provision of law, the following acts, when performed by marijuana cultivation facility with a current, valid registration, or a person 21 year of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana cultivation facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(5) Receiving or purchasing marijuana from a marijuana cultivation facility; and

(6) Receiving marijuana seeds or immature marijuana plants from a person 21 year of age or older.

3 AAC 306.435 is amended to read:

(a) A marijuana cultivation facility shall use a marijuana inventory tracking system in compliance with 3 AAC 306.730 to ensure all marijuana propagated, grown or cultivated on the marijuana cultivation facility's premises are identified and tracked from the time the marijuana is marijuana cultivation facility shall assign a tracking number to each plant over eight inches tall. When harvested, bud and flowers, kief, clones or cuttings, or leaves and trim may be combined in harvest batches of distinct strains, not exceeding five pounds. Each harvest batch must be given an inventory tracking number. Clones or cuttings must be limited to 50 or fewer plants and identified by a batch tracking number.

(A) We feel this is appropriate.

3 AAC 306.455 (b) (1) collect a random, homogenous sample for testing by segregating harvest marijuana into batches of individual strains of bud, flower, **leaf, trim, and kief**, then selecting a random sample from each batch in an amount required by the marijuana testing facility.

(A) We feel this is appropriate.

3 AAC 306.470 (a) is amended to add a new subsection and renumber subsequent sections:

a marijuana cultivation facility that repackages for sale leaf, trim, or any other usable part of the marijuana plant that is not flower or bud must have the product independently tested for THC potency in accordance with 3 AAC 306.345.

(A) We feel that if anything going to a retail store for the purpose of selling to the consumers, has to be tested, however we feel that this should not be the case if it is going to a manufacturing for processing, the cultivator already testes this and then the product gets tested again after final processing before it goes to the retail store and for that reason we feel the amended should read as follows: (a) a marijuana cultivation facility that repackages for sale leaf, trim, or any other usable part of the marijuana plant that is not flower or bud **to a retailer** must have the product independently tested for THC potency in accordance with 3 AAC 306.345.

3 AAC 306.645 (b)(1) is amended by adding a new subparagraph: (D) Marijuana leaf, trim, kief and other parts of the marijuana plant must be tested for potency separately from marijuana flower.

(A) We feel that the same applies to this as **3 AAC 306.470 (a) language and should read as follows:** (D) Marijuana leaf, trim, kief and other parts of the marijuana plant must be tested for potency separately from marijuana flower when **sold to a retail store**.

3 AAC 306.670 is amended to add a new subsection to read:

(d) A marijuana testing facility shall notify the director in writing not later than 24 hours after a significant equipment malfunction or failure that prevents the completion of required marijuana or marijuana product testing. The licensee shall notify the director of any action the licensee intends to take to provide for re-testing or destruction of the marijuana or marijuana product.

(A) We feel that this is appropriate.

3 AAC 306.990(a) is amended to read:

(5) "immature" means a marijuana plant **18 inches or less in height**, with no visible crystals, buds, or flowers, and in which the exposure to light is scheduled with the intent to prevent formation of crystals, buds, or flowers; and 3 AAC 306.990(a) is amended by adding a new subsection (11)
(11) "mature" means a marijuana plant over 18 inches in height.

(A) We feel that a 36-inch height is more appropriate height as we mentioned in 3 AAC 306.405(a) the reason for this is all plants have different genetics and different growth structures, that make every plant different and unique in the way they grow for example a strain that grows like a vine or one that grows on a single stock, for this reason to limit the height to only 18-inches only is not realistic and can be problematic another reason would be a lot of growers remove the lower portion of the plant because it does not get proper light penetration, thus reducing the amount of live foliage that is usable for taking clones, you would have a plant that was naked possibly up to 18" with no room for new growth also a healthy happy plant can grow up to 1 to 2 inches per day.



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September 29, 2017

Marijuana Control Board
Director McConnell
Sent Via Email

Re: Public Comment for November 2017 MCB Meeting

Dear Honorable Members of the Marijuana Control Board & Director McConnell:

Thank you for considering my public comment for the regulation projects identified below.

Quality Control

I would urge the board to adopt this regulation language to allow cultivation and manufacturing licensees to give small samples of marijuana, concentrates and marijuana products to their employees for the purpose of quality control testing. This will allow employees to be more knowledgeable of the product they are selling. Breweries, distilleries, wineries, and restaurants all allow for their employees to try the products they are selling so that the employees can speak from experience as to what they are selling – small amounts for sampling purposes should be allowed.

Direct or Indirect Financial Interest

The exemption in the regulations to allow a landlord to receive a percentage of a marijuana establishment's earnings on a percentage based lease/rent agreement is the exact same language as provided for in the alcoholic beverages regulations, which provide for the identical exemption of percentage based rental arrangements from the prohibition of any persons who are not a licensee from having a financial interest in the liquor/marijuana license. According to the current Alcoholic Beverage Control regulations and statutes, at Section 04.11.450, titled Prohibited Financial

Interest, subsection (a) provides that:

A person other than a licensee may not have a direct or indirect financial interest in the business for which a license is issued.

Id (emphasis added). This is the same prohibition language in our marijuana regulations. In the same section at sub section (d), the alcoholic beverages regulations further state:

For purposes of this section, a lessor under a graduated or percentage lease-rent agreement involving a premises licensed under this title does not hold a financial interest in the business.

Id (emphasis added).

The exemption that Staff is attempting to remove is the same exact exemption that is specifically allowed for in the liquor regulations. The rationale when this current regulation project was presented to the control board was to address concerns that landlords could potentially control the marijuana business via this type of lease arrangement. This concern lacks validity for several reasons.

- First, the control board requires in all commercial marijuana applications that the leases that the licensees are subject to be made, in their entirety, part of the marijuana application. Second, in those leases, which are required to be disclosed, there must be provisions that the landlord agrees to comply with the regulations regarding visitor policies (which means a landlord may never enter the facility's restricted access areas without signing into the visitor log and must agree to never take possession of any marijuana, marijuana plants or products and must contact AMCO to address any products/plants/marijuana).
- Second, the leases also must provide for an agreement from landlord to comply with the marijuana regulations.
- Third, and most important, the licensees are **required to store at least 40 days of 24/7 video surveillance**. If AMCO is concerned about a particular licensee being controlled by a particular landlord, the appropriate avenue is to request the licensee to provide the past 40 days of video and then to see, in the footage, if the landlord is milling around the facility, acting as an owner or manager, directing sales, handling product, etc. Reviewing the footage is the perfect way to determine whether the concern of a landlord controlling a licensee's marijuana operations is valid – removing a regulation that many landowners have relied upon and invested hundreds of thousands based on this specific provision is not a narrowly tailored remedy – it will result in multiple lawsuits between licensees, landlords and this board. It is not an appropriate remedy to the control concern – reviewing the surveillance is the solution and its one of the reasons that licensees have had to invest in surveillance storage that holds 40 days – so that AMCO can properly look into concerns like this without de-stabilizing the entire segments of the industry by alternating the foundation of many business relationships that were properly built based on the written words of the regulations. Without some consistency and stability, no industry can grow in

a healthy and sustainable manner.

Moreover, there are additional factors why it makes sense to continue to allow for percentage based lease arrangements for marijuana licensees:

- All owners of the license need to be residents of Alaska that are eligible to receive a permanent fund dividend. A standard that narrows the eligibility for many land owners and warehouse owners in Alaska – as many of those folks are used to leasing their property to subcontractors of oil companies or leases to oil company directly, many of those property owners are “snow birds” or travel in a manner that they do not qualify for a PFD.
- The buildings that house these licenses are often older, and need extensive remodeling to meet and pass current code inspections. The reason newer buildings are often not utilized is because typically newer buildings still have a bank note attached to them and banks have (and continue) to threaten to accelerate the obligations of the note due to the activity of commercialized marijuana still being federally illegal. Therefore, these marijuana businesses are often (but not always) confined to older, rundown buildings that must be substantially upgraded to be used for a marijuana business.
- Consequently, the owners of these buildings have relied (potentially to their financial detriment) on the percentage based lease provision in the regulations to invest substantial funds to upgrade these buildings and provide some buildout of the facilities. In exchange, and for fair and just compensation, they have carefully negotiated percentage based lease arrangements with the marijuana businesses.
- The provision in the proposed regulation that would require landlords to be “licensees” is not a workable solution – the landlords are landlords, not owners of the licenses. Percentage based lease arrangements are common place in the commercial and retail property industry.

Both licensees and building owners have already relied on the current regulation language when they negotiated the terms of their leases and formed their business models. Many businesses have already been operating under these types of agreements and many more are knee deep in the process of trying to get their establishments operational. The point is, so many people have formed their business models around this exemption in the regulation and if you simply just do away with it what will they be left with? How is this industry supposed to get anywhere when the base keeps changing? I understand the director and the board are concerned for the potential that a landlord “be in a position to exert influence on the facility’s operations in a manner that is expected to be limited to licensees”, but licensees are already required to certify via MJ-09: Statement of Financial Interest that no one other than a proposed licensee has a direct or indirect financial interest in the marijuana business – which is to be signed in front of a notary.

If you do decide to remove this language from the regulations, I would urge you to give grandfather rights to those that have already been approved by you – given the ability to investigate (via pulling surveillance footage) the validity of the concern of a potential controlling landlord issue, any actions by the board to negate this exemption in its entirety is likely to be found as overly broad,

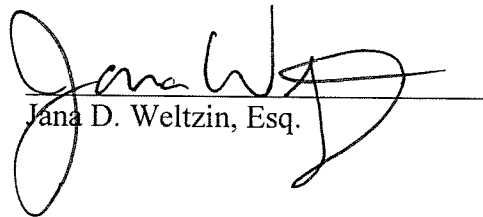
and arbitrary and capricious.

Restriction on Advertising

Please see my attached correspondence dated August 25, 2016 which outlines a more encompassing advertisement regulation scheme (regulation of direct text marketing, social media, etc) that is more applicable in today's type of advertisement. My August 25th correspondence also indicates the need for a revocation or suspension of persons' marijuana handlers' cards that are misusing them.

Thank you for your continued hard work, dedication and commitment to the success of this newly regulated industry.

Respectfully submitted for your consideration,


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August 25, 2017

Marijuana Control Board
Director McConnell
Sent via Email

Re: Public Testimony Submitted for September 2017 MCB

Dear Esteemed MCB Members & Director McConnell:

Please consider the following issues and concerns during your MCB September 2017 meeting.
Thank you for your service to the state and Industry.

Since the July meeting, our office has been receiving new requests from AMCO staff that we have never gotten before in previous incomplete letters/correspondence from the AMCO office. These new requests are said to be “board decisions”, yet as I recall them, these matters were either comments or concerns expressed during discussions amongst the board members by an individual board member(s) – but the general banter back and forth did not result in a motion and a subsequent vote by the board, drawing some type of action or conclusion. The examples below were merely discussions, as opposed to “decisions” made by/voted on by the board as a whole or “deliberations” on specific motions.

AS 17.38.111 and AS 17.38.121 - clearly contemplates the board acting as a whole when making any decisions, approvals or denials as well as the board training manual posted on AMCO’s website. In fact, it is clear in the board training manual posted on AMCO’s website that there is a clear delineation from just board discussions, to board debates once a motion is actually formally made. On page 21 of the Marijuana Control Board Orientation Manual, dated July 2, 2015, the manual articulates the following:

Taking Part in Debate

Debate and discussion are not the same. Discussion is general and does not necessarily lead to closure of an issue. It is the method used

for less formal meetings and work sessions. Debate occurs after a motion has been made, and formal board or commission actions are required. Board discussion **is not a formal request for action**, so members should take care to make a motion in order to propose an actionable item--particularly one that involves a fiscal matter, policy change, or staff response.

Emphasis added, page 21.

Some examples of new requests received from the AMCO office labeled as “board decisions” are:

- Requests in incomplete letters from examiners requiring that a sample of the “actual label” to be used for retailers and cultivators – as I recall the discussion the board had at the July meeting (I don’t yet have access to the meeting minutes) an individual board member, voiced concern that the board did not require a sample of and did not ever lay eyes on the logos and labels that retailers and cultivators will use and some of the other board members agreed that was true and the discussion moved on to another topic, no vote or official “decision” was made regarding this matter, yet it is now being required by AMCO for new applications. Therefore, we have received several incomplete applications stating that the application is incomplete because no sample logo or actual label was provided.
- Another example, was an incomplete response that stated that the board has decided that a licensed premises must be contiguous. The incomplete response required that for this particular applicant license to be compliant with the regulations, even though it was all located enclosed in buildings on one single address, the site would need to be fully enclosed by a fence, or obtain a separate license for each building on the addressed site. I don’t recall the board considering a motion to make this a formal policy, I only recall the discussion of it and members voicing their varying opinions (again, the meeting minutes are not yet available to refer to).

Items Delegated to Director and or Chief of Enforcement

I believe last meeting in July, we discussed some items to be delegated to the director &/or chief of enforcement such as change in licensed premises diagrams, operating plan changes, and perhaps other delegations that I cannot specifically recall. It may be helpful for industry participants, AMCO staff, and MCB members if there was a list of currently approved decisions that have been delegated to the Director so that the industry can better plan for their business modifications and know if a change is possible within weeks via Director delegation or whether that business would necessarily need to wait until the next MCB meeting to implement the proposed change.

Persistence of misuse of Marijuana Handler Permits

The misrepresentation by some persons holding MHP and putting themselves out to the public as licensed to conduct illegal activity is continuing. Currently, there is no tool enforcement can use to revoke or suspend MHP holders who are using the permits to undermine the legal market. We must have a mechanism to combat this misuse. I understand it may not be the most popular

proposal made, but I believe we must give enforcement a tool to revoke MHP holders who are utilizing their permits in a manner that puts the public's health and safety at risk and undermines the taxed, regulated and tested market. I have drafted some suggested regulatory language for the boards consideration:

306.700. is Amended by adding:

(F) MCB shall require the following to be disclosed by an applicant for a MHP:

- (1) Has been convicted of a felony in the state and either
 - (a) less than 5 years has elapsed from time of conviction; or
 - (b) person is currently on probation or parole for that felony.
- (2) Has within 2 years, before submitting an application, been convicted of a class A misdemeanor crime in the state involving a controlled substance other than a Schedule VI controlled substance; or
- (3) Has within 2 years before submitting an application, been convicted of a class A misdemeanor in the state relating to selling, furnishing, or distributing marijuana.

(G) If Chief of Enforcement or the Director deems it is in the best interest of Public Health and safety to deny a MHP based on required disclosures above, then it shall do so and applicant may appeal denial to MCB within seven (7) business days of notice of denial. MCB shall set a special hearing to consider the denial and provide the applicant an opportunity to appeal denial to the MCB. MCB shall determine whether to sustain the denial in the interest of public health & safety, or to overturn the denial and grant the applicant a MHP.

Add in new section

3 AAC.306.XXX

(a) MCB may suspend or revoke MHP issued under this chapter if:

(1) If the board becomes aware that a permit applicant did not disclose required disclosures under 3 AAC.306.700(f) (1) or (2) or (3).

(b) The Director, Chief of Enforcement, or MCB may revoke or suspend a permit issued under this chapter, refuse to renew a permit, or impose a civil fine if a MHP Holder is taking actions to undermined the legal commercial market, misrepresent themselves to the public, use MHP in a manner that is not in the best interest of Public Health and Safety, or an applicant for a MHP misrepresented themselves on background check, affidavit, declaration signed statement, under AS 17.38, 17.37 or this chapter.

Change of Ownership Final Form

There is still no actual transfer of ownership application, just the MJ-17a: Temporary Report of Change in Ownership. All the transfer requests this Board has seen have not actually been dealt

with – AMCO staff is, to the best of our understanding, compiling a list of persons who have requested a transfer, but the actual transfer hasn't been handled because the transfer form has yet to be finalized. Many persons who were licensees that transferred their interest are concerned about the possibility of the continuing liability that stems from the operation of the license to the licensee. Additionally, there is concern for new investors who have purchased a piece of an entity that owns a license, and technically are not considered legal licensees.

Our request is for the Board to direct AMCO staff to finalize the transfer of ownership mechanism and complete the transfer requests in final form for the Board's review and approval.

Reiterating the Lack of Clarity in Advertising Regulations

Lack of clarity as to whom the advertising regulations apply to, what the terms mean as there are limited definitions provided in the regulations and clarity as to what types of mediums are allowed for advertisement has had a chilling effect on the industry's commercial speech. I propose creating a set of regulations in Article 7 – Operating Requirements for All Marijuana Establishments – and address advertisement holistically for all license types as follows:

Proposed Advertisement Regulations

Advertising - Purpose and Application of Rules

- (1) Marijuana Control Board serves the interests of the citizens of Alaska by regulating and prohibiting advertising marijuana items in a manner:
 - (a) That is attractive to minors;
 - (b) That promotes excessive use;
 - (c) That promotes activity that is illegal under Alaska law; or
 - (d) That otherwise presents a significant risk to public health and safety.
- (2) The Control Board also serves the interests of Alaskans by allowing advertising for the purpose of informing the public of the availability and characteristics of marijuana.
- (3) All marijuana advertising by a licensee must conform to these rules.

Advertising Restrictions

- (1) Marijuana advertising may not:
 - (a) Contain statements that are deceptive, false, or misleading;
 - (b) Contain any content that can reasonably be considered to target individuals under the age of 21, including but not limited to images of minors, cartoon characters, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;
 - (c) Specifically encourages the transportation of marijuana items across state lines;
 - (d) Assert that marijuana items are safe because they are regulated by the Control Board or otherwise make claims that any government agency endorses or supports marijuana;
 - (e) Make claims that recreational marijuana has curative or therapeutic effects;
 - (f) Display consumption of marijuana items;
 - (g) Contain material that encourages the use of marijuana *because of its intoxicating effect*; or
 - (h) Contain material that encourages excessive or rapid consumption.
- (2) A licensee may not make any deceptive, false, or misleading assertions or statements on any

informational material, any sign, or any document provided to a consumer.

(3) A licensee must include the following statement on all print, billboard, television, radio and internet advertising in font size legible to the viewer:

(a) "Do not operate a vehicle or machinery under the influence of this drug".

(b) "For use only by adults twenty-one years of age and older."

(c) "Keep out of the reach of children."

(4) A licensee may not engage in advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

Advertising - Definitions

(1) "Advertising" is publicizing the trade name of a licensee together with words or symbols referring to marijuana or publicizing the brand name of marijuana or a marijuana product.

(2) "Billboard" means a large outdoor advertising structure.

(3) "Handbill" is a flyer, leaflet, or sheet that advertises marijuana.

(4) "Radio" means a system for transmitting sound without visual images, and includes broadcast, cable, on-demand, satellite, or internet programming. Radio includes any audio programming downloaded or streamed via the internet.

(5) "Television" means a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming. Television includes any video programming downloaded or streamed via the internet.

(6) "Internet" means an electronic communications network that connects computer networks and organizational computer facilities around the world.

Work session sometime?

Is it possible to arrange a publicly noticed work session with the board and the public? In the Marijuana Control Board Orientation Manual it contemplates in several sections (page 16 and page 21) that work sessions may be used to discuss proposed regulations or for a less formal type of meeting that doesn't necessarily lead to a closure of an issue. Since the start of the MCB formation I do not think we have ever utilized the work session tool. I think it would be helpful for the Board and staff to see some of the end product/packaging/labeling of these facilities and get a chance to ask how this is all playing out in the real world to industry participants and even local government officials too. It will help build trust, communication and mutual understanding amongst industry participants, the public and Staff/MCB. Some of the confusion in this process I think comes from it being so theoretical (as it was from the start) but now there's real tangible outcomes that may be helpful for the board to see – and also gratifying too to see these concepts put into play and how the growth of the industry is effecting the business owners, local government and public.

Lastly, and most importantly, this industry is moving fast – in the cannabis industry, life is like dog years, one year feels like seven, there's so much work on both ends and so much uncertainty and we all need to understand the pressures both the industry and

regulators are under to make this industry safe and free from federal intervention. I know that my office sees this the most, but for anyone else that reads this letter, the staff, enforcement officers, and the director at AMCO are not regular government employees. They are emailing at 7AM and sometimes late into the night past 9pm – to say they are working hard is a complete understatement. I am so impressed by their dedication, commitment to their responsibilities, thoroughness and organizational skill, and their incredible effort they've expended on this industry which has undoubtedly dipped into their personal lives, taking time away from their families and their individual "me time". Thank you to them for playing a huge role, if not the biggest role, in this industry's success to date.

Respectfully Submitted,

Jana D. Weltzin

