



MEMORANDUM

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

DATE: July 12, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Revocation of
Handler’s Permits; Transportation

Summary: This project includes two topics: standards for handler’s permits and their revocation, and marijuana transportation.

The first page, amending 3 AAC 306.700, adds a subsection that sets conditions under which a marijuana handler’s permit may not be issued, and under which a handler’s permit may be suspended or revoked.

Staff is proposing some edits to the language (additions in red, deletions struck through), to clarify that any disqualifying conviction is within Alaska, as the Board does not have statutory authority to perform national criminal history background checks on handler permit applicants. Staff additionally proposes edits to the new section at 3 AAC 306.8xx for readability. These edits are not considered to be substantial changes according to Assistant Attorney General Milks, and the language does not need to be put out for additional public comment.

The third page amends 3 AAC 306.750 by repealing the existing transportation regulations and readopting a much less complicated regulation, which simply states that marijuana must be transported by a licensee or a licensee’s employee or agent. One comment was received on this proposal.

The board has voted to open this regulations project on February 2, 2017, and voted to put the language out for public comment on March 7, 2017. The public comment period ended May 5, 2017. One public comment was received regarding transportation and is attached here.

Recommendation: Adopt the regulations changes.

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

3 AAC 306.700 is amended by adding new subsections to read:

(f) The board may not issue a marijuana handler permit to a person that

(1) has been convicted of a felony **in the state** and either

(A) less than five years have elapsed from the time of the person's conviction; or

(B) the person is currently on probation or parole for that felony.

(2) has within five 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.

(3) has within two years~~;~~ before submitting an application, been convicted of a class A misdemeanor **in the state** relating to selling, furnishing, or distributing marijuana; or,

(4) is currently under indictment for an offense listed in this section that would prevent qualification for a permit.

(g) When filing an application for a marijuana handler permit, the applicant must submit the person's Criminal Justice Information Report obtained from the Alaska Department of Public Safety under AS 12.62.160(b)(10) for criminal justice information to the director. In this section, "criminal justice information" has the meaning given in AS 12.62.900. (Eff.)__/__/____,

Register__)

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

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

3 AAC 306.8xx Suspension or revocation of marijuana handler permit. (a) The board may suspend or revoke a marijuana handler permit issued under this chapter

(1) if any marijuana handler permit holder **does not meet the requirements of 3 AAC 306.700(f)(1) or (2) or (3);** ~~is convicted of or under indictment for a felony listed in 3 AAC 306.700(f)(1)(A) or is currently on probation or parole under 3 AAC 306.700(f)(1)(B) or of a conviction listed in 3 AAC 306.700(f)(2) and (3) or;~~

(2) if the board becomes aware that a permit applicant did not disclose a **disqualification under 3 AAC 306.700(f)(1) or (2) or (3).** ~~conviction under the conditions of 3 AAC 306.700(f)(1)(A) or did not disclose that the person is currently on probation or parole in violation 3 AAC 306.700(f)(1)(B) or of a conviction listed in 3 AAC 306.700(f)(2) and(3).~~

(b) The board may suspend or revoke a permit issued under this chapter, refuse to renew a permit, or impose a civil fine if the board finds that a permit applicant misrepresented a material fact on an application for a marijuana handler permit, or an affidavit, report, or signed statement under AS 17.38 or this chapter. (Eff. __/__/____, Register __)

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

3 AAC 306.750(a) is repealed and readopted to read:

3 AAC 306.750. Transportation (a) Marijuana or marijuana product may only be transported to a licensed marijuana establishment by a licensee or an agent or employee of a licensee. (Eff 2/21/2016, Register 217; am __/__/____, Register____)

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

3 AAC 306.990(a)(10) is repealed:

(10) Repealed __/__/____. (Eff. 2/21/2016, Register 271; am __/__/____, Register____)

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

From: [CED AMCO REGS \(CED sponsored\)](#)
To: [Oates, Sarah D \(CED\)](#)
Subject: FW: Marijuana Regulations Comment 3 AAC 306.750
Date: Monday, May 08, 2017 1:03:27 PM
Attachments: [2015-03-05 AGO to Feds re AMHS Marijuana Policy.pdf](#)

See attached comment re: transportation regulation

Jedediah R. Smith
Local Government Specialist
Alcohol and Marijuana Control Office
(907) 334-2195

<https://www.commerce.alaska.gov/web/amco/>

From: Neussl, Michael A (DOT)
Sent: Monday, April 03, 2017 2:02 PM
To: CED AMCO REGS (CED sponsored) <amco.reg@alaska.gov>
Subject: Marijuana Regulations Comment 3 AAC 306.750

Mr. Jedediah Smith: I write regarding the transportation of marijuana and marijuana product regulations contained in 3 AAC 306.750. The Alaska Marine Highway System (AMHS) must comply with federal laws since we are regulated by a federal agency, the U.S. Coast Guard, and receive funding from federal agencies (the Federal Highway Administration and Federal Transit Authority). The regulations in 3 AAC 306.750 talk about transporting marijuana by vehicle between various authorized licensed businesses. What they do not convey is that such a vehicle carrying marijuana or marijuana products is not authorized aboard an AMHS ferry. I note that AS 17.38.010(d) provides for AMHS to comply with federal law, and the statute takes precedence over a regulation, but I am concerned that the regulations in 3 AAC 306.750 imply that any vehicular transportation of marijuana is authorized when in fact it is not if traveling on an AMHS ferry. There is a conflict between federal and state laws on the topic of marijuana. The attached letter was developed by AMHS and the State Attorney General's office regarding this conflict and how it would be handled aboard AMHS ferries.

Thank you for the opportunity to comment and to reiterate that AMHS complies with federal laws regarding the transportation of marijuana.

Michael

Michael A. Neussl
Deputy Commissioner, DOT&PF
907-465-6977

From: "Alaska Online Public Notices" <noreply@state.ak.us>
Date: March 30, 2017 at 17:50:05 AKDT

Subject: Alaska Online Public Notices for 3/30/2017

Thank you for your interest in Alaska Online Public Notices

New Notices Published on 3/30/2017:

- [**Regulations \(Commerce, Community and Economic Development\)**](#)
[Proposed regulation of transportation of marijuana and marijuana handler permits](#)

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THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

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March 5, 2015

BY U.S. MAIL & ELECTRONIC MAIL

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Alan Wilson, Group Supervisor
Drug Enforcement Administration
Anchorage District Office
1630 East Tudor Road
Anchorage, AK 99507

Re: AMHS Policy Following Alaska's Legalization of Marijuana

Dear Ms. Garcia-Aline and Messrs. Krochalis, Abel, and Wilson:

We write on behalf of our client agency, the Alaska Marine Highway System (AMHS). AMHS is a division of the Alaska Department of Transportation & Public Facilities and operates passenger ferries in state, federal, and Canadian waters. Given its operations – as well as its grant commitments to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) – AMHS is obligated to observe applicable federal law, including federal drug laws.

No doubt, you are aware that voters in Alaska approved a referendum making possession of one ounce or less of marijuana legal under state law. Undoubtedly, you are similarly aware that possession of any quantity of marijuana remains illegal under federal law. In short, state and federal law are in direct conflict insofar as they concern possession and transportation of \leq one ounce of marijuana by an AMHS customer.

Posed with this conflict, AMHS has worked on formulating a policy that conforms to state law, yet does not undermine the core concerns of federal law and policy. This effort has included conferences between AMHS management and Alaska Attorney General's Office, discussions with U.S. Coast Guard and DEA personnel,

and review of the U.S. Department of Justice's memorandum entitled "Guidance Regarding Marijuana Enforcement", dated August 29, 2013.

Having devoted considerable effort to this task, AMHS has adopted the following policy regarding marijuana aboard AMHS vessels:

- Possession and Transportation:
 - If AMHS determines a passenger possesses or is transporting:
 - ≤ 1 ounce of marijuana, AMHS will take no action;
 - > 1 ounce of marijuana, AMHS will report the matter to U.S. Coast Guard and local law enforcement.
- Public Consumption:
 - Passenger:
 - AMHS will inform passenger that any consumption aboard AMHS vessel is illegal and passenger must immediately cease;
 - If passenger refuses to obey, AMHS will report the matter to U.S. Coast Guard and local law enforcement.
- Crewmembers
 - All vessel personnel remain subject to AMHS' Drug & Alcohol Policy regardless of state legalization of marijuana. (We'll be happy to furnish a copy of the employee Drug & Alcohol Policy, upon request.)

In our view, the foregoing policy reflects a reasonable accommodation of conflicting state/federal laws and policies. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:



Richard E. Welsh
Assistant Attorney General

CC: Captain Shannan D. Greene – Captain of the Port – Sector Juneau
Captain Paul Mehler III – Captain of the Port – Sector Anchorage
Commander Benjamin J. Hawkins – Commanding Officer - MSU Valdez
Captain Michael Neussl – Deputy Commissioner, DOT&PF
Captain John Falvey – Division Director, DOT&PF

REW/jrc