



MEMORANDUM

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

DATE: July 12, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Advertising
Requirements; Space Planning and
Layout; Labeling and Packaging

Summary: These three regulations were proposed by former board member Bruce Schulte, were opened on June 9, 2016, and sent out for public comment on July 8, 2016. However, the proposals were not publicly noticed for public comment in 2016. This was brought to the Board's attention at the May, 2017, meeting and the Board voted at that time to send them out for public comment again.

Advertising Requirements: This proposal eliminates three of the five warning statements and revises the remaining two.

Space Planning and Layout: This proposal sets some standards for marijuana facilities sharing buildings with other types of businesses.

Labeling and Packaging: This proposal indicates that the expiration date of a marijuana product only applies to a perishable product.

Recommendation: As no evidence has been presented that the warning labels adopted by the Board and currently in use are either untrue or inappropriate, what is the need for a change? I recommend not moving forward with the advertising requirement proposal.

The Board has approved marijuana facilities in buildings shared with other businesses without this regulation, so the Board must determine whether or not this regulation is necessary.

Not having been privy to the discussion regarding the labeling and packaging regulation, I am unsure of the intent and thus do not have a recommendation at this time.

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

3 AAC 306.360 is amended to read:

(e) All advertising for marijuana or any marijuana product must contain each of the following warnings:

(1) “For adult use only, 21 and older”; [MARIJUANA HAS INTOXICATING EFFECTS AND MA BE HABIT FORMING AND ADDICTIVE.]

(2) “Do not operate a vehicle or machinery after consuming marijuana”
[“MARIJUANA IMPAIRS CONCENTRATION, COORDINATION, AND JUDGMENT. DO NOT OPERATE A VEHICLE OR MACHINERY UNDER ITS INFLUENCE.”]

[(3) “THERE ARE HEALTH RISKS ASSOCIATED WITH CONSUMPTION OF MARIJUANA.”];

(4) “FOR USE ONLY BE ADULTS TWIENY-ONE AND OLDER. KEEP OUT OF THE REACH OF CHILDREN.”;

(5) “MARIJUANA SHOULD NOT BE USED BY WOMEN WHO ARE PREGNANT OR BREAST FEEDING.”.] (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		

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

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

3 AAC 306.925 **Shared use spaces in marijuana establishments** (a) A licensed marijuana establishment may share support spaces with other non-licensee tenants of the same building provided that;

(1) No marijuana or marijuana products may be cultivated, processed, stored, or sold in areas not under the direct and exclusive control of the licensee and;

(2) Non-licensed tenants are not able to access the licensed premises via the shared-use space.

(b) Multiple marijuana establishments may share support spaces provided that;

(1) No marijuana or marijuana products may be cultivated, processed, stored, or sold in areas not under the direct and exclusive control of each licensee and;

(2) Employees of one licensee may not have access to an adjacent licensed premises via the shared space unless that employee is authorized to access both premises. (Eff. __/__/____, Register____)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS17.38.070	AS 17.38.190	AS 17.38.900
	AS17.38.121		

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

3 AAC 306.310 is amended to read:

3 AAC 306.310. **Acts prohibited at retail marijuana store.** (a) A licensed retail marijuana store may not sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver, marijuana or a marijuana product

- (1) To a person under 21 years of age;
- (2) To a person that is under the influence of an alcoholic beverage, inhalant, or controlled substance;
- (3) That is not labeled and packaged as required in 3 AAC 306.345 and
 - (A) 3 AAC 306.470 and 3 AAC 306.475; or
 - (B) 3 AAC 306.565 and 3 AAC 306.570;
- (4) In a quantity exceeding the limit set out in 3 AAC 306.355;
- (5) Over the Internet; a licensed retail marijuana store may only sell marijuana or marijuana product to a consumer who is physically present on the licensed premises;
- (6) After the expiration date shown on the label of **a perishable** [THE MARIJUANA OR] product (Eff. 2/21/2016, Register 217; am __/__/____, Register____)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS17.38.070	AS 17.38.190	AS 17.38.900
	AS17.38.121		



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June 29, 2017

Marijuana Control Board
Director McConnell
Sent via Email

Re: Public Testimony for July 12-14, 2017 MCB Meeting

Dear Esteemed MCB Members & Director McConnell:

Please consider the following issues and concerns during your MCB July 12-14 meeting. Thank you for your service to the state and Industry.

Issue #1 - Change to a Licensed Premise:

Many licensees have a space that they would like to “grow into,” meaning that these start-up businesses simply have a hard time funding the entire buildout of their space at the beginning of operations due to a myriad of reasons (lack of allowance for outside of the state investment; refusal by banks to provide ordinary business loans, etc.). This issue usually only applies to cultivation licenses as the cost of lights, necessary upgrades to power supply, buildout of separate grow rooms, office area, curing and drying rooms, etc., cost large sums of funds. Licensees would often prefer, a business sense often dictates, the need to start smaller, building out just a portion of their licensed space and then “grow into” the space as the business starts to generate money.

Up until now the process for this phasing approach has been relatively simple – the licensee files an MJ14 showing the reduced area to be licensed, Enforcement receives the new MJ14 and inspects the reduced licensed area and then as the business gets more funds from the operation of the reduced cultivation area, it builds out the premises and then submits another MJ14 showing the new buildout, and then Enforcement comes back and inspects the new area to ensure cameras are not obstructed by hoods/lights and verifies other regulatory requirements. Up until this month of June 2017, the licensees could request “Temporary Approval” where Director McConnell and Chief Hoelscher would have the final sign off on approving on a temporary basis the change in premises or denying it until the MCB has had a chance to review the change. The Temporary Approval is then brought to this Board at the next regularly scheduled meeting for final approval or denial.

However, it is the recent position of AMCO administration that there are conflicting regulations that delegate approval to the Director in one regulator provision and then in a different regulation section, the same authority to approve is vested in the MCB.

Our request is that this Board delegate the authority to the Director and Chief of Enforcement for temporary approval and then final approval and denial rests with this Board at the next MCB meeting. The two conflicting regulatory provisions at issue are as follows:

- 3AAC 306.015(c) states, in relevant part, “[i]f a marijuana establishment wishes to reduce or expand the area of the licensed premises used for a marijuana establishment, the marijuana establishment must submit a new line drawing showing the proposed changes to the premises, and **must obtain the board’s written approval.**” Emphasis added.
- 3AAC 306.705(c) – states, “a holder of a marijuana establishment license may not alter the functional floor plan or reduce or expand the area of the licensed premises **without first obtaining the director’s written approval.** A marijuana establishment license holder seeking to change or modify the licensed premises must submit a request for approval of change on a form prescribed by the board along with (1) the fee prescribed in 3AAC 306.100; (2) a drawing showing the proposed change; (3) evidence that the proposed change conforms to any local restrictions; and (4) evidence that the licensee has obtained any applicable building permits.” Emphasis added.

Again, our request is that you clarify the intent to allow for the Director to approve MJ14s on a temporary basis and then to have final approval be done by the MCB at the following MCB meeting after submission of a MJ14 Premises Change.

Issue # 2 Residency verification issue for current licensees:

- The deadline to submit a PFD application is March 30th and it takes the PFD office time to get through all of those and make an eligibility determination and unfortunately the timing of when AMCO checks PFD residency for renewals and when the PFD Department completes their review process does not often align.
 - Licensees who have applied for their PFD for the current year are being asked to complete MJ-18 even though they have received PFD’s every year and/or completed the form and/or went through the residency investigation with enforcement on the last application submitted – the requirement of a lengthy MJ18 due to the review process of the PFD office and AMCO renewals not lining up creates more work and is inefficient for the licensee, Enforcement, PFD office, and AMCO staff. Simply put – the current processing of this issue is not efficiently using state resources – unfortunately, I am not educated in the government processing system of PFD’s to articulate a educated suggestion, therefore our request is limited to requesting the Board direct AMCO staff and Enforcement to

start a dialog with PFD office on their timeline for processing and come up with a solution where the redundant need for a lengthy time consuming MJ18 for renewals is not necessary. Even if the response is for licensees to apply earlier for their PFD (*again, not knowing the internal PFD review process I am unsure if this would help resolve the issue*) that would help licensees understand what they can do to minimize processing time and need for additional documentation requested by AMCO.

Issue #3 – Renewals and request for licensees to submit fingerprints 7 days prior to deadline
AS 17.38.200(a) requires the following for applications & renewal applications:

(a) Each **application or renewal application** for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days before the expiration of the marijuana establishment's registration. **When filing an application under this subsection, the applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check.** The board shall forward the fingerprints and fees to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.

Alaska Stat. Ann. § 17.38.200 (Emphasis added). The renewal fingerprint requirement was not included in any of the renewal instructions because this requirement was not included in the MCB's regulation provision that addresses renewal applications. It is our understanding that the liquor statute for renewals and criminal justice information and records AS 04.11.295(a) states that the board may require finger prints for renewal liquor licenses, but that it has been general practice for the board only to require finger prints for renewals if it has been five years or so since the last submission of licensee fingerprints.

It is reasonable for this Board to interpret AS 17.38.200(a) as requiring finger prints for only new applicants (note how the statute in the first sentence refers to the term "applications" to indicate reference to new applications and uses the specific term of "renewal applications" to refer to applications to renew the licenses) the reference to the requirement for fingerprints is only indicated when there is a filing of an "application" – the statute does not specify a requirement for a renewal application . It is requested that the Board draft regulation for public comment to give the Board discretion of when renewal applications require new fingerprint sets and to not require new finger prints be submitted every single year as this is not the same standard used for liquor licenses nor was this requirement included in the MCB renewal application regulations.

Issue #4 – Change of Ownership

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.

Issue #5 – Meeting Minutes of MCB Meetings

Meeting minutes for MCB meetings have not been made public, or approved by the MCB, or made available on the AMCO website since the meeting minutes from the February 2017 MCB meeting, which was reviewed and approved by this Board at the March 2017 meeting. No meeting minutes from any MCB meeting since March 2017 has been approved by the Board and made public to the industry. Without meeting minutes and no access to recordings of the meetings, the record of what occurs at these licensing and regulation creation meetings is available. This is a new industry – it is critical that these meetings and their contents be properly document, and make available to the public.

Issue #6 – 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 advisement 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;

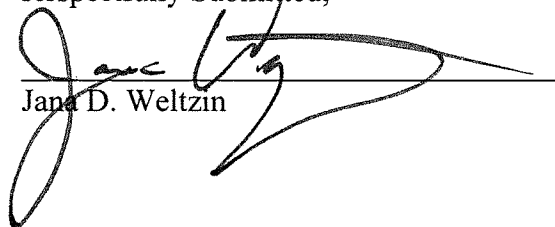
- (c) Specifically encourages the transportation of marijuana items across state lines;
 - (d) Assert that marijuana items are safe because they are regulated by the Control Board or otherwise make claims that any government agency endorses or supports marijuana;
 - (e) Make claims that recreational 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.

Thank you for your service and consideration,

Respectfully Submitted,


Jana D. Weltzin



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
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June 30, 2017

Erika McConnell, Director
Alcoholic Beverage Control Board
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Anchorage, AK 99501

Dear Ms. McConnell:

On behalf of the Alaska Division of Public Health, we respectfully submit comments on proposed changes to regulations 3 AAC 306.360(e) regarding marijuana advertising language requirements and 3 AAC 306.925 regarding shared space with non-licensee tenants. **These proposed changes to existing regulation raise concern for Alaskans' health and safety; therefore, we oppose the changes to (1) the removal of existing advertising language requirements (3 AAC 306.360[e]) and (2) allowing marijuana establishments to share space with non-licensee tenants (3 AAC 306.925).**

The proposed change to 3 AAC 306.360(e) is to repeal and readopt to read:

- (e) All advertising for marijuana or any marijuana product must contain each of the following warnings:**
- (1) "For adult use only, 21 and older";**
 - (2) "Do not operate a vehicle or machinery after consuming marijuana"**

Public Health Concern: While the shorter message may increase the chance that it will be read and understood, we are concerned that this warning does not address the increase in childhood poisonings from cannabis products or the potential risks to pregnant women. Additionally, in light of the concerns of fetal exposure to cannabinoids, the American Medical Association advocates requiring such warnings for pregnant and lactating women be written on medical and recreational marijuana products and posted wherever they are sold. Therefore the Division supports the following language:

- (e) All advertising for marijuana or any marijuana product must contain each of the following warnings:
- (1) "For adult use only, 21 and older. Keep out of the reach of children."
 - (2) "Do not operate a vehicle or machinery after consuming marijuana."
 - (3) "Marijuana should not be used by women who are pregnant or breastfeeding."

June 30, 2017

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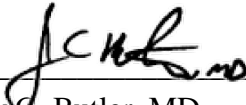
The proposed change to 3 AAC 306.925 adds a new section to allow marijuana establishments to share space with non-licensee tenants under certain conditions.

Public Health Concern: This change may lead to an increase in marijuana exposure to vulnerable populations (e.g. youth) patronizing businesses which share space with a marijuana vendor and thus may reduce the perceived harm of marijuana use and increase the perception of availability of marijuana. Research has shown that certain attitudes and beliefs youth have may increase the likelihood of marijuana use, such as the perception that marijuana is not harmful/somewhat harmful and the perception of greater availability of marijuana. (Source: Substance Abuse and Mental Health Services Administration's Center for the Application of Prevention Technologies, *Risk and Protective Factors Associated with Youth Marijuana Use*, 2014)

Additionally, the recent proposal of onsite public consumption of marijuana may pose additional risks to vulnerable populations patronizing businesses in the proposed shared spaces, exposing them to harmful secondhand marijuana smoke.

Based on these concerns for the health and safety of Alaskans, we recommend the Board not approve the proposed changes to regulations 3 AAC 306.360(e) regarding advertising language requirements and 3 AAC 306.925 regarding shared space with non-licensee tenants. Thank you for your time and consideration in supporting the health and safety of all Alaskans.

Sincerely,



Jay C. Butler, MD

Chief Medical Officer and Director of the Division of Public Health