



MEMORANDUM

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

DATE: September 14, 2017

FROM: Erika McConnell, Director

RE: Director's Report

OPERATIONS

Effective in early July, our Business Registration Examiner separated from state employment, and the vacant administrative positions that were vacated in June have not yet been filled. It has been challenging to complete our work in a timely manner this summer. One of the vacant administrative positions will be filled by a new employee, Joe Toffolo, starting September 18. We are relatively close to filling two other vacant administrative positions (one is a new position from our FY18 budget) and two new Occupational Licensing Examiner positions from our FY18 budget.

AUDITS

After a summer break to focus on other work, the legislative auditors are back working in our conference room; their preliminary report is expected in late October or early November.

The Department of Public Safety will be conducting a biennial audit of non-criminal justice agencies to review agency requirements with security policies. I will be attending a one-day Criminal Justice Information Services training conference in October (in Anchorage) to prepare for the audit.

TRAVEL AND CONFERENCES

A second state regulator's Cannabis Summit is scheduled for September 25-26 in Portland, Oregon. In addition to the four states with existing recreational marijuana programs, the states of California, Nevada, Massachusetts, and Maine are invited, as well as representatives from Canada. A major focus of the conference is the creation of a national state regulator's association.

I have been invited to speak at the Denver Marijuana Management Symposium on October 19-20.

REGULATIONS

- **Current Regulations Projects**

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

- **Possible New Regulations Projects**

- Financial background investigations

At the last meeting, the board expressed an interest in a more enhanced application process to examine the financial backgrounds of applicants. Such a process is supported by statute

which states, at AS 17.38.121(b), “the board shall...establish by regulation the qualifications for licensure including fees and factors related to the applicant’s experience, criminal justice history, and financial interests.” I recommend the board open a regulations project to amend the application requirements and consider any other appropriate standards.

○ Charging for second or subsequent inspections

Enforcement has developed a pre-inspection checklist (Attachment 2) for licensees to ensure that they are ready for an inspection before requesting one. While that has started to cut down on second and third (and subsequent) inspections, it has not eliminated them. In our large state and with a limited enforcement staff, visiting a facility for a second or third time can be costly and time-consuming. I request that the board open a regulations project to add a repeat inspection fee for those licensees who request an inspection but, due to not having completed all items on the pre-inspection checklist (e.g., not having plants tagged, not having premises set up consistent with board-approved diagram), then need a repeat visit(s) from Enforcement staff. I recommend that the repeat inspection fee be \$500, with the allowance to be waived by the director for good cause.

○ Add corporation bylaws as required submittal item

Limited liability companies are required to submit their operating agreement, and staff has at times found information in some operating agreements that indicate the need for additional licensees. The operations of an entity can relate to compliance with statutory and regulatory requirements. I recommend that a regulations project be opened to amend 3 AAC 306.020(b)(3)(C) to require license applicants who are corporations to submit their corporate bylaws.

○ Department of Labor and Department of Revenue review/approval for transfers

Every business in Alaska that utilizes employee labor is required to have workers’ compensation coverage. The Department of Labor has been proactively reaching out to the industry to inform them of these requirements, but has also found a great deal of ignorance of the requirements. We are working with DOL and may add information in our application instructions regarding this issue. I recommend that the board open a regulations project to state that all marijuana transfer applications must be reviewed and approved by the Department of Labor and the Department of Revenue, to ensure the licensee is in compliance with labor laws and current with any required tax payments.

○ Multiple businesses on a lease

The issue of multiple businesses on the lease for one licensed premises has come up in the past, most recently with AK Slow Burn Cannabis Outlet (#10898), a standard cultivation facility approved at the July meeting. I recommend that the board open a regulations project to change 3 AAC 306.020(b)(9) to require the applicant to have sole right to possession of the proposed licensed premises, so that no other entity or business may be listed on the lease as having a right to access the premises.

If another business or entity is listed on the lease as having access to the licensed premises, then this other business/entity has access to marijuana without being a licensee. While at the time of licensing, the other business/entity may be owned by the same person/entity who is being licensed, there is no guarantee that that will always be the case. The licensee may sell the second business/entity to another without notice to or authorization by the board

(which would not be required), and then some number of unlicensed persons would have access to the licensed premises.

In order to ensure that licensees are fully accountable for tracking all marijuana from seed to sale, the licensee should have sole possession of their licensed premises.

o Affiliates

The regulations define "affiliate" as "a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a partnership, limited liability company, or corporation subject to this chapter." License applications are required to include information about "each proposed licensee and each affiliate of each proposed licensee" which indicates that the regulations consider affiliates to be different from licensees. However the regulations also state that "licensee" means each individual named in an application that complies with this section, and includes a sole proprietor, all partners holding interest in a partnership, each member holding ownership interest in an LLC, and each owner of a corporation's stock.

Staff struggles to understand the purpose of an "affiliate." If an affiliate controls a partnership, LLC, or corporation subject to this chapter, shouldn't they actually be a licensee? I recommend that the board open a regulations project to remove the concept of affiliate, which is located only in two places in the regulations (3 AAC 306.020(b)(2) and 3 AAC 306.990(a)(1)) and would not seem to have any practical effect on the licensing process other than eliminating confusion.

o Definition of resident

As the board is aware, all licensees must be residents of Alaska, and "resident of the state" is defined in 3 AAC 306.015(e)(2) as

a person who meets the residency requirement under AS 43.23 for a permanent fund dividend in the calendar year in which that person applies for a marijuana establishment license under this chapter

This is somewhat confusing for two reasons: 1) the residency requirement that is evaluated through the PFD is for the prior year; and 2) license applicants who apply in January through May (approximately) would not know their PFD application status for that calendar year. It is likely that in this situation, staff has actually been checking PDF eligibility for the prior year.

To resolve these issues and make the language less confusing, I recommend the board open a regulations project to make the following two changes:

3 AAC 306.015(b): "The board will not issue, renew, or transfer a marijuana establishment license to..."

3 AAC 306.015(e)(2): "'resident of the state" means a person who currently meets the residency requirement under AS 43.23 for a permanent fund dividend ~~in the calendar year in which that person applies for a marijuana establishment license under this chapter~~".

- Video formats
Enforcement staff has had occasion to request video from licensees. We have found that there is a great variety of formats, many of which we do not have the capability to view. We find ourselves pressuring our IT staff to find software for us to purchase in order to complete investigations, and the process is difficult, time consuming, and potentially expensive. I request that the board open a regulations project that allows the director to publish a list of acceptable video formats. Licensees would need to work with their security companies to convert video into one of those acceptable formats, if the video was not already. This would amend 3 AAC 306.720.
- Local government approval of odor emissions
As not all local governments issue “conditional use permits” for marijuana applicants, I recommend the board open a regulations project to amend 3 AAC 306.430(d) to change “local government conditional use permit process” to “local government approval process.”

SPECIFIC ISSUES

- **Delegation**

Attached for your review is one delegation memo: the authority to approve licensed premises changes, delegated to the director at the July 12, 2017, meeting. (Attachment 3)

- **Licenses Issued with Background Checks Incomplete**

On April 27, 2016, before AMCO had statutory authority to perform criminal background checks on licensees, the board directed the director to determine applications complete before the required background check is performed and to issue licenses before background checks are returned. This was intended to be a temporary work-around while everyone awaited a permanent legislative fix. Such fix was made in the spring of 2016. I request the board's support to continue to determine applications complete before the background check is complete, but to cease issuing licenses until the background check has been returned without issue, in accordance with AS 17.38.010(b)(2) and 3 AAC 306.010(d). This is consistent with the statute and regulations, and with the alcohol program. I propose that this change begin on October 1, 2017.

- **Conditions Placed on License Continue Until Revoked by Board**

We are working under the assumption that once the board places conditions on a license, those conditions remain until the board specifically removes the conditions. A license renewed by the director (through delegation from the board) would still have the conditions placed on the license by the board at the time of first approval. Should this not be the intent of the board, please let us know.

- **Leases**

In the past, the board has indicated that leases should contain a statement that landlords are not authorized to take possession of marijuana and marijuana product if the lessee defaults on the lease. This policy is being implemented by staff.

When the licensed premises is in a structure is owned by a married couple (both names on the deed) but only one partner is a licensee (sole proprietor), should there be a lease from the married couple to the licensee?

- **MJ-18 Purpose**

What is the purpose of the MJ-18? Clearly an MJ-18 should be used when an applicant indicates that they choose not to apply for a PFD. Should the MJ-18 be used for applicants who are found ineligible for the PFD by the Permanent Fund Dividend Division? As the MJ-18 asks for the exact same information as the PFD application, I would advocate that having Enforcement staff duplicate the effort of the Permanent Fund Dividend Division is not appropriate and the MJ-18 should not be used when an applicant is found ineligible for the PFD because of residency.

We have encountered one situation where an applicant was found ineligible for the PFD due to improperly answering one of the questions on the PFD application, but as the person is appealing the denial to the Permanent Fund Division, it appears this issue will be resolved by them. Should we encounter a situation where an applicant is denied a PFD for issues unrelated to residency, the MJ-18 form could then be used.

- **CBD Products**

In February of 2017, products containing CBD oil were seized from a number of marijuana licensees. As has been noted, similar products are being sold in stores that are not licensed by the board. Recently a company selling such products at the state fair was robbed. The legislature considered a bill that would remove hemp products from the definition of marijuana (SB 6) but the bill did not pass in the 2017 legislative session. Would the board support notification and/or enforcement action against non-licensees?

NEXT MEETINGS

The next MCB meeting is scheduled for November 14-15 in Anchorage. Applications must be complete and any other documents for the board must be submitted to our office by October 27, 2017, to be on the November agenda.

The 2018 board meeting schedule is attached to this report (Attachment 4).

STATISTICS

Sales

June	\$4,633,846
July	\$5,599,783
August	\$6,335,573

Total 2017 sales, through August 31, 2017: \$27,973,186

Taxes

May 2017 – from 31 taxpayers:	\$274,278
June 2017 – from 40 taxpayers:	\$512,505
July 2017 – from 46 taxpayers:	\$577,901

Total taxes from program inception to July 30, 2017: \$2,326,750

MCB REGULATIONS PROJECTS

Attachment 1

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	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		Voted out for public comment 3/7/17; comment period ended 5/5/17	7/13/17	
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				
JU2017200542	Quality control	2/2/17				

MCB REGULATIONS PROJECTS

Attachment 1

DOL Project Number	Topic	Date Opened by MCB	Board member point person(s)	Current Status/Notes	Date Adopted by MCB	Effective Date
	Waste disposal #2			Voted out for public comment 7/14/17; posted 8/17/17; cmts due 9/29/17		
	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 10/16/17		
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		
	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		
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		
	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		
	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	Draft on 9/14 agenda		
	Streamline edibles testing	7/14/17	Emmett			



Alaska Marijuana Control Board

Form MJ-21: Pre-Inspection Checklist

What is this form?

This pre-inspection checklist form is for your reference to ensure that your marijuana facility is in compliance with all of the following security and basic operating requirements prior to your inspection. **Please complete all checklist items before requesting your inspection.** If you have any questions regarding this checklist, please contact AMCO enforcement at amco.enforcement@alaska.gov.

Compliance with these checklist items and all statutes and regulations is mandatory before your license will be issued.

Doing Business As:		Date:	
License Type:			
Licensee:		License Number:	

Section 1 – All Marijuana Establishments

	COMPLETED
Surveillance System: Install and maintain a video surveillance and camera recording system with a camera resolution that allows for clear and certain identification of any person and activity in the area at all times.	
a.) Required video cameras must be placed in a way that produces a clear view adequate to identify any individual inside the licensed premises or within 20 feet of each entrance to the licensed premises. Both the interior and exterior to the facility must be recorded.	
b.) The video system must cover each restricted access area (to include each entrance to a restricted area). Any area where marijuana is grown, cured, manufactured, or where marijuana waste is destroyed must have a camera placement in the room facing the entry door, and in adequate fixed positions, at a height that will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, in order to allow for clear and certain ID of any person or activity at all times.	
c.) Surveillance recording equipment and video surveillance records must be housed in a locked and secure area or in a lock box, cabinet, closet or other secure area that is accessible only to the licensee or authorized employee, and to law enforcement personnel including a peace officer or agent of the board. A marijuana establishment may use an offsite monitoring service and offsite storage of video surveillance records if security requirements at the offsite facility are at least as strict as the onsite security requirements.	
d.) Recordings must be preserved for a minimum of 40 days, in a format that can be easily accessed for viewing. All recorded images must accurately display the date and time, and must be archived in a format that does not permit the alteration of the recorded image, so that the images can be readily authenticated. After 40 days, a marijuana establishment may erase video recordings, unless the licensee knows or should know of any pending criminal, civil, or administrative investigation for which the video recording may contain relevant information.	

Attachment 2

Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501

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

Phone: 907.269.0350



Alaska Marijuana Control Board

Form MJ-21: Pre-Inspection Checklist

	COMPLETED
Alarm System: A security alarm system is required on all exterior doors and windows. Motion detectors in every room with non-opening windows are required.	
Locks: Commercial grade, non-residential door locks on all exterior entry points to the licensed premises.	
Lighting: Exterior lighting must facilitate surveillance.	
Marijuana Handler Permit: All licensees and employees must have a valid permit.	
Facility Identification Cards: Each licensee, employee, or agent shall display an identification badge issued by the establishment at all times when on the licensed premises. Marijuana handler cards DO NOT satisfy this requirement.	
Restricted Access Areas: A marijuana establishment shall restrict access to any part of the licensed premises where marijuana or marijuana product is grown, processed, tested, stored, or stocked.	
<p>a.) Each entrance to a restricted access area must be marked by a sign that says “Restricted access area. Visitors must be escorted.” The sign must use this exact phrase, no variations will be accepted.</p> <p>b.) Ensure that any marijuana at the licensed premises cannot be observed by the public from outside. The premises must not emit an odor that is detectable by the public from outside the premises, except as allowed by a local government conditional use permit process.</p>	
Certified Scales: A marijuana establishment shall use certified scales in compliance with AS 45.75.080, the Alaska Weights and Measures Act. A marijuana establishment shall maintain registration and inspection reports of certified scales; and upon request by the board or the director, provide a copy of the registration and inspection reports of the certified scales to the board or the director for review.	

Section 2 – Cultivation Facilities Only

	COMPLETED
A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Where not prohibited by local government, outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscuring wall or fence at least six feet high.	
Plants/Seeds: At the time of your initial inspection you must be in compliance with the following guidelines.	
<p>a.) Plants over 8 inches- Tracked by plant tag</p> <ul style="list-style-type: none"> • 12 mother plants (non-flowering plants of any size) tagged • Any number of immature plants no taller than 18 inches • All tagged correctly and in-line with training from METRC. Tags attached on first fastener around the “trunk” and above first branch after plant in able to support the tag. 	
<p>b.) Plants under 8 inches- Tracked by batch</p> <ul style="list-style-type: none"> • Strain-specific batches with up to 50 plants • Unlimited number of batches • Batches should be in rows and columns for ease of verifying numbers 	
<p>c.) Seeds – Tracked by package tag</p> <ul style="list-style-type: none"> • Strain-specific packages by count or by weight • Unlimited number of packages 	



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Commerce, Community,
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West Seventh Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

Marijuana Control Board

Delegation 2017-07-12a

Approval of Licensed Premises Changes

Adopted (passed 5-0) on July 12, 2017

In accordance with AS 17.38.150, the Marijuana Control Board delegates to the Director the authority to approve a licensed premises change (MJ-14) under 3 AAC 306.015(c).

Peter Mlynarik
Chair
Marijuana Control Board

Erika McConnell
Director
Alcohol & Marijuana Control Office



MEMORANDUM

TO: Chair Mlynarik and Members of the Marijuana Control Board DATE: September 14, 2017

FROM: Erika McConnell, Director RE: 2018 MCB Meeting Schedule

Meeting dates and locations for Marijuana Control Board meetings in 2018, in compliance with AS 17.38.200(d), AS 17.38.111(a), and 3 AAC 306.075(a):

January 24-25	Juneau (first judicial district)
April 4 -5	Nome (second judicial district)
June 13-14	Anchorage (third judicial district)
August 22-23	Denali (fourth judicial district)
October 16-17	Kenai (third judicial district)
December 20-21	Anchorage (third judicial district)

Dates are subject to change, with adequate notice.