



MEMORANDUM

TO: Marijuana Control Board DATE: January 24, 2018

FROM: Erika McConnell, Director RE: Regulations Project – Financial
Marijuana Control Board Background Investigations; Definition of
Resident (JU2017200829)

These proposed regulations changes were posted for public comment on December 8, 2017 and public comments were accepted through 4:30pm on January 11, 2018. Public comments are attached.

Financial Background Investigations

Summary: AS 17.38.010(b)(2) states that the production and sale of marijuana should be regulated so that “legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana.”

AS 17.38.121(b)(2) states that the Marijuana Control 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.” At the September meeting, the board opened a regulations project to institute a financial background check of applicants. The intent of performing financial background checks or investigations is to understand the source of applicant’s funding to open a marijuana business so that the board can be confident that criminal actors are not involved.

Washington State conducts financial investigations on all “true parties of interest,” “financiers,” and any person who exercises control of the business. The financial investigations are necessary to verify all sources of funds needed to start a business. There is no minimum amount required--all people contributing the funds are investigated. A variety of financial documents are requested depending on what the applicant states the source of their money is. Some examples of the requested documents are six months of bank statements, tax returns for at least the past two years, closing documents for sales of property, investment account statements, financial affidavits, loan documentation etc. Background checks are done on all “true parties of interest,” all “financiers,” and their spouses.

In Oregon, Applicants record the funding they provide themselves on the application. A supplemental form for is used for recording any funding provided by others. Tax returns are not requested but the source of funds is required to be provided. Criminal background checks are

mandatory for any person with an ownership interest and for a person with a financial interest greater than 10%. Criminal background checks are discretionary for all others with a financial interest but they run checks on anyone who has contributed \$50,000 or more to the business.

In Colorado, anyone who loans or gives money, inventory, furniture, or equipment to or for use in the business, or who will receive money or profits from the business must be listed along with their SSN and interest. Copies of all notes, security instruments, any written agreements, and details of any oral agreements by which any person will share in the profit or gross proceeds of the establishment must be provided. Financial statements, banking and investment account information, and tax information must be provided, and a waiver to allow investigators to be provided with related information must be signed.

In developing language for this proposed regulation, it became increasingly clear that the criteria for who is a licensee needed to be further developed. The board has developed a regulatory system whereby licensees are required to meet certain standards: namely residency and criminal history standards. The other states generally tie the financial investigation to the criminal history investigation, as this is one means of determining any connection between a marijuana business and criminal enterprises, gangs, and cartels. The financial investigation is another means. In Alaska, the board has statutory authority to perform criminal background checks only on prospective licensees. The board could not require a criminal background check on a person who finances a marijuana business if that person was not designated as a licensee.

The attached proposal clarifies that a person other than a licensee may not have an ownership interest or a controlling interest, in addition to not having a direct or indirect financial interest, in a licensed business. The definition of “direct or indirect financial interest” is modified to provide additional clarity—the proposed language is mostly borrowed from the state of Oregon’s code. A modification to the definition of “controlling interest” is proposed and a new definition for “ownership interest” is proposed.

The board would set what financial history information it requires through modification of the MJ-09 form (Statement of Financial Interest). The board asked for a draft MJ-09 to contemplate what sorts of financial documents would be required, which is attached. Should this regulation be adopted, I recommend that a revised MJ-09 be reviewed by appropriate personnel in the Division of Banking and Securities (DCCED) before being finalized.

Recommendation: Continue discussion to clarify how the board wishes to ensure that criminal actors are not involved in the production and sale of marijuana. If desired, form a subcommittee to work further on the draft.

Definition of Resident

Summary: 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.

With the changes proposed in this regulations project, the most current PFD information will be used to determine residency.

Recommendation: The change to this definition is wrapped into changes in the financial background investigation project because both projects make changes to the same section (3 AAC 306.015(e)). If the board is not ready to adopt the financial background investigation project but wishes to adopt the change to the definition of resident, the board should move to adopt the changes to the definition of resident as shown in the attached draft even though it would modify a different section ((e)(2) in current regulations as opposed to (e)(3) in draft proposal), as the public has notified of the board’s proposal and been given the opportunity to comment.

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

3 AAC 306.015(a) is amended to read:

(a) The board will issue each marijuana establishment license to a specific individual, to a partnership, including a limited partnership, to a limited liability company, to a corporation, or to a local government. A person other than a licensee may not have a direct or indirect financial interest, **ownership interest, or controlling interest** in the business for which a marijuana establishment license is issued.

3 AAC 306.015(e) is repealed and readopted to read:

(e) In this section,

(1) "direct or indirect financial interest" means

(A) having a financial interest in the business of \$20,000 or more;

(B) having an interest in the business such that the performance of the business causes, or could reasonably be anticipated to cause, financial benefit or hardship

(C) lending money, real property or personal property to a licensee for the use in the business;

(D) giving money, real property or personal property to a licensee for use in the business; or

(E) being the spouse or cohabitant of a licensee;

(2) notwithstanding (1) above, "direct or indirect financial interest" does not include a person's right to receive

(A) rental charges on a graduated or percentage lease-rent agreement for real estate leased to a licensee; or

(B) consulting fee from a licensee for services that are allowed under this chapter;

(3) “resident of the state” means a person who currently meets the residency requirement under AS 43.23 for a permanent fund dividend.

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 306.020(b)(4) is amended to read:

(4) for each person listed in compliance with (2) of this subsection, a statement of financial interest on a form the board prescribes **and financial history information required by the board;**

3 AAC 306.990(b) (14) is amended read:

(14) “controlling interest” means ownership or control of

(A) 50 percent or more of the ownership interest or voting shares of **an entity** [A CORPORATION]; or

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

(i) making decisions for the **entity** [CORPORATION] without independent participation of other owners;

(ii) exercising day-to-day control over the **entity's**

[CORPORATION'S] affairs;

(iii) disregarding formal legal requirements;

(iv) using **entity** [CORPORATION] funds for personal expenses or investments, or intermingling **entity** [CORPORATION] finances with personal finances; or

(v) taking other actions that indicate the **entity** [CORPORATION] is a mere instrumentality of the individual;

3 AAC 306.990(b) is amended to add a new paragraph to read:

(31) "ownership interest" is indicated by the following behaviors, benefits, or obligations:

(A) Any person or legal entity, other than an employee or agent acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

(B) Any person or legal entity, other than an employee or agent acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business;

(C) Any person or legal entity, other than an employee or agent acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business; or

(D) Any person or legal entity identified as the lessee of the premises proposed to be licensed.

3 AAC 306.015(b) is amended to read:

(b): The board will not issue **a new license or transfer** a marijuana establishment license to

(1) an individual or a sole proprietorship unless the individual or proprietor is a resident of the state;

(2) a partnership unless each partner is a resident of the state;

(3) a limited liability company unless the limited liability company is a resident of the state; or

(4) a corporation unless the corporation is incorporated or qualified to do business in the state and each shareholder is a resident of the state.

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		



Alaska Marijuana Control Board

Form MJ-09: Statement of Financial Interest

What is this form?

A statement of financial interest completed by each proposed licensee (as defined in 3 AAC 306.020(b)(2)) is required for all marijuana establishment license applications, per 3 AAC 306.020(b)(4). A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)), ownership interest, or controlling interest in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

What must be submitted with this form?

- Bank statements for the last six months for all bank accounts held by proposed licensee.
- Investment account statements for last six months for all investment accounts held by proposed licensee.
- Tax returns of proposed licensee for last two years.
- Loan agreements for any loans made to proposed licensee.
- Details of any oral agreements with any person who will share in the profits or gross proceeds of the business.
- Any other documents that explain funding sources listed in Section 3 below.

This form must be completed and submitted to AMCO’s main office by each proposed licensee before any license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:		License Number:	
License Type:			
Doing Business As:			
Premises Address:			
City:		State:	
		ZIP:	

Section 2 – Individual Information

Enter information for the individual licensee or affiliate.

Name:			
Title:			
SSN:		Date of Birth:	



Form MJ-09: Statement of Financial Interest

Section 3 – Funding Sources

Total funding contributed to business		\$
Source of funds (use additional sheet if necessary)		
Name of source ¹	Type ²	Amount ³ (total must equal amount above)
		\$
		\$
		\$
		\$
		\$

¹ Name of the source of funds, such as the person who loaned money, a bank account holding investment income, etc.

² Identify type of funds, such as savings, profits from another business, employment income, loan, gift, etc.

³ The amount of funding from this source.

Section 4 – Certifications

I certify that no person other than a proposed licensee listed on my marijuana establishment license application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), ownership interest, or controlling interest in the business for which a marijuana establishment license is being applied for.

I further certify that any ownership change shall be reported to the board as required under 3 AAC 306.040.

I understand that my fingerprints will be used to check the criminal history records of the Federal Bureau of Investigation (FBI), and that I have the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record.

The procedures for obtaining a change, correction, or updating an FBI identification record are set forth in Title 28, CFR, 16.34.

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Signature of licensee

Notary Public in and for the State of Alaska

Printed name of licensee

My commission expires: _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

From: David Shimek
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: comment on proposed changes to 3 AAC306.020(b)(4) (financial "history")
Date: Monday, December 18, 2017 11:51:10 AM

This falls under the heading of "be careful what you wish for...".

Who will safeguard these thousands of personal financial records of hundreds, maybe thousands, of applicants and others swept up in these disclosure requirements ? If stored as digital records, how much will have to be spent to ensure they are not hacked ? If the NSA and the CIA cannot safeguard its records (despite spending uncounted millions on digital security), how will AMCO accomplish this feat ?

If these records are kept only as physical documents, how much storage and cataloguing and security will be needed to prevent theft and unauthorized copying ? How much money will be spent making multiple copies when needed for a hearing or other review ? Who will ensure all these copies of private personal documents will be destroyed when no longer needed ? Who will guard the guardians ?

What kind of increased security measures will the Board members, its agents and staffers need to be subjected to to ensure they are not accidental or deliberate leakers ?

Who will screen these personal records to see which ones should be scrutinized by the Board ? Who on the AMCO staff is trained in accounting forensics ? Are the Board members themselves equipped to decide all the kinds of issues which can arise from these records and deal with them in closed hearings ?

How real and substantial are the theoretical benefits of such a greatly enlarged regulatory system ?

David Shimek, Anchorage, AK

From: Brian Coyle
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Public Comment
Date: Thursday, January 11, 2018 4:30:39 PM

Dear MCB,

Thank you for the opportunity to comment on these proposed regulations.

I believe that this rewrite is vague, overly broad and could have unintended affects, specifically:

3 AAC 306.015(e) is repealed and readopted to read:

(e) In this section,(1) "direct or indirect financial interest" means

(A) having a financial interest in the business of \$20,000 or more;

(B) having an interest in the business such that the performance of the business causes, or could reasonably be anticipated to cause, financial benefit or hardship

This could be interpreted to include any bank or other financial institution that lent money to a licensee. It also would preclude arrangements to license proprietary methods and other intellectual property.

(C) lending money, real property or personal property to a licensee for the use in the business;

This could be interpreted to include leasing of equipment, vehicles or any other high capital expenditures and that could pose a real hardship on certain operations

(D) giving money, real property or personal property to a licensee for use in the business; or

(E) being the spouse or cohabitant of a licensee;

Could be interpreted so that "cohabitants" include people who share housing, eg. roommates, children etc. And vague, how long does a person have to live someplace to be considered a cohabitant?

Thank you for your consideration.

Regards,

Brian

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Brian Coyle, CEO

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From: Ronda Lambert
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Comment on proposed Regs
Date: Thursday, January 11, 2018 11:35:22 AM

I am writing to comment on the proposed marijuana regulations.

I think the rewrite of some of the regulations are good, and makes them clearer and better organized. However, I do think that the Board should decline to adopt certain definitions of what constitutes someone having a “direct or indirect financial interest.” Section 306.105(a) states that only the actual licensee can have a “direct or indirect financial interest” in a marijuana establishment. Section 306.105(e)(1) then provides five definitions of what it means to have a “direct or indirect financial interest.” The first two definitions are consistent with the term and but the following three will raise confusion and are outside the scope of what a direct or indirect financial interest typically entails:

“(C) lending money, real property or personal property to a licensee for the use in the business;

(D) giving money, real property or personal property to a licensee for use in the business; or

(E) being the spouse or cohabitant of a licensee;”

In addition it is contrary to the general understanding of what it means to have a financial interest in the business, they would have an unfair impact on licensees, and they could lead to absurd results. I will address each in turn:

Lending money. It is a stretch to say that someone who lends money a business to therefore has a financial interest in the business. It would be one thing if the repayment of the loan was tied to the profitability of the business, since that would indirectly make the lender an equity partner so long as the loan remains unpaid (I note that you allow such an arrangement for landlords whose rental receipts are tied to business receipts, by excluding them from the definition of this section). However, it is expensive to start a marijuana business and jump through the licensing hoops, and I expect quite a number of licensees have borrowed money from family friends to start out. These lenders would presumably be rooting for the success of the business, but unless the loan is actually secured by the business assets, the loan is personal to the borrower. After all, the licensee would be on the hook to repay the loan no matter the outcome of the business venture. When I borrow money from a bank to purchase a car, the lender is certainly hopeful that I remain employed so that I can more easily pay back the loan, but my debt to the lender exists regardless of my employment, and the loan does not give the lender the right to interfere with my business or employment affairs. It strikes me that this rule would make it impossible for anyone to borrow money from anyone – their parents, cousin, their BFF, or even banks if bank loans because available in the future -- to start or grow their marijuana establishment. I am not aware of any other type of business that labors under such a restriction.

Giving money. As much as it is difficult to see how a lender automatically has a financial interest in the business, it is even more of a stretch to see how a gifter of money has a financial interest. Just as some establishments are started with family loans, some are likely started

with gifted contributions to the licensee's necessary seed money. The essence of a gift is that you have no expectation of ever being repaid. When you gift money, you give the money and then you financially walk away. In no sense does a gift of money to a licensee create any ongoing financial interest in the business.

Spouse or cohabitant. This proposed inclusion is difficult to grasp. If a spouse or cohabitant is defined as having a "financial interest" and one cannot have a financial interest without being the licensee, does that mean that both spouses must be the licensee, or that a prospective licensee cannot remain married if they are to obtain a license? Must the prospective licensee move out of a home shared with a spouse or other adult prior to applying for a license or license renewal? Does it extend to all members of the same household, or only those with whom one is in a significant relationship (and if the latter, how "significant" must the significant other be to fall within the prohibition of this regulation: joint bank account? frequent intimacy?). Does it bar a current licensee from getting married, or from moving in with another adult, or from changing the composition of his or her current household? The regulation also makes no practical business sense. Many people who have a spouse or cohabiting partner operate a business – Amway salespeople, attorneys, engineers, realtors, sole proprietors of all sorts – and there is no requirement that the spouse or cohabitant must either become a formal co-owner or move out

For these reasons, I ask that you strike these three subsections from §306.105(e)(1) of the proposed regulations.

I thank you for your consideration of these comments.

Ronda Lambert



Virus-free. www.avg.com

From: Tina Smith
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Proposed regulation change to 3AAC306.015(e)
Date: Thursday, January 11, 2018 3:57:24 PM

3AAC 306.015(e) definitions of direct or indirect interest (e)

(E) I Would like to suggest adding language that specifies “Cohabitant” as “domestic partnership” in some way. Example of why it is needed is this is an industry that is attracting young entrepreneurs who may be living in a roommate situation. Starting a business is expensive and this is a cost effective way to cut living costs. That could be defined at some point as “cohabitation” and in multiple areas in the regulations could be an issue where it should not even be a consideration.

Thank you for your time and consideration.

Tina Smith
Owner/CEO Midnight Greenery
(907)727-2000 t.smith@midnightgreenery.com

From: steve@greatnortherncannabis.com
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Public Comments: Financial Background & Residency Check
Date: Wednesday, December 27, 2017 8:53:51 AM

January 8, 2018

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 306.015; 3 AAC 306.020; 3 AAC 306.990 – Financial background checks for marijuana business applicants; residency requirements for marijuana licensees

Dear Sirs:

Great Northern Cannabis, Incorporated (GNC) is an Alaska corporation with approximately 45 full- and part-time employees, and 23 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 financial background checks for marijuana business applicants; residency requirements for marijuana licensees.

GNC has reviewed the proposed changes and offers the following comments:

1. We consider the addition of “ownership interest” and “controlling interest” to 3 AAC 306.015(a) superfluous but not overly objectionable.
2. We object to the new language proposed for 3 AAC 306.015(e), specifically:
 - a. In subsection (1) (B) a landlord who fails to make timely facility repairs could reasonably be anticipated to cause financial hardship to a business, yet most landlords do not have ownership interests in their tenants’ companies.
 - b. Subsection (1) (C) is problematic as it appears to prohibit loans from outside Alaska. Given the difficulty of obtaining capital, adding further barriers is a step in the wrong direction.
 - c. Subsection (1) (E) is ridiculous on its face; there is no reason to assign a financial interest to a cohabitant like a roommate, nor to assume a spouse shares a financial interest. Indeed, some of our shareholders’ spouses have specifically eschewed financial interest for personal and/or professional

reasons. This subsection cannot possibly pass legal muster and should therefore be deleted.

3. We are wary of adding “, and financial history information required by the board.” To 3 AAC 306.020(b)(4). The amount of information and attestation already required of applicants is already sufficient to the point of onerousness (e.g. new fingerprint cards for license renewals) without adding further burdens. Please delete this change.

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.



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January 11, 2018

Marijuana Control Board
Director McConnell
Sent Via Email

Re: Public Comment Relating to Regulation Project “Financial Background Investigations”

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

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

Financial Background Investigations Proposed Regulation

Change in section 3AAC 306(15)(a) – adding ownership interest or controlling interest, no objection, this seems reasonable.

Change in section 3AAC 306(15)(e) – section (1)(A) change seems reasonable but also seems to be unclear as to what measures the department of AMCO would have to investigate such types of relationships. The language as currently drafted would lend an investigator to make very subjective conclusions that are not easy to quantify by any factual or fixed measure. For example, what does ordinary compensation mean? And how does one classify ordinary compensation for an employee who risks federal criminal action every day working at an establishment that is in the business of engaging in a commercial marijuana business. Similarly, what is under compensation?

In section (1)(A)(ii) proposes an addition of making persons who lend money, real property, or personal property for use of the business licensees. This, in part, directly contradicts this Board’s previous decision, a decision of which I have in writing from the former director’s administration and a decision of which the entire marijuana regulated industry has relied upon. The Board

specifically stated on the record at the Feb. 11, 2016 meeting and the November 20, 2015 meeting that the Board did not consider promissory notes and lenders of such funds to be a prohibited financial interest, requiring such a lender to be a licensee. This provision would make any person who lends any monies, property, or personal property (equipment, etc.) or any person who rendered services without immediate compensation (design professionals, accountants, etc.) a prohibited financial interest, meaning they too would need to be a licensee. This section of the proposed regulation is an overstep and is not acceptable. Section iii of this same provision is also, unacceptable.

Section iv. – being a spouse of an applicant or licensee would require that spouse to be a licensee – Alaska isn't even a community property state, in Alaska you have to actively opt into the community property status. Otherwise, Alaska is an equitable property state, making this specific proposal an incredible overreach as the spouse who is a licensee and owner of the business owns that business by default as their own separate property. There is no rationale to force the other spouse, who may have a job that doesn't allow for this type of business participation, risk of being terminated, at risk for liability, for a business that isn't even owned by that spouse. Many spouses don't want to be business owners in this industry – to force one spouse to be on a licensee because of a choice another made is unconstitutional and comes from an archaic line of reasoning.

Change in section 3AAC 306(15)(e)(B)(i) – the Board specifically decided to keep percentage based leases in the regulations – your draft online has that percentage lease type still included – please fix it, as the board's actions are not properly reported on your proposed regulation draft.

Change in section 3 AAC 306.020(b)(4) – Last meeting I do not think it was clear to the board – **if you, the Board accepts this proposed regulation packet as written you will force all landlords, lenders, lessors of equipment, and spouses to become licensees – if you want to do background checks on the above named persons, your remedy is to have the legislator amend the statute to allow for it. That is the only option for you unless you are prepared to force all these identified people (lenders, landlords, spouses) to be licensees.**

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

Respectfully submitted for your consideration,

Jana Weltzin /s/
Jana D. Weltzin, Esq.