



MEMORANDUM

TO: Mark Springer, Chair, and Members of the Marijuana Control Board DATE: August 15, 2018

FROM: Jed Smith, Local Govt Specialist, and Sarah Oates, Program Coordinator RE: Regulations Project – Testing Working Group Recommendations, Set 1

Testing Working Group Recommendations, Set 1 Summary

Members of the Testing Working Group initially developed the language regarding harvest grading, for the purposes of testing bud and flower, leaf and trim, and kief, primarily as a means to achieve better potency testing accuracy. This regulation project was posted for public comment, and the public comment period closed on August 8.

It came to AMCO staff's attention that the Department of Revenue released a set of draft regulations related to taxation of marijuana after AMCO staff had posted the Marijuana Control Board's Testing Working Group draft regulations. Both regulations propose changes to the definitions of the marijuana plant. AMCO staff believes the Department of Revenue's language, which relates directly to taxation, will inherently affect the behavior of cultivators and how marijuana is distributed among licensees. AMCO staff believes the two agencies' goals are compatible, and should be clear and in alignment to avoid confusion for licensees.

AMCO staff believes it will be in the best interest of regulators and licensees to bring definition language regarding the marijuana plant into alignment. Additionally, staff have identified the need to clarify in regulation that testing of seeds and clones is not required. Therefore, AMCO staff recommends adopting the draft regulation project as presented, with the exception of the following sections, which AMCO requests to be reassigned to the Testing Working Group for additional work:

3 AAC 306.435
3 AAC 306.445
3 AAC 306.990(b)
3 AAC 306.990(b)(3)



Potential Actions

The board should consider the public comments received, and any substantive amendments will require the project to be put out again for public comment. Otherwise, the portions of this project that are not directly impacted by the definitions may be adopted. These parts include:

- 3 AAC 306.345(b)(2)
- 3 AAC 306.455
- 3 AAC 306.475(d)(2)
- 3 AAC 306.645(a)
- 3 AAC 306.645(b)(1)(B)(i)
- 3 AAC 306.645(b)(2)
- 3 AAC 306.670(b)

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

3 AAC 306.345 (b)(2) is repealed and readopted to read:

(2) states the estimated amount of total THC in the labeled product; and

(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

3 AAC 306.435 is amended to read:

3 AAC 306.435. Marijuana inventory tracking system (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 is identified and tracked from the time the marijuana is propagated through transfer to another licensed marijuana establishment or destruction. The marijuana cultivation facility shall assign a tracking number to each plant over eight inches tall. When harvested, **each** [BUD AND FLOWERS, 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 **shall be identified by an inventory tracking number; each inventory tracking number shall be assigned to 50 or fewer plants.** [MUST BE LIMITED TO 50 OR FEWER PLANTS AND IDENTIFIED BY A BATCH TRACKING NUMBER].

(b) A marijuana cultivation facility shall record each sale and transport of **any plants and**

each batch in its marijuana inventory tracking system, and shall generate a valid transport manifest to accompany **any plants and** each transported batch. (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

3 AAC 306.445 is repealed and readopted to read:

3 AAC 306.445. Standards for cultivation and preparation. (a) A marijuana cultivation facility shall use registered scales in compliance with AS 45.75.080 and 3 AAC 306.745.

(b) Harvested marijuana will be segregated into batches using the following grades:

(1) from marijuana plants that are uniform in strain, cultivated in one place and under the same conditions, using the same medium and agricultural chemicals including pesticides and fungicides, and harvested in a time period not to exceed 72 consecutive hours

(A) bud and flower;

(B) primary trim; and

(C) secondary trim; and

(2) kief, which may be combined from multiple strains and harvests. (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

3 AAC 306.455 is amended to read:

3 AAC 306.455. Required laboratory testing. (a) A marijuana cultivation facility shall provide **samples** [A SAMPLE] of each harvest batch of marijuana produced at the facility to a marijuana testing facility and may not sell or transport any marijuana until all laboratory testing required under 3 AAC 306.645 has been completed.

(b) To comply with (a) of this section, a marijuana cultivation facility shall

(1) collect a **representative** [RANDOM], homogenous sample for testing [BY SEGREGATING HARVESTED MARIJUANA INTO BATCHES OF INDIVIDUAL STRAINS OF BUD AND FLOWER, THEN SELECTING A RANDOM SAMPLE] from each **harvest** batch **that has been uniformly dried and cured,** in an amount **as set forth in following table** [REQUIRED BY THE MARIJUANA TESTING FACILITY]:

Harvest Batch Size (pounds)	Quantity of samples (1g each)
1	4
2	4
3	5
4	6
5	8
6	10
7	11
8	13
9	14
10	16

(2) designate an individual responsible for collecting each sample; that individual shall

(A) prepare a signed statement showing that each sample **is**

representative of the harvest [HAS BEEN RANDOMLY SELECTED FOR TESTING];

(B) provide the signed statement to the marijuana testing facility; and

(C) maintain a copy as a business record under 3 AAC 306.755; and

(3) transport the **samples** [SAMPLE] to the marijuana testing facility's licensed premises in compliance with 3 AAC 306.750.

(c) A marijuana cultivation facility shall segregate the entire batch from which the testing **samples were** [SAMPLE WAS] selected until the marijuana testing facility reports the results from its tests. During this period of segregation, the marijuana cultivation facility that provided the **samples** [SAMPLE] shall maintain the batch in a secure, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy. The marijuana cultivation facility that provided the **samples** [SAMPLE] may not sell or transport any marijuana from the segregated batch until the marijuana testing facility has completed its testing and provided those results, in writing, to the marijuana cultivation facility that provided the **samples** [SAMPLE]. The marijuana cultivation facility shall maintain the testing results as part of its business books and records. (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

3 AAC 306.475(d)(2) is amended to read:

(2) the **inventory tracking** [HARVEST BATCH] number assigned to the marijuana in the package;

(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

3 AAC 306.645(a) is amended to read:

(a) A marijuana testing facility shall use the general body of required laboratory tests as set out in this section for marijuana plant material, an extract or concentrate of marijuana, and [AN EDIBLE] a marijuana product. Required tests may include potency analysis, moisture content, foreign matter inspection, microbial screening, pesticide, other chemical residue, and metals screening, and residual solvents levels. A marijuana testing facility shall establish a schedule of fees [AND SAMPLE SIZE] required for each test it offers, **and shall perform tests using methods in compliance with guidelines prescribed by the board.**

(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

3 AAC 306.645(b)(1)(B)(i) is repealed and readopted to read:

(i) for a potency test on marijuana and marijuana concentrate, the marijuana testing facility shall list for each required cannabinoid a single percentage concentration, based on dry weight, that represents an average of all samples within the

test batch; additionally, total THC and total CBD shall be reported. (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

3 AAC 306.645(b)(2) is amended to read:

(2) microbial testing for the listed substances on the listed **marijuana and**

marijuana products is required as follows:

Substance	Acceptable Limits Per Gram	Product to be Tested
--Shiga-toxin producing Escherichia coli (STEC)- bacteria	Less than 1 colony forming unit (CFU/g)	<u>Marijuana</u> [FLOWER]; retail marijuana products; water-and food-based concentrates
<i>Salmonella</i> species-bacteria	Less than 1 colony forming unit (CFU/g)	
<i>Aspergillus fumigatus</i> , <i>Aspergillus flavus</i> , <i>Aspergillus niger</i> -fungus	Less than 1 colony forming unit (CFU/g)	

(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

3 AAC 306.670(b) is amended to read:

(b) A marijuana testing facility shall establish procedures to ensure that reported results are accurate, precise, and scientifically valid. To ensure reported results are valid, a marijuana testing facility shall **report results in compliance with guidelines prescribed by the board**

and shall include in a final report

- (1) the name and location of the marijuana testing facility;
- (2) the unique sample identifier assigned by the marijuana testing facility;
- (3) the marijuana establishment or other person that submitted the testing sample;
- (4) the sample identifier provided by the marijuana establishment or other person that submitted the testing sample;
- (5) the date the marijuana testing facility received the sample;
- (6) the chain of custody identifier;
- (7) the date of the report;
- (8) the type of marijuana or marijuana product tested;
- (9) the test results;
- (10) the units of measure; and
- (11) any other information or qualifiers needed for interpretation of the test method and the results being reported, including any identified and documented discrepancy.

(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

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

(3) "batch" or "harvest batch" means a specifically identified quantity of **bud and flower,** plant trim, leaf, and other usable product from marijuana plants, **that has been segregated into a specific grade as required by 3 AAC 306.445(b), and does not exceed 10 pounds** [THAT ARE UNIFORM IN STRAIN, CULTIVATED IN ONE PLACE AND UNDER THE SAME CONDITIONS, USING THE SAME MEDIUM AND AGRICULTURAL CHEMICALS INCLUDING PESTICIDES AND FUNGICIDES, AND HARVESTED AT THE SAME TIME]; (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

3 AAC 306.990 (b) is amended by adding new paragraphs to read:

(40) "primary trim" means the hairy, sticky, or crystal-covered parts of mature female marijuana plants generally harvested for a potency content that is considered inferior to bud and flower, including immature tops and sugar leaves.

(41) "secondary trim" means usable marijuana that is harvested with a lower potency content than that of primary trim, including fan leaves, and has been significantly macerated.

(42) "total THC" means the sum of THC and $(0.877) * (THCA)$

(43) “total CBD” means the sum of CBD and $(0.877) * (CBDA)$

(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



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July 25, 2018

Marijuana Control Board

Mark Springer, Chair

Jeff Ankerfelt

Loren Jones

Brandon Emmett

Nicholas Miller

Alcohol & Marijuana Control Office

550 West Seventh Avenue, Suite 1600

Anchorage, Alaska 99501

RE: Proposed 3 AAC 306.345; 3 AAC 306.435; 3 AAC 306.445; 3 AAC 306.455; 3 AAC 306.475; 3 AAC 306.645; 3 AAC 306.670; 3 AAC 306.990 – marijuana testing, inventory tracking, sample preparation, and definitions

Dear Sirs:

Great Northern Cannabis, Incorporated (GNC) is an Alaska corporation with approximately 45 full- and part-time employees, and roughly three dozen 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 pertaining to marijuana testing, inventory tracking, sample preparation, and definitions.

GNC finds some of the proposed changes to be reasonable, others objectionable, and offers the following thoughts and questions:

1. The increased number of samples required in proposed 3 AAC 306.455 will increase costs to cultivators with no corresponding offset. If the increase in testing is truly deemed to be in the public interest, which we feel is unlikely at best as those wishing to “game” the testing system will not be deterred by an increased number of samples, then a corresponding tax reduction is warranted.
2. In the same section, we are curious as to the effect of changing from “random” to “representative” in selecting samples for testing? We believe our current practices conform under either definition but would appreciate a written explanation from the board articulating both the reasoning and effect of the change.

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3. Similarly, we are curious as to the reasoning in proposed 3 AAC 306.990(b)(3) limiting harvest batches to 10 pounds. While we currently conform to that standard and do not foresee exceeding it, we can imagine a scenario where large, uniform batches are grown for the manufacturing market. Again, we would appreciate a written explanation of the reasoning as well as direction for instances where harvest batches do exceed 10 pounds (e.g. can they be subdivided?). We also note this appears to be another potential added cost to cultivators and, as such, merits a corresponding tax offset.

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,

A handwritten signature in blue ink that reads "Stephen W. Brashear".

Stephen W. Brashear

Submitted By	Comment
7/3/2018 5:40:16 AM Trevar Neade tneade@gmail.com Fairbanks, AK, US Anonymous User	So the board can change the same regulations they accuse and remove licenses for? Or I guess frozen budz is the only license that got revoked because of personal interest conflicts.

From: dollynda Phelps
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Proposed testing regulations comment
Date: Sunday, July 29, 2018 4:55:56 PM
Attachments: [MCB Testing Regulation Draft Round 1\(1\).pdf](#)

Hey gang! Below are my comments regarding proposed changes to testing requirements. Please don't forget to send in your comments by Aug 8. This is our chance to make sure we aren't stuck paying for additional testing even if it's being manufactured into another product. See attachment of draft regulations.

TESTING REQUIREMENT COMMENTS DUE AUG 8

Proposed regulations for testing look pretty good with a few exceptions:

1- The biggest problem is the requirement to have multiple tests performed per harvest, which may contain as few as 4 plants. Repetitive testing for bud, primary trim, secondary trim and keif will quadruple the testing costs per batch, even if the product is being sold to a manufacturer and will receive additional testing before being sold to retail. I know of only one licensee in the state that has created several different "grades" of trim, but this is not normal and does not represent common practices of the industry. If a cultivator wishes to separate different "grades" of trim for sale to a retailer, then they should absolutely be required to have these separated batches tested. ANY product for sale to retail should be tested. But if it is sold to a manufacturer, the single batch test should suffice.

The cost for 1 test is between \$160-\$185. How can a cultivator afford to pay \$600-\$700 testing fees on 4 plants? What is the purpose of requiring 4 tests on 1 batch if it is not being sold directly to retail for the consumer, but instead being used to make an entirely new tested product? I highly recommend requiring these additional tests only if product is being sold directly to retail. Any product sold to a manufacturer will be tested when it becomes its final product, before being sold to retail. The separation of different parts of the plant commonly used as trim is costly and time consuming for the cultivator, and not all cultivators do this. We should not all be required to pay several times for testing different grades if we aren't selling it to retail.

2- The idea of stating the "estimated amount of total THC" is a good one. This represents the lowest and highest THC the plant produces. This is much safer as the consumer will be aware of the possibility of a higher THC and can make a better judgement call on how much to consume.

3- Collecting a representative sample is also a good one. The sample provided should represent the highest THC possible to prevent overconsumption by consumers. If the test states a strain is 14.23%THC as determined with a *random* sample, but the majority of the plant tests at 21.72%THC it creates a situation where a consumer could easily over indulge, potentially causing risks to the consumer or member of the public. Samples should be picked to represent the highest THC expected.

Dollynda Phelps

907-252-8026