



MEMORANDUM

TO: Marijuana Control Board DATE: February 20, 2019

FROM: Erika McConnell, Director RE: Regulations Project – Tracking and
Marijuana Control Board Grading

On November 8, a package of new testing regulations, recommendations from the Testing Working Group on required sample sizes that are submitted to testing facilities, became effective. The package was the first attempt to address a suite of issues and gaps related to testing that have arisen since the roll out of the licensed retail marijuana industry.

In an attempt to increase confidence in testing accuracy, the Testing Working Group recommended, and the Marijuana Control Board agreed, to increase the amount and quantity of samples required to be submitted to a licensed marijuana testing facility. There have been challenges with aligning the new regulations with the inventory tracking system (Metrc). Additionally, testing facilities have reported some challenges in accepting and handling the increased sample size amounts. Prior regulations granted the testing facility the responsibility to determine the required sample amount from a harvest or batch. At least one testing facility accepted 4 grams, regardless of the size of the harvest.

In other states, a representative from the testing facility or a third party independent contractor collects the sample at the cultivation location, and have specific guidance on the practice and the amounts required. In Alaska, mandating third party sample collection would be logistically challenging and also significantly increase the cost of doing business for cultivators and testing facilities. The testing working group has identified this issue and is discussing additional guidance on sampling. Nationwide, sampling is a current topic of interest and discussion.

The attached draft is the second batch of changes to marijuana testing requirements, complementary to the first round of testing changes went into effect on November 8, 2018. It was put out for a 32-day public comment period.

Much of the language in 3 AAC 306.445 had been re-drafted by the working group to align with language recently adopted by the Department of Revenue, rather than using terms self-identified by

the industry. While not ideal, the Testing Working Group reluctantly supported the draft, and the Marijuana Control Board put it out for public comment.

The proposed draft regulations received numerous substantive comments from the public. The comments raised concerns about duplicative or redundant testing that will put a financial burden on licensees, and recommended end product testing. The draft also contains and unclear and inconsistent definitions of “harvest batch” in the regulations. AMCO staff and the Testing Working Group acknowledge the proposed changes in the draft need further clarification, amounting to substantive changes to many of the regulations in this draft and requiring an additional minimum 30-day comment period.

AMCO staff recommends the Marijuana Control Board **not** adopt the proposed language in 3 AAC 306.435, 3 AAC 306.445, and 3 AAC 306.990(b)(3) and (b)(40)-(42). However, staff does recommend the Marijuana Control Board adopt two definitions in the draft that address “total THC” and “total CBD” listed in the current draft as 3 AAC 306.990(b)(43) and (44).

Options for the board:

- Vote to adopt
- Amend; if amendment is substantive, put out for public comment
- Send back to staff for revisions

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

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 FLOWER, CLONE 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, **or seeds shall be identified by an inventory tracking number; each inventory tracking number shall be assigned to 50 or fewer plants or seeds.** [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 or seeds and** each batch in its marijuana inventory tracking system and shall generate a valid transport manifest to accompany **any plants and seeds 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:

(2) 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) mature bud;

(B) immature bud; and

(C) remainder of the plant; and

(3) 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 306.990 (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) "mature bud" means a mature flower formed on a flowering marijuana plant, and consists of calyx, pistils, resin, and trichomes that are generally swelled with resin, dense to sight and touch, and visibly covered in trichomes;

(41) "immature bud" means an immature flower formed on a flowering marijuana plant, and consists of calyx, pistils, resin and trichomes and that generally appear loose, wispy, or leafy, and are not dense to sight or touch.

(42) "remainder of the plant" means any part of or derived from a flowering marijuana plant that does not meet the definition of mature bud, immature bud, clones, cuttings, seeds, or kief.

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

(44) “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

From: dollynda Phelps
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: PUBLIC COMMENT RE: 306.445(B)
Date: Friday, December 07, 2018 3:32:26 PM

In regards to 306.445, requiring harvested marijuana be segregated into batches of mature bud, immature bud, and the remainder of the plant (trim), and then having all of these batches tested separately creates a HUGE unnecessary expense for cultivators selling trim to a manufacturer.

TRIM TESTING: Amendments made to regulation 306.455 at the Aug 15 meeting regarding testing products not sold directly to retail but instead sold to a manufacturer will financially burden every cultivator in the state, for no purpose. I have personally operated a cultivation facility for 2 years and not once been asked by a manufacturer to test the trim independently.

Repetitive testing for different parts of the same batch will exponentially increase the testing costs per batch, even if the product is trim being sold to a manufacturer, made into a vape pen, and will receive additional testing before being sold to retail.

ANY product for sale to retail for a consumer should be tested. But products sold to a manufacturer already come from a tested batch and receive additional final testing. If a manufacturer only wants to buy trim product that has been tested, this is purely a business negotiation between manufacturer and cultivator. This should in no way be dictated by a regulatory board.

The adoption of this amendment is obviously not in the interest of public safety if the product is not being sold to a consumer. So what is this requirement for? I strongly urge the board to reconsider this amendment and change this as it is an arbitrary requirement which serves no purpose. Trim being sold to a manufacturer should not be **required** to have a separate test.

Definition of Arbitrary:

- 1- Determined by chance, whim, or impulse, and not by necessity, reason, or principle.
- 2- A course of action or a decision that is not based on reason or judgment but on personal will or discretion.

Dollynda Phelps

907-252-8026

From: Barret Goodale
To: [CED AMCO REGS \(CED sponsored\)](#)
Cc: [Christian Hood](#); [Trevor Haynes](#); [Greg Allison](#)
Subject: PUBLIC COMMENT CONCERNING PROPOSED CHANGES ON MARIJUANA INVENTORY TRACKING AND HARVEST GRADING
Date: Sunday, December 09, 2018 2:32:39 PM

Marijuana Control Board Members,

The proposed changes to the marijuana inventory tracking and harvest grading will produce economic injury to the legal cannabis industry.

3 AAC 306.990 (b) (3) regarding the definition of batch or harvest batch has 3 3 major issues.

1) Segregation of Harvest batches:

Mandating harvest batches be segregated into grades defined by 3 AAC 306.445(b) increases the cost to cultivators due to the increased cost in testing. If the proposed regulation changes move forward than trim will have to be tested separately from other product. Trim is not nearly as valuable as flower. Trim already has a tax rate that equates to \$240. Testing costs for potency and microbial testing can vary from \$200-300. So if a cultivator had a harvest that produced 1 pound of trim, the cost would be \$440-540 in tax and testing alone. This is more than the market value in most states. Taxing and mandating testing that would create a financial weight greater than the value of a product is not good practice. This will encourage diversion and deceit. The reasonable option would be to not mandate testing for product that would be used for concentrate manufacturing. This would allow for 10 lb batches, without the heavy financial burden of testing a low value product that will undergo testing in the future before consumption.

2) Conflict of multiple harvest batch definitions:

Already there are multiple definitions of "harvest batch". In Metrc (the inventory tracking system for Alaska) a harvest batch is the original grouping of plants that are harvested from a single crop and variety. There is no limit to the size. In the regulations there are two definitions. This was made clear by Investigator J. Bankowski via an Advisory Notice on 10/10/17. Investigator Bankowski stated that harvest batch as referred to in 3 AAC 306.435 was separate from every other time harvest batch was mentioned in the regulations. So if the board chooses to make an amendment to the definition of harvest batch under 3 AAC 306.990, it would be wise to take the opportunity to separate these three definitions that all use the same term. Speaking with the administrators of Metrc the terms that would match the regulations would be Harvest Batch, Package, and Testing batch lot. **Harvest Batch** is the term Metrc uses for the original grouping of plants that are harvested from a single crop and variety, the purpose is to report the wet weight, non usable plant waste, and show the origin of all packages and testing batch lots that arise from said harvest. **Testing Batch Lot** is the term Metrc has used in other states that have a batch size limit. This term could be synonymous with 3 AAC 306.990. Lastly, **package** is the term in Metrc that is being described under 3 AAC 306.435. By using three terms for three definitions instead of one term for three definitions, much confusion could be avoided and could enhance licensees ability to follow the regulations and stay compliant.

1) Segregation of Harvest batches:

Mandating harvest batches be segregated into grades defined by 3 AAC 306.445(b) increases the cost to cultivators due to the increased cost in testing. If the proposed regulation changes move forward than trim will have to be tested separately from other product. Trim is not nearly as valuable as flower. Trim already has a tax rate that equates to \$240. Testing costs for potency and microbial testing can vary from \$200-300. So if a cultivator had a harvest that produced 1 pound of trim, the cost would be \$440-540 in tax and testing alone. This is more than the market value in most states. Taxing and mandating testing that would create a financial weight greater than the value of a product is not good practice. This will encourage diversion and deceit. The reasonable option would be to not mandate testing for product that would be used for concentrate manufacturing. This would allow for 10 lb batches, without the heavy financial burden of testing a low value product that will undergo testing in the future before consumption.

3) The impact of the 10lb harvest batch is already being enforced

Because of the 11.8.2018 changes made to 3 AAC 306.455, AMCO has already been enforcing the 10lb maximum to testing batch size. This is relevant to the current regulatory changes that are out for public comment because according to the AMCO state website, "3 AAC 306.990 is proposed to add new definitions for marijuana and limit harvest batches to 10 pounds." This conflict should be considered as the points I have made herein are applicable to this public comment period, but AMCO has used their authority to interpret the regulations and circumvent the board and prematurely instate the 10lb harvest batch limit without public comment. This is in direct violation of due process according to AS 44.62.210. The financial impact of the 10lb harvest batch limit is now in place due to the overreach of AMCO enforcement and needs to be addressed immediately. I hope that the board will address this overreach.

I appreciate your time and for providing me with a platform to express my concerns, comments, and respect for this board.

Sincerely,

C. Barret Goodale
GOOD Cultivation Manager
907-699-9478

Follow GOOD on [Instagram](#), [Twitter](#), and [Facebook](#)
Alaska Marijuana Industry Association member

Submitted By	Comment
12/7/2018 3:44:19 PM Anchorage (Midtown), AK, US Anonymous User	<p>Greetings,</p> <p>Requiring Marijuana be segregated into graded batches may cause problems. when would the division happen? we would harvest the whole plant, allow it to dry, then begin to process it. we will not have a total amount of product until it is completely processed. meaning, I cannot pull abnormal bud away from good bud before the entire harvest batch is worked through. at the point of complete processing, we would then create individual packages of the specific grade of product for sale. do not require us to create a package before we know what is in the package.</p> <p>proposing harvest batches are no larger than 10 pounds creates issues. is it 10 pounds of dried product in a single harvest batch? are you referring to whole un-trimmed flower in a single 10 pound batch? how could we anticipate how many whole wet plants it will take to achieve 10 pounds of whole dry flower? if we harvest all into one whole harvest batch, then pull 10 pounds of dried product out to get tested, that can work. that option will keep the tested amount to 10 pounds per test. which is what I hope you are trying to achieve. change that language, "tested amount cannot exceed 10 pounds in a single test." please do not ask us to assume the dry weight of product when we only have the whole wet plant to base our decision on.</p> <p>thank you for your time, have a glorious day!</p>



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December 12, 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 amendments to 3 AAC 306.435, 3 AAC 306.445 and 3 AAC 306.990

Dear Sirs:

Great Northern Cannabis, Incorporated (GNC) is an Alaska corporation with approximately 80 full- and part-time employees, and roughly two dozen Alaskan shareholders from a wide variety of backgrounds. We currently own and operate a cultivation facility and two retail stores. We thank you for the opportunity to comment on the proposed regulations, especially those dealing with new definitions for marijuana and limit harvest batches to 10 pounds.

While GNC does not have any specific objections to the proposed amendments, we do have reservations that the proposed amendments will achieve their intended purpose. For starters, the only certainty of the proposed amendments is increased business for marijuana testing facilities. If the aim of the proposed amendments is to provide a higher level of consumer safety and protection, our opinion is the regulations should be amended to ensure random testing—testing that is representative of each actual harvest batch. Under the proposed amendments, nothing prevents a cultivator from submitting samples harvested from a single plant for multiple batches harvested simultaneously.

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Thank you again for the opportunity to comment. We would be happy to participate in any future rule-making processes.

Sincerely,

A handwritten signature in blue ink that reads "John E. Redden". The signature is fluid and cursive, with a long horizontal stroke at the end.

John E. Redden