



MEMORANDUM

TO: Marijuana Control Board

DATE: February 20, 2019

FROM: Erika McConnell, Director

RE: Director's Report

OPERATIONS

Craig Douglas, AMCO's Administrative Officer for over two years, accepted a new position in the Department of Transportation and left AMCO in mid-January. AMCO has hired a new Administrative Officer who will begin soon.

AMCO was not granted hiring permission to fill the Regulations Specialist position in December. The position is included in Governor Dunleavy's FY20 budget so I will request hiring approval again. If granted, AMCO will re-initiate the recruitment process.

ISSUES

APSIN/ARMS

On December 1, after 30 days' notice, the Department of Public Safety (DPS) terminated AMCO's access to the Alaska Public Safety Information Network (APSIN) and to the Alaska Records Management System (ARMS). They are databases used by law enforcement agencies for case management, crime reporting, and processing of citations and criminal cases (ARMS) and for access to criminal justice information needed to conduct thorough and safe investigations, flagging of licensees and license locations for other law enforcement knowledge, collaboration with other law enforcement on investigations, and processing of citations and criminal cases (APSIN). These tools have been used by AMCO investigators for many years, for APSIN, going back to when the ABC Board was housed in the Department of Revenue.

The removal of our ability to use APSIN and ARMS is preventing the investigators from fully performing their statutory duties which include enforcement of criminally punishable provisions of Title 4, Chapter 17.38, and elements of Title 11. Their safety and the safety of other law enforcement personnel is compromised—the investigators are not able to identify individuals who have been flagged as a risk to officer safety, they are not able to share information with other law enforcement agents, and they are not able to use radio talk groups to call for assistance if they are in a remote area and need help or answer calls for assistance from other law enforcement. AMCO investigators make scheduled and unscheduled inspections of licensed facilities to respond to complaints or tips about unlicensed activity, bootlegging, over service, under-age drinking, and other activities that threaten public health and safety. With no access to these databases, the investigators may go to interview someone who is subject to a warrant or possibly armed and dangerous, without having any warning or information. In the worst case scenario, AMCO investigators could interview

a wanted individual without ever knowing there was a warrant for that person, and the person could go on to commit new crimes.

In addition, AMCO is now without an enforcement case management system, which means we will either need to purchase new software (an unneeded duplicative expense) or find time-consuming work-arounds with unsecured Excel spreadsheets, hindering our efficiency, accuracy, and reporting ability.

The threshold for access to APSIN and ARMS, according to the attached letter from Major Greenstreet, is either being a criminal justice agency or being peace officers. While it is debatable whether or not AMCO is a criminal justice agency, the investigators have been considered to be peace officers for many years. DPS testified to this effect before the House Labor and Commerce in 2003 when the ABC Board was in the Department of Revenue So what changed?

While you won't read this in Major Greenstreet's letter, what DPS has told us in meetings is that the factor of change is the addition of marijuana to AMCO's regulatory responsibilities. Because marijuana remains illegal at the federal level, DPS fears that the FBI will remove the entire state's ability to access criminal justice information if the marijuana regulators are given access to criminal justice information. This information was relayed to me in meetings at DPS headquarters, and also to Commissioner Anderson at a meeting held with DPS Commissioner Price on December 27, 2018. This is concerning to me because as your director, I am bound by statute -- as you are -- to enforce Title 4 and AS 17.38, and the legislature has made no changes whatsoever to the enforcement provisions of those statutes. You should also know that I, and you, have no information to support the suggestion that the regulation of marijuana has changed the landscape of your enforcement obligations. On the contrary, you should know that:

- The FBI has not contacted DPS to indicate that the FBI has a problem with marijuana regulators having access to criminal justice information.
- DPS has not contacted the FBI to ask if the FBI has a problem with marijuana regulators having access to criminal justice information.
- In every other state where recreational marijuana has been legalized, the marijuana regulators have access to criminal justice information.
- The FBI audited AMCO in 2017 regarding how we handle criminal justice information, and no issues were raised regarding there being a problem with our access to criminal justice information.

After two meetings and various correspondence, DPS agreed to provide specific information contained in APSIN to AMCO investigators when requested for specific investigations. When requested, information may be provided within a couple of days. While I certainly appreciate the effort on behalf of DPS, you should know that the protocol that was offered severely constrains your enforcement staff and does not provide anywhere near the authority that is given to the ABC and MC boards in AS 04.21.070 and AS 17.38.131 respectively. Essentially, it requires AMCO's commissioned officers to seek DPS permission every time the officers deem it appropriate to initiate or pursue an investigation. On a purely practical level, this is unworkable. AMCO officers must be able to follow up on reports of illegal activity at a moment's notice. It is unreasonable and creates a risk to the public welfare to expect them to wait for what is essentially permission before initiating

an investigation, which at times involves limited and difficult travel to remote places. Then, while your officers are on location performing an investigation, access to additional information that may be needed is not immediately available and won't be so for several days, if it is provided at all. This stop-gap plan serves no one, least of all the people whose safety the legislature has entrusted to you. It is undermining the morale and efficiency of AMCO's enforcement officers and staff.

James Hoelscher, AMCO's Chief of Enforcement is on the phone today. If you have specific questions about how DPS's substitute plan differs from the authority that had been recognized by DPS for many years and how the change will affect Enforcement's work, I am sure he would be willing to provide a fuller picture for you.

ABC Board Chair Klein and MC Board Chair Springer jointly sent a letter to DCCED Commissioner Anderson asking her to request a legal opinion from the Attorney General regarding whether or not AMCO investigators are peace officers. The Commissioner put the issue on hold until after the Governor's budget was released. As you have seen, the Governor proposes to consolidate the majority of state investigators into one unit in the Department of Law. It is likely that should your enforcement officers be moved to this unit, they would have access to APSIN and ARMS, although I cannot say for sure.

Governor's Budget and Proposals

On February 13, 2019, Governor Dunleavy released his new budget along with information regarding changes to be proposed through legislation and executive orders. There are two major changes proposed relating to the ABC and MC Boards and AMCO.

1. By executive order, the Governor established a Statewide Investigator Unit within the Department of Law (order attached). The intent is to consolidate most of the investigators from the Departments of Commerce, Environmental Conservation, Health and Social Services, Labor and Workforce Development, and Revenue, which would include your investigators. The order creates a taskforce comprised of the Attorney General, the Director of the Division of Personnel and Labor Relations, and the OMB Director, to develop an implementation plan, with implementation to begin in FY20.

2. In addition, the Governor has indicated his intention to introduce legislation to repeal the Alcoholic Beverage Control Board and the Marijuana Control Board. The following supporting information was provided:

- The intent is to transfer the authority and responsibilities of the two boards to the commissioner and remove the marijuana control board and the alcoholic beverage control board.
- Reducing the regulatory burden in efforts to expand entrepreneurialism.
- Commissioner may adopt regulations and processes to allow alcohol and marijuana licenses to be processed more akin to that of professional licenses.
- This removes the limitations on the selection and appointment process of the director by the Governor.

As of February 14, 2019, no legislation has yet been introduced.

The Governor's FY20 budget reduces AMCO's budget by \$48,700 from the FY19 Management Plan. The cut is entirely from Travel, leaving a travel budget of \$135,000.

Introduction of New Strains

At the October 2018, meeting, the board approved a form to allow a cultivation licensee to bring in a limited number of clones or seeds from an unlicensed source, to implement the regulatory change that became effective on October 20, 2018. Between that meeting and February 14, 2019, I have received 256 requests from 45 different licensees.

- Most requests submitted by a single licensee: 25
- Most requests with same provider: 22
- Request for seeds: 169
- Request for clones/cuttings: 87
- Requests denied: 11 (duplicate of request approved earlier; ineligible license type; inconsistent information on form)

LEGISLATION

As of February 14, no legislation has been introduced that directly affects Chapter 17.38 and the regulation of the commercial marijuana program.

REGULATIONS

Attached to this report is a regulations projects status spreadsheet.

NEXT MEETING

The next MC Board meeting is scheduled for May 1-3 in Anchorage. Applications must be complete and any other documents for the board must be submitted to our office by April 12 to be on the agenda.

STATISTICS

Retail Sales

November	\$12,856,957	2016 Total Sales	\$1,689,329
December	\$13,420,548	2017 Total Sales	\$57,562,728
January	\$11,416,081	2018 Total Sales	\$130,475,707

Total retail sales from program inception to 1/31/19: \$201,143,845

Taxes Assessed

<i>Month</i>	<i># of taxpayers</i>	<i>Taxes Assessed</i>		
October	122	\$1,841,705	2016 Taxes	\$232,695
November	115	\$1,439,812	2017 Taxes	\$6,082,078
December	121	\$1,493,903	2018 Taxes	\$15,695,517

Total taxes assessed from program inception to 12/31/18: \$22,010,290

Marijuana-specific local sales and excise taxes generated a combined \$2,036,132 in FY18 in eight communities.