



MEMORANDUM

TO: Marijuana Control Board

DATE: May 1, 2019

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Fine Schedule

The board expressed a desire to develop a fine schedule in May of 2018. A first draft was brought to the board in August of that year. The board referred the draft to a subcommittee of Mr. Jones and Mr. Ankerfelt. The subcommittee recommended some changes, and I added some other changes to reflect subsequent board actions (e.g., the adoption of the onsite consumption regulation).

The general concept is that “notice of violation” is changed to “citation of violation” which comes with a penalty—usually either a fine or a suspension. Most types of violations have additional penalties for repetition within a three year period. A few serious violations do not reset after a certain time period but would accumulate over the life of the license.

Another change is to add that the board may suspend or revoke an endorsement in the same manner you can revoke a license.

The public comment period on this proposed regulation closed on April 12. Eleven comments were received, which are attached.

Since this is a significant regulatory change and there are currently only three board members present, I recommend that any adoption vote on this matter be postponed to the next meeting.

Options for the board:

- Vote to adopt as written
- Amend; if amendment is significant, put out for public comment
- Send back to staff for revisions
- Close the project without action

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

3 AAC 306.805 is amended to read:

3 AAC 306.805. Report [OR NOTICE OF VIOLATION]. (a) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity, may issue an inspection report **or** [,] an advisory report [, OR A NOTICE OF VIOLATION BEFORE TAKING ACTION TO SUSPEND OR REVOKE A MARIJUANA ESTABLISHMENT LICENSE].

(b) An inspection report documents an investigator's inspection of licensed premises. An inspection report must be prepared on a form the board prescribes and include information prescribed under AS 17.38 or this chapter or that the board requires.

(c) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may issue an advisory notice when an incident occurs or a defect is noted that could result in a violation of a statute, regulation, or municipal ordinance. An advisory notice may result from an inspection report, but is not a basis for administrative action unless the incident or defect continues or is not corrected.

(d) **Repealed** / / . [THE DIRECTOR, AN ENFORCEMENT AGENT, AN EMPLOYEE OF THE BOARD, OR A PEACE OFFICER ACTING IN AN OFFICIAL CAPACITY MAY ISSUE A NOTICE OF VIOLATION IF AN INSPECTION REPORT OR OTHER CREDIBLE INFORMATION SHOWS A MARIJUANA ESTABLISHMENT IS IN VIOLATION OF AS 17.38, THIS CHAPTER, OR OTHER LAW RELATING TO MARIJUANA. THE NOTICE OF VIOLATION MUST BE DELIVERED TO THE MARIJUANA ESTABLISHMENT AT ITS LICENSED PREMISES, AND TO THE BOARD.

THE NOTICE MUST DESCRIBE ANY VIOLATION, AND CITE THE APPLICABLE STATUTE, REGULATION, OR ORDER OF THE BOARD. A MARIJUANA ESTABLISHMENT THAT RECEIVES A NOTICE OF VIOLATION MAY RESPOND TO THE NOTICE ORALLY OR IN WRITING, AND MAY, NOT LATER THAN 10 DAYS AFTER RECEIVING THE NOTICE, REQUEST AN OPPORTUNITY TO APPEAR BEFORE THE BOARD. A NOTICE OF VIOLATION MAY BE THE BASIS OF A PROCEEDING TO SUSPEND OR REVOKE A MARIJUANA ESTABLISHMENT'S LICENSE AS PROVIDED UNDER 3 AAC 306.810.] (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.807. Citation of Violation. (a) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may issue a citation of violation if an inspection report or other credible information shows a marijuana establishment is in violation of as 17.38, this chapter, or other law relating to marijuana. The citation of violation must be delivered to the marijuana establishment either at the electronic mail address required in 3 AAC 306.020(b)(6) or at its licensed premises, and to the board. The citation must describe any violation, and cite the applicable statute, regulation, or order of the board.

(b) A citation of violation may be issued as follows:

Violation Type	1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
Marijuana obtained from an non-licensee 3 AAC 306.305 3 AAC 306.405 3 AAC 306.505	Accusation for revocation of license; seizure of product			
Marijuana sold to a non-licensee 3 AAC 306.305 3 AAC 306.405 3 AAC 306.505	Accusation for revocation of license			
Sale to minor 3 AAC 306.310	30-day suspension	Accusation for revocation of license		
Consumption on licensed premises 3 AAC 306.310 3 AAC 306.405 3 AAC 306.510 3 AAC 306.610	10-day suspension or \$15,000 monetary fine	30-day suspension	Accusation for revocation of license	
Sale of untested marijuana 3 AAC 306.340	30-day suspension	Accusation for revocation of license		
Allowing a minor on premises 3 AAC 306.710	\$5,000 monetary fine	\$10,000 monetary fine	\$30,000 monetary fine	Accusation for revocation of license
Refusal to allow inspection 3 AAC 306.800	30-day suspension or \$30,000 monetary fine	Accusation for revocation of license		

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
License transfer without approval 3 AAC 306.045	Suspension until approval and \$10,000 each monetary fine to transferor and transferee			
Prohibited acts (if not addressed in other category) 3 AAC 306.310 3 AAC 306.405 3 AAC 306.410 3 AAC 306.510 3 AAC 306.610	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Licensee/employee failure to display marijuana handler permit or ID badge; maintain handler permit on person or premises 3 AAC 306.320 3 AAC 306.425 3 AAC 306.530 3 AAC 306.700 3 AAC 306.710	Warning	\$1,000 monetary fine to licensee	\$5,000 monetary fine to licensee	\$10,000 monetary fine to licensee
Unauthorized access in restricted access areas 3 AAC 306.325 3 AAC 306.430 3 AAC 306.535 3 AAC 306.710	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Failure to utilize and/or maintain marijuana inventory tracking system 3 AAC 306.330 3 AAC 306.435 3 AAC 306.540 3 AAC 306.655 3 AAC 306.730	\$1,000 monetary fine	\$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	Accusation for revocation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Health and safety standards 3 AAC 306.335 3 AAC 306.440 3 AAC 306.545 3 AAC 306.735	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Packaging and labeling violations 3 AAC 306.345 3 AAC 306.470 3 AAC 306.475 3 AAC 306.565 3 AAC 306.570	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Advertising and consumer notice violations 3 AAC 306.365 3 AAC 306.770	Warning	\$5,000 monetary fine	\$10,000 monetary fine	\$15,000 monetary fine
Employment without handler permit 3 AAC 306.700	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Unapproved operations 3 AAC 306.703	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Unauthorized alteration of licensed premises 3 AAC 306.705	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Visitor failure to display ID badge; be escorted 3 AAC 306.710	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain security alarm systems and lock standards 3 AAC 306.715	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Failure to maintain video surveillance system, records 3 AAC 306.720	10-day suspension or \$5,000 monetary fine	30-day suspension or \$10,000 monetary fine	Accusation for revocation of license	
Failure to meet marijuana waste disposal requirements 3 AAC 306.740	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Transportation violations 3 AAC 306.750	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Manifest violations	Warning	\$1,000 fine	\$5,000 fine	\$15,000 fine
Failure to maintain/provide business records 3 AAC 306.755	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Failure to comply with trade show regulations 3 AAC 306.760	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
(Retail) Displaying products in a manner visible to the general public from a public right of way AS 17.38.070(a)(1)	\$2,500 monetary fine	\$5,000 monetary fine	\$10,000 monetary fine	\$15,000 monetary fine

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
(Retail) Sales/consumer access outside allowed hours 3 AAC 306.310(b)(1)	5-day suspension or \$5,000 monetary fine	10-day suspension or \$15,000 monetary fine	30-day suspension	Accusation for revocation of license
(Retail) Marijuana or marijuana product given away for free 3 AAC 306.310(b)(3)	5-day suspension or \$1,000 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
(Retail) Failure to check ID 3 AAC 306.350	5-day suspension	30-day suspension	Accusation for revocation of license	
(Retail) Sales in excess of limit on quantity sold 3 AAC 306.355	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license	
(Retail) Failure to comply with onsite consumption endorsement requirements 3 AAC 306.370	5-day suspension of endorsement or \$1,000 monetary fine	10-day suspension of endorsement or \$5,000 monetary fine	30-day suspension of endorsement	Accusation for revocation of onsite consumption endorsement
(Cultivation) Odor detectable outside facility 3 AAC 306.430(c)(2)	\$500 monetary fine	\$1,000 monetary fine	\$5,000 monetary fine	Accusation for revocation of license
Failure to maintain standardized scale requirements 3 AAC 306.445 3 AAC 306.745	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Required laboratory testing 3 AAC 306.455 3 AAC 306.550	10-day suspension or \$5,000 monetary fine	30-day suspension or \$15,000 monetary fine	Accusation for revocation of license	

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Samples and quality control 3 AAC 306.460 3 AAC 306.557	Warning	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension
(Manufacturing) Unauthorized production methods 3 AAC 306.525 3 AAC 306.555	10-day suspension or \$5,000 monetary fine, and seizure of product	30-day suspension and seizure of product	Accusation for revocation of license and seizure of product	
(Manufacturing) Unapproved products 3 AAC 306.525 3 AAC 306.555	5-day suspension or \$2,500 monetary fine, and seizure of product	10-day suspension or \$5,000 monetary fine, and seizure of product	30-day suspension and seizure of product	Accusation for revocation of license and seizure of product
(Manufacturing) Exceeding potency limits 3 AAC 306.560	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
Retest or transfer of failed material without authorization 3 AAC 306.660	5-day suspension or \$5,000 monetary fine	10-day suspension or \$15,000 monetary fine	30-day suspension	Accusation for revocation of license
Operating with suspended license	Accusation for revocation of license			

(c) A marijuana establishment that receives a citation of violation shall, not later than 10 days after receiving the citation,

(1) appeal the citation to the board by submitting a written request to the director; the appeal shall be presented to the board at the next available meeting except that if product is seized, an appeal shall be heard by the board in accordance with 3 AAC 306.830(b); or

(2) respond to the notice in writing, including information indicating whether a suspension or monetary fine is chosen when such choice is available, except that a marijuana cultivation facility shall always pay the monetary fine; a monetary fine shall be submitted with the response; the director shall determine the time of the suspension period.

(d) A citation of violation may be the basis of a proceeding to suspend or revoke a marijuana establishment's license or endorsement as provided under 3 AAC 306.810. (Eff. ____/____/____, Register ____)

3 AAC 306.810 is amended to read:

3 AAC 306.810. Suspension or revocation of license. (a) The board will suspend or revoke a marijuana establishment license or endorsement issued under this chapter if any licensee is convicted of a felony or of a crime listed in 3 AAC 306.010(d)(2) or (3), or if the board becomes aware that a licensee did not disclose a previous felony conviction or a conviction of a crime listed in 3 AAC 306.010(d)(2) or (3).

(b) The board may suspend or revoke a license or endorsement issued under this chapter, refuse to renew a license, or impose a civil fine, if the board finds that a licensee for any marijuana establishment

(1) misrepresented a material fact on an application for a marijuana establishment license or endorsement, or an affidavit, report, or signed statement under AS 17.38 or this chapter; [OR]

(2) is following any practice or procedure that is contrary to the best interests of the public, including

(A) using any process not approved by the board for extracting or manufacturing marijuana concentrate or products; [OR]

(B) selling or distributing any marijuana concentrate or product that has not been approved by the board; or

(C) selling or distributing any marijuana or marijuana product that has not been tested as required by this chapter;

(3) failed, within a reasonable time after receiving a **citation** [NOTICE] of violation from the director, to correct any defect that is the subject of the **citation** [NOTICE] of violation of

(A) AS 17.38 or this chapter;

(B) a condition or restriction imposed by the board; or

(C) other applicable law;

(4) **violated or** knowingly allowed an employee or agent to violate AS 17.38, this chapter, or a condition or restriction imposed by the board;

(5) failed to comply with any applicable public health, fire, safety, **labor**, or tax statute, ordinance, regulation, or other law in the state; or

(6) used the licensed premises for an illegal purpose including gambling, possession or use of narcotics other than marijuana, prostitution, or sex trafficking.

(c) A local government may notify the director if it obtains evidence that a marijuana establishment has violated a provision of AS 17.38, this chapter, or a condition or restriction the board has imposed on the marijuana establishment. Unless the board finds that the local government's notice is arbitrary, capricious, and unreasonable, the director shall prepare the

notice and supporting evidence as an accusation against the marijuana establishment under AS 44.62.360, and conduct proceedings to resolve the matter as described under 3 AAC 306.820.

(d) When indicated in 3 AAC 306.807 and without appeal, a license or endorsement will be suspended without specific board action. (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306.820 is amended to read:

3 AAC 306.820. Procedure for action on license or endorsement suspension or revocation.

(a) Except for suspensions set forth by 3 AAC 306.807, [A] proceeding to suspend or revoke a license **or endorsement** must be initiated by service of an accusation on the marijuana establishment in compliance with AS 44.62.360 and 44.62.380, and conducted in compliance with AS 44.62.330 - 44.62.630. The accusation must be served at the address of the licensed premises, or at the address of the licensee who is responsible for management and compliance with laws as listed in the marijuana establishment license application in compliance with 3 AAC 306.020(b)(5). The marijuana establishment is entitled to a hearing as provided under AS 44.62.390. (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306.830 is amended to read:

3 AAC 306.830. Seizure of marijuana or marijuana product. (a) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity, may seize marijuana or any marijuana product from a licensed or previously licensed marijuana establishment if the marijuana establishment has

(1) any marijuana or marijuana product not properly logged into the marijuana establishment's marijuana inventory tracking system;

(2) any adulterated marijuana food or drink product prohibited under 3 AAC 306.510(a)(4);

(3) any marijuana or marijuana product that is not properly packaged and labeled as provided in

(A) 3 AAC 306.470 and 3 AAC 306.475; or

(B) 3 AAC 306.565 and 3 AAC 306.570; [OR]

(4) not renewed its license as required under 3 AAC 306.035;

(4) any marijuana or marijuana product that has not been tested as required by this chapter; or

(5) had its license revoked by the board under 3 AAC 306.810.

(b) If the director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity seizes marijuana or a marijuana product under this section, the director shall update the marijuana inventory control tracking system to reflect the seizure and ensure that the seized items are stored in a reasonable manner **at the expense of the licensee.**

Except for seizures authorized by 3 AAC 306.807 that are not appealed, the [THE] director shall immediately give the marijuana establishment from which the marijuana or marijuana product was seized notice of the reasons for the seizure and the time and place of a hearing before the board. Unless the marijuana establishment from which the marijuana or marijuana product was seized requests a delay, the hearing will be held not later than 10 days after the director gives notice of the reasons for seizure and the scheduled hearing. If the seizure occurs in

connection with a summary suspension under 3 AAC 306.825, the hearing will be combined with a hearing on the summary suspension.

(c) If the marijuana establishment from which the marijuana or marijuana product was seized does not request or participate in a hearing under this section, or if after a hearing the board finds that seizure of the marijuana or marijuana product was justified, the marijuana or marijuana product will be destroyed by burning, crushing, or mixing with other material to make the marijuana or marijuana product unusable as provided in 3 AAC 306.740.

(d) If a seizure under this section is of marijuana plants in place in a licensed standard or limited marijuana cultivation facility, the seizure order may direct the marijuana cultivation facility to continue care of the plants until the hearing, but prohibit any transfer, sale, or other commercial activity related to the plants. (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306.840(a) is amended to read:

(a) The board may, in addition to any other penalties **and civil fines** imposed under this chapter, impose a civil fine on a marijuana establishment, licensee, or person that the board determines has violated a provision of AS 17.38 or this chapter.

(Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306.845(a) is amended to read:

(a) An aggrieved party may appeal to the board regarding any action of the director, an enforcement agent, or an employee of the board charged with enforcing AS 17.38 or this chapter, including suspending [OR REVOKING] a license, seizing marijuana or a marijuana product, or imposing a civil fine.

(Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

Authority:	AS 17.38.010	AS 17.38.131	AS 17.38.200
	AS 17.38.070	AS 17.38.150	AS 17.38.900
	AS 17.38.121	AS 17.38.190	

From: [Lisa Coates](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Public Comment regarding proposed changes to 3 AAC 306.807
Date: Wednesday, April 10, 2019 12:20:56 PM

Dear Alaska Marijuana Control Board,

I would like to comment on the proposed new section establishing a table of fines and penalties for violations. I believe establishing these fees for violations is a bad idea at this point in our industry. The board and AMCO should be encouraging transparency within the industry to achieve compliance. The table of fines does not achieve that at all. Overall it seems that the board and AMCO are slowly creating an atmosphere that is geared towards creating non-transparency.

Any violation type that is a METRC clerical error, including virtual transfers should not be a violation let alone a fine. For example, most virtual transfers are due to clerical issues that once the error is discovered, we just want to make right in the system. No product has been put on the shelf, no minor has gained access to the cannabis, etc. It is generally a clerical bookkeeping issue. No harm no foul. The METRC software is far from perfect. As a product manufacturer we will transport 1,000's and 1,000's of packages within a year. We are human and there will be errors in the transfer paperwork on occasion. It gets discovered by us or the receiving store. The transfer part of METRC is so poorly designed and transfer errors are common enough that even METRC employees tell us on the phone that it happens everyday so don't sweat it. They have put in software updates to try and help tell you that you have an error on a transfer, but it doesn't tell you where the error is. When you think you found the error and made the appropriate corrections to your manifest, it would make sense for the error to disappear and it does, but not in a timely manner. It can take up to 6 hours or overnight to see if you've corrected the transfer error. Why fine for this sort of thing?

I do believe that AMCO should also look at the heart of each violation issued. Did the violator willfully commit the violation or was it an accident? If it was willful, were they warned about it in the past? Was public safety jeopardized? If yes, then a fine could be issued. Did they take steps to try and ensure it doesn't happen again? If public safety is not in any way harmed, they should be given a pass.

The majority of violations should be issued to people who are operating in the black market, not those who are trying to comply with all the regulations. The black market is still thriving. Until we successfully tackle that issue, the board and AMCO should be encouraging compliance. What's the goal of the cannabis industry in our state? I believe it is to bring safe cannabis products to the public while generating revenue for the state. Help us push for legislative change to the current tax structure. Help push for the arrest of black market operators. Once that occurs, the black market will go away, more revenue will go to the state, and that is time AMCO and the board should be setting a fine table for violations.

Thank you for your time. I appreciate your efforts to better the industry for the us and the general public.

Sincerely,
Lisa Coates
Herban Extracts, lic. 14432

907-252-4755

907maryjane@gmail.com

Submitted By	Comment
<p>4/12/2019 3:31:53 PM</p> <p>Kyle A Denton</p> <p>kyle@anseralaska.com</p> <p>Unknown location</p> <p>Anonymous User</p>	<p>The fine structured proposed seems excessively punitive. Some of these penalties could ruin a business with a single violation regardless of the severity or intention. Please consider a smaller fine schedule that provides penalties that are more commensurate with the severity of the violation.</p>



AMCO & MCB,

I am urging you to not approve the fine and fee schedule as written. Instead, I am requesting that the department and board delay any action on this subject until a more robust compliance and enforcement program can be developed. I would certainly be willing to help with this process in work sessions or any other format that the board and administration would consider.

I worked most of my career in regulatory compliance. As a Certified Safety and Risk Management Professional, I have seen and worked within numerous compliance and enforcement programs. As written, this proposal lacks the ability to both: 1) prevent violations and 2) encourage communication with regulators. This one size fits all hammer does not allow the agency the flexibility it needs to manage compliance, and does not provide the industry with a fair regulatory playing field. I would offer up the following things to consider:

- How does the Governors administrative action placing enforcement under the Dept. Of Law impact this? Does Law already have something they use? Will Law honor the schedule that AMCO develops? Perhaps waiting until the task force has been developed, and engaging law on this matter is appropriate.
- Does this take into account the size of the violator? Does business willingness to tolerance risk change based on how much money they make? What was the financial benefit of the risk taken? Is that considered?
- Severity of the violation should be the bucket that individual violations fall under, not specifically trying to address every possible situation with a table. OSHA has operated a very successful model that places violations in buckets of severity and those severity limits have fines, based on the type and repetitive frequency of the violation.
- Does this plan offer any ability to mitigate fines through beneficial or supplemental projects instead of simply monetary gain for the state? Are there corrective action plans or other avenues that a business could take instead of simply paying a fine?
- Why should a business be shut down for any amount of time? In my opinion, a business is either deemed fit to operate or not. What would change after 5 days of closure that makes the business more fit to operate? Again, this is just another bulky hammer. And it is one that equally penalizes the State.

If the goal is to achieve compliance in a new industry; “Actual compliance” ... Then there is absolutely no chance of success with this document as written. If the goal of this is to achieve “perceived compliance” then this document is nearly perfect. Please take another look at this and help the industry by developing something realistic and sustainable. In that absence of that, you are going to get the “walking wounded”. Business and industry that is hurt, but afraid to say anything.

Thank you kindly for your consideration,

Ryan Tunseth
President
East-Rip (13382)

From: [Barret Goodale](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Cc: [Trevor Haynes](#); [Christian Hood](#); [Greg Allison](#)
Subject: Proposed changes to the Fine Schedule
Date: Friday, April 12, 2019 12:21:33 PM

Dear Marijuana Control Board Members,

The proposed changes to the “violation fine schedule” are not yet fit to be passed. Furthermore, this fine schedule does not encourage compliance. Instead, this schedule is encouraging licensees to hide their errors and discontinue the open communication that has been developed between licensees and their investigators. Among the 14 pages of proposed changes there are many ill worded regulations, unclear definitions, potentials for overreach, and unreasonable penalties for human error. My concerns are numerous, I will mention only a few to illustrate some of my concerns.

For a sale to a minor, the penalty is a thirty-day suspension. A thirty-day suspension is a strong enough penalty to essentially permanently close businesses in this industry. Most states, in regards to identification responsibilities, state that if the licensee asks for identification and the customer provides a convincing false ID, that the licensee is not held responsible for the customer's fraud. The proposed fine schedule does not have a clause for this. Shuttering a business for a customer's fraudulent behavior is unacceptable.

The regulations that fall under “Failure to utilize and/or maintain marijuana inventory tracking system”, have a penalty structure that is unreasonable. Human error occurs. Because of the current manner in which the regulations are written, one honest mistake could result in a violation of two or more of these regulations in one transfer. The important point is that companies maintain their Metrc system. If a licensee catches an error, they should be able to report and correct the error without risk of losing their business. Leniency should be given to those that self-report their errors. Otherwise, the regulations as proposed will encourage licensees to hide their errors instead of keeping an open communication line with their investigators.

3 AAC 306.430(c)(2) is not written with any tangible limits. Effective regulation must include quantitative limits in order to treat licensees equally. The possibility of a licensee being revoked based upon an investigator saying they could smell marijuana with no evidence is unacceptable.

I am in favor of a schedule to illustrate the impossible penalties for non-compliance, but as written, this fine schedule shows an overall lack of knowledge of the industry.

This schedule needs to be reworked, with industry input if it is going to be successful.

Thank you for your time and continued diligence.

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

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

From: [Sam Hachey](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Fine Schedule public comment
Date: Friday, April 12, 2019 3:14:30 PM

Greetings,

Today is the last day for public comment on the Violations Fine Schedule. If enacted, they will put every business at risk of being shut down through financial burden or license revocation.

This fine schedule will:

- 1) discourage self-reporting and decrease transparency,
- 2) lead to severe punishments for good actors, and
- 3) burden and shutdown companies that are trying to abide by the regulations.

Sam Hachey

Operations
Tanana Herb Company
(907) 888-9696
TananaHerbCompany.com



Dear MCB and AMCO Staff,

April 12, 2019

I strongly object to the proposed changes on violation fine schedules. The proposed schedule would be ineffective in gaining industry compliance. In fact, it would have the opposite of the desired effect.

Because punishments under this fine schedule are overly and arbitrarily severe, the proposed fine schedule will:

- 1) discourage self-reporting and decrease transparency,
- 2) lead to severe punishments for good actors, and
- 3) burden and shutdown companies that are trying to abide by the regulations.

We are working under new and complex regulations that are rapidly changing. These proposed regulations will not gain industry compliance or promote best business practices. Because punishments are so severe, even good actors doing their best to maintain compliance will have strong incentive not to self report. Transparency will not be maintained.

Although I have examined this proposal closely, I will not get into the details of the inherent problems because it is generally flawed and needs to be completely revised. This will require AMCO work with industry and non-industry groups (e.g., form a working group). This group will be required to create regulations that promote best business practices and compliance, effectively punishes bad actors, and increases transparency and self-reporting.

As a start, this AMCO working group should:

- 1) Consider existing compliance models and determine which are most effective and transferable to the marijuana industry.
- 2) Use current data on violations to analyze how proposed fine schedules affect businesses. This will ensure punishments are not arbitrarily hash. AMCO could examine proposed fine schedules with current data to analyze punishment consequences. For example:
 - How many businesses would have had their licenses revoked at this point in time?
 - What would the average annual fine burden be for a business?

Understanding the consequences of proposed punishments in this manner will be the only way to build effective compliance regulations in the industry.

To reiterate - the proposed fine schedule is worse than ineffective and needs to be completely revised. It discourages self reporting, decreases transparency, provides punishments that are too severe, and does not appear to be based on data or existing effective models. I strongly object to these proposed changes.

Sincerely,

Trevor Haynes

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From: [Barbara Paschall](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Fine Schedule
Date: Friday, April 12, 2019 3:25:33 PM

This fine schedule will:

- 1) discourage self-reporting and decrease transparency,
- 2) lead to severe punishments for good actors, and
- 3) burden and shutdown companies that are trying to abide by the regulations.

I believe that this fine schedule is far too strict, severe, and arbitrary

Please take this into consideration.

Thank you Barbara Paschall DBA Nature's ReLeaf

From: [dollynda Phelps](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Public comment - FINE schedule
Date: Friday, April 12, 2019 9:36:14 AM

In regards to the proposed fine schedule, the most concerning issue is that issuing violations becomes incentivized for money. It is clear, regardless of the millions of dollars in tax revenue the state is collecting from marijuana cultivation facilities, that AMCO is on a witch hunt for more money. Some of the items listed are mainly caused by human error, simply making a human mistake should not cost thousands of dollars or a license suspension.

Unless retail facilities are forced to check ID outside the facility, including during winter or inclement weather, there could always be the possibility of a minor on the premises. The only way to determine this is by checking ID which is not performed outside. This penalty needs to be removed.

In some cases, there is a license "suspension" proposed, however what would this look like for a cultivation facility? It is not appropriate or reasonable to request that a cultivation facility destroy and remove all crops that take several months to procure due to a 5-day suspension, nor is it appropriate to cease business operations in regards to caring for plants, so what does this mean for a cultivation facility?

A violation for exceeding potency limits for a manufacturer at this time is also highly inappropriate. This can only be enforced if the testing labs used showed consistency. On the one hand, AMCO posted a public PSA regarding the inconsistency of testing results, now AMCO wants to use these inconsistent results to impose monetary fines for potency limits. This is unacceptable.

A proposal to allow AMCO or a peace officer to seize marijuana for not being properly logged or properly labeled is stepping way too far. Again, the human element of human error should not be a basis for extreme consequences.

In many cases, the FINE schedule should indicate a WARNING before extreme action is taken. There are a couple items that indicate a WARNING first, but this should be used as a first step in many cases.

Dollynda Phelps

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John E. Redden
General Counsel
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April 12, 2019

Marijuana Control Board
AMCO.regs@alaska.gov.

Re: Draft Fine Schedule

Dear Marijuana Control Board:

Great Northern Cannabis, Incorporated (GNCI) is an Alaska corporation with approximately 90 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 draft fine schedule.

We agree that a clear, well defined fine schedule is helpful to the industry. We believe that the proposed fines and penalties would benefit from minor adjustment for both violations related to Sale to a Minor and Refusal to Allow Inspection.

First, with regard to a violation of a Sale to a Minor, the proposed 30-day suspension for the first violation is draconian. For many operators, 30-day suspension would effectively equate to an "accusation for revocation of license." Secondly, the schedule does not account for the possibility of a very authentic, invalid form of identification, which may thwart even the most effective and diligent efforts to confirm the age of a potential customer. It is our opinion that it is possible for the penalty for a Sale to a Minor to be proportionate and meaningful without putting a diligent, compliant operator out of business on the first or second violation.

On the other hand, it is our belief that a licensee that refuses to allow for an inspection should forfeit their license. Accordingly, the first violation of an operator's failure to allow an inspection should result in an "accusation for revocation of license."

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Our suggested changes are as follows:

Violation Type	1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
Sale to a Minor	\$10,000 Monetary Fine	\$20,000 Monetary Fine and 5-day suspension	\$30,000 Monetary Fine and 10-day suspension	Accusation for Revocation of License
Refusal to allow inspection	Accusation for Revocation of License			

We appreciate the opportunity to provide public comment and we would be happy to participate in any future rule-making processes.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Redden", with a stylized flourish at the end.

John E. Redden

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From: [Caleb Saunders](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Comment on Fine Schedule.
Date: Friday, April 12, 2019 11:11:34 AM

I am in support of putting out a fine schedule such as the proposed one in this regulations project. It allows for enforcement and licensees to know where we stand on what violations. However, I do think that this schedule is extremely harsh and would allow staff members to essentially end a business's existence with one move. It even states that the licenses will be suspended without appeal. Why would an enforcement staff member have the authority to give a 30 suspension which in some cases would end up being a \$500,000.00 fine essentially if they are shut down for 30 days with no ability to appeal?

This current schedule as it is written opens the window for young and very small businesses to be shut down by one person who decided in the moment and without an appeal that they should be shut down. I do believe that repeat violators should be fined and eventually have their licenses removed however, I do not believe this should be the first violation with no appeal.

I would recommend that the "without appeal" be removed and that the fines be more realistic in that it will not shutter small businesses on their first mistake.

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Caleb L. Saunders
CEO | Green Jar
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[Green Jar](#)

From: [Bryant Thorp](#)
To: [CED AMCO REGS \(CED sponsored\)](#)
Subject: Fine Schedule
Date: Tuesday, March 19, 2019 4:08:47 PM

I'd like to voice my opinion of the current fine schedule that has been put out:

I've read through the fine schedule several times with an open mind and continue to find the fines and punishments to be fully punitive in nature rather than corrective. I'm all for follow the rules and staying within the regulations but we all make mistakes and these fines and suspensions seem harsh at best and appear to be of an over-governing nature. It seems that the person that was tasked with this document is out to shut the industry down one violation at a time.

Are these fines and suspensions even close to being in-line with the alcohol industry? This schedule needs a major overhaul before it becomes a legitimate and workable document.

Bryant Thorp
Arctic Herbery



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April 12, 2019

MCB Board
Director McConnell
Chief James Hoelscher

Sent Via Electronic Mail

Re: Fine Schedule Proposed Regulation

Dear Honorable MCB Members, Director McConnell and Chief Hoelscher:

Thank you for your hard work furthering the growth and sustainability of our thriving marijuana industry. As an initial matter, I want to make it clear that I am in support of an Enforcement Fine Schedule. However, I am not in support of the proposed fine schedule and would urge members of the Board to rethink and redraft this regulation project.

I think the starting point for crafting an effective Fine Schedule for Enforcement should be first determining what is the goal of the fines. Is it compliance? Punishment? A chilling effect on new ideas and new business development? I believe Enforcement wants a tool to help foster compliance – I believe that is the intent behind this regulation project. However, the way it is currently crafted would lead one to assume that the goal is for punishment or chilling of new business ideas and concepts. The fine schedule should be a tool that makes licensees afraid when Enforcement walks into their facility – when licensees see Enforcement currently, they by and large see Enforcement as their team mate and look to them for guidance and assistance. I would urge the Board to not destroy this important relationship between Enforcement and the licensees. I feel adopting this fine schedule as is would result in the destruction of that relationship.

Its not just the fine schedule that renders this proposed regulation change harmful to the industry – it's the entire regulation project:

Amending 3 AAC 306.805 – changes propose the following:

3 AAC 306.805. Report [OR NOTICE OF VIOLATION]. (a) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity, may issue an inspection report or [,] an advisory report [, OR A NOTICE OF VIOLATION BEFORE TAKING ACTION TO SUSPEND OR REVOKE A MARIJUANA ESTABLISHMENT LICENSE].

The proposed regulation change gets rid of NOVs in their entirety and replaces the NOV process with the fine report. The NOV process has been a useful tool for the MCB members to stay abreast of the evolving regulatory issues and the unintended effects on licensees. The NOV process allows for a *dialogue* between the licensee, enforcement and the ultimate decision maker – the Marijuana Control Board. The removal of the NOV process usurps the MCB control component and replaces it with Enforcement control and fines. This is not acceptable to the industry and it shouldn't be acceptable to the public either. In the current process, the MCB reviews all NOVs and responses and then from there determines whether additional criminal punishments need to occur – this regulation project would remove this process and the MCB would not see responses to NOVs (because there wouldn't be any responses from Licenses) and they would only see the matter if the licensee appealed the fine to the MCB. This is an inefficient method of encouraging compliance and it also removes the MCB from the conversation.

Second change to the regulation adds a new section:

3 AAC 306 is amended by adding a new section to read: 3 AAC 306.807. Citation of Violation. (a) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may issue a citation of violation if an inspection report or other credible information shows a marijuana establishment is in violation of as 17.38, this chapter, or other law relating to marijuana. The citation of violation must be delivered to the marijuana establishment either at the electronic mail address required in 3 AAC 306.020(b)(6) or at its licensed premises, and to the board. The citation must describe any violation, and cite the applicable statute, regulation, or order of the board.

In addition to my concerns illustrated above regarding the usurping of authority from the MCB to the staff of the board, this new proposed section creates standard of proof that is not legally recognized as any known burden of proof. The new section tries to create a subjective standard of proof that is not recognized in any legal theory – “citation of violation if an inspection report or other credible information shows a marijuana establishment is in violation.” If the Board decides to move forward with this regulation, it would be wise to consider adopting one of the three recognized standards of proof instead of attempting to recreate the wheel. In every legal proceeding (and yes, a citation that effects a person or business in this manner is a legal proceeding) there are evidentiary standards that the parties must adhered to – below are the three standards for civil/administrative proceedings:

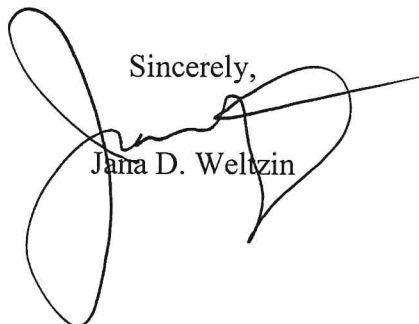
Preponderance of the Evidence: The burden of proof would be on the state to present evidence that amounts to a determination that more likely than not, the offence occurred based on the weight of the evidence presented.

Clear and Convincing Evidence: This burden of proof requires the state to provide evidence that the particular facts of the situation are more likely than not to be true – it sets a higher standard than preponderance of the evidence, but does not rise to the level of the criminal standard, beyond a reasonable doubt.

Substantial Evidence: This would require Enforcement to provide substantial evidence that would lead a reasonable mind to accept the evidence as adequate support for the particular citation.

According to George F. Indest III, J.D., M.P.A., LL.M., a leading attorney who represents individuals in licensing matters, he opines that the standard burden for administrative licensure matters should be clear and convincing evidence¹. If the Board is inclined to accept the incredibly hefty punishment schedule proposed in this regulation project, I would strongly urge the Board to require clear and convincing evidence as opposed to just the investigative report and other “credible information.” The fine schedule proposed, provides enforcement to issue massive fines and suspensions purely on “credible evidence” and while a licensee could appeal that fine and/or suspension it would take time, energy and money to hire counsel or step away from their new businesses to defend themselves. And all of this damage would be imposed on the licensee, regardless of the outcome of the appeal, purely on the assertion of “credible information”? This is not a reasonable regulation project and if adopted by this Board there will be a legal challenge to its validity.

The proposed chart needs to be reworked into fines that are lower and provide for warnings for most 1st offender violations. The way the fines and suspensions are structured in the proposed fine schedule will lead licensees to appeal nearly every citation, creating an incredibly inefficient system that will suck up precious time and resources from AMCO administrative staff, Enforcement staff and this honorable Board. We have better use for their time and resources and do not need to waste it on appeals that will undoubtedly occur over these stiff penalties. The fines & suspension periods proposed need to be reduced.

Sincerely,

Jara D. Weltzin

¹ <https://www.thehealthlawfirm.com/blog/>