



MEMORANDUM

TO: Marijuana Control Board DATE: July 10, 2019

FROM: Erika McConnell, Director RE: Regulations Project – Fine Schedule
Marijuana Control Board

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. After a round of public comments, the board referred the draft to a subcommittee of Mr. Jones for additional revisions. The attached draft shows tracked changes from the last draft based on Mr. Jones' work.

The general concept is that many violations are assessed a penalty fine without specific board action. 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. The concept of a "notice of violation," which had been removed and replaced by a "notice of citation," is returned as a potential pre-citation warning, to be used either as shown in the proposed tables, or at the discretion of the investigator. The option to choose either a fine or a suspension is removed.

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

Options for the board:

- Put out for public comment
- Amend and 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, or a citation 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 either at the electronic mail address required in 3 AAC 306.020(b)(6) or 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.]

(e) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may issue a notice of citation in accordance with 3 AAC

306.807. (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 for violations shown by a licensee:

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		

(c) A citation of violation may be issued as follows for violations shown by a licensee within any three-year period:

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 <u>Notice of violation</u>	\$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 <u>Notice of violation</u>	\$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 <u>Notice of violation</u>	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 <u>Notice of violation</u>	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 <u>Notice of violation</u>	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(a), (b), or (d)	5-day suspension or \$2,500 monetary fine <u>Notice of violation</u>	10-day suspension or \$5,000 monetary fine	30-day suspension	Accusation for revocation of license
<u>Failure to meet marijuana waste disposal requirements</u> <u>3 AAC 306.740(c)</u>	<u>\$2,500 monetary fine</u>	<u>\$5,000 monetary fine</u>	<u>30-day suspension</u>	<u>Accusation for revocation of license</u>
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 <u>Notice of violation</u>	\$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

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) 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 <u>Notice of violation</u>	\$5,000 <u>2,500</u> monetary fine	\$10,000 <u>5,000</u> monetary fine	\$15,000 monetary fine <u>Accusation for revocation of license</u>
(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 <u>\$1,000 monetary fine</u>	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

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
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	
Samples and quality control 3 AAC 306.460 3 AAC 306.557	Warning <u>Notice of violation</u>	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			

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

(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 if applicable; the director shall determine the time of the suspension period if applicable.

(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(b) or (c) 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] 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;

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

(56) 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(b) or (c) 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	