



MEMORANDUM

TO: Marijuana Control Board DATE: September 11, 2019

FROM: Erika McConnell, Director RE: Regulations Project – Out-Of-State
Marijuana Control Board Investment in Testing Facilities

The board opened this regulations project at the January 2018 meeting and adopted it on May 1, 2019.

During review by the Department of Law, the Department concluded that a portion of the adopted language is ambiguous and not susceptible to any kind of predictable assessment. The Department recommends reconsidering your approval, amending the regulation as shown below, and putting the regulation back out for public comment.

Language adopted by the board:

3 AAC 306.015(f)(2): “The board shall consider, but is not limited to, the following factors when determining whether the non-resident involvement enhances marijuana testing in the state: commitment to invest equity, expertise in testing, expertise in developing standards for testing, expertise in maintaining quality control, and provision of state of the art equipment for testing.”

Suggested replacement language by the Department of Law:

3 AAC 306.015(f)(2): “In determining whether the non-resident involvement enhances marijuana testing in this state, the board may consider whether the non-resident involvement

- (A) directly contributes to improvements in the testing facility’s procedures;
- (B) enables or supports hiring and retention of highly qualified employees;
- (C) provides expertise not otherwise reasonably available in this state;
- (D) enables the facility to obtain and maintain state-of-the-art equipment, and
- (E) any other factor the board deems relevant.”

Attachment: Full text of adopted regulation

3 AAC 306.015 is amended by adding a new subsection to read:

(f) Notwithstanding (b) of this subsection, the board may issue a marijuana testing facility license, renew a testing facility license, or approve the transfer of a marijuana testing facility to the following entities upon determining the non-resident involvement enhances marijuana testing in the state.

(1) Eligible entities are

(A) a partnership if at least half of the partnership interest is held by partners who are residents of the state;

(B) a limited liability company if the limited liability company is qualified to do business in the state and at least half of the ownership of the company is held by members who are residents of the state; or

(C) a corporation if the corporation is incorporated or qualified to do business in the state and at least half of the corporate stock is held by shareholders who are residents of the state.

(2) The board shall consider, but is not limited to, the following factors when determining whether the non-resident involvement enhances marijuana testing in the state: commitment to invest equity, expertise in testing, expertise in developing standards for testing, expertise in maintaining quality control, and provision of state of the art equipment for testing.

(Eff. 2/21/2016, Register 217; add'l am 2/21/2016, Register 217; am 2/21/2019, Register 229; am 4/11/19, Register 230; 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