



## MEMORANDUM

TO: Marijuana Control Board                      DATE: September 11, 2019  
FROM: Erika McConnell, Director              RE: Regulations Project – Umbrella  
Categories

The board initiated this project in October of 2018, to explore ways in which similar products such as cookie varieties could be approved as a single product.

As staff has considered this issue, continued to work on a product spreadsheet for the board and public, and struggled to help the board be more consistent on product approvals, we have identified the following issues relating to products:

**1. Product Name.** What is the intent of the product name? Sometimes the product name proposed by the licensee is more of the product type (e.g., “Shatter”) and the significant information on the product label is the marijuana strain used. Sometimes the product name does not appear on the product label at all. And sometimes the product name is a significant element in marketing the product, such as “MoMo’s Crinkles.” In addition, for some licensees, it is impossible to connect the approved product name to the item name in Metrc.

Staff proposes that the product name be required to be on the product label and in Metrc, in order to connect the final product to Metrc to the board’s approval. Adding a discreet product number for each approved product will also assist with this. In some situations, the strain of marijuana used to make the product will be part of the product name—that flexibility should be allowed. In that situation, the product name should be proposed to the board as “[Strain Name] Shatter” or similar. Alternately, the product name could be set as approved, and a “sub-name” that could either be a strain name or a product flavor (see ingredients discussion below), such as “Shatter: OG Kush” or “Leaf Chew: Raspberry-Lime.”

**2. Ingredients.** Should ingredients for a single product be allowed to vary? The board has approved some variations in a single product—in general for different flavors of the same product such as hard candies. Occasionally this has also been done to allow a manufacturer the flexibility to use either their own marijuana infused product or another licensee’s marijuana infused product, or to vary the type of infused cooking fat to be used in an edible.

Licensees have requested more flexibility in the ingredients that can be varied within a single product. At least one licensee desires to be able to vary a single ingredient and the packaging for a single approved product. Not only is it extremely difficult to set the parameters of what single ingredient could be swapped out (for example, if one has infused honey containing cannabis oil and honey, can one swap out the honey for peanut butter and have infused peanut butter under the same

product approval?), but to have different-looking final products AND packaging is confusing for Enforcement and the public.

Staff recommends requiring a separate product for any change in ingredients as the most clear, straightforward, and consistent way to proceed. Should the board wish to do that, the board could examine the fee structure to lessen the monetary burden on licensees for similar products. That said, the board may conclude that requiring a separate product for each flavor of a hard candy or a cookie with different nuts isn't reasonable. If so, it will be difficult to address this in regulations in terms of drawing the line about what types of ingredients can vary, but form changes may facilitate this.

During discussions at the recent regulators meeting, I learned that Oregon allows some minor deviations in a single product, such as flavorings, but Ohio requires a separate product approval if there is any variation in the ingredients.

**3. Production Process.** 3 AAC 306.520(b) requires an applicant for a product manufacturing or concentrate manufacturing license to submit, “the equipment and solvents, gases, chemicals, and other compounds used to create concentrates and the processes to be used;” and “each marijuana product the applicant intends to process at this location; the product description must include the color, shape, texture, ingredients and standard production procedure to be used and the additional information required for product approval in 3 AAC 306.525.” 3 AAC 306.525(b)(2) requires the submittal of “the proposed standard production procedure and detailed manufacturing process for each product.”

The level of detail that is required for the production procedure and manufacturing process needs some thought. Licensees have legitimate concerns about proprietary information relating to their processes, but those concerns could be addressed by changes to what is considered a public record rather than the board not getting sufficient level of detail. This issue is complicated by a lack of understanding of the various processes used to make marijuana products on the part of the board's staff, which needs to be remedied.

For some product types, an intermediate product is made and identified in Metrc. For example, there is an approved product, a rosin, where the standard production method states that “either flower, bubble hash, dry sift or kief” will be used in the process to make the rosin. Bubble hash is a marijuana product, but the licensee does not have that as an approved product. Staff finds these intermediate products in Metrc at times which creates confusion.

Ultimately, what is the board's intent in approving individual products? My understanding is that it is to ensure the health and safety of the public by regulating the ingredients and manufacturing process, and ensuring that products available to consumers are not appealing to children and are properly packaged and labeled. (Packaging and labeling to be addressed in a separate regulations project already opened by the board—expect a draft at the next meeting.) The attached draft attempts to clarify some of the issues raised in this memo while keeping my understanding of the board's intent in mind. It assumes the board will wish to allow minor variations in product ingredients. It is a starting point for board discussion.

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



3 AAC 306.520 is amended to read:

**3 AAC 306.520. Application for marijuana product manufacturing facility license.**

An applicant for a marijuana product manufacturing facility license, including a marijuana concentrate manufacturing facility license, must file an application on a form the board prescribes, and provide the information required under 3 AAC 306.020 and

(1) a copy of an active application for a required food safety permit under 18 AAC 31.020 from the Department of Environmental Conservation or a municipality with authority delegated under AS 17.20.072 and 18 AAC 31.945;

(2) a diagram of the proposed licensed premises required in 3 AAC 306.020(b), identifying the area where

(A) in-house testing, if any, will occur; and

(B) marijuana and any marijuana product, including marijuana concentrate, will be stored;

(3) in the applicant's operating plan required under 3 AAC 306.020(c), a description of

(A) the equipment and solvents, gases, chemicals, and other compounds used to create concentrates and the processes to be used;

(B) **the information required for product approval in 3 AAC 306.525** **for** each marijuana product the applicant intends to process at this location; [THE PRODUCT DESCRIPTION MUST INCLUDE THE COLOR, SHAPE, TEXTURE, INGREDIENTS AND STANDARD PRODUCTION PROCEDURE TO BE USED AND THE ADDITIONAL INFORMATION REQUIRED FOR PRODUCT APPROVAL IN 3 AAC 306.525;

(C) THE PACKAGING TO BE USED FOR EACH TYPE OF PRODUCT;

(D) SAMPLE LABELS SHOWING HOW THE LABELING INFORMATION REQUIRED IN 3 AAC 306.570 WILL BE SET OUT;] and

~~(C)~~[(E)] the applicant's plan for disposal of waste. (Eff. 2/21/2016, Register 217; am 7/27/2017, Register 223; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

<b>Authority:</b>	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 306.525 is amended to read:

**3 AAC 306.525. Approval of concentrates and marijuana products.** (a) A marijuana product manufacturing facility, including a marijuana concentrate manufacturing facility, must obtain the board's approval for each product it will manufacture for sale or transfer to another licensed marijuana establishment. The board will not approve a product that is prohibited under 3 AAC 306.510(a)(4).

(b) An applicant for a marijuana product manufacturing facility license may request the board's approval of its intended products with a new license application by including, in its operating plan

(1) a photograph, drawing, or graphic representation of the expected appearance of each final product; [and]

(2) the proposed standard production procedure and detailed manufacturing process for each product;[.]

**(3) a product description, including the color, shape, texture, and ingredients;**

**(4) serving sizes proposed for each product;**

**(5) the packaging to be used for each product; and**

**(6) a sample label for each product showing how the labeling information required in 3 AAC 306.570 will be set out.**

(c) A licensed marijuana product manufacturing facility may at any time submit a new product approval request to the board on a form the board prescribes along with the fee required under 3 AAC 306.100(c).

(d) A licensed marijuana product manufacturing facility shall keep its ingredient list and potency limits for any food product containing marijuana on file at the marijuana product manufacturing facility's licensed premises. The ingredient list and potency limits for any product manufactured at the facility must be made available for inspection on request by the director, or an employee or agent of the board.

**(e) Each product shall**

**(1) be assigned a product number by the board;**

**(2) contain the product name on the consumer label; the product name may include the marijuana strain name or a flavor name;**

**(3) be identified in the marijuana inventory tracking system by the product name.**

**(f) Except as follows, any deviation in ingredients or manufacturing process is indicative of a different product. The board may approve variations of secondary**

**ingredients such as flavorings or optional additives.** (Eff. 2/21/2016, Register 217; am  
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**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)(29) is amended to read:

(29) "marijuana product" has the meaning given in AS 17.38.900; **a marijuana**

**product has a specific name, a specific list of ingredients, and a specific manufacturing  
process;**

(Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am  
8/11/2018, Register 227; am 10/20/2018, Register 228; am \_\_\_\_/\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 17.38.010 AS 17.38.121 AS 17.38.200  
AS 17.38.040 AS 17.38.150 AS 17.38.900  
AS 17.38.070