THE STATE of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community, and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE
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# MEMORANDUM

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|---|---|---|---|
| TO: | Marijuana Control Board | DATE: | July 10, 2019 |
| FROM: | Erika McConnell, Director | RE: | Regulations Project – Tracking and Grading |

This regulations project contains revisions to proposed changes that had previously been provided to the board as "Testing working group recommendations." The board evaluated that draft in the fall of 2018 and adopted a small portion of the project (revisions to definitions of THC and CBD) at the last meeting. The remainder of the project was referred back to the Testing Working Group for more work.

Summary of recommendations:

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The testing working group recommends bringing into conformity all bulk package weights. Previous drafts and current regulation set bulk packages at five pounds. The recommended draft regulation in 3 AAC 306.445 allows for 10 pound packages to be transferred to testing facilities. Additional changes in 3 AAC 306.435; 3 AAC 470(a)(1)(B) and 3 AAC 306.565(c) have set all bulk packages at 10 pounds to provide consistency for the industry. AMCO enforcement does not perceive any problems with this change.

3 AAC 306.445 requires harvested marijuana to be segregated into harvest batches for the purpose of testing. Samples must be pulled from each harvest batch package (not exceeding 10 pounds). 3 AAC 306.455 further clarifies harvest batch package size and quantity of samples required to be submitted. All samples must be representative of the package from which they are pulled, and not adulterated, nor ground up or homogenized prior to submittal to the testing facility.

3 AAC 306.660 addresses failed materials and retests. The current regulation requires a cultivator to destroy an entire harvest if any part of the submitted sample fails a required test. The change to the regulation will require the cultivator to destroy only the package from which the sample is drawn. Further, a cultivator may submit a request to the director for a re-test. A new subsection (d) is proposed to address the retesting of a marijuana concentrate that passed a required test. The board opened a regulations project to address this issue at the last meeting. The Testing Working Group has not seen subsection (d).

The Testing Working Group has discussed whether Aspergillus testing is an effective measure or whether it results in false positives that have little benefit to protecting the public. Work is ongoing to develop other, perhaps more appropriate tests for water activity and pH. Changes related to these issues are not reflected in this regulations project, however.

The public comment period for this project closed on June 19, 2019. Three comment were received, which are attached.

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

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

3 AAC 306.435 is amended to read:

**3 AAC 306.435. Marijuana inventory tracking system** (a) A marijuana cultivation facility shall use a marijuana inventory tracking system in compliance with 3 AAC 306.730 to ensure all marijuana propagated, grown, or cultivated on the marijuana cultivation facility's premises is identified and tracked from the time the marijuana is propagated through transfer to another licensed marijuana establishment or destruction. The marijuana cultivation facility shall assign a tracking number to each plant over eight inches tall. [WHEN HARVESTED, BUD AND FLOWER, CLONE OR CUTTINGS, OR LEAVES AND TRIM MAY BE COMBINED IN HARVEST BATCHES OF DISTINCT STRAINS, NOT EXCEEDING FIVE POUNDS.] **Marijuana to be transferred to another licensed facility shall be put into packages not exceeding 10 pounds, with each package being** [EACH HARVEST BATCH MUST BE] given an inventory tracking number. Clones**,** [OR ] cuttings**, or seeds shall be identified by an inventory tracking number; each inventory tracking number shall be assigned to 50 or fewer plants or seeds** [MUST BE LIMITED TO 50 OR FEWER PLANTS AND IDENTIFIED BY A BATCH TRACKING NUMBER].

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**(b)** A marijuana cultivation facility shall record each sale and transport of **any plants or seeds and** each **package** [BATCH] in its marijuana inventory tracking system and shall generate a valid transport manifest to accompany **any transported plants and seeds and** each transported **package** [BATCH].

(c) A marijuana cultivation facility shall record in its marijuana inventory tracking system all marijuana used to provide a sample authorized under 3 AAC 306.460 for the purpose of negotiating saes, incluing

(1) the amount of each sample;

(2) the retail marijuana store or marijuana product manufacturing facility that received the sample; and

(3) the disposal of any expired or outdated promotional sample returned to the marijuana cultivation facility. (Eff. 2/21/2016, Register 217; 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

3 AAC 306.445 is amended to read:

**3 AAC 306.445. Standards for cultivation and preparation.** (a) A marijuana cultivation facility shall use registered scales in compliance with AS 45.75.080 and 3 AAC 306.745.

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**(a) Harvested marijuana will be segregated into harvest batches.**

**(b) Once a harvest batch has been uniformly dried and cured, it shall be put into harvest batch packages not exceeding 10 pounds each. A sample of each harvest batch package in accordance with 3 AAC 306.455 shall be submitted to a marijuana testing facility.**

**(c) Once a harvest batch sample has passed all required testing, a marijuana cultivation facility may then repackage marijuana from that harvest batch for sale or transfer.** (Eff. 2/21/2016, Register 217; 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

3 AAC 306.455 is amended to read:

**3 AAC 306.455. Required laboratory testing.** (a) A marijuana cultivation facility shall provide samples of each harvest batch of marijuana produced at the facility to a marijuana testing facility and may not sell or transport any marijuana**, except as provided for in (c) of this section,** until all laboratory testing required under 3 AAC 306.645 has been completed.

(b) To comply with (a) of this section, a marijuana cultivation facility shall

(1) collect a representative [, HOMOGENOUS] sample for testing from each harvest batch **package** that has been uniformly dried and cured, in an amount as set out in the following table:

| Harvest Batch **Package** Size (pounds) | **Number of 1g sub-samples to make up required sample** [QUANTITY OF SAMPLES (1G EACH)] |
|---|---|
| 1 | 4 |
| 2 | 4 |
| 3 | 5 |
| 4 | 6 |
| 5 | 8 |
| 6 | 10 |
| 7 | 11 |
| 8 | 13 |
| 9 | 14 |
| 10 | 16 |

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(2) designate an individual responsible for collecting each sample; that individual shall

(A) prepare a signed statement showing that each sample is representative of the harvest **batch package**;

(B) provide the signed statement to the marijuana testing facility; and

(C) maintain a copy as a business record under 3 AAC 306.755; and

(3) transport the samples to the marijuana testing facility's licensed premises in

compliance with 3 AAC 306.750.

(c) A marijuana cultivation facility shall segregate the **harvest** [ENTIRE] batch **package** from which the testing **sample was** [SAMPLES WERE] selected until the marijuana testing facility reports the results from its tests. During this period of segregation, the marijuana cultivation facility that provided the **sample** [SAMPLES] shall maintain the **harvest** batch **package** in a secure, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy. The marijuana cultivation facility that provided the **sample** [SAMPLES] may not sell or transport any marijuana from the segregated **harvest** batch **package** until the marijuana testing facility has completed its testing, and provided those results, in writing, to the marijuana cultivation facility that provided the sample**, except that a cultivation facility may transfer untested marijuana to a licensed concentrate manufacturer or product manufacturer.** (Eff. 2/21/2016, Register 217; am 11/08/2018, Register 228; am__/__/_, Register_____)

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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 306.470 (a)(1)(B) is amended to read:

(B) in a wholsale package not exceeding **10** [FIVE] pounds for repackaging by the retail marijuana store; or (Eff. 2/21/2016, Register 217; 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

3 AAC 306.565(c) is amended to read:

(c) Except as prohibited in 3 AAC 306.555(b)(2), a licensed marijuana product manufacturing facility may transfer marijuana concentrates in wholesale packages not to exceed **10** [FIVE] pounds to another licensed marijuana product manufacturing facility or a licensed retail marijuana store. (Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229; 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

3 AAC 306.660 is repealed and readopted to read:

**3 AAC 306.660. Failed materials; retests.**

(a) If a sample tested by a marijuana testing facility does not pass the required tests based on the standards set out in 3 AAC 306.645, including a visual foreign matter inspection, the marijuana establishment that provided the sample shall dispose of in accordance with 3 AAC 306.740, the harvest batch package or production lot from which the sample was taken.

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(b) If a sample of marijuana fails a required test, any marijuana plant trim, leaf, and other usable material from the same harvest batch package fails the required test. The board or director may approve a written request, on a form prescribed by the board, to allow a batch of marijuana that fails a required test to be used to make carbon dioxide- or solvent-based extract. After processing, the carbon dioxide- or solvent-based extract must pass all required tests.

(c) If a marijuana cultivation or a marijuana product manufacturing facility submits a written request, on a form prescribed by the board, for a retest of marijuana or a marijuana product that failed a required test, the board or director may authorize a retest to validate the test results. The marijuana cultivation facility or a marijuana product manufacturing facility shall pay all costs of a retest.

(d) When requested by a marijuana product manufacturing facility, the director may authorize a retest of a marijuana concentrate that passed a required test when the licensee wishes to reprocess a marijuana product to further reduce residual solvent levels. The marijuana product manufacturing facility shall pay all costs of a retest. (Eff. 2/21/2016, Register 217; am 7/5/2017, Register 223; am 10/20/2018, Register 228; 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

3 AAC 306.990 (b) (3) is amended to read:

(3) "batch" or "harvest batch" means a specifically identified quantity of **bud and flower,** plant trim, leaf, and other usable product from marijuana plants, that are uniform in strain, cultivated in one place and under the same conditions, using the same medium and agricultural chemicals including pesticides and fungicides, and harvested at the same time; (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____).

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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

**From:** Barret Goodale
**To:** CED AMCO REGS (CED sponsored)
**Subject:** proposed changes on marijuana tracking and testing
**Date:** Thursday, June 13, 2019 10:51:04 AM

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Dear Members of the Board,

These proposed changes to the marijuana tracking and testing regulations make many improvements to the existing regulations. This set of regulations will resolve much confusion and will increase continuity among the industry and AMCO. I support this change.

Thank you for your time,

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

Follow GOOD on Instagram, Twitter, and Facebook
Alaska Marijuana Industry Association member

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| Submitted By | Comment |
|---|---|
| 5/29/2019 5:15:38 PM<br>Fairbanks, AK, US<br>Anonymous User | This proposed rule to change, 3 AAC 306.435, to change the harvest testing batch size to 10 lbs from 5 lbs is a bad idea. It will make the difference between the test results<br>and what is sold in the stores even worse than it is now. The retail customers are now paying for products that are mislabeled as far as potency and terpenes are concerned and more importantly will assist in sending more microbial tainted products into the marketplace. By enlarging the testing batch size you will only make this worse. The board should protect the buying public from this bad regulation.<br>This is also unfair to the limited cultivators. This in effect cuts in half the cost of testing for standard cultivators but leaves the limited cultivators with testing cost twice as high as the standard cultivators. The standard cultivators already have a market advantage and this would remove one of the few regulations that helps level the playing field.<br>This regulation would simply put more money into some cultivators pockets but do nothing for anyone else. |
| 5/20/2019 11:10:07 AM<br>Sam Hachey<br>sam@tananaherbcompany.com<br>Anchorage, AK, US<br>Anonymous User | Greetings honorable members of the Amco board,<br>Thank you for taking a few minutes of your time and reviewing my public comment.<br>To be honest with you, I can't think of a better way to create a more fair way of testing product. I like the 10 pound limit and the fact that if the test fails, it only fails that specific harvest batch package. I'm just not a big fan of the 16 grams for a testing sample. It's coming from a good place, but I feel like it will increase the SOP's for the testing labs. Which will increase the overall cost for the test. I believe that keeping the harvest batch packages to 10 pounds, we could accurately predict the testing range from half of that amount or at the very least four grams instead of 16.<br>I am not clear about assigning a tracking number to 50 or fewer plants or seeds? is that for immature plants or clones awaiting the rooting process and before they are 8" or taller? I believe we already do this in the immature plants tab in metrc. |

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| Submitted By | Comment |
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| | We should also be carful about requiring multiple samples from the same original harvest batch. meaning, a single test for flower and another test for trim. this will dramatically increase the cost of testing a harvest for everyone and may make the cost not affordable for smaller gardens.<br>We need to do something about a consistency with the testing labs, but not at the cost of the grower. Growers already pay all the state tax, testing and transportation cost. If you increase the amount of product to be tested, that will also create a loss of revenue for the growers. losing four grams to a test is something we can handle, but 16 grams on every 10 pounds per product (flower, abnormal flower, trim & Keif) is a large increase in cost.<br>Also, please never require an outside 3rd party service to collect the samples. Imagine sending a testing lab representative to a grow in Nome, Petersburg or Copper Center. Who will pay for the travel time, housing cost, man hours worked and per diem? Putting that burden on the cultivator will most likely cripple many companies in this state.<br>I want standardization just as much as the next guy, but please consider the financial cost you are asserting onto a still developing industry.<br>Sincerely,<br>Sam Hachey |

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