



MEMORANDUM

TO: Marijuana Control Board DATE: May 27, 2020

FROM: Glen Klinkhart, Interim Director RE: Regulations Project –
Jane P. Sawyer, Regulations Specialist Administrative Hold and Seizure

The board opened this regulations project at the January 2020 meeting after AMCO seeing the need for mitigations to potential issues regarding the safety of the public as it pertains to marijuana and marijuana product safety and sent it out for public comment. The draft was open for public comment for about 65 days, no comments were received.

Brief summary of the changes:

3 AAC 306.800. Inspection and investigation adds a provision to allow administrative hold (seizure in place) of marijuana or marijuana product by the director, an enforcement agent, an employee of the board, or a peace officer actin in an official capacity.

3 AAC 306.830. Seizure of marijuana or marijuana product is repealed and readopted to add provisions regarding administrative hold.

3 AAC 306.990(b) adds the definition of “probable cause” which is used in the new language of 3 AAC 306.830

Options for the board:

- Vote to adopt
- 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 306.800(a) is amended to read:

(2) issue a report or notice as provided in 3 AAC 306.805; [AND]

(3) seize, including placing on administrative hold, marijuana or any

marijuana product, as provided in 3 AAC 306.830; and

(4) [(3)] as authorized under AS 17.38.131, exercise peace officer powers and

take any other action the director determines is necessary.

(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3 AAC 306.830 is repealed and readopted to read: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;

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

(5) any marijuana or marijuana product that based on a finding of probable cause poses an immediate threat to worker or public health, safety or welfare; or

(6) engaged or attempted to engage in the illegal diversion of marijuana or a marijuana product or engaged in other criminal activity at the establishment's licensed premises.

(b) The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may determine whether the seizure shall be an administrative

hold in place of the marijuana or marijuana product or a full seizure, requiring physical removal of the marijuana or marijuana product from the establishment. An administrative hold may be changed to a full seizure of the marijuana or marijuana product at the discretion of the director. The director shall update the marijuana inventory control tracking system to reflect the seizure, including to identify whether the seizure is an administrative hold or physical removal of the marijuana or marijuana product from the establishment.

(c) If marijuana or marijuana product seized under this section is placed on administrative hold in place, the marijuana establishment must:

(1) physically separate the marijuana or marijuana product from the public and store it in a secured and restricted access area of its licensed premises; and

(2) receive express written consent of the director to sell, move, transfer, or engage in any other commercial activity of the marijuana or marijuana product placed on hold.

(d) If marijuana or marijuana product seized under this section is subject to a full seizure, the director will ensure that the seized items are stored in a reasonable manner.

(e) 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 notice of whether the seizure is an administrative hold in place or a full seizure constituting physical

removal of the marijuana or marijuana product from the establishment.

(f) If the seizure is an administrative hold in place, the establishment may request an informal conference with the director or the board.

(g) An informal conference requested under this section must be held at a time and place convenient to the applicant and the board, but not later than the next scheduled meeting of the board. An informal conference may be conducted telephonically. If the informal conference does not resolve the matter to the establishment's satisfaction, the establishment may, not later than 15 days after the last day of the informal conference, request a formal hearing. The hearing will be held not later than 15 days after the director's receipt of the request for a formal hearing.

(h) If the seizure is a full seizure, the director's notice shall identify the time and place of a hearing before the board. Unless the marijuana establishment 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.

(i) If a seizure under this section of marijuana plants is an administrative hold 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.

(j) Marijuana or marijuana product seized under this section will not be considered in the establishment’s physical inventory until such time that the marijuana or marijuana product is removed from seizure. (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	

3 AAC 306.990(b) is amended by adding a new paragraph to read:

(49) “probable cause” means reliable information in sufficient quantity and detail as to lead a reasonable person to believe that a crime or violation has occurred. (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 4/11/2019, Register 230; am

5/9/2019, 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

3 AAC 306.830 is repealed:

[3 AAC 306.830. **Seizure of marijuana or marijuana products.** (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.

(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. 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.]