



MEMORANDUM

TO: Marijuana Control Board DATE: February 20, 2019

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

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. The subcommittee recommended some changes, and I have added some other changes to reflect subsequent board actions (e.g., the adoption of the onsite consumption regulation). The changed from the previous draft shown to the board are tracked.

The general concept is that “notice of violation” is changed to “citation of violation” which comes with a penalty—usually either a fine or a suspension. 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.

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 as written
- Amend and put out for public comment
- Send back to staff for revisions
- Close the project without action

out for comment
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Register _____, _____ 2019 COMMERCE, COMMUNITY, AND EC. DEV.

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.] (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306 is amended by adding a new subsection 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 ~~shall~~ may be issued as follows:

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; <u>seizure of product</u>			
Marijuana sold to a non-licensee 3 AAC 306.305 3 AAC 306.405 3 AAC 306.505	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
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	\$1,000 monetary fine <u>to licensee</u>	\$5,000 monetary fine <u>to licensee</u>	\$10,000 monetary fine <u>to licensee</u>
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
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

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
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	\$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
<u>Failure to comply with trade show regulations</u> <u>3 AAC 306.760</u>	<u>5-day suspension or \$2,500 monetary fine</u>	<u>10-day suspension or \$5,000 monetary fine</u>	<u>30-day suspension</u>	<u>Accusation for revocation of license</u>
(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	\$5,000 monetary fine	\$10,000 monetary fine	\$15,000 monetary fine
(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	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	

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
(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
<u>Retest or transfer of failed material</u> 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
<u>Operating with suspended license</u>	<u>Accusation for revocation of license</u>			

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

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

(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:

(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 → "applicable" still applies

(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 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. 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

(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 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 _____)