MEMORANDUM

State of Alaska
Department of Law

TO:	Marijuana Control Board	DATE:	October 7, 2020
		FILE NO.:	2020200086
		TEL. NO.:	(907) 269-3039
FROM:	Joan M. Wilson Senior Assistant Attorney General Commercial, Fair Business and Child Support Section	SUBJECT:	Rekeyed Administrative Hold and Seizure Regulations (3 AAC 306.800, .830, .845, .990

The Department of Law has completed its review of Regulations Project 2020200086, Administrative Hold and Seizure Regulations. The regulations are rekeyed to accomplish Board intent and address a technical error. Substantive changes are identified below. I recommend that the Board approve the rekeyed regulations as final. If the Board does so, this regulations project will be forwarded to the Lieutenant Governor's Office for final adoption.

Page 1, 3 AAC 306.800(a)(3): -- The phrase "seize, including place on administrative hold, . . ." is grammatically clumsy. The more readable approach is to say "seize or place an administrative hold on . . . ." Correction is made for readability.

Page 1, 3 AAC 306.830(a) (introductory language): -- Change to introductory language to reflect the above change.

Page 2, 3 AAC 306.830(a)(5): -- Remove reference to "probable cause" and replace with "reasonable grounds" to avoid confusion on governing civil versus criminal burdens of proof. Burden of proof at hearing is still "preponderance of the evidence."

Page 2, 3 AAC 306.830(a)(6): -- Removed the word "illegal" before diversion. This edit reflects that our state's criminal code (AS 11) does not use the term "diversion" in a named offense, and also that the term appears alone, not preceded by "illegal", elsewhere in 3 AAC 306. Effectively, the grounds for administrative hold or seizure are "diversion", regardless of legality (although it is difficult to think of a legal diversion) or whether the diversion occurred on the marijuana establishment's licensed premises.

Page 2, 3 AAC 306.830(a)(6): -- Changed "other criminal activity on the establishment's licensed premises" to "a crime on the establishment's licensed premises". The term "crime" has the meaning given in AS 11.81.900(b). Board requirement that criminal activity occur on the licensed premises remains. The term "crime" may take in all acts commonly understood as diversion, but the term will take in only felonies and misdemeanors, not acts that are only violations under AS 11.

Pages 2 - 3, 3 AAC 306.830(b): -- Edits keep administrative holds separate from seizures rather than viewing administrative holds as a subset of "full" seizures. The result is plainer language, in line with Washington and Colorado regulations.

Page 3, 3 AAC 306.830(c)(2): -- Because director would not lift an administrative hold until after an investigation is complete, language inserted to clarify that director's consent is subject to completion of the investigation into the marijuana establishment's conduct and any related actions by the director.

Page 3, 3 AAC 306.830(c)(2)(A): -- Changed "any informal conference or appeal" to "any informal conference, any formal hearing, and any hearing under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) and, if applicable, 2 AAC 64.100 - 2 AAC 64.990" to clarify various options available to aggrieved licensee.

Pages 4, 3 AAC 306.830(e) -- Edits clarify that an aggrieved marijuana establishment can request an immediate formal hearing regarding an administrative hold, without an informal conference.

Restructured 3 AAC 306.830(e)(2) also contains the material, formerly in 3 AAC 306.830(h), regarding the director's duty to schedule the time and place for a formal hearing. Extended the time period from 10 to 15 days for the director to schedule a formal hearing to address a seizure, or to address an administrative hold without an informal conference. This edit takes into account weekends and holidays that might require a more immediate hearing and avoids the situation where the director has a duty to schedule a formal hearing in less time than a marijuana establishment has to decide whether to request an informal conference.

Pages 5, 3 AAC 306.830(h): -- Additional edits to harmonize 3 AAC 306.830(h) with the new provisions in 3 AAC 306.830(e) - (g) for informal conferences.

Page 5, 3 AAC 306.830(i): Changed "order may" to "order . . . must."

Page 5, 3 AAC 306.830(i)(1) and (2): -- To identify various options available to the aggrieved licensee, changed "a formal hearing" to "any informal conference, any formal

hearing, and any hearing under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) and, if applicable, 2 AAC 64.100 - 2 AAC 64.990".

Pages 6, new 3 AAC 306.830(j): -- New 3 AAC 306.830(j) sets out the existing regulation's text on destruction of seized marijuana or marijuana products. This text was accidentally omitted from the board's repealed and readopted regulations. Text also address administrative holds. New sentence at the beginning of 3 AAC 306.830(j) ties the process in 3 AAC 306.830 with the process in 3 AAC 306.835. Changes prevent the destruction of plant or product absent completion of appeals process to avoid unlawful taking, unless licensee agrees to destruction. Change also permits the board to order fines or other civil remedies in addition to or in place of destruction.

Page 6, 3 AAC 306.830(k): -- Clarifies that the board may not instruct the local governments how to apply local law. The director solely gives the local taxing authority notice of the administrative hold /seizure status. Removed passive voice in first sentence to clarify change.

Page 7, new amendment to 3 AAC 306.845(b): -- New amendment to 3 AAC 306.345(b) conforms provision to 3 AAC 306.830. Identifies appeal right for unjustified administrative holds or seizures to superior court under AS 44.62.560.