



The issue addressed—requirements for packaging—is within the scope of the board’s authority. The problem with the regulations as written include:

- a. Internal inconsistency. Each regulation requires that marijuana, marijuana products, or samples must leave the premises “packaged” in “opaque, resealable, child-resistant packaging.” The proposed changes state that the opaqueness component “of the package may be achieved by the consumer [or employee] placing the marijuana or marijuana product [or sample] on the consumer’s [or employee’s] person in an opaque matter or in the consumer’s [or employee’s] personal opaque bag.” Proposed changes to 3 AAC 306.345(a)(3), 3 AAC 306.460(d)(7), and 3 AAC 306.557(7). On its face, the regulation both requires opaque packaging and does not require opaque packaging. If the intent is that opaque packaging not be required of the licensee, if the customer or employee keeps the item opaque or obscured in another manner, then the board may want remove the requirement of opaque packaging and add a new paragraph requiring that when a purchaser leaves the retail section of a store, or an employee leaves the licensed premises, marijuana, marijuana products, or samples are in opaque packaging and that opaque packaging may be provided by the licensee or the customer or employee.
- b. Vagueness. It’s not clear what placing something on a person in an opaque manner means; it may mean that the product is removed from the store but in opaque packaging provided by the consumer.

To proceed further, the Department of Law asks the board to consider its intent. Is it to make opaque packing optional, and only needed if the marijuana or marijuana product cannot be placed in a customer’s or employee’s opaque packaging or is it something else.

**2. Testing of samples.** These changes are within the scope of the board’s authority, but appear incomplete. The proposed changes apply to 3 AAC 306.460 and 3 AAC 306.557, but not 3 AAC 306.455 and 3 AAC 306.550 even though the latter two regulations also address testing. Did the board consider if 3 AAC 306.455 and

3 AAC 306.550 should be changed to clearly establish testing before an employee is provided a sample?

*With technical edits (attached), the changes to 3 AAC306.460 and 3 AAC 306.557, if consistent with the board's intent, could be submitted to the Office of the Lieutenant Governor by the Department of Law for filing. They will be effective 30 days after filing. Our preference is that the board meet to assure the edits are consistent with the board's intent, and to consider if 3 AAC 306.455 and 3 AAC 306.550 should also be amended.*

To achieve the board's intent and keep the regulations clear, it is not necessary to add new subsections to 3 AAC 306.460 and 3 AAC 306.557. What the board formatted as new 3 AAC 306.460(e) and 3 AAC 306.557(b) would fit better in current 3 AAC 306.460(d) and 3 AAC 306.557 and still would appear to meet the board's intent. The change to 3 AAC 306.460(d) could be accomplished by the following:

The introductory language of 3 AAC 306.460(d) is amended to read:

(d) A marijuana cultivation facility may provide a sample of marijuana **grown at that facility** to an employee of the facility, who is in possession of a valid marijuana handler card for the purpose of quality control only if

...

3 AAC 306.460(d) is amended by adding a new paragraph to read:

(8) each sample is tested as required under 3 AAC 306.455 and 3 AAC 306.645 before being provided to an employee under this subsection.

Similarly, the board's changes to 3 AAC 306.557 would appear to be met more clearly if 3 AAC 306.557 was amended as follows.

The introductory language of 3 AAC 306 557 is amended to read:

**3 AAC 306.557. Quality control sampling.** A marijuana product manufacturing facility may provide a sample of marijuana concentrate or other marijuana product **produced by that facility** to an employee of the facility, who is in possession of a valid marijuana handler card for the purpose of quality control only if

...

3 AAC 306.557 is amended by adding a new paragraph to read:

(8) each sample is tested as required under 3 AAC 306.550 and

3 AAC 306.645 before being provided to an employee under this section.

Please review these suggestions, and confirm if they meet the board's intent.

#### **B. Conclusion**

Attached is a hand-edited version of how the changes would look if the board wants to go forward with the changes to 3 AAC 306.460(d) and 3 AAC 306.557 while it considers if future changes are needed to 3 AAC 306.455(a) (to add "or provide an employee a sample of") and 3 AAC 306.550(a) (to add "or provide an employee a sample of"). The edit in the attached, although seemingly extensive, are technical only and intended to express the board's intent, as set out in the January 30, 2020 notice of proposed regulation changes, to require quality control of samples to be tested and to clarify that the quality control sample may only be provided to an employee of the cultivator who grew the marijuana or an employee of the manufacturer who made the marijuana product.

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

3 AAC 306.345(a)(3) is amended to read:

(3) marijuana or a marijuana product sold is packaged in opaque, resealable, child-resistant packaging when the purchaser leaves the retail section of the licensed premises; the packaging must be designed or constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly. For the purpose of this paragraph, the opaqueness component of the packaging may be achieved by the consumer placing the marijuana or marijuana product on the consumer's person in an opaque manner or in the consumer's personal opaque bag.

(Eff. 2/21/2016. Register 217: am 11/8/2018. 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~~

((( Publisher: 3 AAC 306.345 is unchanged. )))

3 AAC 306.460(d)(7) is amended to read:

(7) samples that leave the licensed premises are packaged in opaque, resealable, child-resistant packaging and clearly marked or labeled "For Quality Control" and the packaging is designed or constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly. For the purpose of this subsection, the opaqueness component of the packaging may be achieved by the employee placing the sample on the employee's person in an opaque manner or in the employee's personal opaque bag.

((( Publisher: 3 AAC 306.460 is unchanged except that the closing period changes to 1 a connector and the and connector moves from 3 AAC 306.460(d)(6) to reflect the addition of new (d)(8). )))

3 AAC 306.460 is amended by adding a new subsection to read:

(d) A marijuana cultivation facility may provide a sample of marijuana grown at that facility to an employee of the facility, who is in possession of a valid marijuana handler card only if ~~(1) must pass all applicable laboratory tests required under this chapter before distributing it to an employee; and~~

3 AAC 306.460 is amended by adding a new paragraph to read:

(8) Each sample is tested under 3 AAC 306.455 and 3 AAC 306.647 before marijuana. (Eff. 2/21/2016, Register 217; am 11/8/2018, Register 228; am \_\_\_\_\_, being provided to an employee under this subsection.

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 306.557(7) is amended to read:

(7) samples that leave the licensed premises are packaged in opaque, resealable, child-resistant packaging and clearly marked or labeled "For Quality Control" and the packaging is designed or constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly. For the purpose of this subsection, the opaqueness component of the packaging may be achieved by the employee placing the sample on the employee's person in an opaque manner or in the employee's personal opaque bag.

*(C) Publisher: 3 AAC 306.460 is unchanged except that the closing period at the end of (7) changes to a semi colon, and the "and" connector moves from 3 AAC 306.460(b) to reflect the addition of new (8)."*

The introductory language of

3 AAC 306.557 is amended by adding a new subsection to read:

(b) A sample provided under (a) of this section

~~(1) must pass all applicable laboratory tests required under this chapter before being distributed to an employee; and~~

~~(2) may be distributed only to an employee of the facility that manufactured the~~

3 AAC 306.557. Quality Control Sampling. A marijuana product manufacturing facility may provide a sample of 2 marijuana concentrate or other marijuana product manufactured by that facility to an employee of the facility, who is in possession of a valid marijuana handler card for the purpose of quality control only if ...

marijuana product. (Eff. 5/25/2018, Register 226; 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 306.557 is amended to add a new paragraph to read:

(8) each sample is tested under 3 AAC 306.445, and 3 AAC 306.550 before being provided to an employee under this section.