



MEMORANDUM

TO: Members of the Marijuana Control Board
FROM: Rick Helms
DATE: April 4, 2022
RE: AMCO Program Coordinator Report

Outreach

Attended the March 2022 city-wide meeting of the Municipality of Anchorage Federation of Community Councils.

Attended the March 2022 city-wide meeting and the Anchorage Coalition of Community Patrols.

A “MARCH MEET METRC” meeting was held for all licensees on March 8, 2022 via the *Zoom* meeting platform. Inv. Bankowski will provide details on this meeting in his comments. There will be another Metrc user meeting the morning (time to be determined) of Friday, June 24, 2022 when Metrc is in Anchorage.

In the process of updating the Local Option MJ list as to legal status and to make it more user-friendly (to include readability) beginning with those communities that have stated in the past that they have instituted a local option or reference portions of their own code that addresses marijuana establishments and/or licensing. Will also be adding at the same time the Alaska Native community name of record to any existing legal/common place name that is not an Alaska Native community name. As to local option interest, AMCO has received several inquiries lately on how one goes about prohibiting the sale of marijuana and/or operation of a marijuana establishment in a community or a portion of the community. Currently working on a public marijuana presentation where a portion of the presentation will address this information and process.

Retail marijuana establishments have been victims of burglary and their employees, victims of armed robberies. I am exploring hosting a security forum primarily for retail licensees. This would provide an opportunity for them to hear from security professionals – managers and technicians on physical, electronic, and procedural security subjects and revisit related regulatory requirements with AMCO.

Project Updates

Random testing for pesticides and heavy metals

Background: For years, testing marijuana for additional substances such as heavy metals and pesticides has been broached. My inquiry of marijuana testing labs in the summer of 2021 reflected that if additional package testing for pesticides and heavy metals were to be requested or mandated, labs could do it within a year but only after additional costs for upfront instrumentation/equipment. Additionally, testing costs to licensees would increase between \$250 to \$500. Conducting random testing to comply with current regulation alone was a financial concern of the labs because of the substantial initial cost of equipment required and no routine business. In other words, random testing by itself would not provide the ability to cover the costs of equipment and personnel.

More recently I held two internal agency meetings during February and March 2022 and one March 2022 meeting where all current marijuana licensees of any type were invited to attend and participate by contributing their thoughts, experiences, prior discussions or information they might have on the topic, or to just to listen in. Personnel from the SOA Environmental Health Lab and the Industrial Hemp program participated.

There are currently two MCB compliance sampling regulations. The first, found at 3 AAC 306.465 (Random sampling) requires random sampling from cultivations of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for pesticides and chemical residues, and screened for unsafe levels of metals. Here, the marijuana testing facility collects and tests the samples. The cultivation bears all costs.

The other regulation, found at 3 AAC 306.665 (Supplemental marijuana quality testing) requires a cultivation or product manufacturing facility upon demand submit a specified sample, batch, or packaged product to a designated marijuana testing facility for any test the board or director designates. The cultivation or manufacturer pay all the costs.

Here are the two regulations in full:

3 AAC 306.465. Random sampling

(a) The board will or the director shall from time to time require a standard or limited marijuana cultivation facility to provide samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. The sample may be screened for pesticides and chemical residues, screened for unsafe levels of metals, and used for other laboratory tests the director finds to be in the interests of the public. The marijuana cultivation facility shall bear all costs of testing under this subsection.

(b) When the board or the director orders random sampling under this section, the director shall identify a licensed marijuana testing facility to perform the testing. The marijuana testing facility shall collect the test samples. The marijuana cultivation facility shall cooperate to facilitate the collection of samples.

(Eff. 2/21/2016, Register 217)

3 AAC 306.665. Supplemental marijuana quality testing

(a) The board or director may at any time determine that the interests of the public require random supplemental testing of marijuana or a marijuana product. When the board or director requires random supplemental testing, the board will or director shall direct the marijuana cultivation facility that produced the marijuana, or the marijuana product manufacturing facility that manufactured the product, to submit a specified sample, batch, or packaged product to a designated marijuana testing facility. The material must be packaged in a manner that ensures the marijuana testing facility will be able to confirm that it has received and is testing the correct supplemental sample.

(b) When a marijuana testing facility receives a sample for random supplemental testing under this section, the marijuana testing facility shall

(1) perform any required laboratory test the board or director requests; and

(2) report its results to

(A) the board or director; and

(B) the facility that provided the sample.

(c) A marijuana testing facility that conducts laboratory testing under this section shall bill all costs directly to the marijuana cultivation facility or the marijuana product manufacturing facility that provided the samples for testing.

(Eff. 2/21/2016, Register 217)

Testing sample sizes are not specifically listed in regulation, but each individual test requires a necessary sample size as follows:

Plant materials

- Metals = 1g
- Pesticides = 3g
- Mico or Mycro (each) 2g

For Concentrates

- Metals = 1g or 3 .5g cartridges
- Pesticides = 1g
- Mico or Mycro (each) 1g

Soil and H2O

- Metals and Pesticide in soil is generally 50g or 2 cups
- Metals in water is minimum 50 mL, 100 – 200 mL is preferred.
- Pesticides in water is heavily dependent on what extraction technique the lab is using. The volume requirement can be anywhere from 100 mL to 1000 mL.

Collecting a sample amount however differs from the amount needed to test as noted above. To achieve a total representative sample by weight or volume would be greater than an amount to test. It would all depend on the size of the production lot, how many plants, etc. In a hypothetical, if sampling a grow of 100 plants, a sample could be taken from every plant if possible - a few wet

grams each. The lab would dry and homogenize, then subsample from that to have a 1-gram etc. testing sample.

During the work on this project, all active and operating marijuana testing facilities were polled as follows (answers are combined):

Question 1. Is your marijuana testing facility in Alaska, with current equipment, able to test samples of growing medium, soil amendments, fertilizers, crop production aids, and water from marijuana cultivations for metal content and pesticides/herbicides?

Answer: No.

One lab did state that it has some equipment to test for toxic metals and pesticides but it “has been unused for a year and would need . . . maintenance” and need to undergo a validation procedure.

Question 2. Can marijuana and marijuana products currently be screened for pesticides and metals at your lab?

Answer: No

Question 3. If you are currently not testing for pesticides and metals, once you learn that regulations will be updated to include requirements for pesticide and metals testing, please estimate a timeframe for procuring equipment, reagent and standards and performing the method validation and QA/QC necessary to bring these tests online as an offering to your customers.

Answer: Unspecified to 9-12 months. Also, comments relate that timing is determinant on staffing.

As mentioned in Background above, testing for pesticides and heavy metals requires a commitment of a substantial outlay of funds - in the range of \$500,000 to \$1M for instruments/equipment. It is doubtful that a licensed marijuana testing facility could support such purchase with proceeds from random testing alone. Adding these tests to the testing package is seen as the way to deal with such a substantial purchase of equipment. While it is difficult to determine what a competitive testing market cost might be, testing for pesticides and heavy metals could increase the combined price an estimated \$250 - \$300 to the cost of currently submitted packages.

A possibility is to have heavy metal testing (reported as not as expensive or difficult) in six months and pesticides in a 12-month timeframe. Heavy metals could be a required test for all packages and required of the labs while pesticides are tested from randomly collected samples submitted to elsewhere.

Another option is to just have a state lab test randomly for both heavy metals and pesticides.

Whatever the lab, being able to test would require a lab to: order the instruments, install and complete qualifications for instruments – with company technician on location at lab, recruit and train if necessary a chemist that can perform such analysis, validations (identify problems, adjust as needed, collect data over time – weeks, write the validation report), write protocols, create all relevant internal documents and create certificates of analysis for new methods, create sample prep and analysis training materials and tests, get approval for the methods, submit the method validation report to “DEC”/ISO, participate in an audit.

After reviewing the random and supplemental/quality testing model to comply with current regulations, it appears the resource challenges to licensed marijuana testing labs of equipment and staffing for just random testing are too great. As such, a state lab approach should be used at this time.

Under the state lab approach, AMCO staff would collect each retail sample. If permissible, the retail product “sample” would be purchased by AMCO from the retail establishment (at the retailer’s purchased cost). If not permissible, the original product manufacturer or cultivator would assume the cost or portions of the costs. EHL staff would collect the plant, water and soil, etc. samples. The cultivator would assume the costs as is currently outlined partially in regulation.

The EHL of the DEC has experience with the instrumentation and testing. Approval and funding for the Department of Environmental Conservation would be required but it would be expected that DNR would use the EHL for their hemp samples rather than ship off samples to labs outside Alaska.

Nothing herein is proposed to stop a licensed marijuana testing lab from pursuing the ability to perform heavy metal and pesticide tests too.

Staff proposes a regulation addition to provide for random testing of plant, soil and water, etc. and of retail products for heavy metals and pesticides with the EHL at the DEC performing the tests. If the MCB approves this recommended approach, staff can begin working with the state departments involved where policy and funding decisions would need to be made.

Universal Symbol on packaging

At a prior meeting staff proposed that the International Intoxicating Product Symbol (“IICPS”) be adopted. Since then, Montana became the first state to adopt official use of the IICPS. Montana’s rule went into effect on January 1, 2022, with a grace period to allow businesses to use existing package inventories. In February 2022 the New Jersey Cannabis Regulatory Commission also adopted the universal symbol. Additionally, Vermont has also adopted the base universal symbol design with a different color.

In January 2022, the membership of ASTM International formally adopted the IICPS as the world’s only international consensus standard cannabis product symbol. ASTM is expected to publish the official specifications in April 2022.

As individual states continue to and the federal government approaches legalization of cannabis for medical and adult use, a universal symbol for cannabis products is essential to the protection of public health and safety. Currently, states that have legalized cannabis for medical or adult use have implemented differing requirements for cannabis labeling. These standards vary widely, and in the absence of federal standardization, the solutions that are best for one jurisdiction may not be suitable for another. Nonetheless, there is one anchor point to ensure that Americans of all ages and backgrounds can correctly identify and exercise caution with cannabis products: a universal symbol on cannabis packages. Such a symbol is important for, among other reasons, preventing the accidental ingestion of cannabis by adults and children.

Below is the IICPS, what VT, MT, and NJ are using and a proposed one for Alaska’s potential use. There would be versions designed for both light and dark backgrounds and perhaps for printing and embossing.

It is noteworthy that at the January 2022 MCB meeting, the IICPS would have been very useful solving several matters including the following example of a safe packaging concern. One product manufacturer created a beverage additive that is best described as a marijuana infused sugar for coffee or other drinks. While the box the small package servings came in had the regulatory warning and safety language the small packets had nothing. This was a concern as the nondescript product would be separated from the box and could be used by an unaware person. There were comments that it would be difficult to place warning/safety language on each small individual package and it is the customer that needs to be responsible. Absent the fact quite a bit of writing is placed on the pink, blue, and white packets on most restaurant tables, the AK version of IICPS as a sticker could have easily been applied to each serving pack providing a necessary identification and relieving the manufacture from additional labeling that would be practical for the box but perhaps not so for the small loose packages.

Staff recommends the MCB open a regulation project toward adoption of the universal symbol as proposed below.



Drive-throughs

Staff has reviewed the idea of retail establishment drive-throughs and finds such a service option does not meet license site requirements, nor is it feasible for a licensee to maintain safely, or for such an option to meet general community public safety concerns.

As a marijuana retail establish may only sell marijuana or a marijuana product to a consumer who is physically present on the licensed premises, a drive-through or exterior window is not provided for in regulation. A vehicle to include an SUV, sedan, truck, motorhome, 4-wheeler or snowmachine is not an extension of a licensed premises. The street, courtyard, sidewalk or parking lot is also not the licensed premises for sale.

Even if there was an enclosure for the vehicle determining age through comparison to lawful identification for each vehicle occupant would be difficult even in the best of weather conditions and lighting. Likewise, preventing sales to a person that is under the influence of an alcoholic beverage, inhalant, or controlled substance is difficult to achieve if the employee must observe and assess a customer seated inside a vehicle or standing outside a building. A customer may not be able to observe required consumer notices posted within the premises.

Note: The temporary emergency order of 2020 authorized under 3 AAC 306.995 did not allow drive-throughs.

Staff does not recommend any action with regard to drive-throughs.

Signage

A survey of various sign laws and procedures by the regulations desk, enforcement and myself continues.

Compliance check programs

I wrote policies and procedures, and a job description for compliance decoy/underage buyer positions over nine months ago in 2021. Since then I have been updating and pursuing these jobs needed for the compliance efforts for both alcohol and marijuana. As of March 31, 2022, it is a pleasure to report there has been some action by SOA classification and CED HR and the process can finally proceed.

Projects being researched and otherwise worked on

AMCO staff in concert with others continue work researching and furthering proposals and recommendations for a subcategory for drinkables, preapproved packaging and an associated catalog. In addition, updates of projects other than these such as waste management waiting period, product transfers, trade show regulation, majority ownership related issues, and board delegated authority will appear in the reports of others at a different location of the agenda.
