

Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
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530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Commerce, Community & Economic Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: July 24, 2018

RE: Filed Permanent Regulations: Marijuana Control Board
Marijuana Control Board regulations re: testing equipment failure (3 AAC 306.670(d))

Attorney General File: JU2017200536
Regulation Filed: 7/24/2018
Effective Date: 8/23/2018
Print: 227, October 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE MARIJUANA CONTROL BOARD

The attached single page of regulations, dealing with reporting of testing equipment failure for marijuana licensees, is certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its November 29, 2017, meeting, under the authority of AS 17.38.121 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Marijuana Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 7/19/18



Erika McConnell, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on July 24, 2018 at 11:57 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: August 23, 2018

Register: 227, October 2018

3

by adding

3 AAC 306.670 is amended to add a new subsection to read:

(d) A marijuana testing facility shall notify the director in writing not later than 24 hours after a significant equipment malfunction or failure that prevents the completion of required marijuana or marijuana product testing. The licensee shall notify the director of any action the licensee intends to take to provide for re-testing or destruction of the

marijuana or marijuana product. (Eff. 2/21/2016, Register 217; am 8/23/2018, Register 227)

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

MEMORANDUM

State of Alaska
Department of Law


To: The Honorable Byron Mallott
Lieutenant Governor

Date: July 24, 2018

File No.: JU2017200536

Thru:

Tel. No.: 465-3600

From: Steven C. Weaver 
Senior Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Marijuana Control Board regulations
re: testing equipment failure (3 AAC
306.670(d))

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a general delegation dated December 5, 2014 from the regulations attorney. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Marijuana Control Board after the close of the public comment period. The regulations concern actions that a marijuana testing facility is to take if testing equipment fails.

The August 20, 2017 public notice and the July 19, 2018 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc: Erika McConnell, Director
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Linda Mattson, Regulations Contact
Department of Commerce, Community, and Economic Development

Jedediah Smith
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

April Simpson, Notary Administrator
Office of the Lieutenant Governor

Harriet Dinegar-Milks, Assistant Attorney General
Commercial, Fair Business, and Child Support Section

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Byron Mallott
Lieutenant Governor

Date: December 5, 2014

From: Susan R. Pollard *Susan R. Pollard*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

Re: Delegation of Authority for
Regulations Matters

In my absence, when I am traveling or otherwise out of the office, Senior Assistant Attorney General and Assistant Regulations Attorney Steven C. Weaver is designated as Acting Regulations Attorney. Under this delegation, Steve Weaver has my full authority under AS 44.62 to conduct the legal review of regulations or take necessary actions as Acting Regulations Attorney.

This delegation is effective immediately and is in effect until revoked by me.

If you have any questions, please let me know.

SRP/pav

cc: Scott Meriwether, AAC Coordinator
Office of the Lt. Governor

Jim Cantor, Deputy Attorney General
Civil Division

Nancy Gordon, Statewide Office Chief
Civil Division

Steven C. Weaver, Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Cori Mills, Assistant Attorney General
Legislation and Regulations Section

Linda Miller, Legal Editor
Legislation and Regulations Section

Lisa Rickey, Legal Editor
Legislation and Regulations Section

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE MARIJUANA
CONTROL BOARD TO MARIJUANA PLANT COUNT, TESTING OF MARIJUANA AND
REPORTING OF TESTING EQUIPMENT FAILURE

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with the testing of marijuana, marijuana plant count, and the reporting of equipment failure at a marijuana testing facility, including the following:

- (1) 3 AAC 306.405 adds new subsections to address plant counts for marijuana cultivation facilities.
- (2) 3 AAC 306.435 adds “kief” to the list of marijuana that may be combined in harvest packages.
- (3) 3 AAC 306.455 adds leaf, trim, and kief to random harvest samples for required testing.
- (4) 3 AAC 306.470 adds a new subsection requiring leaf, trim and other non-flower part of the marijuana plant to be independently tested for THC potency.
- (5) 3 AAC 306.555(d)(1) is proposed to be repealed.
- (6) 3 AAC 306.645 is proposed to add requirements for potency testing.
- (7) 3 AAC 306.670 is proposed to change reporting requirements for marijuana testing facilities.
- (8) 3 AAC 306.990 is proposed to amend definitions of marijuana plant maturity.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alcohol & Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. Additionally, the Marijuana Control Board will accept comments by electronic mail at amco.regs@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 4:30 pm on September 22, 2017.

You may submit written questions relevant to the proposed action to the Marijuana Control Board by email at amco.regs@alaska.gov or at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The Marijuana Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jedediah Smith at amco.regs@alaska.gov or (907) 269-0350 not later than September 12, 2017 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting the Alcohol & Marijuana Control Office at (907) 269-0350 or amco.regs@alaska.gov.

After the public comment period ends, the Marijuana Control Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 17.38.010; AS 17.38.070; AS 17.38.121; AS 17.38.150; AS 17.38.190; AS 17.38.200; AS 17.38.900

Statutes being implemented, interpreted, or made specific: AS 17.38.070; AS 17.38.200

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: August 14, 2017



Erika McConnell, director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: .
3. Citation of regulation (may be grouped): 3 AAC 306.405 3 AAC 306.435; 3 AAC 306.455; 3 AAC 306.470; 3 AAC 306.555; 3 AAC 306.645; 3 AAC 306.670; 3 AAC 306.990
4. Department of Law file number, if any: JU2017200536

5. Reason for the proposed action:

- Compliance with federal law or action (identify): _____
- Compliance with new or changed state statute
- Compliance with federal or state court decision (identify): _____
- Development of program standards
- Other (identify): _____

6. Appropriation/Allocation: \$0

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 18	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
Other (identify)	<u>\$ 0</u>	<u>\$ 0</u>

9. The name of the contact person for the regulation:

Name: Jedediah Smith

Title: Local Government Specialist

Address: 550 West 7th Ave, Suite 1600 Anchorage, AK 99501

Telephone: (907) 269-0350

E-mail address: amco.regs@alaska.gov

10. The origin of the proposed action:

Staff of state agency

Federal government

General public

Petition for regulation change

Other (identify): Marijuana Control Board

11. Date: August 14, 2017

Prepared by:



Name (printed): Jedediah Smith

Title (printed): Local Government Specialist

Telephone: (907) 269-0350

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Erika McConnell, Director of the Marijuana Control Board, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 306.670 regarding reporting of testing equipment failure, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

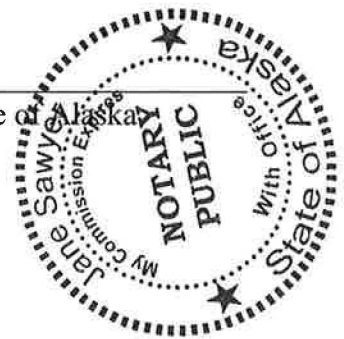
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 6/20/18

Erika McConnell
Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska, on 6/20/18.

Jane Sawyer
Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Erika McConnell, Director of the Marijuana Control Board, being duly sworn, state the following:

In compliance with AS 44.62.215, the Marijuana Control Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Marijuana Control Board Regulation on reporting of testing equipment failure.

Date: 6/20/18

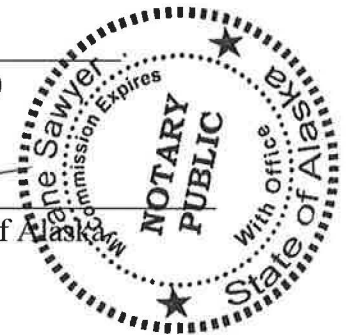
Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 6/20/18
(date)

Jan Sawyer

Notary Public in and for the State of Alaska



ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270221

Order #: 0001409193

Cost: \$373.50

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin
being first duly sworn on oath
deposes and says that she is
a representative of the
Anchorage Daily News, a
daily newspaper. That said
newspaper has been approved
by the Third Judicial Court,
Anchorage, Alaska, and it now
and has been published in the
English language continually as a
daily newspaper in Anchorage,
Alaska, and it is now and during
all said time was printed in an
office maintained at the aforesaid
place of publication of said
newspaper. That the annexed is
a copy of an advertisement as it
was published in regular issues
(and not in supplemental form)
of said newspaper on

August 20, 2017

and that such newspaper was
regularly distributed to its
subscribers during all of said
period. That the full amount of
the fee charged for the foregoing
publication is not in excess of
the rate charged private individuals.

Signed

Joleesa Stepetin

Subscribed and sworn to before

me this 21 day of June

20 18

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019



NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE MARIJUANA CONTROL BOARD TO MARIJUANA PLANT COUNT, TESTING OF MARIJUANA AND REPORTING OF TESTING EQUIPMENT FAILURE

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Statutes being implemented, interpreted, or made specific: AS 17.38.070; AS 17.38.200

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: August 14, 2017
Erika McConnell, director

Published: August 20, 2017

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ST OF AK/ALCOHOL & MARIJUANA

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Ad Number: 1409193-01

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Publication:
Anchorage Daily News

Section: D

Publication Date: 08/20/2017

Page: 4

DISCLAIMER

Enter the appropriate disclaimer text here

AFFIDAVIT OF MARIJUANA CONTROL BOARD ACTION

I, Erika McConnell, Director of the Marijuana Control Board, being duly sworn, state the following:

The attached motion dealing with regulation changes to reporting of testing equipment failure were passed by the Marijuana Control Board during its November 29, 2017, meeting.

Date: 6/20/18

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 6/20/18
(date)

Jane Sawyer

Notary Public in and for the State of Alaska





**Marijuana Control Board
Meeting Minutes
November 28, 2017
Third Judicial District**

**Alaska Scientific Crime Detection Laboratory, Public Classroom
4805 Dr. Martin Luther King Jr. Avenue
Anchorage, Alaska**

● **ADMINISTRATION**

9:02am

- A. Call to Order
- B. Roll Call

Board Members Present:

Peter Mlynarik, Chair, Public Safety Member
Mark Springer, Vice Chair, Rural Member
Brandon Emmett, Industry Member
Nick Miller, Industry Member
Loren Jones, Public Health Member

Staff Members Present:

Erika McConnell, Director
Sarah Oates, Program Coordinator

Legal Counsel Present:

Harriet Milks, Assistant Attorney General

- C. Approval of Agenda

Mark Springer moves to approve the agenda.

Brandon Emmett seconds the motion.

None opposed, motion carries.

● **NEW LIMITED MARIJUANA CULTIVATION FACILITY APPLICATIONS**

- A. **License #12612:** **Absolem’s Garden**
Licensee: Absolem's Garden, LLC
Premises Address: 13247 East Wycoff Drive

9:03am

TAB 41

*Mark Springer moves to renew license 10901 The High Expedition Company with delegation.
Brandon Emmett seconds the motion.
Jana Weltzin, legal counsel, identifies herself for the record. She states that an investigation was lodged as a result of complaints from the public, and that the enforcement team concluded that the accusations were unfounded.
Erika McConnell confirmed that an investigation took place and is now closed.
Peter Mlynarik requests that this type of information be provided to the Board in the future.
Motion carries, 4-1 (Peter Mlynarik votes No).*

● **REGULATIONS**

A. Proposed Regulations Projects

B. Reconsideration of Packaging and Labeling Regulations Project (adopted 7/14/17) 3:50pm TAB 63

*Loren Jones asks if the Board would have to start all over, or if it could amend the regulation.
Harriet Milks states that Law recommended that the Board withdraw this project and then consider making changes and starting over with a new project.*

*Brandon Emmett moves to withdraw this regulation project.
Mark Springer seconds the motion.
Motion carries unanimously.*

C. Plant Count for New Cultivators; Testing Trim and Kief Separately; Reporting Test Equipment Failure 4:01pm TAB 65

Status: Comment period closed September 22, 2017
Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

Erika McConnell states that this is three different, but related, topics that are grouped together for administrative purposes. She requests that the Board take independent action on the topics.

Reporting Test Equipment Failure

*Mark Springer moves to adopt 3 AAC 306.670 as amended.
Brandon Emmett seconds the motion.
The Board members consider public comments received.
Motion carries unanimously.*

Plant Count for New Cultivators

The Board members consider public comments received and AS 17.38.070(b)(6).

Erika McConnell states that she understands that this is not the technical definition of mature or immature, but the staff wanted to be able to reference the concepts of both being under a certain height and having no visible crystals, buds, or flowers without having to say all of that whenever wanting to express those concepts. This is why the staff is proposing to define immature in that way.