

Byron Mallott
Lieutenant Governor
State Capitol
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Anchorage, Alaska 99501
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LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

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

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: September 27, 2018

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: plant count for new marijuana cultivation facilities (3 AAC 306.405; 3 AAC 306.730(a); 3 AAC 306.990)

Attorney General File:	2018200370
Regulation Filed:	9/20/2018
Effective Date:	10/20/2018
Print:	228, January 2019

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

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE MARIJUANA CONTROL BOARD

The attached six pages of regulations, dealing with plant count for new cultivators, is certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its June 15, 2018, 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.

In considering public comment, 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: 9/10/18

Erika McConnell
Erika McConnell, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on September 20, 2018, at 11:50 A.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Byron Mallott
Lieutenant Governor

Effective: October 20, 2018.

Register: 228, January 2019.

3 AAC 306.405 is amended to read:

3 AAC 306.405. Standard marijuana cultivation facility: privileges and prohibited acts.

(a) A licensed standard marijuana cultivation facility is authorized to

- (1) propagate, cultivate, harvest, prepare, cure, package, store, and label marijuana;
- (2) sell marijuana only to a licensed retail marijuana store, to another licensed marijuana cultivation facility, or to a licensed marijuana product manufacturing facility;
- (3) provide samples to a licensed marijuana testing facility for testing;
- (4) store inventory on the licensed premises; any stored inventory must be secured in a restricted access area and accounted for in the marijuana cultivation facility's marijuana inventory tracking system as required under 3 AAC 306.730;
- (5) transport marijuana in compliance with 3 AAC 306.750;
- (6) conduct in-house testing for the marijuana cultivation facility's own use;
- (7) provide marijuana samples to a licensed retail marijuana store or marijuana product manufacturing facility for the purpose of negotiating a sale;

(8) begin initial operations at the time of preliminary inspection by an employee or agent of the board with

(A) 12 or fewer mature, non-flowering plants, designated and used as mother plants;

(B) any number of immature plants; and

(C) any number of seeds for cultivation on the licensed premises;

(9) introduce a new strain after written approval by the director on a form prescribed by the board, by

(A) receiving not more than 6 clones or cuttings from a person 21

years of age or older, without compensation; or

(B) receiving not more than 10 seeds from a person 21 years of age or older, without compensation, for cultivation on the licensed premises.

(b) A licensed standard marijuana cultivation facility may also apply for a marijuana

product manufacturing facility license and a retail marijuana store license. A standard marijuana

cultivation facility that obtains **a marijuana product manufacturing facility license or a retail**

marijuana store [ANY OTHER MARIJUANA ESTABLISHMENT] license shall

(1) conduct any product manufacturing or retail marijuana store operation in a room completely separated from the marijuana cultivation facility by a secure door when co-located; and

(2) comply with each provision of this chapter that applies to any other type of marijuana establishment license that the standard marijuana cultivation facility licensee obtains.

(c) A licensed standard marijuana cultivation facility may not

(1) sell, distribute, or transfer marijuana or a marijuana product to a consumer, with or without compensation;

(2) allow any person, including a licensee, employee, or agent, to consume marijuana or a marijuana product on the licensed premises or within 20 feet of the exterior of any building or outdoor cultivation facility on the licensed premises;

(3) treat or otherwise adulterate marijuana with any organic or nonorganic chemical or other compound to alter the color, appearance, weight, or odor of the marijuana;

(4) except as permitted under a marijuana product manufacturing facility license, extract marijuana concentrate, using any process described in 3 AAC 306.555, at the licensed premises;

(5) sell marijuana that is not packaged and labeled in compliance with 3 AAC 306.470 and 3 AAC 306.475; *in* 2 *semicolons should be both boldface and underlined*

(6) introduce marijuana or marijuana product, including plants and seeds, onto the licensed premises from any outside source after the initial preliminary inspection, except as acquired from another licensed cultivation facility and accounted for in the marijuana cultivation facility's marijuana inventory tracking system as required under 3

AAC 306.730 or as provided under (a)(9) of this section. (Eff. 2/21/2016, Register 217; am 10/20/2018 Register 228) *no boldface or underline for this period*

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 306.730(a) is amended to read:

(a) A marijuana establishment shall use a marijuana inventory tracking system capable of sharing information with the system the board implements to ensure all marijuana cultivated and sold in the state, and each marijuana product processed and sold in the state, is identified and tracked from the time the marijuana is a [PROPAGATED FROM] seed or cutting[, THROUGH TRANSFER TO ANOTHER LICENSED MARIJUANA ESTABLISHMENT, OR USE IN MANUFACTURING A MARIJUANA PRODUCT,] to a completed sale of marijuana or a

marijuana product, or disposal of the harvest batch of marijuana or production lot of marijuana product. (Eff. 2/21/2016, Register 217; am 10/20/2018, Register 228)

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

(a)
3 AAC 306.990 is amended to read:

3 AAC 306.990 (a). Definitions

(a) In AS 17.38 and this chapter,

[REPEALED 3/11/2013]

(1) ~~"affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a partnership, limited liability company, or corporation subject to this chapter;~~

(2)

(2) "assisting" does not include

(A) using, displaying, purchasing, or transporting marijuana in excess of the amount allowed in AS 17.38.020; ~~AS 17.38.020;~~

(B) possessing, growing, processing, or transporting marijuana plants in excess of the number allowed in AS 17.38.020;

(C) growing marijuana plants for another person in a place other than

(i) that other person's primary residence; or

(ii) a garage, shed, or similar place under the other person's

control;

(2) (3) "delivering"

(A) means handing to a person who purchases the product on licensed premises only;

(B) does not include transferring or transporting to a consumer off licensed premises;

⁽³⁾ ~~(4)~~ "flowering" means a marijuana plant that has visible crystals, buds, or flowers, or for which the exposure to light is scheduled with the intent to produce crystals, buds, or flowers;

⁽⁴⁾ ~~(5)~~ "immature" means a marijuana plant **18 inches or less in height**, with no visible crystals, buds, or flowers, and in which the exposure to light is scheduled with the intent to prevent formation of crystals, buds, or flowers;

⁽⁵⁾ ~~(6)~~ "in public"

(A) means in a place to which the public or a substantial group of people has access;

(B) except as provided in (C) of this paragraph, includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(C) does not include an area on the premises of a licensed retail marijuana store designated for onsite consumption under 3 AAC 306.305;

⁽⁶⁾ ~~(7)~~

"mature" means a marijuana plant over 18 inches in height;

⁽⁷⁾ ~~(8)~~

"personal cultivation" does not include

(A) using, displaying, purchasing, or transporting marijuana in excess of the amount allowed in AS 17.38.020; ~~AS 17.38.020;~~

(B) possessing, growing, processing, or transporting marijuana plants in excess of the number allowed in AS 17.33.020;

(C) growing marijuana plants for another person in a place other than

(i) that other person's primary residence; or

(ii) a garage, shed, or similar place under the other person's

control;

~~29~~(8) "possess" means having physical possession or control over property;

~~40~~(9) "registration" means licensure or license;

~~41~~(10) Repealed 10/11/2017. (Eff. 2/24/2015, Register 213; am 2/21/2016,

Register 217; am 10/11/2017, Register 224; am 10/20/2018, Register 228)

am 8/11/2018, Register 227;

Authority: AS 17.38.010 AS 17.38.121 AS 17.38.200
AS 17.38.040 AS 17.38.150 AS 17.38.900
AS 17.38.070

MEMORANDUM

State of Alaska Department of Law


To: The Honorable Byron Mallott
Lieutenant Governor

Date: September 18, 2018

File No.: 2018200370

Thru:

Tel. No.: 465-3600

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

Re: Marijuana Control Board regulations
re: plant count for new marijuana
cultivation facilities (3 AAC 306.405;
3 AAC 306.730(a); 3 AAC 306.990)

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. I have reviewed this project under a general delegation of authority dated December 5, 2014 from the Regulations Attorney. 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 how marijuana cultivation facilities may count and use mature plants, immature plants, seeds, cuttings, and clones; close a loophole that could have been misunderstood to allow a cultivator to obtain a testing facility license; and make conforming changes to tracking system requirements and definitions.

The April 29, 2018 public notice and the September 10, 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
Marijuana Control Board
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

Tel. No.: 465-3600

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

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

AFFIDAVIT OF MARIJUANA CONTROL BOARD ACTION

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

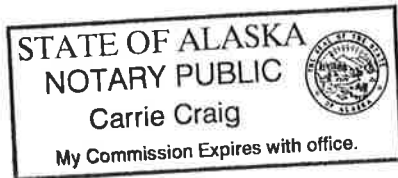
The attached motion dealing with regulation changes to plant count for new cultivators of marijuana was passed by the Marijuana Control Board during its June 15, 2018, meeting.

Date: 7/9/18

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 7/9/18.
(date)



Carrie Craig

Notary Public in and for the State of Alaska



Marijuana Control Board
Excerpt from unapproved meeting minutes
June 15, 2018
Third Judicial District
Atwood Building
550 W. 7th Avenue, Rooms 102 & 104
Anchorage, Alaska

● **REGULATIONS**

A. Public Comments Received

1. Plant Count for New Cultivators

3:00pm

TAB 13

Status: Comment period closed June 1, 2018

Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

Brandon Emmett moves to adopt the language as written.

Nick Miller seconds the motion.

The Board members discuss the public comments received.

Motion carries unanimously.

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 306.405, 3 AAC 306.730, and 3 AAC 306.990, regarding plant count for marijuana cultivators, 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.

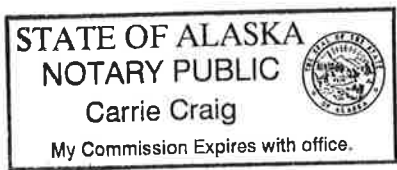
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the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


Date: 7/9/18



Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska, on 7/9/18.





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:

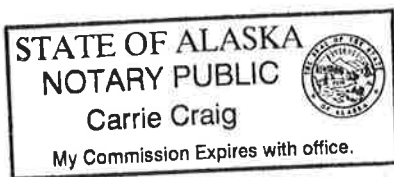
In compliance with AS 44.62.215, the Marijuana Control Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Marijuana Control Board regulation on plant count for new marijuana cultivators (3 AAC 306.405, 3 AAC 306.730 and 3 AAC 306.990).

Date: 7/9/18

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 7/9/18.
(date)



Carrie Craig
Notary Public in and for the State of Alaska

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE MARIJUANA
CONTROL BOARD TO MARIJUANA PLANT COUNT

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with marijuana plant count, including the following:

3 AAC 306.405 is proposed to define plant limits and rules for introducing new strains for standard cultivation licensees.

3 AAC 306.730 is proposed to clarify regulations regarding seed-to-sale tracking in the marijuana inventory tracking system for licensed cultivators.

3 AAC 306.990 is proposed to define mature and immature marijuana plants.

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 June 1, 2018.

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 May 18, 2018 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: April 26, 2018

A handwritten signature in black ink that reads "Erika McConnell". The signature is written in a cursive, flowing style.

Erika McConnell, director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: Plant count for licensed cultivators
3. Citation of regulation (may be grouped): 3 AAC 306.405; 3 AAC 306.730; 3 AAC 306.990
4. Department of Law file number, if any: 2018200370
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 19____	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: April 26, 2018

Prepared by:



Name (printed): Jedediah Smith
Title (printed): Local Government Specialist
Telephone: (907) 269-0350

ANCHORAGE DAILY NEWS

4/29

AFFIDAVIT OF PUBLICATION

Account #: 270221

ST OF AK/ALCOHOL AND MARIJUANA
CONTROL BOARD
550 W 7TH AVE #1600
ANCHORAGE, AK 99501

Order#
Cost

0001420534
\$298.80

Product ANC-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/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

April 29, 2018

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 30th day of April, 2018

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

MY COMMISSION EXPIRES

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE MARIJUANA CONTROL BOARD TO MARIJUANA PLANT COUNT

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with marijuana plant count, including the following:

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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: April 26, 2018

Erika McConnell, director

Published: April 29, 2018

