

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Amy Demboski
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: February 13, 2020

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: tracking and testing of marijuana (3 AAC 306.435 - 3 AAC 306.455; 3 AAC 306.470(a)(1)(B); 3 AAC 306.565(c); 3 AAC 306.660; 3 AAC 306.990(b)(3))

Attorney General File:	2019200398
Regulation Filed:	2/12/2020
Effective Date:	3/13/2020
Print:	233, April 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Jane Sawyer, Regulations Specialist

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached seven pages of regulations, dealing with marijuana tracking and testing, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its January 24, 2020, 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: 1-31-2020


Glen Klinkhart, Interim Director

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

Febr. 12th, 2020 at 3:38 P.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective: March 13, 2020.

Register: 233, April 2020.

Register 233 April 2020 COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 306.435(a) is amended to read:

(a) A marijuana cultivation facility shall use a marijuana inventory tracking system in compliance with 3 AAC 306.730 to ensure all marijuana propagated, grown, or cultivated on the marijuana cultivation facility's premises is identified and tracked from the time the marijuana is propagated through transfer to another licensed marijuana establishment or destruction. The marijuana cultivation facility shall assign a tracking number to each plant over eight inches tall and each package of marijuana to be transferred to another facility. A package of marijuana may not exceed 10 pounds. The marijuana cultivation facility shall also assign a plant batch name or number to each batch of clones or cuttings. A batch may not consist of more than 50 clones or cuttings. [WHEN HARVESTED, BUD AND FLOWERS, CLONES OR CUTTINGS, OR LEAVES AND TRIM MAY BE COMBINED IN HARVEST BATCHES OF DISTINCT STRAINS, NOT EXCEEDING FIVE POUNDS. EACH HARVEST BATCH MUST BE GIVEN AN INVENTORY TRACKING NUMBER. CLONES OR CUTTINGS MUST BE LIMITED TO 50 OR FEWER PLANTS AND IDENTIFIED BY A BATCH TRACKING NUMBER.]

3 AAC 306.435(b) is amended to read:

(b) A marijuana cultivation facility shall record each sale and transport of any plants or seeds and each package [BATCH] in its marijuana inventory tracking system and shall generate a valid transport manifest to accompany any transported plants and seeds and each transported package [BATCH].

(Eff. 2/21/2016, Register 217; am 3 / 13 / 2020, Register 233)

Register 233, April 2020 COMMERCE, COMMUNITY, AND EC. DEV.

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 306.445 is amended by adding new subsections to read:

(b) A marijuana cultivation facility shall segregate harvested marijuana into harvest batches.

(c) Once a harvest batch has been uniformly dried and cured, the marijuana cultivation facility shall divide the harvest batch into packages not exceeding 10 pounds each. A sample of each harvest batch package must be submitted to a marijuana testing facility for required testing under 3 AAC 306.455.

(d) Once a harvest batch sample has passed all required testing, a marijuana cultivation facility may repackage marijuana from that harvest batch package for sale or transfer. (Eff.

2/21/2016, Register 217; am 3 / 13 / 2020, Register 233)

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 306.455 is amended to read:

3 AAC 306.455. Required laboratory testing. (a) A marijuana cultivation facility shall provide samples from [OF] each harvest batch package of marijuana produced at the facility to a marijuana testing facility and may not sell or transport any marijuana, except as

provided for in (c) of this section, until all laboratory testing required under 3 AAC 306.645 has been completed.

(b) To comply with (a) of this section, a marijuana cultivation facility shall

(1) collect a representative [, HOMOGENOUS] sample for testing from each harvest batch package that has been uniformly dried and cured, in an amount as set out in the following table:

Harvest Batch <u>Package</u> Size (pounds)	<u>Number of 1g sub-samples to make up required sample</u> [QUANTITY OF SAMPLES (1G EACH)]
1	4
2	4
3	5
4	6
5	8
6	10
7	11
8	13
9	14
10	16

(2) designate an individual responsible for collecting each sample; that
individual shall [IS REPRESENTATIVE OF THE HARVEST;]

(A) prepare a signed statement showing that each sample is representative
of the harvest batch package;

(B) provide the signed statement to the marijuana testing facility; and

(C) maintain a copy as a business record under 3 AAC 306.755; and

(3) transport the samples to the marijuana testing facility's licensed premises in

Register 233, April 2020 COMMERCE, COMMUNITY, AND EC. DEV.

compliance with 3 AAC 306.750.

(c) A marijuana cultivation facility shall segregate the harvest [ENTIRE] batch package from which the testing sample was [SAMPLES WERE] selected until the marijuana testing facility reports the results from its tests. During this period of segregation, the marijuana cultivation facility that provided the sample [SAMPLES] shall maintain the harvest batch package in a secure, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy. The marijuana cultivation facility that provided the sample [SAMPLES] may not sell or transport any marijuana from the segregated harvest batch package until the marijuana testing facility has completed its testing, and provided those results, in writing, to the marijuana cultivation facility that provided the sample, except that a marijuana cultivation facility may transfer untested marijuana to a licensed marijuana concentrate or marijuana product manufacturing facility to be used to make carbon dioxide- or solvent-based extract. After processing, the carbon dioxide- or solvent-based extract must pass all required tests [SAMPLES]. The marijuana cultivation facility shall maintain the testing results as part of its business books and records. (Eff. 2/21/2016, Register 217; am 11/8/2018, Register 228; am 3 / 13 / 2020, Register 233)

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 306.470(a)(1)(B) is amended to read:

(B) in a wholesale package not exceeding 10 [FIVE] pounds for

Register ~~233~~, April 2020 COMMERCE, COMMUNITY, AND EC. DEV.

repackaging by the retail marijuana store; or

(Eff. 2/21/2016, Register 217; am 3 / 13 / 2020, Register 233)

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 306.565(c) is amended to read:

(c) Except as prohibited in 3 AAC 306.555(b)(2), a licensed marijuana product manufacturing facility may transfer marijuana concentrates in wholesale packages not to exceed 10 [FIVE] pounds to another licensed marijuana product manufacturing facility or a licensed retail marijuana store. (Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229; am 3 / 13 / 2020, Register 233)

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 306.660 is repealed and readopted to read:

3 AAC 306.660. Failed materials; retests. (a) If a sample tested by a marijuana testing facility does not pass the required tests based on the standards set out in 3 AAC 306.645, including a visual foreign matter inspection, the marijuana establishment that provided the sample shall dispose of the harvest batch package or production lot from which the sample was taken, as required under 3 AAC 306.740.

Register 233, April 2020 COMMERCE, COMMUNITY, AND EC. DEV.

(b) If a marijuana sample fails a required test, any marijuana plant trim, leaf, and other usable material from the same harvest batch package fail the required test. The board or director may approve a written request, on a form prescribed by the board, to allow a batch of marijuana that fails a required test to be used to make carbon dioxide- or solvent-based extract. After processing, the carbon dioxide- or solvent-based extract must pass all required tests.

(c) If a marijuana cultivation facility or a marijuana product manufacturing facility submits a written request, on a form prescribed by the board, for a retest of marijuana or a marijuana product that failed a required test, the board or director may authorize a retest to validate the test results. The marijuana cultivation facility or a marijuana product manufacturing facility shall pay all costs of a retest.

(d) When requested by a marijuana product manufacturing facility, the director may authorize a retest of a marijuana concentrate that passed a required test when the licensee wishes to reprocess a marijuana product to further reduce residual solvent levels. The marijuana product manufacturing facility shall pay all costs of a retest. (Eff. 2/21/2016, Register 217; am 7/5/2017, Register 223; am 10/20/2018, Register 228; am 3 / 13 / 2020, Register 233)

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 306.990(b)(3) is amended to read:

(3) "batch" or "harvest batch" means a specifically identified quantity of **bud and flower**, plant trim, leaf, and other usable product from marijuana plants, that are uniform in

Register ~~233~~, ~~April~~ 2020 COMMERCE, COMMUNITY, AND EC. DEV.

strain, cultivated in one place and under the same conditions, using the same medium and agricultural chemicals including pesticides and fungicides, and harvested at the same time; (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am 8/11/2018, Register 227; am 10/20/2018, Register 228; am 4/11/2019, Register 230; am 5/9/2019, Register 230; am 3 /13 /2020, Register ~~233~~)


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	AS 17.38.190	

MEMORANDUM

State of Alaska Department of Law


To: The Honorable Kevin Meyer
Lieutenant Governor

Date: February 3, 2020

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

File No.: 2019200398

Tel. No.: 465-3600

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

Re: Marijuana Control Board regulations
re: tracking and testing of marijuana
(3 AAC 306.435 - 3 AAC 306.455;
3 AAC 306.470(a)(1)(B); 3 AAC
306.565(c); 3 AAC 306.660; 3 AAC
306.990(b)(3))

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. 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 the tracking and testing of marijuana, in particular the harvesting, batching, testing, and transport of marijuana from licensed cultivation facilities in accordance with AS 17.38.

The May 12, 2019 public notice and the January 31, 2020 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.

SCW

Hon. Julie Anderson, Commissioner
Department of Commerce, Community, and Economic Development

Glenn Klinkhart, Interim Director
Marijuana Control Board

Amy Demboski, Assistant Commissioner and Regulations Contact
Department of Commerce, Community, and Economic Development

Jane Preston Sawyer
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Joan M. Wilson, Assistant Attorney General
Commercial, Fair Business, and Child Support Section

NOTICE OF PROPOSED CHANGES ON MARIJUANA TRACKING AND TESTING
IN THE REGULATIONS OF THE MARIJUANA CONTROL BOARD

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

- 3 AAC 306.435 is proposed to be change package sizes to not exceed 10 pounds and assign tracking numbers to 50 or fewer plants or seeds
- 3 AAC 306.445 is proposed to set standards for cultivation and preparation of marijuana samples
- 3 AAC 306.455 is proposed to change requirements for subsamples submitted to a testing facility.
- 3 AAC 306.470 and .565 is proposed to change the size of wholesale packages.
- 3 AAC 306.660 is proposed to change requirements for marijuana that has failed testing.
- 3 AAC 306.990 is proposed to change the definition of harvest batch.

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 and 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 19, 2019.

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

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact the Alcohol and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350 not later than June 11, 2019, 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 and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350.

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: AS17.38.121; AS 17.38.131; AS 17.38.190

Statutes being implemented, interpreted, or made specific: AS 17.38.200; AS 17.38.900;

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

The Alcohol and Marijuana Control Office keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Marijuana Control Board notices of proposed regulation changes. To be added to or removed from the list, send a request to the Alcohol and Marijuana Control Office at amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Erika McConnell, Director
Alcohol and Marijuana Control Office

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: Marijuana Tracking and Testing
3. Citation of regulation (may be grouped): 3 AAC 306.435-.990
4. Department of Law file number, if any: 2019200398

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): _____
- (x) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: none

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

A private person: No additional cost beyond what is currently required by licensees

Another state agency: none

A municipality: none

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


	Initial Year FY <u>20</u>	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) 334-2195
E-mail address: Jedediah.smith@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: May 8, 2019 Prepared by: 

Name (printed): Jedediah Smith
Title (printed): Local Government Specialist
Telephone: (907) 334-2195

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 tracking and testing of marijuana (3 AAC 306.435-.990) has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

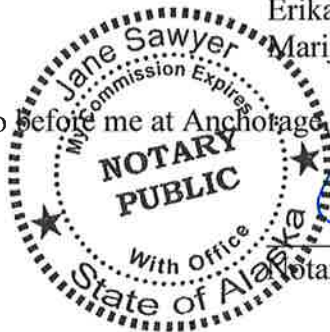
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 8/9/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 8/9/19.



Jane Sawyer

Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

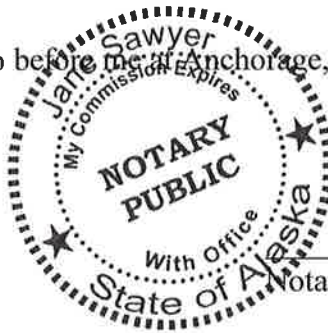
I, Erika McConnell, Director of the Marijuana Control Board, being duly sworn, state the following:

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 tracking and testing of marijuana.

Date: 8/9/19

Erika McConnell
Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 8/9/19.



Jane Sawyer
Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270221

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

Order#
Cost

0001438067
\$438.26

Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

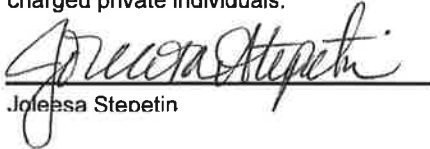
Joleesa Stepetin

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

May 12, 2019

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 13th day of May, 2019

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

MY COMMISSION EXPIRES


7/14/2020

STATE OF ALASKA
NOTARY
PUBLIC
Jada L. Nowling

NOTICE OF PROPOSED CHANGES ON MARIJUANA TRACKING AND TESTING IN THE REGULATIONS OF THE MARIJUANA CONTROL BOARD

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If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact the Alcohol and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350 not later than June 11, 2019.


or email to: legals@adn.com
Please call 257-4584, fax to 279-8170
**Advertise your
legal notices**

AFFIDAVIT OF BOARD ACTION

I, Glen Klinkhart, Interim Director for the Marijuana Control Board, being duly sworn, state the following:

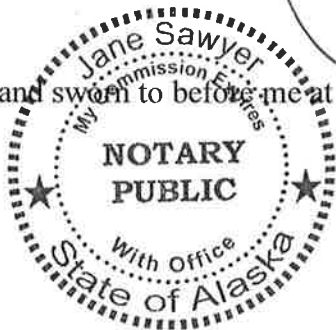
The attached motion dealing with marijuana tracking and testing was passed by the Marijuana Control Board during its January 24, 2020, meeting.

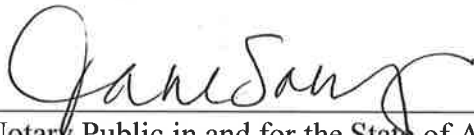
Date: 1-31-2020



Glen Klinkhart, Interim Director

Subscribed and sworn to before me at Anchorage, Alaska, on 1-31-2020.





Notary Public in and for the State of Alaska



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

Alcohol and Marijuana Control Office

550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

Marijuana Control Board Meeting January 23-24, 2020 Excerpt from Unapproved Minutes

1. Tracking and Testing of Marijuana

TAB 73

Status: Adopted on July 11, 2019

Potential Board Actions: Due to technical edits made, reconsider and readopt
Glen reviews. Motion to readopt: 5-0 passed