Kevin Meyer Lieutenant Governor State Capitol Juneau, Alaska 99811 907.465.3520 WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700 Anchorage, Alaska 99501 907.269.7460 LT.GOVERNOR@ALASKA.GOV

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 24, 2020

RE:

Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: oversight of marijuana testing facilities (3 AAC

306.100(d)(6); 3 AAC 306.620(c); 3 AAC 306.635(a)(3), (c); 3 AAC 306.640(b))

Attorney General File:

2019200396

Regulation Filed:

2/24/2020

Effective Date:

3/25/2020

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 THE MARIJUANA CONTROL BOARD

The attached four pages of regulations, dealing with marijuana testing oversight, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its January 23, 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

Feby- 24, 20 ∂ 0 at ∂ : ∂ 3. P.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective:

March 25, 2020.

Register:

233, Apr. 2020.

Register 233 April 2019 (2020)

3 AAC 306.100(d) is amended to read:

- (d) The annual license or endorsement fee, to be paid with each application for a new marijuana establishment facility license or endorsement and each license or endorsement renewal application is
- (1) for a new retail marijuana store license, \$5,000, and for a renewed retail marijuana store license, \$7,000;
- (2) for a new limited marijuana cultivation facility license, \$1,000, and for a renewed limited marijuana cultivation facility license, \$1,400;
- (3) for a new standard marijuana cultivation facility license, \$5,000, and for a renewed standard marijuana cultivation facility license, \$7,000;
- (4) for a new marijuana concentrate manufacturing facility license, \$1,000, and for a renewed marijuana concentrate manufacturing facility license, \$2,000;
- (5) for a new marijuana product manufacturing facility license, \$5,000, and for a renewed marijuana product manufacturing facility license, \$7,000;
- (6) for a new marijuana testing facility license, \$1,000, and for a renewed marijuana testing facility license, **\$5,000** [\$2,000];
- (7) for an onsite consumption endorsement to a retail marijuana store license, \$2,000. (Eff. 2/21/2016, Register 217; am 7/19/2017, Register 223; am 8/11/2018, Register 227

am 2/21/2019, Register 229; am 3 / 25 /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

am 4/11/2019, Register 230; am 5/1/2019, Register 230; am 5/9/2019, Register 230; 3 AAC 306.620(c) is amended to read:

(c) The board will approve a marijuana testing facility license if, after the board or the board's contractor has examined the qualifications and procedures of the marijuana testing

facility license applicant and documented the conclusions of the examination in a written
the qualifications and procedures,

report, the board finds them generally in compliance with good laboratory practices **and their application meets the requirements of this section**. Nothing in AS 17.38 or this chapter constitutes a board guarantee that a licensed marijuana testing facility can or will protect the public from all potential hazards of marijuana including microbials, poisons or toxins, residual solvents, pesticides, or other contaminants. (Eff. 2/21/2016, Register 217; am 3 / 25 /

<u>2020</u>, Register <u>233</u>)

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 306.635(a) is amended to read:

(a) An applicant for a marijuana testing facility license and a licensed marijuana testing facility shall

(12 Keep the titles italiaised)))

(1) use as guidelines or references for testing methodologies

(A) the American Herbal Pharmacopoeia's Cannabis Inflorescence:

Standards of Identity, Analysis, and Quality Control, Revision 2014, adopted by

reference; and

(B) the United Nations Office on Drugs and Crime's Recommended

Methods for the Identification and Analysis of Cannabis and Cannabis Products: Manual

for Use by National Drug Analysis Laboratories, dated 2009 and adopted by reference; and

(2) notify the board of any alternative scientifically valid testing methodology the marijuana testing facility proposes to use for any laboratory test it conducts; the board may require third-party validation of any monograph, peer-reviewed scientific journal article, or analytical method the marijuana testing facility proposes to follow to ensure the methodology

Alcohol and Marijuana Testing Facility Compliance Document, dated

2019 and adopted by reference; a marijuana testing facility whose license was first issued

(March 25, 2020) (Paragraph not later than) (September 25, 2020)

(prior to [effective date] shall comply with this subsection by [effective date + six months].

3 AAC 306.635(c) is amended to read:

refore

(c) The board or the board's contractor may inspect the practices, procedures, and programs adopted, followed, and maintained by the applicant or the licensed marijuana testing facility and may examine all records of the applicant or the licensed marijuana testing facility that are related to the inspection. The board may require an applicant or a licensed marijuana testing facility to have an independent third party inspect and monitor laboratory operations to assess testing competency and the marijuana testing facility's compliance with its quality program. The board may require random validation of a marijuana testing facility's execution of each testing methodology the facility uses. [THE MARIJUANA TESTING FACILITY SHALL PAY ALL COSTS OF VALIDATION.] (Eff. 2/21/2016, Register 217; am 3/25/2020 Register 233)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200

(2020)

AS 17.38.070

AS 17.38.190

AS 17.38.900

AS 17.38.121

3 AAC 306.640(b) is amended to read:

(b) The scientific director of a marijuana testing facility shall approve, sign, and date each standard operating procedure, and each revision to any standard operating procedure. Each

revision to any standard operating procedure shall be provided to the board Within 10 days

stapproval by the scientific director for review by the board or the board's contractor.

The revised standard operating procedure shall not be implemented until approved by the

board or the board's contractor. (Eff. 2/21/2016, Register 217; am 3 /25/2020, 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

MEMORANDUM

State of Alaska

Department of Law

To: The Honorable Kevin Meyer

Lieutenant Governor

Thru:

Date: February 14, 2020

File No.: 2019200396

Susan R. Pollard

Tel. No.: 465-3600

Chief Assistant Attorners C

Chief Assistant Attorney General and Regulations Attorney

Legislation and Regulations Section

Re: Marijuana Control Board regulations

re: oversight of marijuana testing facilities (3 AAC 306.100(d)(6);

3 AAC 306.620(c); 3 AAC 306.635(a)(3), (c); 3 AAC

306.640(b))

From: Steven C. Weaver

Senior Assistant Attorney General Legislation and Regulations Section

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 generally increase oversight of marijuana testing facilities, and increase the fee for renewal of a marijuana testing facility license from \$2,000 to \$5,000.

We note that 3 AAC 306.635(a)(3) (page 3) contains two placeholders tied to the effective date of the regulations. Once the regulations are filed and the effective date for these regulations changes known, please substitute the actual effective date for the first placeholder. For example, if the regulations are filed May 2, 2019, please substitute for the first placeholder the effective date "June 1, 2019." The second placeholder is for the date that is six months after the effective date. Again, once the regulations are filed and the effective date known, please substitute the appropriate date for the second placeholder.

The October 2, 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.

Honorable Kevin Meyer, Lieutenant Governor File No. 2019200396

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 w/enc:

Glen Klinkhart, Interim Director

Marijuana Control Board

Department of Commerce, Community, and Economic Development

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

Jane Preston Sawyer, Regulations Specialist 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

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 testing oversight was passed by the Marijuana Control Board during its January 23, 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



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. Marijuana Testing Oversight

TAB 3

Status: Public comment period closed November 2, 2019 Potential Board Actions: Vote to adopt; OR Substantially amend and put out for public comment

Director Klinkhart provides background information.

Christopher Jaime motions to adopt, seconded by Loren Jones.

The board reviews the received comments and Mark Springer notes that AMIA is opposed. Nick Miller would like more info before adopting – the testing labs should have more input.

Mark Springer has question for Steve Crupi regarding comments from Peak Analytical, were those comments included in his manual? — what's his view on the discussion? Mr. Crupi says some adjustments were made after seeing the comments. He believes it is ready to adopt as is.

Christopher Jaime says there is no perfect regulation. Nick Miller says the board doesn't talk to the public and the industry. He would like to hear from the licensees — will not support pushing it forward at this time. Bruce Schulte the compliance document is included by reference — does that mean when the compliance document is updated whether the board sees it or not it is still included by reference. Mark Springer says it is not included by reference, the document title dated so and so and attached.

Mark Springer does not want to delay the adoption – will support. **3-2 passes. Bruce** Schulte and Nick Miller opposes, motion carries.

NOTICE OF PROPOSED CHANGES ON MARIJUANA TESTING OVERSIGHT 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 marijuana testing oversight, including the following:

- 3 AAC 306.100 is proposed to increase the license fee for marijuana testing facilities.
- 3 AAC 306.620 is proposed to require the board's contractor to examine a marijuana testing facility prior to being issued a license.
- 3 AAC 306.635 is proposed to require compliance with the Marijuana Testing Facility Compliance Document.
- 3 AAC 306.640 is proposed to require changes to standard operating procedures be submitted to the director and approved by the board's contractor.

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 November 2, 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) 269-0350 not later than October 23, 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) 269-0350.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System. A copy of material proposed for adoption by reference may be viewed at the agency's office at 550 West 7th Ave. Suite 1600, Anchorage, Alaska, 99501

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; 17.38.150; AS 17.38.190; AS 17.38.200; AS 17.38.900

Statutes being implemented, interpreted, or made specific: AS 17.38.200; 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 Marijuana Control Board at amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

October 1, 2019

Erika McConnell, Director Marijuana Control Board

Euha M'Connell

ADDITIONAL REGULATION NOTICE INFORMATION (AS 44.62.190(d))

1.	Adopting agency: Marijuana Control Board			
2.	General subject of regulation	on: Marijuana	Testing Facility Compliance	
3.	Citation of regulation (may	be grouped):	3 AAC 306.100640	
4.	Department of Law file nur	mber, if any: 2	2019200396	
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: Increases license fee from \$2,000 to \$5,000			
	Another state agency:			
8,	Cost of implementation to the state agency and available funding (in thousands of dollars):			
		Initial Year	Subsequent	
		FY _20	1	
	Operating Cost	\$_0		
	Capital Cost	\$_0		
	1002 Federal receipts	\$_0	\$ <u>0</u>	
	1003 General fund match	\$_0	\$_0	
	1004 General fund	\$_0	\$_0	
	1005 General fund/			
	program	\$_0	\$ <u>0</u>	
	Other (identify)	\$ 0	\$_0	

The name of the contact person for the regulation:

9.

	Name: Jane P. Sawyer		
	Title: Regulations Specialist		
	Address: 550 West 7 th Ave. Suite 1600, Anchorage, AK 99501		
	Telephone: (907) 269-0490		
	E-mail address: jane.sawyer@alaska.gov		
10.	The origin of the proposed action:		
	Staff of state agency Federal government General public Petition for regulation change X Other (identify): Marijuana Control Board		
11.	Date: October 1, 2019Prepared by:		
	Name (printed): Jane P. Sawyer		
	Title (printed): Regulations Specialist		
	Telephone: (907) 269-0490		
	1		

ANCHORAGE DAILY NEWS AFFIDAVIT OF PUBLICATION

Account #: 270221 ST OF AK/ALCOHOL AND MARIJUANA CONTROL BOARD, ANCHORAGE, AK: 99501

Order #: W0011830

Cost: \$448.24

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Lisi Misa 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

10/02/2019

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

Subscribed and sworn to before me this 29th day of January 2020.

Notary Public in and for

The State of Alaska.
Third Division

Anchorage, Alaska

SPE OF ALASAS

PUBLIC

Vada L. Nown

MY COMMISSION EXPIRES

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

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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) 269-0350 not later than October 23, 2019, to ensure that any necessary accommodation can be provided.

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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 Marijuana Control Board at amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

October 1, 2019 By: /s/ Erika McConnell, Director Marijuana Control Board

Published: October 2, 2019

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, Glen Klinkhart, Interim 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 306.100(d), 3 AAC 306.620(c), 3 AAC 306.635(a) & (c), 3 AAC 306.640(b) regarding marijuana testing oversight 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: 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

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Glen Klinkhart, Interim Director, for 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 marijuana testing oversight.

Date: 1-31-2020

Glen Klinkhart, Interim Director

Subscribed and sworn to be love at Anchorage, Alaska, on _

1-31-2020

Notar Public in and for the State of Alaska