

Kevin Meyer
Lieutenant Governor
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907.465.3520
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530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Glenn Hoskinson
Department of Commerce, Community, and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: August 2, 2021

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: THC content in edibles (3 AAC 306.005(1); 3 AAC 306.300(a)(2); 3 AAC 306.560; 3 AAC 306.645(b)(1))

Attorney General File:	2021200006
Regulation Filed:	8/2/2021
Effective Date:	9/1/2021
Print:	239, October 2021

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

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached four pages of regulations, dealing with increase in THC content in edibles, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its June 24, 2021, 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: July 12, 2021



Glen Klunkhart, Director

April Simpson for

FILING CERTIFICATION

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

August 2, 2021 at 2:59 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for 

Lieutenant Governor *Kevin Meyer*

Effective: September 1, 2021

Register: 239, October 2021

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2018.



Kevin Meyer

**KEVIN MEYER
LIEUTENANT GOVERNOR**

~~2 (Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)~~

3 AAC 306.005²(a)(1) is amended to read:

(1) a retail marijuana store license, granting authority for activities allowed under AS 17.38.070(a), and subject to the provisions of 3 AAC 306.300 – 3 AAC 306.370 [3 AAC 306.300 - 3 AAC 306.365] and 3 AAC 306.700 - 3 AAC 306.770;

(Eff. 2/21/2016, Register 217; am 10/17/2018, Register 228; am 9 / 1 / 2021, Register 239)

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 306.300(a)(2)(A) is amended to read:

(A) each applicable provision of 3 AAC 306.300 – 3 AAC 306.370 [3 AAC 306.300 - 3 AAC 306.365] and 3 AAC 306.700 - 3 AAC 306.770; and

(Eff. 2/21/2016, Register 217; am 10/17/2018, Register 228; am 9 / 1 / 2021, Register 239)

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 306.560 is amended to read:

3 AAC 306.560 Potency limits per serving and transaction for edible marijuana products. A marijuana product manufacturing facility may not prepare a marijuana product with potency levels exceeding the following, as tested in compliance with 3 AAC 306.645:

(1) for a single serving of a marijuana product, **not more than 10** [FIVE] milligrams of active tetrahydrocannabinol (THC) or Delta 9;

(2) in a single packaged unit of a marijuana product to be eaten or swallowed, not more than 10 servings or **100** [50] milligrams of active THC or Delta 9; the THC content must be homogenous, or evenly distributed throughout the marijuana-infused product. (Eff.

2/21/2016, Register 217; am 9 / 1 / 2021, Register 239)

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 306.645(b)(1) is amended to read:

(b) The tests required for each marijuana type or marijuana product, are as follows:

(1) potency testing is required on marijuana bud and flower, marijuana concentrate, and a marijuana product, as follows:

(A) the required cannabinoid potency test must at least determine the concentration of THC, THCA, CBD, CBDA and CBN cannabinoids; a marijuana testing facility may test and report results for any additional cannabinoid if the test is conducted in compliance with a validated method;

(B) a marijuana testing facility shall report potency test results as follows:

(i) for a potency test on marijuana and marijuana concentrate, the marijuana testing facility shall list for each required cannabinoid a single percentage concentration, based on dry weight, that represents an average of all samples within the test batch; additionally, total THC and total CBD shall be reported;

(ii) for a potency test on a marijuana product, whether conducted on each individual production lot or using process validation, the marijuana testing facility shall list for each cannabinoid the total number of milligrams contained within a single retail marijuana product unit for sale;

(iii) testing whether the THC content is homogenous, the marijuana testing facility shall report the THC content of each single serving in a multi-unit package; the reported content must be within 20 percent of the manufacturer's target; for example, in a 100 ^{milligrams} total THC package with 10
servings, each serving must contain between eight and 12 milligrams of THC;

[IN A 25 MILLIGRAMS TOTAL THC PACKAGE WITH FIVE SERVINGS,
EACH SERVING MUST CONTAIN BETWEEN FOUR AND SIX
MILLIGRAMS OF THC;]

(C) the marijuana testing facility shall determine an edible marijuana product to have failed potency testing if

with 10 servings that is

(i) an individually packaged edible retail marijuana product contained within a test lot is determined to have more than 120 [60] milligrams of THC within it; or

(ii) the THC content of an edible marijuana product is not homogenous;

(Eff. 2/21/2016, Register 217; am 7/5/2017, Register 223; am 11/8/2018, Register 228; am 9 / 1 / 2021, Register 239)

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

Date: July 29, 2021

File No.: 2021200006

Thru: Susan R. Pollard Susan R Pollard Digitally signed by Susan R Pollard
Date: 2021.07.29 12:21:25 -0800
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

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

Re: Marijuana Control Board regulations
re: THC content in edibles (3 AAC
306.005(1); 3 AAC 306.300(a)(2);
3 AAC 306.560; 3 AAC
306.645(b)(1))

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. The regulations were adopted by the Marijuana Control Board after the close of the public comment period. The regulations increase the content in edibles of tetrahydrocannabinol (THC), the main psychoactive substance found in marijuana, to the levels allowable in most other jurisdictions, adjust testing requirements for homogeneity across a product accordingly, and make minor technical updates.

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. Based upon our review, we find no legal problems. In particular, we note that the vote to adopt the regulations was in accordance with the procedures set out in AS 17.38. For the five-person board, AS 17.38.111(b) establishes a three-person quorum to do business; and three members were present at the meeting to consider the regulations amendments. Though a majority of the full board--that is, at least three members--is also necessary to vote to perform most actions, AS 17.38.111(b) does not identify regulation amendments among the actions for which that majority is necessary. Therefore, the 2-to-1 action to amend the regulations in this project is legal, under the negative-implication canon of statutory construction: that the expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*). See *State v. Fyfe*, 370 P.3d 1092, 1099-1101 (Alaska 2016); *Ranney v. White Water Engineering*, 122 P.3d 214, 219 (Alaska 2005); A. SCALIA & B.A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* § 10 (2012).

The January 19, 2021 public notice and the July 12, 2021 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 w/enc: Glen Klinkhart, Director
Marijuana Control Board

Glenn Hoskinson, Special Assistant and Regulations Contact
Department of Commerce, Community, and Economic Development

Jane P. Sawyer, Regulations Specialist
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

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

NOTICE OF PROPOSED CHANGES ON THC CONTENT FOR EDIBLES
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 THC content for edibles, including the following:

- 3 AAC 306.005(a)(1) and 3 AAC 306.300(a)(2)(A) are amended to update the range of applicable provisions
- 3 AAC 306.560 is amended to allow for a single serving to contain not more than 10 milligrams of THC, and for a single packaged unit to contain not more than 100 milligrams of THC. The packaged unit still may not exceed 10 servings, each serving may not exceed a specific range of THC content.
- 3 AAC 306.645(b)(1)(B)(iii) is amended to update the example provided of the 20 percent variance allowed for THC content in a single serving.
- 3 AAC 306.645(b)(1)(C)(i) is changed from 60 milligrams to 120 milligrams based on the 20 percent variance.

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 Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage AK 99501. Additionally, the Marijuana Control Board will accept comments by email 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 4:30pm on March 5, 2021.**

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) 269-0490 not later than February 26, 2021, 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) 269-0490.

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.

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

Date: January 13, 2021



Jane P. Sawyer
Regulations Specialist

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: THC Content for Edibles
3. Citation of regulation (may be grouped): 3 AAC 306.005; 3 AAC 306.300; 3 AAC 306.560; 3 AAC 306.645
4. Department of Law file number, if any: 2021200006

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: DCCED/Alcohol and Marijuana Control Office

7. Estimated annual cost to comply with the proposed action to:
 - A private person: at least, \$250 to amend licensee's operating plan
 - Another state agency: none known
 - A municipality: none known

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

	Initial Year FY <u>21</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: Jane P. Sawyer
Title: Regulations Specialist
Address: 550 West 7th Ave., Ste. 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 change⁷
 Other (identify): Marijuana Control Board

11. Date: January 13, 2021

Prepared by: 
Name (printed): Jane P. Sawyer
Title (printed): Regulations Specialist
Telephone: 907-269-0490

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

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

Order #: W0019960

Cost: \$423.34

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 afore-said 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

01/19/2021

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 2021.

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

MY COMMISSION EXPIRES

4/14/2021

ANGELA M SIMMONS
NOTARY PUBLIC
State of Alaska
My Commission Expires Apr. 14, 2021

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- * 3 AAC 306.645(b)(1)(B)(iii) is amended to update the example provided of the 20 percent variance allowed for THC content in a single serving.
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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.

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Date: January 13, 2021

By: /s/ Jane P. Sawyer
Regulations Specialist

Pub: January 19, 2021

AMCO

FEB - 1 2021

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

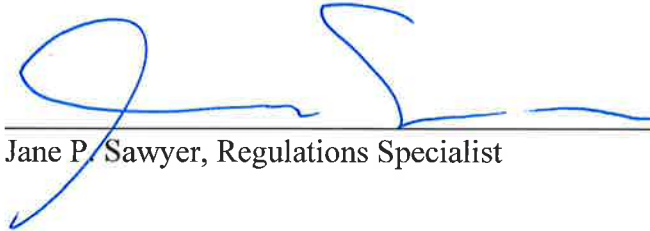
I, Jane P. Sawyer, Regulations Specialist, of the Marijuana Control Board, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 306.005; 3 AAC 306.560; 3 AAC 306.645 regarding increase of THC content in edibles 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: July 12, 2021



Jane P. Sawyer, Regulations Specialist

Subscribed and sworn to before me at Anchorage, Alaska, on 7/12/21.





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

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

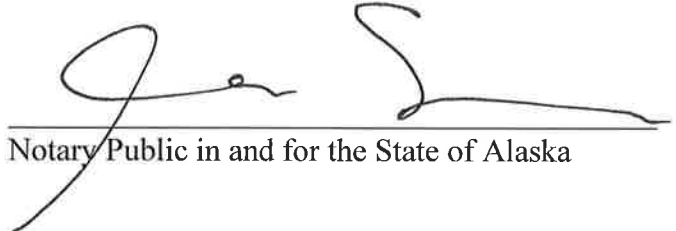
In compliance with AS 44.62.215, the Marijuana Control Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Marijuana Control Board regulation on increase of THC content in edibles.

Date: July 12, 2021


Glen Klinkhart, Director

Subscribed and sworn to before me at Anchorage, Alaska, on July 12, 2021.




Notary Public in and for the State of Alaska

AFFIDAVIT OF BOARD ACTION

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

The attached motion dealing with application and renewal date was passed by the Marijuana Control Board during its June 24, 2021, meeting.

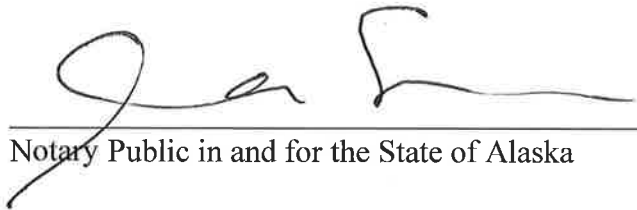
Date: JULY 12, 2021



Glen Klinkhart, Director

Subscribed and sworn to before me at Anchorage, Alaska, on July 12, 2021.





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 June 24, 2021, Excerpt from Unapproved Minutes

THC Content Limit for Edibles

TAB 63

Status: public comment closed March 5, 2021. Many comments received.

Potential Board Actions: vote to adopt; amend and put out for public comment; send back to staff for revisions; close project without action.

*Nick M. reviews the options to the board. **Bruce S. motions to adopt. Christopher J. seconds for discussion.** Christopher J. is against raising the limits. Bruce S. does not see any issues with raising these limits. Alaska is the most conservative state regarding limits. Nick M. supports it and recognizes that it is controversial. Joan Wilson suggests a discussion regarding onsite consumption with higher THC content. Nick M. says this regulation would not change the amount a customer could purchase for onsite consumption. Bruce S. agrees – not looking to change the onsite consumption limits. **Christopher J. is opposed, motion passes 2-1 (one vacant seat, Casey Dschaak not present at the meeting).** Would this change require operating plan change? Director Klinkhart suggests a one-page form, temporary approval by Director and brought to the board for final approval. Jane Sawyer says the notice says \$250 app fee per application. Rick Helms and James H. are in support of two different fees based on product quantity. Revisit the fee issue at a later date. Will need photos of the different containers or different volumes.*