

GOVERNOR'S ADVISORY TASK FORCE ON RECREATIONAL MARIJUANA REPORT TO THE ALASKA MARIJUANA CONTROL BOARD

ON BEHALF OF THE TASK FORCE ON RECREATIONAL MARIJUANA
CO-CHAIRS JANA WELTZIN & BRANDON EMMETT | June 1, 2023

Alaska Cannabis Regulations Reform; Amendments pertaining to product transfers, annual registrations, transportation, Metrc, overlapping premises, harvests, and testing facilities.

Executive Summary

The Advisory Task Force on Recreational Marijuana (Task Force) was created by Alaska Governor Mike Dunleavy through Administrative Order No. 339 on September 22, 2022. Pursuant to this Administrative Order, the Task Force is commissioned to review current marijuana tax and fee structures, regulations applicable to marijuana operators, and to provide recommendations for improvements to the Office of the Governor. Specifically, the Task Force was requested to (1) model potential changes to the existing tax structure applicable to recreational marijuana businesses, while noting potential revenue impacts to state and local governments and to existing recreational marijuana businesses; (2) identify opportunities to foster collaboration between recreational marijuana businesses and State government; and (3) analyze the recreational marijuana program and the industrial hemp program for purposes of providing recommendations to enhance public safety.

The Task Force includes broad representation from regulators, cultivators, manufacturers, retailers, and public members. The Task Force was designed to bring together a variety of voices and perspectives to consider recommendations for industry viability and improvement. The Task Force is represented by 13 voting members. Three voting members who are State of Alaska officials, and ten voting members who are not state officials. These individuals are identified below:

- Brandon Emmett | Co-Chair | Licensed Marijuana Product Manufacturer | Good Titrations
- Jana Weltzin, Esq. | Co-Chair | Public Member | JDW Counsel LLC
- Joan Wilson, Esq. | State of Alaska Dept. of Commerce | Director, AMCO (as designated by Department of Commerce & Economic Development Commissioner Julie Sande)
- Fadil Limani | State of Alaska Dept. of Revenue | Deputy Commissioner (as designated by prior Department of Revenue Commissioner Lucinda Mahoney)
- Bryan Scoresby | State of Alaska Division of Agriculture | Commissioner of the Department of Natural Resources
- Nick Miller | Chair, Marijuana Control Board | Alaska Buds
- Leif Abel | Licensed Standard Cultivator | Greatland Ganja

- David Pruhs | Municipal Member | Mayor, City of Fairbanks
- Frank “Dru” Malone | Licensed Limited Cultivator | Lightning Strikes Organics
- Ryan Tunseth | Licensed Retailer | East Rip
- Sam Hachey | Industry Member at Large | Tanana Herb Co
- Gary Evans | Industry Member at Large | Grass Station 49
- Aaron Stiassny | Industry Member at Large | Uncle Herbs¹

On an accelerated schedule due to the date of commissioning, the Task Force met on six different occasions between December 2022 and January 2023 to develop findings and recommendations, which were submitted to the office of the Governor. Task Force meeting documents are available for review on the [Alaska Alcohol & Marijuana Control Office \(AMCO\) website](#). The Task Force utilized the following goals and guiding principles when creating its recommendations:

- *Ensure consumer protection and safety.*
- *Promote fair participation by industry/market participants.*
- *Create a thriving business environment that grows Alaska’s work force for the present and future of the Alaska cannabis industry (including both recreational marijuana and industrial hemp).*
- *Create statutory and regulatory authority for AMCO to exercise jurisdiction over hemp and hemp products.*
- *Develop clear recommendations and guidance that consider opportunities for alignment with other State, Federal, and/or international standards where appropriate.*
- *Request appropriate discretion to various State agencies for rule-making authority to effectuate changes in federal laws, marketplace evolution, and to aid in creation of a tax system that is determined by the market value of cannabis vs. a static, weight-based tax system as originally proposed in effectuating legislation.*

The Task Force has developed purposeful recommendations regarding the current marijuana tax structure in Alaska. Pertinent to an issue challenging all states that are grappling with the influx of intoxicating hemp products unintentionally permitted under the Agricultural Improvement Act of 2018² (colloquially known as the Farm Bill), the Task Force has also made thoughtful recommendations for the sale and control of hemp-derived products and synthetically derived or chemically converted THC isomers. In each case these products may cause a person to become intoxicated when consumed.

¹ The Task Force would also like to extend a special thank you to the following individuals who provided outstanding administrative and legal support to the Task Force: Kevin Higgins, Esq. | State of Alaska Dept. Of Law, Senior Asst. Attorney General; Maya Ali | State of Alaska Dept. of Commerce, AMCO; and Bailey Stuart | Stuart Consulting.

² AGRICULTURE IMPROVEMENT ACT OF 2018, PL 115-334, December 20, 2018, 132 Stat 4490

There is no dispute that the cannabis landscape is evolving and changing very rapidly. Nor is the State of Alaska alone in addressing the numerous challenges that have emerged as recreational marijuana and industrial hemp (referred to in the Task Force Report collectively as *Cannabis sp.*) grow as industries. Thirty-five to forty states and territories have legalized *Cannabis sp.* in one form or another. At least five of those states have formed similar task forces to address these challenges.³ As such, it is apparent that the dynamic nature of emerging cannabis issues requires long-standing focus and collaboration. It is for this reason that we also recommended to the Governor that this Task Force remain commissioned through the 33rd Legislature to provide the Governor’s Office input not only as it develops its statutory priorities, but on additional issues and concerns as they develop. Some such issues are addressed here in this report to the Alaska Marijuana Control Board.

Current Affairs of the Task Force

Following the submittal of the Task Force Report to the Governor on January 13, 2023, Task Force Members continued to meet on a bi-weekly basis to collaborate with members of the industry and with members representing government, to discuss the legislative progress and track the sponsored bills (HB 119 & HB 117), to take public comment, and to review the current Marijuana Regulations.

The work performed by the Task Force was to “identify opportunities to foster collaboration between recreational marijuana businesses and state government.” It is with this guiding principle that meetings were held regularly, to track the progress of bills through the legislature and be present to advocate for responsible and meaningful reforms for the industry.

Task Force members focused predominantly on the statutory changes in the Final Report to the Governor, as the quick turnaround time (6 weeks over the holidays) required members to focus efforts on the Statutes. Of the original Task Force Recommendations to the Governor, there were only two that pertained to Regulatory Reform. These two Recommendations #10 and #11 have been included in this Task Force Report to the MCB.

House Bill 117 (colloquially known as the Hemp Bill) and House Bill 119 (colloquially known as the Tax Bill) were drafted by the House Labor and Commerce Committee to address the specific Task Force recommendations. HB 117 did not receive a committee hearing however and this legislation gained little traction and died in session. HB 119 did receive a House Labor and Commerce hearing on April 26, 2023. However, this legislation did not gain further support and has stalled in committee. Furthermore, the second version of HB 119 that was presented at the House Labor and Commerce Committee meeting on April 26th, had a significant modification to the Sales Tax proposed by the Task Force, increasing it from 3% to 10%. This increase was performed with no input from the Task Force. In follow-up correspondence with the committee, there is support for the legislation as a priority during the next session, beginning in January 2024. Both groups are looking at a Fall 2023 work session to better understand the details of this important legislation.

³ *These states include Colorado, Oregon, Maryland, Washington, and Virginia. Each of these reports may be accessed on AMCO’s website on [AMCO’s website/ Task Force on Recreational Marijuana page](#).*

Task Force Recommendations to the Marijuana Control Board

(1) Allow for product transfers between all license types.⁴

The Task Force recommends AS 17.38.070(a) (1-5) be amended to remove (2-5) and replace them with a new paragraph that permits the purchase, delivery, or transfer of marijuana and marijuana products (or all *Cannabis sp.* if recommendation 2 is followed) to another licensed cannabis facility. To ensure this recommendation does not create unintended loopholes or conflicts with other sections of regulation, the Task Force requests further overview by the Control Office, the Department of Revenue, and the Department of Law.

Justification – The purpose of this recommendation is to address an unintended consequence of current law that does not allow for plant or product returns for rejected or revoked transactions or for returns in the event of product recalls. Currently when a product moves from the manufacturer to the retailer, there is no ability to move the product back to the manufacturer or cultivator. The intent of this prohibition was to ensure that there was seed-to-sale traceability. The problem with this approach is that it is wasteful and does not allow for the full value of a product to be captured. Seed-to-sale traceability will remain in place. This will reduce waste within the industry and allow businesses more flexibility over inventory management and better ability to protect consumer safety. An evaluation is needed with the traceability provider METRC as well as the Department of Revenue to ensure that the proper tabulation of taxes owed can be accommodated.

(2) Amend the annual registration & renewal requirement.⁵

The Task Force recommends AS 17.38.200 be amended to remove “an annual” within this section, thereby permitting biennial licenses similar to those that are applicable to alcoholic beverage licensees. The language as amended would read: “45 to 90 days after receiving an application or renewal, the board shall issue a registration to the applicant, unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.190 or the board is notified by the relevant local government that the applicant is not in compliance with ordinances and regulations made pursuant to AS 17.38.210 and in effect at the time of application.

⁴ This recommendation was Recommendation #10 in the Governor’s Report, moved by Ryan Tunseth and Seconded by Leif Abel. The motion passed unanimously by the Task Force on January 9, 2023.

⁵ This recommendation was moved by Ryan Tunseth and Seconded by Dru Malone. The motion passed unanimously by the Task Force on January 9, 2023.

Justification – The justification for this is twofold: First, requiring annual renewal requirements in statute creates a massive amount of annual workload for Control Office staff. The annual requirement does not appear to be promoting health and safety of consumers,⁶ and seems to amount only to increasing bureaucratic delays, burden state agencies, and burden the industry with limited upside. Second, alcoholic beverage licenses are not renewed annually; they are renewed biannually. The Task Force sees no justification to require recreational marijuana licenses to be treated differently than alcoholic beverages licenses.

(3) Amend Transportation Regulations to support commerce and address security issues.⁷

The Task Force recommends amending the transportation regulations⁸ as they restrict commerce and pose a public safety risk to transporters, as currently written. The industry is experiencing increasing operating and transportation costs while the wholesale market value of marijuana products has been in decline. Burdensome regulations create unnecessary and unfair competition amongst marijuana license-holders and has the unintended consequence to benefit those operators willing to take chances and cut corners in order to survive. Current transportation regulations disproportionately benefit operators who exist on the road-system and creates barriers for entry and additional layers of cost for operators in rural markets. A case in point, a cultivation license in South-East Alaska has to send a transporter for every testing sample north to Anchorage. Furthermore, the requirements to have a detailed transport manifest be entered into the Metrc inventory traceability system, of which other people from other businesses can view to access travel routes, times, and sensitive information. This is unnecessary and creates public safety issues.

Justification – Easing transportation regulations will allow for the broader movement of goods across the State and support the continued growth and maturation of the industry in Alaska, particularly in the rural markets. Transportation regulations that were first adopted by the Marijuana Control Board were weighing public opinion that wanted strict control and felt the need to track the movement of marijuana products closely, requiring manifests to track directions, times and note streets and stops along the way. These public safety concerns have been addressed and these regulations are now seen by members of the Task Force as posing a greater public safety risk to transporters themselves because they explicitly call out times, locations, and the direction of travel. These details create a safety risk to the transporter and have little to no benefit for the broader public safety. The Task Force recommends adopting transportation regulations similar to those that are applicable to alcoholic beverage transportation where inventory is controlled upon shipment and landing for license-holders. These goods are tracked from door to door.

⁶ Joan Wilson does not concur with this conclusion as to not promoting health and safety of consumers. In her estimation, the data supporting this conclusion is lacking. She does concur that there should be parity between alcoholic beverage and marijuana licensees with a two-year renewal period.

⁷ This recommendation was moved by Sam Hachey and Seconded by Leif Abel. The motion passed unanimously by the Task Force on March 20th, 2023.

⁸ [Transportation letter](#) written by Sam Hachey, Aaron Stiassny, and Barrett Goodall.

(4) Allow Metrc batch tags up to a maximum of 100 plant count per tag.⁹

The Task Force recommends removing the individual plant tag requirement and moving to a single plant tag or package tag per harvest batch of the same plants, not exceeding 100 plants per batch.

Justification – The cost of plant and package tags is high. Task Force members have reviewed plant tag regulations in other legal marijuana states and have identified this as an area to reduce cost for operators.¹⁰ Reducing costs twofold, by minimizing plant and package tags cost, as well as the labor to maintain a cultivations’ Metrc database and inventory requirements with clone batches, immature plants, and flowering plants. This regulation change would streamline and simplify plant tag management for operators and would reduce the cost considerably, particularly for large cultivations and farms who have over 500 plants per harvest. Currently, Metrc rates for plant tags are \$0.45 each and package tags are \$0.25 each plus shipping. A cultivator that harvests 500 plants per harvest has a \$225 plant tag cost per harvest, whereby with 100 plants per tag, if this were to be a package tag, would be \$1.25 for 500 plants, by comparison). This recommendation, if adopted, would align with other legal marijuana states who have experienced a considerable downturn and had to identify meaningful ways to reduce costs for operators. (Note: as proposed, the 10-pound harvest batch and testing requirements would remain in place, thereby, the tracking of harvested cannabis once dried and cured would remain the same as current regulations require.)

(5) Language Clean-up with the Overlapping Premises Definition, Regulation 3 AAC 306.705.¹¹

The Task Force recommends a language clean-up and review of the “Overlapping Premises” term found in the regulations. A quick search of the term “Overlapping” in regulations, identifies (12) instances where this term is applied. This term appears in regulations 3 AAC 306.705 & 3 AAC 306.710 and does not have consistent language. The Task Force recommends changes to 3 AAC 306.705. Licensed premises; alteration (pp. 88).

(d) The board may approve overlapping premises for two or more licenses, owned by the same person or the same group of persons, and within the same building or with abutting premises, to use in common for an office, an employee breakroom, bathrooms, [ADD] {**marijuana or marijuana product storage areas that are contiguous restricted access areas**} or any combination of those uses.

⁹ This recommendation was proposed by Sam Hachey at the April 17th, 2023, meeting. The Task Force proposed including it in the report to the MCB.

¹⁰ [Metrc-Batch-Tagging.pdf \(oregon.gov\)](#)

¹¹ This recommendation was proposed by Jana Weltzin at the April 17th, 2023, meeting. The Task Force proposed including it in the report to the MCB.

Justification—There are multiple instances where a shared overlapping space is critically important for a license-holder. The current regulations surrounding overlapping premises are confusing; it restricts product movement and limits a marijuana businesses ability to keep its product safe and secure, in an insured safe and or a climate-controlled room, for example. Overlapping Premises are vital for the long-term success and growth of the industry because they enhance the quality of the product and allow marijuana businesses the opportunity to have shared spaces for products, sometimes in very confined business environments. Overlapping Premises should continue to be permissible when the ownership interest of the two adjoining entities is the same. Regulations that have conflicting language with other regulations should be reviewed and simplified to ensure that all operators are able to follow the same consistent rules and AMCO Enforcement has the appropriate guidance with which to investigate violations.

(6) Propose expanding the 24-Hour Harvest Rule to allow continuous harvests for cultivation licenses.¹²

The Task Force recommends expanding the 24-Hour Harvest Rule Requirement. This would allow cultivation operators who employ continuous harvesting methods to batch the same product under the same Harvest Batch, for plants that are of the same strain grown under the same conditions and methods.

Justification – The current Metrc system requirement has a 24-hour Rule or Time-Out that restricts the ability to assign new plants to a Harvest Batch when 24-Hours has passed. This limits cultivation businesses from running individual plants longer, because, perhaps, they’re showing signs of taking a few days more to finish flowering. Once the 24-hour Rule passes, it requires another Harvest Batch to be performed which adds additional cost(s), additional package tags as well as lab testing requirements. For small, limited cultivations, this is cost prohibitive, particularly when one is talking about small 1-3 lb. batches of cannabis. Furthermore, this regulation doesn’t involve public health or safety.

7) Support Outside Investment in Testing Facilities to allow pesticide and heavy metal testing.¹³

The Task Force supports efforts by the MCB to allow outside investment in Alaska’s testing labs and facilities to provide pesticide and heavy metal testing for cannabis products. This has been a topic of discussion at the Task Force, and we support the MCB exploring opportunities to expand testing requirements with which to improve public safety and consumer confidence for cannabis in Alaska.

¹² This recommendation was proposed by Dru Malone at the April 17th, 2023 meeting. The Task Force proposed including it in the report to the MCB.

¹³ This recommendation was proposed by Ryan Tunseth at the April 17th, 2023 meeting. The Task Force proposed including it in the report to the MCB.

Justification – Alaska has two testing facilities in operation currently, and both are located in South-Central Alaska. This makes it difficult for producers to get their products tested without absorbing significant transportation costs. Promoting healthy competition and having another lab facility for Alaskans, would benefit the industry. Furthermore, the Task Force supports opportunities to allow outside investment, when they would expand the scope of lab services provided beyond what the current testing labs can provide. Public safety depends on appropriate lab testing and analysis. The MCB and State of Alaska should look at expanding opportunities for lab facilities in Alaska.

Conclusion

The Governor’s Advisory Task Force on Recreational Marijuana wants to thank the Marijuana Control Board for your hard work and dedication in promoting fairness, listening openly to license-holders and adopting meaningful reforms for the marijuana businesses of Alaska. As members of the Task Force, we hope this document serves to bring us closer together, to collaborate and find more opportunities to work together and adopt progressive changes for the cannabis industry in Alaska.

In the absence of successful legislation during the 2023 Legislative Session, members of the Task Force are concerned that this may be the first year where the industry has a considerable increase in non-renewals and further tax delinquency. Without tax reform legislation, the Task Force acknowledges that the earliest the industry can expect Tax Reforms is by the end of 2024. That is a long-time to wait. In the interest of getting ahead of the curve and moving the industry forward, promoting opportunity for license-holders and reducing regulations that stifle growth and opportunity should be evaluated quickly. The Task Force would encourage the Marijuana Control Board (MCB) to be more steadfast in adopting the regulatory changes that have been proposed. The comment was made by a former member of the MCB and a current Task Force Member that “the first iteration of the MBC there was an abundance of caution, and many regulations were made because there was fear that if the MCB didn’t make incredibly strict regulations that the Federal Government would intervene. The industry has now shown that they do not need a lot of the regulations anymore”. The recommendations are provided to promote economic growth and respond to public health and/or safety challenges so the industry and its regulators may best serve Alaskans. We welcome the MCB’s review and respectfully thank you all for this opportunity to build a stronger, better, and safer Alaska.