

# **Preliminary Considerations for Implementation of AS 17.38**

## **Prepared for the Alcoholic Beverage Control Board and Public**

### **February 12, 2015**

Intent: The ABC Board is charged in AS 17.38 with implementing rules regarding changes in marijuana law and policy voted for by the people of the State of Alaska on November 4, 2014. The purpose of this document is to provide a common frame of reference, identify major policy issues, and where feasible, make recommendations as to implementation and policy decisions.

#### **Goals for Regulation:**

The ABC Board or Marijuana Control Board should identify goals and measure regulations against those goals as the regulations are developed. The following goals are identified at this time:

- Keep marijuana away from underage persons;
- Protect public health and safety;
- Respect privacy and constitutional rights;
- Prevent diversion of marijuana, and
- Degrade illegal markets for marijuana

#### **Board Authority:**

The ABC Board is the default authority for promulgating regulations relating to AS 17.38. However, AS 17.38.080 provides the legislature the opportunity to create a separate Marijuana Control Board. After attending and testifying at numerous hearings regarding board authority, the Walker administration has indicated it will be taking on the board issue in the form of a governor's bill. We anticipate that the bill will create a separate 5-member volunteer board and direct the current ABC agency and staff to serve as agency and staff for both boards, with a modest increase in staff at the agency. The legislature appears to generally support this approach although the fate of the bill will not be clear until its introduction and debate.

Advantages of this approach are as follows:

- Licensing and enforcement staff with significant experience in regulating dangerous substance (alcohol) could bring that experience to bear in regulating marijuana
- Director and management team have worked on marijuana issues since bill passage and will bring experience from that learning process, from testifying before legislature regarding marijuana and from fielding questions from public and media since bill passage.
- Agency staff has significant experience with regulations making process.
- Sharing licensing and enforcement employees represents significant fiscal savings.
- Two separate five member boards eliminate potential conflicts between industries.
- Meet required timeline to complete adoption of regulations, versus need to create an entirely new agency.

**Background:** The main scientific components of marijuana are:

- Delta 9 Tetrahydrocannabinol (THC) – the main psychoactive substance found in marijuana
- 11-Hydroxy-THC – the main psychoactive metabolite of THC formed in the body after marijuana consumption

- 11-nor 9 Carboxy THC – the main secondary metabolite of THC, which is formed in the body after marijuana is consumed. It is not psychoactive
- Cannabidiol (CBD) – is considered to have a wider scope of medical applications than THC
- Cannabinol (CBN) – a mildly physiologically active principle in Cannabis with medical applications

**Definitions:** Clear and consistent definitions are critical to orderly regulation and enforcement of marijuana laws. While AS 17.38 contains a list of definitions, the definition of the term “marijuana” raises some questions and the new statute contains many undefined terms, such as “edibles”.

- Recommended definition of marijuana: “marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. “Marijuana” does not include fiber produced from the stalks, cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products (“Salts” and “oil” removed from AS 17.38.900(6))
- Recommended definition of marijuana concentrate: “Marijuana concentrate” means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the THC-bearing resins of the plant.
- Recommended definition of marijuana product: “Marijuana product” means concentrated marijuana and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- Recommended definition of Public: “Public” for purposes of 17.38.040 has the meaning given to the term “public place” in AS 11.81.900(53).
- Recommended definition of Edibles: “Edible marijuana product” means any marijuana product which is intended to be consumed orally, including but not limited to, any type of food, or drink. Edible marijuana products do not include adulterated food or drink products.
- Recommended definition of adulterated: “Adulterated food or drink product” means a product which is intended to be consumed orally and which existed without marijuana in a form ready for consumption to which marijuana was subsequently added by any process. Adulterated food or drink products do not include raw ingredients which are combined with marijuana in a manufacturing process.

**Exclusions:** Statutorily excluding adulterated food or drink products would increase the public safety of legalized marijuana. Colorado’s most contentious marijuana edibles would be unsellable in Alaska markets by making this statutory change. Adulteration is a process of removing a market ready food product from its packaging and spraying concentrated marijuana on the product. The product is then repackaged and sold as a marijuana “infused” product, or MIP. Many of the adulterated products sold in Colorado blatantly appeal to children, such as Little Debbie’s or Haribo Gummy Bears sprayed down with a marijuana concentrate.



**Adulterated Edible Products**

**Edibles:** Emulating Colorado’s new rules (eff. 2/1/15) concerning edibles, including serving sizes and child proof packaging, will help Alaska avoid many of Colorado’s bad outcomes around edibles. These rules should be established by the Control Board (ABC or Marijuana Control Board) through a public regulations process rather than set in statute. Regulations related to edibles should cover issues such as:

- Serving size- recommend 5 mg of active THC (single serving)
  - Recommend that the maximum serving size of an individual edible marijuana product be 50 milligrams of THC (maximum 10 servings per package). Require that they be marked or scored to illustrate portions and require re-sealable packaging to child proof standards for items containing more than 1 serving.



**Scored Serving Sizes with markings**

**Medical Marijuana:** AS 17.38.130 specifically states that nothing in the act is intended to impact the medical marijuana law set forth in AS 17.37.

- Recommend that the board does not separate medical marijuana or declare some marijuana to be medical and other marijuana to be recreational. Differentiating between medical and recreational marijuana has caused many regulatory issues for the states that have done so. Alaska enjoys a distinct advantage in achieving consistent regulation by not differentiating separate rules for medical marijuana and recreational marijuana. Creating one set of rules for all marijuana will result in the most consistently enforceable rules that are safest for the public.

**Packaging:** All marijuana products sold by a retailer or created by an edibles manufacturer should be required by statute to meet stringent packaging requirements. Further regulation should be left to the board.

- Recommend Child-Resistant requirements meaning special packaging that is:
  - Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20.
  - Opaque so that the packaging does not allow the product to be seen without opening the packaging material.

- Re-sealable back to childproof for any product intended for more than a single use or containing multiple servings.
- Recommend requiring warning labels that detail things such as:
  - How many servings
  - How much total Active THC
  - Keep out of Reach of Children
- Recommend developing symbol for all marijuana products as to aide recognition by non-English reading persons. Similar in theory to:



**Local Control:** AS 17.38.110 provides for local control of marijuana. Local options for alcohol exist in Title 4 and give us a starting place for MJ local options in Title 17.

- Recommendation- Consider a similar “menu” of options to offer local governments when it comes to commercial marijuana in their respective community, recognizing that no two communities in Alaska are the same.

**Advertising and Education:** Reasonable advertising limits should be part of the rules and public education about rules is essential, this can be accomplished via an intergovernmental effort within the administration and by joining with local governments.

- Recommendation- Take Colorado up on their offer to share with us their incredibly effective “Good to Know” public awareness campaign for little to no cost.

**Be educated. Be responsible.**

- › It's illegal to purchase, possess or use marijuana if you're under 21.
- › It's illegal to use marijuana in public.
- › It's illegal to take marijuana out of state.
- › It's illegal to give or share marijuana with anyone under 21.
- › Protect youth from underage marijuana use. Keep it locked up, out of sight and out of reach.

**GOOD to KNOW**  
www.GoodToKnowColorado.com

Marijuana in Colorado

Whether you choose to use or not,  
**YOU MIGHT NOT KNOW AS MUCH AS YOU THOUGHT.**  
Be educated. Be responsible.

For those underage,  
**IT'S JUST NOT OKAY.**  
THEIR BRAINS ARE STILL GROWING.  
**SO KEEP IT AWAY.**

Retail marijuana use is unsafe for anyone under 21.

## License Selection Process and License Types:

### Relevant definitions:

- “Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
  - “Marijuana product manufacturing facilities” means an entity licensed to purchase marijuana; manufacture, and package marijuana products; and sell marijuana and marijuana products to other marijuana manufacturing facilities and to retail marijuana stores, but not to consumers.
  - “Retail marijuana stores” means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.
- Recommend that the awarding of licenses be based on a strict merit selection system as opposed to lottery or population density model. Avoiding population limitations at a state level will likely mean that local governments will establish their own pop/density based rules, which would be appropriate for local control.
  - Recommend there be a matrix of qualification, similar to that used in fair hiring practice. This matrix could be built by the regulatory agency. It can include things such as:
    1. Residency requirements
    2. Suitability requirements
    3. Security requirements
    4. Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of twenty-one
    5. Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana
  - Recommend the following license types:
    1. Cultivation license- Tiers can be offered based on square footage of facility or expected output, thus changing the fee schedule
      - Consider small growers license coupled with broker’s license
    2. Manufacturing license
      - Includes processing of concentrates and edibles
    3. Retail license
      - Includes sale of flower/bud, edibles, tinctures, salves, marijuana products
    4. Laboratory License
      - Private labs for testing with certification by state authority

### Enforcement:

- Discuss marijuana rules outside of commercial licenses. Police and troopers may struggle to understand what is legal and what is not legal for marijuana. These difficulties will be exacerbated if marijuana remains in the state controlled substances schedule. Alaska legislators are evaluating if they are going to keep marijuana as both a controlled substance and a regulated substance. By having the rules in two different places, the frustration and confusion effect for law enforcement officers is high.

- For marijuana to be truly regulated like alcohol, the substance should be removed from the controlled substances schedule and be subject to a single title containing all of the marijuana statutes and regulations in one place. The current versions of HB 79 and SB 30 accomplish this change.
- Recommend that ABC or Marijuana Control Board be granted the same authority over marijuana enforcement that the ABC has over alcohol. AS 17.38 in its current form grants the ABC or Marijuana Control Board the authority to make rules around the licensing of marijuana but does not provide the authority to enforce the rules or to enforce the law regarding black market operations. It is imperative that if there are to be marijuana enforcement officers employed by the regulatory agency that they have the statutory authority to enforce not only licensing rules but all laws regarding marijuana.

**Other considerations:**

**Testing:** Marijuana food product hygiene requirements and safety should be reflective of other commercial kitchen requirements. Testing of products by privately owned labs should be required, and the Department of Environmental Conservation could be tasked with approving or certifying private labs.

**Concentrate Manufacturing:** There are a wide variety of methods utilized in hash oil and concentrate manufacturing processes. Note: Hash/hashish/oil/concentrate is not synonymous with butane extraction. Butane extraction is simply one method of extraction and hash or hash oil is a product that results from extraction. Marijuana concentrates are specifically legalized in AS 17.38, but regulations can require a closed loop manufacturing process for licensees that will reduce the risks of explosions. Please note that depending on the authority given to the ABC or Marijuana Control Board (if one is created) regulation of solvent processing of marijuana outside of licensed premises may be the domain of criminal law or local governing bodies. Closed loop systems at licensed commercial facilities could be safely regulated similarly to any explosive vulnerable business, i.e. car painting companies, helium providers, etc.

**Driving:** Other state departments such as Law are working on the issue of driving under the influence of marijuana. They may recommend setting reasonable toxicology levels of impairment with regards to driving while impaired. Other legalized states as well as the US DOT have rules in place regarding marijuana limits based on blood testing which Law or the legislature may use as a starting place for developing DUI standards.