

Report Highlights

Why DLA Performed This Audit

The audit was performed to determine if there is a continued need for the board and whether its termination date should be extended. The board is set to sunset on June 30, 2024, and will have one year from that date to conclude its administrative operations.

What the Legislative Auditor Recommends

1. AMCO's director should establish procedures to ensure handler permit documentation is properly maintained.
2. The MCB and AMCO's director should continue to implement a new license and enforcement information system.
3. The legislature should consider requiring regulation changes be approved by the majority of MCB members.

A Sunset Review of the Department of Commerce, Community, and Economic Development, Marijuana Control Board

October 30, 2023

Audit Control Number 08-20137-24

REPORT CONCLUSIONS

Overall, the audit concluded that the Marijuana Control Board (MCB *or* board) served the public's interest by holding its meetings in compliance with state law, actively amending regulations, and conducting investigations in a timely manner. The audit also concluded that licenses were issued in accordance with statutes and regulations; however, applications were not processed in a timely manner. Additionally, Alcohol and Marijuana Control Office (AMCO) staff did not maintain adequate documentation to show compliance with marijuana handler permit laws.

The audit identified one instance that regulations were approved with two "yay" votes. Although approving regulations with only two votes of the five-member board was permissible under state law, the audit questions whether the action was in the public's best interests. Additionally, the audit noted deficiencies in the tracking of enforcement activities by AMCO staff. Further, the audit reports that, as of April 2023, 59 delinquent marijuana taxpayers collectively owed \$3.1 million in taxes.

As part of the audit, a survey was sent to 319 marijuana licensees; 112 fully responded (response rate of 35 percent). Sixty-three percent of respondents rated the MCB's overall effectiveness in serving the public's interest as "effective" or "very effective".

In accordance with AS 44.66.010(a)(13), the MCB is scheduled to terminate on June 30, 2024. We recommend the legislature extend the board's termination date three years, to June 30, 2027, which is significantly less than the eight-year maximum allowed in statute. The three-year extension

REPORT CONCLUSIONS (Continued)

recommendation is made in recognition that a report issued by the governor's Advisory Task Force on Recreational Marijuana may lead to significant changes to MCB and AMCO duties, and a new information system, which is expected to be implemented by the end of 2023, would significantly change MCB's licensing and enforcement processes. A three-year extension would allow for a timely evaluation of the substantial changes. Further, a three-year extension would align the MCB's next sunset review with the Alcoholic Beverage Control Board's sunset review and allow a comprehensive review of AMCO's support to both boards.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

November 27, 2023

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Marijuana Control Board and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
MARIJUANA CONTROL BOARD
SUNSET REVIEW
October 30, 2023

Audit Control Number
08-20137-24

The audit was conducted as required by AS 44.66.050(a). Per AS 44.66.010(a)(13), the Marijuana Control Board (board) is scheduled to terminate on June 30, 2024. We recommend the legislature extend the board's termination date three years, to June 30, 2027.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in dark ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AMCO	Alcohol and Marijuana Control Office
AS	Alaska Statute
CISA	Certified Information Systems Auditor
COVID-19	Coronavirus Disease 2019
CPA	Certified Public Accountant
DLA	Division of Legislative Audit
DOR	Department of Revenue
FY	Fiscal Year
MCB or board	Marijuana Control Board
MOU	Memorandum of Understanding
NOV	Notice of Violation
THC	Delta-9-Tetrahydrocannabinol

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ORGANIZATION AND FUNCTION

Marijuana Control Board (MCB or board)

The MCB is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for the purpose of controlling the cultivation, manufacture, and sale of marijuana in the state. The MCB consists of one member from the public safety sector, one member from the public health sector, one member residing in a rural area, one member actively engaged in the marijuana industry, and one member who is either from the general public or actively engaged in the marijuana industry. Board members serve staggered three-year terms and those who have served all or part of three successive terms may not be reappointed unless three years have elapsed since serving on the board. Further, the non-industry board members and immediate family may not have a financial interest in the marijuana industry. Board members as of April 2023 are shown in Exhibit 1.

Exhibit 1	
Marijuana Control Board Members as of April 30, 2023	
Nicholas Miller, Chair	Industry
Bruce Schulte	Public
Christopher Jaime	Public Safety
Eliza Muse	Public Health
Ely Cyrus	Rural - Kiana

Source: Office of the Governor, Boards and Commissions website.

Except for license actions, three members of the board constitute a quorum for conducting business. A majority of the board’s membership must approve applications for new licenses, renewals, transfers, suspensions, revocations of existing licenses, and product approvals.

Alaska Statute 17.38.121 establishes the following powers and duties of the board:

1. Propose and adopt regulations;
2. Establish by regulation the qualifications for licensure including fees and factors related to the applicant’s experience, criminal justice history, and financial interests;

**Department
of Commerce,
Community,
and Economic
Development, Alcohol
and Marijuana Control
Office (AMCO)**

3. Review applications for licensure and may order the executive director to issue, renew, suspend, or revoke a license; and
4. Hear appeals from actions of the board director and from actions of officers and employees charged with enforcing board statutes and regulations.

AMCO provides assistance to the MCB in administering licensing, and enforcing marijuana statutes and regulations. AMCO staff provide similar support to the Alcoholic Beverage Control Board established in AS 04.06. AMCO is led by a director, appointed by the governor, who also serves as the board's executive officer. During FY 23, AMCO had 23 authorized permanent full-time employee positions. Positions include the director, a program coordinator, eight investigators, one criminal justice technician, three administrative positions, six licensing examiners, one licensing supervisor, one regulations specialist, and a local government specialist. In addition, the board employed a non-permanent project assistant.

AMCO staff are responsible for receiving and processing handler permit and license applications, collecting fees, maintaining licensing records and files, publishing notices of board meetings, preparing board member meeting packets, and drafting board meeting minutes. AMCO staff also perform other administrative duties, such as tracking revenues and expenditures and assisting with board regulatory projects.

AMCO investigators conduct inspections of licensed premises, investigate complaints, and issue notices of violation (NOV) to establishments in violation of marijuana statutes, regulations, or conditions or restrictions imposed by the board. The board may suspend, revoke, or refuse to renew a marijuana establishment license, or impose a civil fine if the board finds that a licensee failed to correct the defect that is the subject of the NOV.

BACKGROUND INFORMATION

Marijuana Excise Tax

Alaska Statute 43.61.010 requires an excise tax to be imposed on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or a marijuana product manufacturing facility. Every marijuana cultivation facility must pay an excise tax at the rate of \$50 per ounce, or proportionate part thereof.

As shown in Exhibit 2, 50 percent of the marijuana excise tax collected is deposited in the recidivism reduction subfund within the general fund. The legislature may appropriate the annual estimated balance to the Department of Corrections, the Department of Health, or the Department of Public Safety for recidivism reduction programs. Twenty-five percent of the marijuana excise tax is deposited in the marijuana education and treatment subfund within the general fund. The legislature may appropriate the annual estimated balance to the Department of Health for the comprehensive marijuana use education and treatment program. The remainder of the marijuana excise tax collected (25 percent) is deposited in the general fund.

Exhibit 2

Marijuana Excise Tax Required Deposits AS 43.61.010 (c) and (f)	
Fund	Percent
Recidivism Reduction Subfund	50%
Marijuana Education and Treatment Subfund	25%
Total	75%

Statutes outline that delinquent tax payments shall subject the marijuana facility to civil penalties under AS 43.05.220. Additionally, if a marijuana facility fails to pay the excise tax, the facility's registration may be revoked in accordance with procedures established under AS 17.38.190(a)(1).

Governor’s Marijuana Task Force

The Advisory Task Force on Recreational Marijuana (Task Force) was created by Governor Dunleavy through Administrative Order No. 339 on September 21, 2022. The purpose of the Task Force was to review the marijuana tax and fee structures, regulations applicable to marijuana operators, and to provide recommendations for improvements. 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 issued a report, dated January 13, 2023, which recommended, in part, revising the current marijuana tax structure; restructuring the taxation, sale, and control of hemp-derived products; establishing a distribution license and limitation on the number of licenses; reallocating revenues from license fees and excise taxes to, in part, fund Marijuana Control Board operation support; increasing the limits for legal sale and possession; allowing for biennial license renewals; and restructuring the Marijuana Control Board to change board composition and expand board duties, including oversight for hemp. During June 2023, Governor Dunleavy issued Administrative Order No. 347, which extended the Task Force to May 30, 2024.

REPORT CONCLUSIONS

In developing our conclusion regarding whether the Marijuana Control Board's (MCB or board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concluded that the MCB served the public's interest by holding its meetings in compliance with state law, actively amending regulations, and conducting investigations in a timely manner. The audit also concluded that licenses were issued in accordance with statutes and regulations; however, applications were not processed in a timely manner. Additionally, Alcohol and Marijuana Control Office (AMCO) staff did not maintain adequate documentation to show compliance with marijuana handler permit laws.

The audit identified one instance where regulations were approved with two "yay" votes. Although approving a regulation with only two votes of the five-member board was permissible under state law, the audit questions whether the board's action was in the public's best interests. Additionally, the audit noted deficiencies in the tracking of enforcement activities by AMCO staff. Further, the audit reports that, as of April 2023, 59 delinquent marijuana taxpayers collectively owed \$3.1 million in taxes.

As part of the audit, a survey was sent to 319 marijuana licensees;¹ 112 fully responded (response rate of 35 percent). Sixty-three percent of respondents rated the MCB's overall effectiveness in serving the public's interest as "effective" or "very effective". Survey questions and responses can be found in Appendix B of this report.

In accordance with AS 44.66.010(a)(13), the MCB is scheduled to terminate on June 30, 2024. We recommend the legislature extend

¹ Note: Exhibit 4 on page 10 shows 475 total licenses. The higher number in Exhibit 4 is due to some licensees holding multiple license types.

the board's termination date three years, to June 30, 2027, which is significantly less than the eight-year maximum allowed in statute. The three-year extension recommendation is made in recognition that a report issued by the governor's Advisory Task Force on Recreational Marijuana may lead to significant changes to MCB and AMCO duties, and a new information system, which is expected to be implemented by the end of 2023, would significantly change the MCB's licensing and enforcement processes. A three-year extension will allow for a timely evaluation of the substantial changes. Further, a three-year extension would align the MCB's next sunset review with the Alcoholic Beverage Control Board's sunset review and allow a comprehensive review of AMCO's support to both boards.

Detailed report conclusions are as follows.

The MCB conducted its meetings in accordance with state law and did not duplicate the activities of other entities.

A review of five of 17 board meetings held from January 2021 through April 2023 found that all five meetings were public noticed appropriately, allowed time for public comment, and a quorum was consistently met. Board meetings were held in all judicial districts as required by statute, except for calendar year 2021, when no meeting was held in the first judicial district due to COVID-19 pandemic related travel restrictions.

The audit found that the MCB did not duplicate the efforts of other entities. Although local governments may also license marijuana establishments (i.e. special land use permits), a State license is a prerequisite to receiving a local license.

The MCB actively worked to amend regulations as considered necessary.

The MCB amended marijuana control regulations through 13 board approved regulation projects. In addition to clarifying existing regulations, significant regulation changes included:

- Removing the application requirement to submit entity documents and proof of possession of premises at every license renewal, and

clarifying applicants' public notice requirements. The changes were made to improve the application process.

- Allowing a licensee to transfer a license to another location or person and to have a license reinstated after the failure to renew. These changes were made to promote the financial health of the marijuana industry.
- Increasing the allowable content of delta-9-tetrahydrocannabinol (THC) in edibles, which is the main psychoactive substance found in marijuana. According to Department of Law review of the regulation, the changes aligned the allowable levels with most other jurisdictions' marijuana programs.
- Adding infused dairy butter, oils, or fats as stand-alone edible products for sale, other than to a wholesale or product manufacturing facility. This revision expanded the marijuana product market.
- Expanding marijuana product samples to include each strain that is transported to a trade show for display. The change allowed a variety of marijuana products to be presented at a trade show or event to help increase product awareness.
- Requiring marijuana products to be placed in an opaque package prior to exiting a retail store. This change was made to improve privacy and public safety.
- Repealing the requirement for a three-day waiting period before making marijuana waste unusable and disposing of it. The change was made to help ensure the continued operation of marijuana establishments without unnecessary waiting periods.
- Adopting by reference the board's fine schedule. This change was made to help ensure fines are fair and consistent.

Auditors noted that regulation changes were discussed during public board meetings and the public had an opportunity to comment.

During June 2021, regulations were adopted without input or support from the public safety, public health, or rural MCB members.

A vote by the majority of MCB members is needed to approve licensing actions. For the five-member MCB, this means licensing actions require a minimum of three “yay” votes. Non-license MCB actions can be taken by a majority vote with a quorum present. In other words, non-license MCB actions can be approved with two “yay” votes if the minimum quorum of three members is present.

Exhibit 3 summarizes the MCB votes on regulation amendments approved during the audit period. The audit noted that, during the June 2021 meeting, regulation amendments to increase the level of THC in edibles were approved despite a “no” vote from the public safety member and despite the absence of the rural board member and the vacant public health board seat. (See Recommendation 3)

Exhibit 3

Marijuana Control Board Regulation Amendments January 2021 through April 2023				
Meeting Date(s)	Regulations Description	Yay Votes	Nay Votes	Board Seats Absent/Vacant
January 7, 2021	Emergency Regulations Adopted	4	0	Rural
June 23–24, 2021	Onsite Consumption	3	0	Rural Public Health
June 23–24, 2021	Increase THC Levels for Edibles	2	1 (Public Safety)	Rural Public Health
June 23–24, 2021	Tribal Identification	3	0	Rural Public Health
August 18–19, 2021	Exit Packaging - Opacity	4	0	Rural
October 26–28, 2021	Fine Schedule	4	0	Rural
April 13–14, 2022	Licensure Reinstatement	5	0	None
June 29–30, 2022	Waste Disposal	5	0	None
June 29–30, 2022	License Transfer Location	5	0	None
September 21–22, 2022	Tradeshaw Samples	4	1 (Public Safety)	None
September 21–22, 2022	Application Renewal Requirements	5	0	None
September 21–22, 2022	Public Notice of License Applications	5	0	None
September 21–22, 2022	Dairy butters, oils and fats in edible products	5	0	None

Source: MCB meeting minutes.

The board operated in the public's interest by licensing marijuana establishments in accordance with statutes and regulations.

As shown in Exhibit 4, as of April 2023 there were 475 active marijuana establishment licenses and 6,635 handler permits. The board issued 63 new marijuana establishment licenses from January 2021 through April 2023.

Exhibit 4

Marijuana Control Board Active Licenses and Permits as of April 30, 2023	
Licenses	
Limited Marijuana Cultivation Facility	106
Marijuana Concentrate Manufacturing Facility	19
Marijuana Product Manufacturing Facility	40
Marijuana Testing Facility	2
Retail Marijuana Store	168
Standard Marijuana Cultivation Facility	140
Total Licenses	475
Handler Permits	6,635

Source: Compiled from AMCO’s licensing database.

Auditors reviewed 10 new licenses and eight renewed licenses issued during the audit period and found all were issued in compliance with statutes and regulations. Auditors also reviewed five applications coded as “initiated”, 10 in-progress applications coded as “active-pending inspection, delegated, queued, or tabled”, and five applications coded as “expired or surrendered”. The classifications were found to be appropriate.

Documentation was not consistently maintained to show marijuana handler permits were approved in accordance with statutes and regulations.

Regulations require all licensees, employees, or agents of marijuana establishments who sell, cultivate, manufacture, test, or transport marijuana or a marijuana product, or who check the identification of a consumer or visitor, to obtain a marijuana handler permit before being licensed or being employed at a marijuana establishment. Auditors tested 25 handler permits for compliance with statutes and regulations. Six of the 25 (24 percent) had one or more of the following errors:

- Applications for four permits were not retained and auditors could not verify compliance with statutes or regulations.
- The expiration dates on two permits were not visible due to a low quality scan and auditors could not verify compliance with regulations.
- One permit was not supported by a training certificate; instead, the file included a certificate for a different individual.

Further, auditors noted that background checks, which are required by regulations, were not retained due to AMCO management concerns over maintaining the confidentiality of the information. Consequently, auditors were unable to verify the handler permits were issued in compliance with state law. (See Recommendation 1)

Staff vacancies reduced AMCO resources available for marijuana licensing and enforcement functions.

During the period January 2021 through April 2023, 13 of AMCO's 24 positions were vacant at least once (54 percent). Additionally, several positions turned over multiple times. Recruiting and training new staff reduced AMCO's ability to carry out its duties. Exhibit 5 on the following page summarizes AMCO vacancies. In total, 13 positions were vacant a total of 62 months. AMCO staff resources were also impacted by legislation that required staff resources be diverted to help with the procurement and installation of a new licensing/enforcement database. AMCO management reported that, as of April 2023, all positions were filled with the exception of two occupational licensing examiners.

Exhibit 5**Alcohol and Marijuana Control Office Staff Vacancies
January 2021 through April 2023**

Position	Total Months Vacant
Administrative Assistant	10
Special Investigator	9
Program Coordinator	8
Local Government Specialist	8
Occupational Licensing Examiner	6
Occupational Licensing Examiner	5
Administrative Assistant	3
Occupational Licensing Examiner	3
Occupational Licensing Examiner	3
Project Assistant (long-term, non-permanent)	3
Occupational Licensing Examiner	2
Regulations Specialist	1
Administrative Officer	1
Total	62

Source: AMCO management.

**License applicants
experienced significant
processing delays.**

Auditors reviewed a random sample of 10 marijuana establishment licenses that were newly issued during the audit period. On average, it took about a year for the applicants to receive a license. Given the financial investment necessary to become eligible, licensing delays serve as a barrier to entering the marijuana industry. Exhibit 6 summarizes the average number of days to complete the new license application process based on the sample of 10 newly issued licenses.

Exhibit 6

Average Processing Time for New Marijuana Licenses Based On A Sample of 10 Licenses		
Processing Step	Measurement Period	Average Days to Complete
Staff review of application	Date received to date determined complete	161
Board review of application	Date determined complete to date reviewed by the board	38
Awaiting notice of protest and other required documentation to be submitted and reviewed	Date approved by the board to date issued	80
Inspection	Date issued to date delivered after completed inspection	90
Total		369

During the review, auditors identified several factors that contributed to license delays.

Complexity: The marijuana license process is inherently complex. There are many steps to the process and applications must be accompanied by a large volume of supporting information. The complexity leads to incomplete applications being submitted to the MCB. Eight of 10 new license applications reviewed by auditors were returned to the applicants due to incomplete information.

Inefficient manual processes: AMCO staff manage the licensing process using an electronic portal and multiple spreadsheets. Maintaining the spreadsheets is time-consuming and prone to error. Further, applications are not subject to online edits, which increases the likelihood of application errors.

Information required to be submitted by multiple entities: Once an initial application is approved by the MCB, the license process is held up pending receipt of additional information, such as local government protest notifications, food safety permits, zoning approvals, fire marshal approvals, and building permits. Licensure is also delayed pending a site inspection.

AMCO staff shortages: As described above, vacancies and competing priorities reduced the AMCO resources available to process marijuana establishment license applications.

Auditors reviewed a random sample of eight licenses that were renewed during the audit period and found that, on average, it took AMCO staff eight months to process the renewals. Additionally, auditors reviewed a sample of 10 license applications coded as “in-progress” as of April 2023 and found similar delays.

Processing delays and a lack of staff resources led to a backlog of licensing applications. AMCO issued temporary licenses to allow marijuana establishments to continue to operate pending review of the renewal application backlog.

When asked about the initial license process, 37 percent of survey respondents rated the initial license process as “poor” and another 37 percent rated it “average”. Further, 43 percent of respondents stated that the initial license process took longer than a year. (See Recommendation 2) When asked about the renewal license process, 33 percent of survey respondents rated the process “poor” and 27 percent rated it “average”.

Enforcement activities were conducted in a timely manner, but improvements in tracking enforcement activities are needed.

As summarized in Exhibit 7, AMCO enforcement staff reported issuing 547 notices of violation (NOV)² and 65 advisory notices³ during the audit period. Auditors reviewed a sample of 20 NOVs and five advisory notices and concluded all were processed and resolved in a timely manner. Additionally, auditors reviewed three accusations issued during the audit period and found the MCB and AMCO took appropriate action.

The audit noted that AMCO staff track enforcement activities using multiple spreadsheets. Auditor review of the spreadsheets identified missing dates, inaccurate dates, and a lack of enforcement details and outcomes. (See Recommendation 2)

Exhibit 7

Enforcement Activities January 2021 to April 2023				
	2021	2022	January– April 2023	Total
Complaints	55	62	19	136
Investigations	36	19	12	67
NOVs	209	239	99	547
Advisory Notices	26	34	5	65
Inspections	94	82	17	193
Walkthroughs	107	49	15	171
Total	527	485	167	1,179

Source: AMCO enforcement tracking spreadsheets.

² Per regulation 3 AAC 306.805, the AMCO director, enforcement agents, an employee of the board, or a peace officer acting in an official capacity may issue a NOV to a licensee whenever a violation of the laws related to marijuana is found to exist. An NOV may be the basis of a proceeding to suspend or revoke a marijuana establishment's license.

³ An advisory notice may be issued by the board's investigative personnel to a licensee when an incident occurs or a defect is identified that could result in a violation of a statute, regulation, or municipal ordinance.

During March 2023, AMCO management entered into a memorandum of understanding (MOU) with the Department of Natural Resources, Division of Agriculture to conduct inspections of premises where industrial hemp or industrial hemp product is available for retail sale. Per Division of Agriculture management, as of July 2023, there were 203 hemp registrants that were part of the Industrial Hemp program. AMCO management did not expect the MOU to significantly impact AMCO's ability to conduct AMCO enforcement actions, as hemp inspections would be conducted concurrently with marijuana license inspections. This audit was unable to assess the impact of the MOU on AMCO enforcement operations because the MOU was signed at the end of the audit period.

AMCO procured a new licensing and enforcement information system.

During March 2023, AMCO management hired a contractor to implement a new information system for licensing and enforcement called the Alaska Alcohol and Cannabis Control Information System. The new system is expected to provide a centralized web portal for online license applications, payments, and enforcement activities, and should provide applicants the ability to manage applications electronically. According to the contractor, the new system will accelerate application processing and streamline enforcement, eliminating hours of manual work for AMCO staff. The new system is expected to go live during autumn 2023.

As of April 2023, 59 delinquent taxpayers collectively owed \$3.1 million in taxes.

On a monthly basis, Department of Revenue (DOR) staff provided the MCB with a listing of licensed marijuana cultivators who were delinquent in paying marijuana excise taxes. Per DOR's listing, as of April 2023, there were 59 marijuana cultivators collectively owing \$3.1 million in taxes. Of the 59 delinquent cultivators, 40 had an active marijuana license, of which 16 had entered into a payment plan with DOR. Nineteen did not have an active license.

The audit concluded that AMCO's enforcement staff consistently issued NOVs to delinquent taxpayers and reported the NOVs to

the board. The MCB's responses to the delinquent taxpayers varied during the audit period. Early in January 2021, the MCB allowed delinquent licensees to renew licenses despite the outstanding debt. Later in 2021, the board began to conditionally approve renewals, giving delinquent licensees 60 days to pay the debt or the license would be re-evaluated. According to the MCB chair, in early 2023 the board began instructing AMCO's director to file accusations to revoke a license if a licensee owed \$5,000 or more and was delinquent for more than three months.

Marijuana fees were set at a level that exceeded the cost of regulation, allowing for repayment of MCB start-up costs.

AMCO is responsible for collecting marijuana related license and administrative fees. AMCO's FY 17 operating budget⁴ stated that it was the intent of the legislature that application and licensing fees cover the cost of regulation and recover the \$5.5 million of unrestricted general fund appropriations made while the program was being established. According to AMCO management, fees were set at a level that generated more revenue than necessary to regulate the industry; the excess was considered repayment to the general fund. Management estimated that \$868,000 was still owed to the general fund as of April 2023 and the debt was expected to be fully repaid by the end of FY 24.

Statutes limit fees to no more than \$5,000, to be adjusted annually for inflation, unless the MCB determines a greater fee is necessary to carry out its responsibilities. The MCB set renewal fees for cultivation facilities, product manufacturing facilities, and retail stores at \$7,000. A schedule of fees is shown in Exhibit 8 on the following page.

⁴ Chapter 3, 4SSLA 2016, Section 1, Page 7, Line 6—9.

Exhibit 8

**Marijuana Control Board
License, Permit, and Other Related Fees
as of April 2023**

	Fee Amount	
	Initial	Renewal
License Fees		
Standard Marijuana Cultivation Facility	\$5,000	\$7,000
Limited Marijuana Cultivation Facility	1,000	1,400
Marijuana Product Manufacturing Facility	5,000	7,000
Marijuana Concentrate Manufacturing Facility	1,000	2,000
Marijuana Testing Facility	1,000	5,000
Retail Marijuana Store	5,000	7,000
Application and Administrative Fees		
New Application for Marijuana Establishment License	1,000	
Transfer License Application to Another Person or Another Location	1,000	
License Conversion Application	1,000	
Renewal Application	600	
Late Renewal Application Fee	1,000	
Reinstatement Fee for an Expired License	Varies	
Marijuana Handler Permit Card and Permit Card Renewal	50	
Fingerprint Fee (per person)	48.25	
Business Name Change	250	
Licensed Premises Diagram Change	250	
Operating Plan Change	250	
Proposed New Marijuana Product	250	
Ownership Change	250	
Onsite Consumption Endorsement Application	1,000	
Onsite Consumption Endorsement to a Retail Marijuana Store License	2,000	
Onsite Consumption Renewal Application	600	
Processing Fees for Late Renewal After Failure to Pay Taxes	Varies	
Second or Subsequent Marijuana Establishment Inspection	500	

Source: MCB regulations.

FINDINGS AND RECOMMENDATIONS

The prior 2017 sunset audit made four recommendations:

1. The Marijuana Control Board (MCB or board) members, Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources.
2. The MCB and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow-up action and investigated in a timely manner.
3. The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.
4. The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

Prior year Recommendations 1 and 2 regarding establishing an enforcement plan and implementing a process to monitor and track complaints were resolved. The audit found the MCB established enforcement priorities and written enforcement procedures that materially addressed the finding. Further, AMCO staff implemented a process to track all complaints.

Prior year Recommendation 3 regarding developing written procedures and providing training related to marijuana handler permit expiration dates was resolved. Regulations were adopted February 2019 to establish an expiration date for handler permits and written procedures were developed to help ensure the expiration dates are updated according to regulations.

Prior year Recommendation 4 regarding developing and implementing procedures for segregating the duties for collecting and remitting fees to local governments was also resolved. The audit found the MCB developed and implemented procedures.

This audit makes three new recommendations.

Recommendation 1:

AMCO’s director should establish procedures to ensure handler permit documentation is properly maintained.

Auditors tested 25 handler permits for compliance with statutes and regulations and found the following documentation deficiencies:

- background checks for all 25 permits were not retained;
- applications for four permits were not retained;
- the training certificate for one handler permit was not retained; and
- the expiration date on two permits was not visible due to the low quality of the scan.

Per AS 17.38.121, the board must control the cultivation, manufacture, and sale of marijuana in the state. Insufficient written procedures contributed to the documentation deficiencies. Lack of sufficient documentation increases the risk that permits are issued to ineligible people, which may increase the risk to public safety.

We recommend AMCO’s director establish procedures to ensure documentation is properly maintained.

Recommendation 2:

The MCB and AMCO’s director should continue to implement a new license and enforcement information system.

AMCO staff manage the licensing process using an electronic portal and multiple spreadsheets. Maintaining the spreadsheets is time-consuming and prone to error. Further, licensing applications are not subject to electronic edits, which increases the likelihood of application errors and may delay the license process. AMCO staff use multiple spreadsheets for its licensing functions because the licensing database is not capable of automating the licensing process.

AMCO staff also track enforcement activities using multiple spreadsheets. Auditor review of the spreadsheets found missing dates, inaccurate dates, and a lack of enforcement details and outcomes. AMCO enforcement staff began using spreadsheets

after Department of Public Safety management terminated AMCO's access to Department of Public Safety's record and public safety information network. Access was terminated based on Department of Public Safety management's belief that AMCO did not qualify as a criminal justice agency. The lack of an enforcement database or system impairs AMCO's ability to effectively and efficiently carry out its enforcement functions.

Per AS 17.38.121, the board must control the cultivation, manufacture, and sale of marijuana in the state.

During March 2023, AMCO selected a contractor to implement a digital platform for licensing and enforcement. The system is expected to provide a modern, centralized web portal for online license applications, payments, and enforcement activities. To address the deficiencies noted by the audit that are attributed to the use of spreadsheets, we recommend the MCB and AMCO's director continue to implement a new license and enforcement information system.

Recommendation 3:

The legislature should consider requiring regulation changes be approved by the majority of MCB members.

At the June 2021 MCB meeting, regulations to increase the level of delta-9-tetrahydrocannabinol (THC) in edibles was approved by the board with two "yay" votes (industry and public members). The public safety board member voted "nay", the rural board member was absent, and the public health board position was vacant.

Per AS 17.38.080, the MCB consists of five members: one person from the public safety sector, one person from the public health sector, one person residing in a rural area, one person engaged in the marijuana industry, and one person from either the marijuana industry or the general public. Alaska Statute 17.38.111(b) states that three members of the MCB constitute a quorum for the conduct of business. However, a majority of the whole membership of the MCB must approve applications for new licenses, renewals, transfers, suspensions, and revocations of existing licenses, and

product approvals as provided in regulations adopted by the MCB. The extent to which the MCB has operated in the public's interest is one of the evaluation criteria identified in AS 44.66.050(c) to be used in the legislative sunset oversight process.

Given that the perspectives of all board seats are important to the regulatory process, the audit questions whether approving regulations that govern the level of THC in edibles despite a "nay" vote from the public safety member and without input from board members representing rural communities and public health was in the public's best interest.

We recommend the legislature consider requiring marijuana regulation changes be approved by the majority of MCB members.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Marijuana Control Board (MCB *or* board) to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 44.66.010(a)(13), the board will terminate on June 30, 2024, and will have one year from that date to conclude its administrative operations.

Objectives

The objectives were to:

1. Determine if the termination date of the board should be extended,
2. Determine if the board is operating in the public interest, and
3. Determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from January 2021 through April 2023.

Methodology

During the course of our audit, we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20100-17) to identify issues affecting the board and to identify prior sunset audit recommendations.

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- The most recent Alcoholic Beverage Control Board sunset audit (ACN 08-20127-21) to identify issues impacting the Alcohol and Marijuana Control Office (AMCO) processing of license applications.
 - Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
 - Thirteen board approved regulation projects for compliance with statutes and to identify board member approvals.
 - The State's Online Public Notices System to verify that board meetings and regulatory changes were adequately public noticed.
 - Various news and other websites to identify complaints against the board, other board related concerns, or potential duplication of board activities.
 - Municipality of Anchorage website to gain an understanding of the special land use permit for a marijuana business license to evaluate if it duplicates the activities of the MCB.
 - The *Governor's Advisory Task Force on Recreational Marijuana Report to the Honorable Governor Mike Dunleavy*, January 13, 2023, to identify recommendations that would impact the MCB and AMCO operations.
 - Department of Natural Resources, Division of Agriculture's memorandum of understanding (MOU) with AMCO, including the hemp registrant list to gain an understanding of the potential impacts on enforcement activities.
 - Department of Revenue (DOR) monthly list of tax-delinquent marijuana cultivator licensees to identify active and inactive marijuana licensees and amounts owed, as well as MCB actions.

-
- Operating budget bills to identify the amount of general fund monies spent to start the marijuana regulation program.
 - AMCO vacancy spreadsheet to identify the turnover of positions, extent of vacancies, and to evaluate the impacts on AMCO operations.
 - AMCO procedures for shared revenues to local governments to evaluate the resolution of a prior audit recommendation.
 - AMCO website for applications and licensing guidance; application processing manuals to gain an understanding of the licensing process.
 - Board licensing and permit handler data as of April 30, 2023. Data was used to identify the various license types.
 - Enforcement procedures, principles, and tracking spreadsheets to identify the various enforcement activities from January 2021 through April 2023. Notice of violation (NOV) and advisory notice documentation was used to assess the accuracy of the tracking spreadsheets.
 - Internal controls over licensing, handler permit, and enforcement activities to determine if controls were properly designed and implemented.

Auditors attended a board meeting to gain an understanding of board activities and the meeting process. Auditors observed the application review process to gain an understanding of the licensing process.

To identify and evaluate board activities, auditors conducted interviews with Department of Commerce, Community, and Economic Development staff, AMCO staff, board members, DOR staff, and Department of Natural Resources staff. Specific topics of inquiry included board operations, regulations, complaints against the board, delinquent taxes, and the MOU regarding hemp enforcement.

Inquiries regarding board related complaints were made of the following organizations:

- Office of the Ombudsman;
- The Department of Commerce, Community, and Economic Development commissioner;
- Governor's Office of Boards and Commissions.

During the course of the audit, the following samples were reviewed:

- Five of 17 board meetings were judgmentally selected and minutes were reviewed to gain an understanding of board proceedings and activities, whether the meetings were public noticed, the nature and extent of public input, and whether quorum was maintained. All 17 board meetings were reviewed for new application approvals, regulations discussion, board attendance, and approval of regulations projects for public comment and adoption.
- A random sample of 10 of 63 newly issued licenses and eight of 412 renewed licenses with license status of "active-operating" as of April 30, 2023, were assessed for statutory and regulatory compliance. License applications were also evaluated to identify stages of the application process and timeframes to complete each stage. The sample size was selected based on low control risk, moderate inherent risk, and moderate audit risk. Results were not projected to the population.
- The following random samples were selected based on license status as of April 30, 2023, and reviewed to determine if status was appropriate. The sample sizes were selected based on low control risk, moderate inherent risk, and moderate audit risk. Results were not projected to the population.
 - Ten of 103 in-progress license applications with license status of "tabled, queued, delegated, completed-pending inspection". In-progress license applications were also reviewed and evaluated for timeframes to complete the application process stages.

-
- Five of 586 “initiated, new, failed to complete, returned, incomplete, new transfer” applications.
 - Five of 253 “denied, rescinded, revoked, surrendered, expired” applications.
 - A random sample of 25 of 6,635 active handler permits applications as of April 30, 2023, were assessed for statutory and regulatory compliance. The sample size was selected based on a low control risk, moderate inherent risk, and moderate audit risk. Results were not projected to the population.
 - A random sample of 20 of 547 NOVs and five of 65 advisory notices issued from January 2021 through April 2023 and assessed for regulatory compliance. The sample size was selected based on low control risk, moderate inherent risk, and moderate audit risk. Results were not projected to the population.

All three accusations issued during the audit scope were assessed for regulatory compliance.

A survey of licensees was conducted to obtain opinions on various aspects of the board’s activities, including whether the board operated in the public’s interest. The survey was sent to 319 licensees and 112 (35 percent) fully responded.

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APPENDICES

SUMMARY

Appendix A: This appendix provides the sunset criteria used in developing the conclusions regarding whether the Marijuana Control Board's termination date should be extended.

Appendix B: As part of this audit, a survey was sent to 319 licensees and 112 fully responded (35 percent). Licensee survey questions and responses are presented in Appendix B.

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APPENDIX A

Analysis of Public Need Criteria AS 44.66.050(c)

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

APPENDIX A

(Continued)

8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission in its own activities and in the area of activity or interest;
9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

APPENDIX B

Marijuana Control Board Licensee Survey

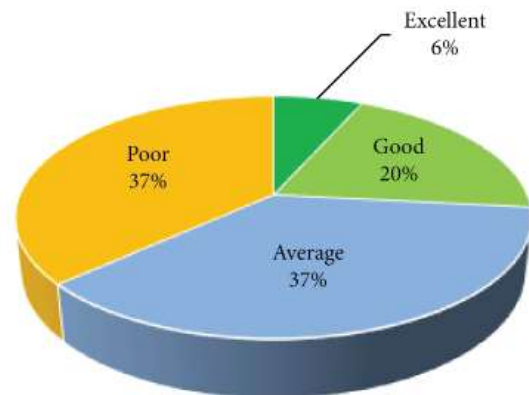
Question 1: During the period covered by our audit (January 2021 through April 2023), which did you apply for?

License Type	Count
Initial License	4
Renewal License	82
Both Initial and Renewal License	26
Total	112

Question 2: How would you rate the initial application licensing process?

Rating	Count	Percent
Excellent	2	6%
Good	6	20%
Average	11	37%
Poor	11	37%
Total	30	100%

Initial Application Process



APPENDIX B

(Continued)

Marijuana Control Board Licensee Survey

Question 2a: To help better understand your rating of “Average” or “Poor”, please provide additional details.
(Common themes from 21 respondents that provided comments)

Theme	Count	Percent
Slow application process	19	90%
No or slow communication or unhelpful staff	6	29%
Regulations (barrier to entry)	4	19%
Understaffed	3	14%
Inadequate number of board meetings	2	10%
Better communication with other agencies	1	5%
Cap on licenses	1	5%

Question 3: What was the timeframe from the date you submitted your initial application to the date your license was received?

Timeframe	Count	Percent
Between 3 months and 6 months	2	7%
Between 6 months and 12 months	15	50%
More than 12 months	13	43%
Total	30	100%

APPENDIX B

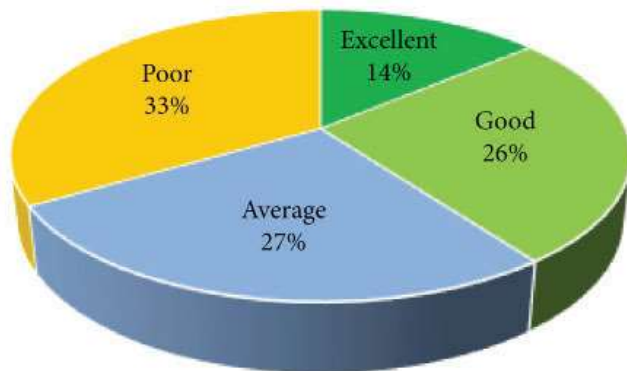
(Continued)

Marijuana Control Board Licensee Survey

Question 4: For your most recent renewal period, how would you rate the overall license renewal process?

Rating	Count	Percent
Excellent	15	14%
Good	28	26%
Average	29	27%
Poor	36	33%
Total	108	100%

Renewal License Process



Question 4a: To help better understand your rating of “Average” or “Poor”, please provide additional details.
(Common themes from 62 respondents that provided comments)

Theme	Count	Percent
Slow renewal process	54	87%
No or slow communication	12	19%
High cost of licensure	8	13%
Inadequate staff	6	10%
High volume of paperwork	4	6%
Outdated system	1	2%
Slow product approvals	1	2%

APPENDIX B

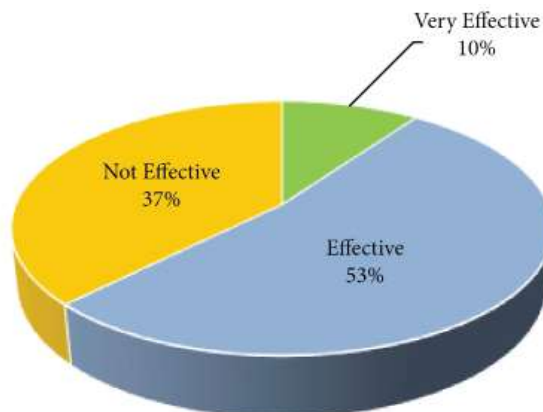
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Marijuana Control Board Licensee Survey

Question 5: How would you rate the overall effectiveness of the board in serving the public interest?

Rating	Count	Percent
Very Effective	11	10%
Effective	59	53%
Not Effective	42	37%
Total	112	100%

Overall Board Effectiveness



Question 5a: To help better understand your rating of “Not Effective”, please provide additional details.
(Common themes from 37 respondents that provided comments)

Theme	Count	Percent
Unsupportive/unknowledgeable of industry	12	32%
Improve tax structure	9	24%
Not revising or proactively revising regulations	7	19%
Improve enforcement	6	16%
Application processing timeliness/burdensome paperwork	5	14%
Address black market	4	11%
Unaware of hemp industry	3	8%
License cap/market saturation	3	8%
Board bias and conflicts of interest	3	8%
Change license fees	2	5%
Too focused on administrative tasks	2	5%

APPENDIX B

(Continued)

Marijuana Control Board Licensee Survey

Question 6: Please add any comments or suggestions you may have to supplement your answers.

(Common themes from 64 respondents that provided comments)

Theme	Count	Percent
Improve tax structure	12	19%
Improve application processing times	11	17%
Improve regulations	9	14%
Hire more staff/resources	8	13%
Cap licenses	7	11%
Realign the board to include hemp	4	6%
Board is unknowledgeable about industry	4	6%
Conflicts of interest with board	4	6%
Improve communication on license status	3	5%
Biennial license renewals	3	5%

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Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce,
Community, and Economic
Development

OFFICE OF THE COMMISSIONER
Julie Sande, Commissioner
P.O. Box 110800
Juneau, Alaska 99811-0800

Main: 907.465.2500
Fax: 907.465.5442

RECEIVED

DEC 29 2023

LEGISLATIVE AUDIT

December 26, 2023

Kris Curtis, CPA CISA
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Curtis:

Thank you for the December 13, 2023, Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development (DCCED), Marijuana Control Board Sunset Review. Please see the following comments regarding the recommendations:

Recommendation #1: The AMCO director should establish procedures to ensure handler permit documentation is properly maintained.

The Department concurs with this recommendation.

Recommendation #2: The MCB and AMCO's director should continue efforts to implement a new license and enforcement information system.

The Department concurs with this recommendation. Please also note that as of this writing AMCO has zero vacancies in its licensing unit. Even without the improvements to its licensing system, it has reduced the length of time license applications are in its initial review queue (not including post-board meeting delegations) by fifty percent. Under current management, AMCO focuses upon maintaining a healthy work environment and to building a career track within the office to retain its excellent, customer-service oriented employees. The automated licensing and enforcement system is expected to further improve performance and better serve Alaskans.

Recommendation #3: The legislature should consider requiring marijuana regulation changes to be approved by the majority of MCB members.

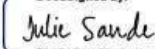
The Department does not concur with this recommendation nor with the conclusions supporting this recommendation. The Marijuana Control Board (MCB or Board) is volunteer dependent. At key times in the last years, both the public health and rural seats were difficult to fill. The Board is called upon to amend 3 AAC 306 at each board meeting and on average it considers four to five regulatory projects a board meeting.

Were a majority of the board required to approved regulatory projects the industry and the public would potentially be poorly served.

Thank you for this opportunity to evaluate the conclusions and recommendations of Confidential Preliminary Report. While we believe the Board has operated in a manner that would support a lengthier extension of time before its next sunset, we do not object to the three-year extension. We agree that aligning the audits of the Board and the Alcoholic Control Board best serves the industries and Alaskans at large.

Sincerely,

DocuSigned by:



8BAE8EAA5D47472...
Julie Sande

Commissioner

cc: Micaela Fowler, Deputy Commissioner, DCCED
Hannah Lager, Administrative Services Director, DCCED
Joan M. Wilson, AMCO Director, DCCED

Agency Response from the Marijuana Control Board

January 1, 2024

*Transmitted via email
Kris.curtis@akleg.gov*

Kris Curtis, CPA CISA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED

JAN 04 2024

LEGISLATIVE AUDIT

Re: Reply to Confidential Preliminary Report,
DCCED Marijuana Control Board Sunset Review

Dear Ms. Curtis

Thank you for the opportunity to comment on the conclusions and recommendations in your confidential preliminary report dated October 30, 2023. In consultation with the Alcohol & Marijuana Control Office ("AMCO"), I reply to your letter as follows:

Findings and Recommendations of the Confidential Preliminary Report

After meeting in executive session to consider your letter, the Marijuana Control Board ("MCB" or "Board") replies as follows.

AMCO director should establish procedures to ensure handler permit documentation is properly maintained.

The Board concurs.

The MCB and AMCO's director should continue to implement a new license and enforcement information system.

The Board concurs.

During June 2021, regulations were amended without input from public safety, public health, or rural members.

The Board does not concur. The discussion of whether the amount of delta-9 THC permitted in servings and packages had been the subject of many board meetings including the public comment portion of the meeting. The project was first opened in October 2020. There, four board members, including the public health and rural members voted to open a project to increase THC content levels. In January 2021, AMCO brought a draft of the regulations project back to the board for its consideration. The Board voted 3 in favor and one against to put the project out for public comment. This included the rural member. The public health seat was vacant. In March 2021, the board received a board packet that

included the numerous comments, the vast majority in favor of increase THC content. Three board members attended that meeting. The public safety member was not present, and the public health seat was not yet filled. The board chose to table acting until June 2021 when at least the public safety member, who had already expressed objection would be present. In June 2021, the public safety member was present, but the public health seat was vacant, and the rural position was absent. The Board held a lawful vote to approve the regulations as final. There was no failure to consider public health, public safety, or rural positions. Each board member weighed the factors and voted according to public interest. Noting the length of past board vacancies requiring a majority of the board versus the majority of the quorum would likely lead to even greater delays in reviewing and updating a complex regulatory scheme. For these reasons and as noted, the Board does not concur with the recommendation to change the required vote for regulatory changes.

Conclusions of the Confidential Preliminary Report

The Board concurs with the conclusions of the Confidential Preliminary Report

Conclusion

Thank you for this opportunity to evaluate the conclusions and recommendations of the confidential preliminary report. Please direct any further questions you may have to me.

Sincerely,



Nicholas Miller
Chair, Marijuana Control Board

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

January 5, 2024

Members of the Legislative Budget
and Audit Committee:

I have reviewed the board chair and commissioner's responses to this audit. Nothing contained in the responses caused me to revise or reconsider the report conclusions and recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor