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DEPARTMENT OF TAXATION**

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**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608**

LCB File No. R092-17

1. Background

In November 2016, Nevada voters approved Ballot Question 2, legalizing retail marijuana in the state, and requiring the Department of Taxation to develop regulations to license and regulate the adult-use marijuana industry. Question 2 gives the Department until January 2018 to complete regulations and begin issuing licenses for marijuana establishments to cultivate, manufacture, test, distribute, and sell marijuana in retail stores to Nevada consumers.

Since 2014, Nevada (through the Division of Public and Behavioral Health) has licensed and regulated medical marijuana establishments, which are permitted to cultivate, manufacture, test, and sell medical marijuana to registered medical cardholders.

The Department of Taxation drafted proposed regulation R092-17 to establish procedures for the issuance, suspension or revocation of licenses issued by the Department of Taxation, provide operating requirements to licensed marijuana establishments, require monthly filing of returns and remittance of tax imposed on the sales of marijuana, require the maintenance of certain records, and provide for the inspection of such records relating to the regulation and taxation of marijuana pursuant to NRS 453D.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

In July 2017, the Department of Taxation prepared and disseminated draft language for the proposed permanent regulation R092-17 seeking input and information from small businesses regarding the impact of the language. The notice of workshop, agenda and proposed language were:

- Emailed by the Department to 264 members of its interested parties list, including members of a marijuana-specific interested parties list of 511
- Emailed by the Nevada Taxpayers Association to its list of interested parties

The workshops on the proposed language were held on the following dates:

- **Monday July 24, 2017**
 - Application and licensing requirements & education and training

- Civil penalties, security, disposal, and taxes
- **Tuesday July 25, 2017**
 - Distribution, delivery, and storage
 - Retail stores
- **Wednesday July 26, 2017**
 - Cultivation facilities
 - Testing facilities
- **Thursday July 27, 2017**
 - Product manufacturing facilities
 - Packaging and labeling & signage, marketing, and advertising

The content of the responses can be summarized into the following major themes:

- **Labels and Packaging** - Respondents said that fruit images should be allowed on labels and packaging; requiring both stamping and individually wrapped edibles is excessive; provide alternatives to packaging of glass bottles and liquids; allow a smaller font size for smaller products; adjust variance of +/- 15% to 8 or 10%.
- **Department Preapproval** - Respondents asked to add animals to the allowable images for logos or names; approve logos of licensed product from another state; clarify what sources for non-marijuana ingredients need approval; allow for branded products to be sold at retail marijuana stores; provide for a shorter review time.
- **Definitions** - Respondents asked to include that industrial hemp is not marijuana; update growing unit definition.
- **Disposal** - Respondents asked to provide alternatives to grinding roots and stalks; require notice to the Department of unusable marijuana; provide the ability to return product if unusable.
- **Penalties** - Respondents asked to remove language regarding impaired staff; add bad faith complaints; allow establishments to obtain investigative file during discovery; do not issue civil penalties unless establishment is grossly negligent, refuses to correct violations, or repeatedly violates the same regulation.
- **Concentrated Cannabis** - Respondents asked to increase the purchase limit of THC in concentrated cannabis.
- **Advertising** - Respondents said that fruit images should be allowed in advertising; photographs of approved products should be acceptable; allow submission of data on youth viewership for advertising approval; do not require preapproval if falls within advertising guidelines; do not require preapproval of social media, websites, blog posts, e-mails, and text updates; consider not allowing advertising on motor vehicles used for private transportation.
- **Distributor Requirements** - Respondents asked to adjust amount required for liquid assets;

maximum load limits should be changed; do not require distributor vehicles to maintain a temperature of 41 degrees cash management for transportation/distribution (trackable/traceable to a specific customer and invoice) should be included in the regulations.

- **Application and Licensing** - Respondents asked that we give preference for an establishment who has local government approval but no medical marijuana registration certificate; add additional reasons when a license will not be renewed.
- **Testing** - Respondents requested that we keep testing consistent with medical marijuana regulations; update minimum sample size; remove shelf-life testing; remove the requirement to test for any pesticide not approved by the Department of Agriculture at any detectable amount.
- **Local Governments** - Respondents asked that we prohibit outdoor cultivation; include local authorities during inspection; notify local law enforcement of surveillance system malfunctions; provide application information for both establishments and agent cards to local government; provide a fee to the local fire protection agency; allow for local inspections.
- **Taxes** - Respondents requested that we clarify that retail excise tax does not apply to non-marijuana products.

Anyone interested in obtaining a copy of the summary of responses can contact:

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3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small business.

The Department used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes. Initially the Department conducted its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R092-17. The proposed permanent regulation provides the structure to license businesses and provide the regulatory structure for the program to operate. This is a new program that the Department must implement. Every business that operates under this regulation can be deemed a small business. Thus, these provisions affect every business in the same manner and the impacts are not the result of being disadvantaged as a small business in a competitive context with large businesses and corporations.

The Department also held workshops on Monday, July 24, 2017, through Thursday, July 27, 2017, where members of the public stated their concerns and submitted correspondence regarding the permanent regulation. The Department analyzed the written responses and oral feedback to

determine the likely impact of the proposed permanent regulation on small businesses. This analysis included categorizing responses to identify themes and the frequency with which impacts were named. The Department also looked at issues that were named with less frequency but could potentially have an impact. The Department revised the language of the proposed permanent regulation to address these impacts and has determined that there will be no adverse impacts to small marijuana businesses after making these revisions.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no adverse economic effect on small business.

After the workshops on the proposed permanent regulation, all of the adverse effects reported by public comment that could be addressed were resolved through revisions in the proposed language.

It is also important to note that most, if not all, of the existing legal marijuana establishments in Nevada qualify as small businesses, so the impacts are not the result of being disadvantaged as a small business in a competitive context with large businesses and corporations.

Direct and indirect beneficial effects

The Department anticipates that those marijuana businesses that receive retail marijuana licenses will realize the beneficial economic effects of expanding from a medical-only market into a medical and adult-use market. The investments that businesses have made in establishing their medical marijuana businesses have often been extensive, and the adult-use program allows them to begin increasing their return on those investments.

5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The Department considered the feedback made by the public and determined that revisions to the proposed language would reduce the impact on small businesses. The Department made the following revisions to the proposed permanent regulation to address a number of possible adverse effects and to clarify sections that may have inadvertently created the perception of adverse effects.

- **Distributor Requirements** - Removed the \$250,000 liquid asset requirement; increased the load limit to \$25,000 at wholesale from \$10,000; removed the requirement to maintain vehicles at 41 degrees.
- **Labels and Packaging** - Allowed fruit images on labels based on statutory language in Senate Bill 344; added language to clarify physical demarcation of a single serving of marijuana product; added language allowing for products packaged in glass bottles; the

language regarding seal for marijuana product in liquid form was changed to allow to be packaged using a re-sealable cap; allowed for retail marijuana store to package usable marijuana on-site.

- **License Renewal** - Added in language for requirements for license renewal.
- **Definitions** - Revised definition of marijuana to not include industrial hemp and updated definition of growing unit.
- **Disposal** - Added language to clarify that if the establishment does not want to grind roots and stalks, they may request an alternative method to the Department; added language for retail and distributors to be able to return product; removed the time period required to notify Department of disposal.
- **Penalties** - Removed language regarding “impaired staff” from the civil penalties table.
- **Concentrated Cannabis** - Increased the purchase limit of THC from 1,750 milligrams to 3,500 milligrams in concentrated cannabis.
- **Advertising** - Added language that social media, blog posts, emails, and test updates do not require Department preapproval.
- **Taxes** - Added language that the excise tax does not apply to non-marijuana products sold by the retail marijuana store.
- **Testing** - Revised sample size for testing; removed shelf-life testing requirement.
- **Local Governments** - Added language to not prohibit local authorities from conducting inspections of marijuana establishments and language to include local authorities doing inspections as persons authorized to be on the premises; added language to include that a licensee must notify local law enforcement of a surveillance system malfunction.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

7. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Section 85 provides for the reimbursement of costs incurred by the Department to conduct a preliminary walk-through prior to an inspection; Section 91 provides for an application fee for an agent card; Section 92 provides for the reimbursement of all costs incurred by the Department to review or investigate a change in ownership; Section 102 allows a fee for the oversight of a marijuana establishment, Section 109 requires the marijuana establishment to pay a fee assessed by the independent contractor for using the seed-to-sale tracking system; Section 115 provides for reimbursement of all costs incurred by the State or locality for cleaning up, mitigating or remedying any environmental damage; Section 246 allows for the Department to collect a fee for costs of investigating a complaint. These fees are not additional fees but mirror the fees provided for in NRS

453A and NAC 453A to bring the adult-use marijuana program into conformity with the medical marijuana program.

8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed permanent regulation does not overlap or duplicate any regulation of other federal, state or local governmental entities but does reference Chapter 453A Medical Use of Marijuana Statute.

9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The Department has determined that there will be no adverse impacts to small marijuana businesses after making revisions to the proposed permanent language based on comments received. Conversely, the Department has determined that there will be beneficial impacts to small marijuana businesses based on the expansion of medical marijuana businesses into the adult-use market.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.



Deonne E. Contine, Executive Director
January 9, 2018

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2096 no later than five working days prior to the meeting.

Notice has been posted at the following locations: The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

Notice has been EMAILED/FAXED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building 1, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada.