

Date: August 4, 2017

To: Department of Taxation

From: Lucinda Mahoney

Subject: Comments regarding Proposed regulations relating to Production, Packaging and Labeling

The following are my comments relating to the proposed regulations to Chapter 453D that were discussed in a public hearing that I attended on 7/27/2017.

A. LABELS– My comments are in regard to displaying fruit images on labels affixed to packages. My company produces Dried Fruit infused with THC and our labels contain images of fruit. Additionally, many of our labels for other products contain images of fruit. In the public meeting on July 27 the Director of Taxation indicated that no fruit images are allowed on labels.

On June 29 our labels, that contain fruit images, were discussed with Steve Gilbert, Nataliya Wood, Joann, Anna, Attorney from Taxation, Attorney from DPH, Will Adler and as a result of the meeting our Company received an email indicating that our labels were allowed. It is important to note the following:

- The March 20, 2017 the first version of SB344 included a prohibition of fruit images on packages. However, the word “fruit” was ultimately removed from the bill. The final bill does not include a prohibition on using fruit images on the labels for edibles as it was intentionally removed during the legislative process as they had not intended to exclude fruit labels.

References:

- 3/20/17 SB344 Section 1 453A.360 b) line 15 includes the word “Fruit” as a prohibition.
- 3/20/17 SB344 Section 1 453D.360 b) line 6 include the word “fruit” as a prohibition
- The final SB344 that passed in June 2017 EXCLUDED the prohibition of using fruit images on packaging. The prohibition of fruit on labeling was intentionally removed.
 - o See section 1 453A.360 b). FRUIT IS NOT EXCLUDED
 - o See Section 2 453D.360 b). FRUIT IS NOT EXCLUDED
- We worked with Senator Farley to allow fruit images.
- Also worked directly with Senator Farley to allow infusion of THC on Dried Fruit, Nuts and Granola.

B. PACKAGING; THC STAMPS & INDIVIDUAL WRAPPING – My comments are related to excessive packaging requirements. While I fully support child proofing our packages it is my opinion that the current proposal is excessive. Specifically, the requirement for the THC stamp on each individual edible PLUS the requirement to wrap each individual edible is excessive. I suggest that producers be provided an option to implement one of the two requirements; individual wrapping OR stamping. BUT NOT BOTH.

Natural products like dried fruit and baked goods do not lend themselves to being “marked” and such markings, if they could be done, would likely require the introduction- on those previously natural products - of dyes, inks, resins, or other chemicals in order to mark them.

If the final regulation includes a requirement for THC stamping on each individual product it would be very appreciated if you could please provide at least 9 months, from final approval of the regs, to allow for the molds or other solutions to be custom made.

C. PACKAGING: Glass Bottles – A question was asked, in the public hearing on July 27, to clarify the packaging requirements associated with glass bottles. The Director of Taxation responded that glass bottles did not need to be packaged in the 4ml plastic packages as long as the products were placed in the child resistant exit packages by the retail store. It would be appreciated if this could be incorporated in the regs to avoid any confusion between production companies and dispensaries. Section 4 could be modified to state the following:

“4. Except as other provided in subsection 3, marijuana products in solid or liquid form must be packaged in plastic which is 4 mils or more in thickness; except for products packaged in glass bottles which shall be packaged in accordance with subsection 5.”

D. PACKAGING – RESEALABLE packages for multiple openings. Reference Proposed Regs Packaging Generally item number 3.”

“When sold at a retail marijuana store, any product containing marijuana must be packaged in child-resistant packaging in accordance with 16 CFR 1700 or the standards specified in subsection 4 or 5 and maintains its child-resistant effectiveness for multiple openings prior to leaving the retail marijuana establishment.”

We trust this is addressing the exit bag provided by Retail stores only and not the packaging provided by producers? Could you pls confirm?

E. MARIJUANA PRODUCTS IN LIQUID FORM: Suggest that section 5 be reworded: 5. “Marijuana products in liquid form provided in glass shall be sealed using a metal crown cork-style bottle cap or packaged in plastic which is 4 mils or more in thickness.”

We support that the metal crown requirement should stay in the regulation, but allow products where the metal crown does not work to alternatively place their container in a child proof bag. These forms of a seal are the best for child proofing.

Several edible liquid products do not lend themselves to being sealed with a metal crown. Some products require a much larger opening, i.e., honey jars, or the product itself may not react well with metal and is better suited to purpose and taste by having a better pour-ability. In such case, that glass container could be placed in a retail exit bag that is childproof.

F. ADVERTISING GUIDELINES AND CAMPAIGNS – Our current ads contain pictures of our products which include dried fruit, which are specifically allowed to be produced. It seems reasonable that the advertisements should also allow pictures of dried fruit that are professional, not attractive to children and comply with the other regs.

Section 1, (d) does not prohibit pictures of fruit or dried fruit

In the Approval section in 5 (a) packaging regs do not exclude fruit images. However the “likeness” regulation in Section 5 (d) does exclude fruit. So it can be confusing.

Suggestion: add a bullet point that states "Acceptable advertisements may include photographs of approved products and labels"

In the meeting a question was asked to Taxation Director if pictures of approved products and labels could be used without going through approval process and she said approval was not required.

Thank you for the opportunity to provide comments. If there are questions about any of my comments please advise and I will provide clarification.

Lucinda Mahoney