



TO: Jorge Pupo, Executive Deputy Director
FROM: Riana Durrett, NDA Executive Director
DATE: August 15, 2017
SUBJECT: Requested Revisions to Proposed Permanent Regulations

EXPLANATION: Matter in (1) *blue italics* is language proposed by this memorandum; (2) ~~red-strikethrough~~ is deleted language proposed in this memorandum.

Thank you very much for taking the time to consider the following requested revisions to the proposed permanent regulations that will be issued under Nevada Administrative Code 453D.

1) TESTING

In order to avoid interruption of the single stream of medical and retail marijuana, which could jeopardize the continued existence of the medical program, please consider the following language:

Nothing in this section or chapter requires a designation of a product as medical marijuana or a retail marijuana product. Marijuana or marijuana products that pass the tests required in this section may be sold as medical or retail marijuana or marijuana products.

Alternatively, please consider the following language:

The testing requirements become effective upon adoption of the same tests under Chapter 453A of the Nevada Administrative Code.

2) CIVIL PENALTIES

In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the

violator's ability to continue in business, and such other matters as justice may require. The Department shall try to resolve any violations by allowing the establishment to submit a plan of correction, wherever appropriate. The Department shall only file complaints or issue civil penalties when the establishment is grossly negligent, intentionally refuses to correct violations, repeatedly violates the same regulation, or is putting public health or safety in imminent danger.

In addition, the Department should not impose a fine for "impaired staff" as many registered agents are medical marijuana patients and "impaired" is overly broad. The Department should allow the establishment to implement and enforce its own drug use policy, which will allow the establishment to maintain more specific rules. Alternatively, the Department should provide a narrower definition of "impaired." For example, under DUI law, a person can be convicted if they are "impaired to a degree that renders the person incapable of safely driving." Similarly, the Department should impose a restriction that involves impairment to a degree that jeopardizes public safety.

3) DEFINITIONS

- (a) Industrial hemp, as defined in NRS 557.040, which is grown or cultivated pursuant to the provisions of chapter 557 of NRS; or*
- (b) The mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.*

4) MONOPOLY PROVISIONS

To prevent monopolistic practices, the Department shall ensure, in county whose population is 100,000 or more, that it does not issue, to any person, group of persons or entity, the greater of:

- (a) One retail marijuana store license; or*
- (b) More than 10 percent of the retail store licenses allocable in the county or within the municipality located within that county.*

5) PRODUCTION

For the purposes of NRS 453D.(), the maximum allowable quantity of marijuana products allowed to be sold to a consumer is:

- 1. One ounce of usable marijuana other than concentrated marijuana;*
- 2. One-eighth of an ounce of concentrate that is the equivalent of ~~1750~~ **mg** 3500 mg of THC;*

3. *One-eighth of an ounce of concentrate that is the equivalent of 1750mg of THC when in edible form; or*
4. *A combination of the two not to exceed the allowable limits.*

6) DELIVERY

Sec. () Requirements for an Establishment to be Authorized to Conduct Deliveries.

Except for delivery made pursuant to NRS 453D.110(3), delivery of marijuana or marijuana products to a consumer by a marijuana establishment or any third party are prohibited unless each of the following requirements is met;

1. *The retail store is responsible for the delivery and only retail store agents may conduct the delivery;*
2. *A retail store may enter into a service agreement with a company that employs retail store agents that may conduct delivery, any such service agreement shall be made public;*
3. *Every portion of the delivery process, including accepting the order and physical delivery, is conducted by a registered agent that is registered to work in at least one (1) retail store;*
4. *A retail store may only deliver to persons that have physically entered the retail store and provided verification of their age within the retail store;*
5. *Registry at a retail store is required only for purposes of delivering retail marijuana and retail marijuana products and requires documentation of a person's name and date of birth and documentation that the retail store agent verified the customer's age by scanning at least one form of identification listed under Sec. () to confirm the person's age;*
6. *Prior to physically providing the marijuana or marijuana products to a consumer upon delivery, the retail store agent must obtain verification of the person's age by scanning at least one form of identification listed under Sec. ();*
7. *The scanner used by the retail store and upon delivery must be approved by the Department;*
8. *Retail store agents may deliver marijuana and marijuana product from multiple retail stores but cannot transport marijuana with any other product unless that product is merchandise, packaging or promotional items directly related to the marijuana or marijuana product being delivered;*
9. *Delivery must only be conducted during the hours the retail store is open for business; .*
10. *The retail store agent transporting marijuana and marijuana products must only travel to and from the retail store and delivery destinations and must not make any unnecessary stops that are not disclosed in the trip plan and shipping manifest. The delivery vehicle may make fuel stops as necessary and keep a list of designated fuel stops along the route that can be submitted to the Department upon request;*
11. *A retail store may only deliver marijuana and marijuana products within*

Nevada.

Sec. () Requirements for When Conducting Delivery to a Consumer.

1. *Before transporting marijuana or marijuana products pursuant to subsection 1 of this chapter, the licensed marijuana distributor agent must:*
 - (a) *Complete a trip plan that includes, without limitation:*
 - (1) *The agent name and registration number providing and receiving marijuana;*
 - (2) *The date and start time of the trip;*
 - (3) *A description, including the amount, of the marijuana or marijuana products being transported; and*
 - (4) *The anticipated route of transportation.*
 - (b) *Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation; and*
 - (c) *Record the trip plan in the inventory control tracking system approved by the Department.*
2. *During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed marijuana distributor agent must:*
 - (a) *Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 2 of this section with him or her for the duration of the trip;*
 - (b) *Have his or her marijuana establishment agent card in his or her immediate possession;*
 - (c) *Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana, or marijuana products;*
 - (d) *Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and*
 - (e) *Ensure that all marijuana or marijuana products are not visible.*
 - (1) *After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a licensed marijuana distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 2 of this section.*
3. *Each licensed retail store agent delivering marijuana or marijuana products must:*

(a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs; and

(b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana establishment agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section () of this chapter.

(c) Report any unauthorized stop that lasts longer than 2 hours to the Department.

4. A retail marijuana store shall:

(a) Maintain the documents required in paragraph (a) of subsection 2 and subsections 1 (a) and (b) of this section; and

(b) Provide a copy of the documents required in paragraph (a) of subsection 2 and subsections 1 (a) and (b) of this section to the Department for review upon request.

5. Each marijuana retail store shall maintain a log of all reports received pursuant to subsection 3 of this section.

6. If the delivery vehicle is stopped at an unlicensed location, is involved in a traffic accident, or the vehicle breaks down and scheduled travel is interrupted for more than 2 hours, the retail store agent must notify the Department of the interruption by means determined by the Department;

7. The retail store shall use the inventory tracking system approved by the Department to create shipping manifest documenting the delivery of marijuana and products. A paper manifest or digital copy is to be kept with product at all times.

Sec. () Retail Store Agents Conducting Deliveries

1. Any persons conducting delivery must be at least 21 years of age;

2. While engaged in the delivery of marijuana and marijuana products, any person that occupies a transport vehicle when it is loaded with marijuana or marijuana products must have their physical retail establishment agent registration card in their possession;

3. All drivers must carry in the vehicle valid driver's insurance at the limits required by the State of Nevada and the Department. All drivers must be bonded in an amount sufficient to cover any claim that could be brought, or disclose to all parties that their drivers are not bonded;

4. Marijuana establishment agent registration cardholders and the licensed retail marijuana establishment they work for are responsible for the marijuana and

marijuana product once they take control of the product and leave the premises of the marijuana establishment.

Sec. () Vehicle Requirements for Delivery

- 1. Retail marijuana establishments must obtain approval from the Department for each vehicle it is intending to use for delivery of marijuana and marijuana products to consumers. The Department will issue an identification card containing information as determined by the Department for each vehicle and this card is to be kept in the vehicle at all times. Licensed marijuana distributor's transporting vehicles cannot have any advertising, signage or markings related to marijuana.*
- 2. The Retail marijuana establishment may use any vehicle that meets the requirements set forth in Chapter 484D of NRS.*
- 3. A delivery vehicle contains no more than 10 ounces at any one time;*
- 4. All drivers must carry in the vehicle valid driver's insurance at the limits required by the State of Nevada and the Department. All drivers must be bonded in an amount sufficient to cover any claim that could be brought, or disclose to all parties that their drivers are not bonded.*
- 5. Marijuana establishment agent registration cardholders and the licensed retail marijuana establishment they work for are responsible for the marijuana and marijuana product once they take control of the product and leave the premises of the marijuana establishment.*

7) ADVERTISING AND PACKAGING

To allow retail stores to package onsite, the following changes are suggested:

Sec. () Maximum unit size; minimum requirements for font and size of label. (NRS 453D. ())

- 1. ~~Any marijuana establishment that packages marijuana and marijuana products must~~ Any retail marijuana store must ensure that all marijuana and marijuana products are individually packaged, labeled and sealed ~~the marijuana or marijuana products~~ in unit sizes such that no single unit contains more than an one ounce of usable marijuana;*

The following edits are suggested to the advertising sections as the approval of all advertising including websites, social media, and blogs is unduly burdensome and unrealistic given the time sensitive nature of these medias:

Sec. () Approval process. (NRS 453D. ())

Approval is required of the Department of any marijuana establishment name, logo, sign, advertisement or package before it is used by the marijuana establishment. The Department may require up to 30 days for approval.

1. Marijuana establishments ~~owners~~ with conditional licenses must submit electronic files of proposed names, logos, signs, ~~website, social media~~, radio and television ads, ~~print~~ advertisements or packaging on a form prescribed by the Department to be considered as a part of their pre-opening inspection findings, and/or whenever new designs are created.
2. The submitted artwork will be reviewed by the Department to evaluate compliance with the advertising guidelines. The Department will supply a form to the establishment indicating its recommendation to approve or deny the proposed artwork.
3. If the proposed artwork is not recommended, the reason for the recommended denial of any portion of the submission will be indicated on the form, including feedback and reasons for the decision.
4. ~~The Department has final say on approvals and denials for the names, logos, signs, website, social media, radio and television ads, advertisements and packaging. Appeals of the Department's final decision are not permitted.~~
5. The following guidelines will be used to evaluate marijuana establishment names, logos, signs advertisements and packaging:
 - a. Are not presented in packaging that contains an image of a cartoon character, mascot, action figure balloon or toy, except that such an item may appear in the logo of the marijuana product manufacturing facility which produced the product.
 - b. Are not packaged in a manner which is modeled after a brand of products primarily consumed by or marketed to children.
 - c. Does not appear to be a lollipop or ice cream.
 - d. Bears the likeness or contains characteristics of a real or fictional person, animal or fruit, including, without limitation, a caricature cartoon or artistic rendering,
 - e. ~~Overall design of any submission should be tasteful and respectful. The look should contain no reference to or perception of being high in nature. Shall be professional in nature. Shall not depict consumption of the product or a real or fictional person, animal, character, mascot or cartoon possessing the product.~~
 - f. Typography selections shall include using clean fonts (sans serif), and avoiding script, ~~decorative or gimmicky~~ fonts. It is preferred that a maximum of two fonts and three colors are used in the design.
 - g. Acceptable words or referenced include, but are not limited to: green; wellness; compassion; health; patient; therapy; care; garden; nature; marijuana; and cannabis.
 - h. ~~Designers~~ shall avoid making unfounded claims or promises or using the word "cure."
 - i. ~~Designers~~ shall avoid using marijuana slang such a high, bud, pot, weed, grass, joint, doobie, 420.

- j. *All logos submitted for approval must also be used on business cards, letterhead, and any other types of stationary used by the marijuana establishment, ~~as well as any advertisements purchases by the marijuana establishment.~~ Different logos, other than those approves by the Department, will not be permitted.*

Please let me know if you have any questions or concerns. Thank you once again for your time and consideration, Mr. Pupo.