



TO: Department of Taxation
FROM: Riana Durrett, NDA Executive Director
DATE: August 2, 2017
SUBJECT: Written Comments in Response to Proposed 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 the thorough discussion of the proposed permanent regulations that took place July 24 to July 27. The Nevada Dispensary Association (“NDA”) is grateful for the extensive planning and thought that went into the development of the proposed regulations and the opportunity to provide feedback .

The NDA supports adoption of the proposed permanent regulations in the timeframe proposed at the Public Workshops. The NDA provides the following feedback and requests to change or modify certain provisions of the permanent regulations that may impose undue burdens on the industry or that could lead to unintended consequences.

1) DELIVERY TO CONSUMERS

This topic is covered in the enclosed memorandum.

2) DEFINITIONS

Adopt the expanded definition of industrial marijuana utilized in the medical marijuana program. With the understanding that marijuana is already defined in the ballot initiative, further clarify that marijuana does not include industrial hemp or the mature stems of the plant. As this is a clarification, there is no violation of the constitutional mandate that the ballot initiative cannot be changed for three (3) years.

Proposed language:

- (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.

3) DISPOSAL

- Remove roots and stalks from the items that need to be ground to render those items unusable. Perhaps they should be rendered unusable, but not through grinding.

Proposed language:

Disposal of Marijuana Products and Waste

8. Waste that must be rendered unusable prior to disposal include but are not limited to the following:

(a) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent;

...

(d) Except that roots and stalks are not required to be ground, but may be rendered unusable by mixing with other non-marijuana waste by volume so the mixture is at least fifty percent non-marijuana waste by volume.

- Remove the 24-hour notice requirement to render marijuana unusable. The Establishment should be able to render marijuana unusable immediately and remove it from the premises as soon as possible.

Proposed language:

Establishments must provide the Department ~~a minimum of twenty-four hour~~ notice in the traceability system prior to rendering the product unusable and disposing of it.

- A dispensary should be allowed to return product to a cultivation or production facility as a part of its waste protocol.

Marijuana waste must be rendered unusable prior to leaving a licensed production, cultivation, distribution, retail store or laboratory, *except that a retail store may return waste to a cultivation or production facility to be rendered unusable.*

4) Operations and Licensing

- Remove the 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 more narrow 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.
- Add a clause to allow the Department to impose a fine or fee for establishments found to have made complaints against other establishments in bad faith.

Proposed language:

If the Department determines that an establishment made a complaint about another marijuana establishment in bad faith or the complaint was untrue and made for the purpose of harassment, the establishment that made the complaint will be required to pay the costs of the investigation.

- Allow establishments to obtain the investigation file during open discovery.
- Allow dispensaries to package their own flower.
- The NDA supports the proposed regulations regarding consumer education and registered agent training.
- Limit ownership of retail store establishment to ten (10) percent of the licenses allocable in the municipality within a county, in addition to the proposed limit of ten (10) percent within the county.

Proposed language:

Under **Registration of Establishments, Ranking of Applicants**

3. 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.*

- Allow facilities to respond to any deficiencies or violations of regulations enumerated in categories II through V with a plan of correction and only impose a fine if the facility is found in violation of the same conduct for which they submitted a plan of correction. Add language that civil penalties shall only be applied when establishments are found to be grossly negligent, willfully or intentionally violating regulations, or are posing an imminent threat to public safety.

Proposed language:

Civil Penalties

2. 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.

5) Single Stream

The NDA is aware that the Department recognizes the value in allowing for a single stream of medical and recreational products, as emphasized by Colorado regulators and lawmakers. The NDA strongly encourages the Department to continue to accommodate the single stream of products and to avoid any provisions that would interfere with the single stream.

6) Merchandise

Clarify that branded materials, such as t-shirts, hats, etc. may be sold in dispensaries. These items may be related to brands sold at the dispensary and not just the brand of the dispensary selling the item.

Proposed language:

Allowable products for sale in marijuana retail stores

4. All products sold in a retail marijuana store should only include marijuana and items that relate to the marijuana establishment *or brands of items sold at the retail store*;

7) Production

- Provide a subcategory for concentrated cannabis, apart from edibles. The proposed purchase limit of 1750 mg of THC per transaction is reasonable. However, this is too restrictive for concentrated cannabis, which should continue to be limited to the current 3500 mg of THC. The THC in these products is more highly concentrated, but the effects are almost immediate and thus the problems with over-consumption and unpredictable titration levels is not nearly as prevalent as with edible products.

Proposed language:

Maximum allowable quantity of marijuana products to be sold to a consumer

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.
- Allow at least 9-12 months before implementing any regulations that would require stamping, molding, or demarcation that was not already included in Senate Bill 344 or the emergency regulations.

8) Testing

- Adopt the testing regulations from the medical program, which have not resulted in public health concerns and are more likely to protect public health than the regulations proposed to govern the recreational program. The recreational program should not eliminate testing of coliform, while it should eliminate the testing of aspergillus as aflotoxins will be detected in the mycotoxin testing. Further, any interruption in the “single stream” of products could result in facilities

shifting to grow, produce, sell only recreational products as a dual track may be impractical for some facilities.

Alternatively, if the Department declines to adopt the testing regulations under Chapter 453A of the Nevada Administrative Code, the NDA requests that the following changes be made to the proposed permanent regulations.

- Remove the one (1) percent sample size for production runs of edible products. The Department of Public and Behavioral Health considered imposing this minimum sample size, but the Nevada Cannabis Lab Association and Nevada Dispensary Association agreed in written comments that the requirement could be impractical when testing large production runs. Alternatively, impose a cap on the number of products submitted for testing.
- Remove the homogeneity test as establishments are required to submit their recipes for approval, which contains details on how they will homogenize the product.
- Remove the aspergillus testing as aflatoxins are already detected in mycotoxin screening.
- Remove botulism testing or only impose the testing if a facility is canning marijuana or marijuana products.

9) Advertising

- Add a provision that clarifies that facilities may submit information on youth viewership provided by the company with which the facility is advertising. For example, provide information from a television company, billboard company, etc. on the demographics of their viewers. This was intended when the recommendation was drafted for the Governor's Task Force from which the subject advertising language originated.

Proposed language:

An establishment may reasonably expect youth viewership to be thirty (30) percent or less if the company that owns the advertising medium provides data, information, or statistics projecting youth viewership is thirty (30) percent or less of the audience where the advertisement is or will be placed.

- Only require submission of advertisements for approval if they do not clearly fall within the advertising regulations. If the advertisement

clearly falls within the advertising guidelines, do not require the facility to submit the advertisement for approval.

Proposed language:

An establishment is not required to obtain pre-approval on an advertisement when it is one that a reasonable person believes complies with the advertising requirements set forth in this Chapter. The establishment must submit the advertisement to the Department, but not prior to obtaining approval. If it is unclear whether the advertisement complies with the regulations or it would be unclear to a reasonable person, then the establishment must submit it for prior approval.

10) Transportation

Remove the requirement to maintain vehicles at 41 degrees. Marijuana and marijuana products are grown at various temperatures and keeping them stored at that temperature is not necessary and could risk the health and moisture levels of the products.