

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

LCB File No. T002-17

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 retail 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 has drafted proposed temporary regulation T002-17 to allow for an early-start retail marijuana program, with sales expected to begin July 1, 2017. The early-start program allows existing medical marijuana establishments who are operational and in good standing to apply for temporary retail marijuana establishment license(s) that are the same type(s) they currently hold for medical marijuana (with the exception of distribution licenses, which are a new license category). With the early-start program, the Department sought to balance the state's desire for revenue, the industry's desire to enter into the retail market, and the need for a tightly regulated, safe market that protects public safety and public health. It was the intent of the Department to achieve this balance by limiting applications during early start to only existing establishment that have already completed the extensive vetting process required by the Medical Marijuana Program, have a history of operating in compliance with the regulations of the Medical Marijuana Program, and have proven experience in the legal marijuana industry.

The permanent Retail Marijuana Program will begin January 1, 2018, under separate, permanent regulation, and at that time, the Department will again be accepting applications for licenses. The early-start program is not "the" entry point into the retail marijuana market, but rather a one-time issuance of licenses for establishments to operate until the permanent program commences.

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.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the impact of the proposed temporary regulation. The questionnaire was distributed as follows:

- Emailed by the Department to 438 members of its interested parties list, including members of a marijuana-specific interested parties list
- Emailed by the Nevada Taxpayers Association to its list of interested parties

Twenty-nine (29) small businesses completed and returned questionnaires. All 29 responses were from Nevada-based medical marijuana businesses, some fully operational and some with provisional registration certificates.

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

- **Fees** – respondents said the fees were either cost-prohibitive generally, or that it would be cost-prohibitive to pay the full license fees for an approximate six-month license only to have to pay them again for a permanent license
- **Distribution Licenses** – respondents consistently said it would have multiple adverse effects on their businesses if they were required to use a third-party distributor to transport their products, and that they would realize efficiencies and other benefits if they were allowed to transport their own products, either by being permitted to apply for a distribution license or through other means
- **Application Requirements** – some respondents said the requirements to be “operational” and “in good standing” would prevent them from being able to apply for a license during the temporary program, disallowing them to realize an early return on investment and getting in on the market share early
- **Designation of Inventory** – many respondents said that if they are required to separate their medical marijuana inventory from their retail marijuana inventory they would encounter many adverse impacts; this provision of the regulation is dependent on the tax structure established by pending legislation
- **Testing Laboratories** – Respondents that are marijuana testing laboratories identified several impacts specific to labs: Labs must be exempt from the requirement to use a licensed distributor to transport marijuana or they risk the integrity of the chain of custody requirements that ensure fair and accurate marijuana testing, and to use a third-party distributor for the small amounts of marijuana labs need to have transported would be cost prohibitive; Labs also said they would be adversely impacted by the omission in regulation of allowing marijuana users to request lab testing for samples of marijuana and marijuana products (as is currently permitted in the Medical Marijuana Program); Labs said the Department must have a mechanism to levy penalties against “bad actors” that violate requirements and threaten the integrity of lab testing and the regulated industry generally
- **Business and Workforce** – many respondents said the regulation that allows for an early-start retail marijuana program will have a beneficial impact on their small businesses by increasing the market, their revenue, and allowing them to hire more staff
- **Other Impacts** – respondents identified other adverse and beneficial impacts outside of the main themes above, including: adverse impacts resulting from temporary licenses expiring only 45 days after permanent regulations are adopted,

business' difficulty in complying with the zoning attestation in certain circumstances, concern about potential double taxation of sales from cultivators, and requirements on timeframe for weighing Wet Whole Plants to determine value for the wholesale excise tax, issues around the Department's methods for determining Fair Market Value for wholesale marijuana and marijuana products, and other impacts from the application requirements; beneficial impacts included expanding return on investment from medical marijuana and a seamless application process for medical marijuana establishments

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.

In the questionnaire, respondents were asked to identify any direct adverse impacts, direct beneficial impacts, indirect adverse impacts, and indirect beneficial impacts. The Department analyzed the 29 responses to determine the likely impact of the proposed regulation on small business. This analysis included categorizing questionnaire 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 analyzed impacts across all marijuana establishment types, and impacts specific to certain establishment types (e.g., marijuana testing labs).

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 anticipates that some small businesses – primarily those who will not meet the “operational” and “in good standing” requirements of the application – may experience a short-term (6 month) adverse economic effect because they will be unable to enter the retail market during the early-start program. However, the application process will be re-opened in January 2018.

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.

Many of the adverse effects summarized in section 2, including fees, distribution licenses, designation of inventory, testing laboratories, and other impacts, have been resolved through revisions in the draft regulation. Those are noted in section 4.

Direct and indirect beneficial effects

The Department anticipates that those marijuana businesses that meet the requirements of the early-start program and receive retail marijuana licenses will realize the beneficial economic effects of expanding from a medical-only market into a medical and retail market. The investments that businesses have made in establishing their medical marijuana businesses have often been extensive, and the early-start 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 and carried out revisions to the draft regulation to address a number of possible adverse impacts and to clarify sections that may have inadvertently created the perception of adverse impacts. A description of these revisions follows:

- Changed the local zoning attestation to indicate that the business understand its location “must” be properly zoned, rather than “is” to allow for circumstances where the zoning is not yet clear with the local jurisdiction; added clarification that the Department will not issue the license until the local jurisdiction has submitted written verification to the Department of compliance with requirements around zoning, distance, and land use
- Revised application process to allow for plans of correction that are in progress
- Fees: Added language that if the temporary marijuana establishment license is not approved, the license fee will be refunded; revised to allow for an application license or fee for a temporary marijuana establishment license to be applied toward the fees for a permanent marijuana establishment license
- Changed the expiration date of temporary licenses from 45 days after permanent regulations are adopted to 90 days
- Distribution licenses: clarified that a distribution license is only required to transport marijuana to or from a retail store; clarified that a marijuana distributor does not purchase or sell marijuana, but only transports it; clarified that a marijuana testing lab can transport marijuana samples for testing without using a licensed distributor or acquiring a distribution license

- **Penalties:** increased the amount of civil penalties the Department may assess for violations and added language regarding the factors the Department will consider when determining the penalty amount to assess
- Clarified that retail marijuana will only be subject to the wholesale excise tax once, at the first sale from a cultivator
- Added a requirement for the submission of detailed transaction reports from cultivators to the Department to assist the Department in determining Fair Market Value
- Removed the requirement to harvest and package the Wet Whole Plant in the same day
- **Designation of Inventory:** clarified that the designation and separation of medical vs. retail marijuana inventory will only be required if the taxing structures remain different and necessitate it for proper taxation, and that the sections of the regulation requiring designation of inventory will not be applicable if legislation is passed that makes the taxing structure the same (until the point of sale)

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

The proposed temporary 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.

The proposed temporary regulation does not include new fees or increase an existing fee beyond what is provided for in NRS 453D.

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 temporary 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 both short-term adverse and beneficial impacts to some small marijuana businesses. Some businesses will not qualify because they are not yet operational or they have been subject to an enforcement action. Other businesses will qualify. Those that do not qualify will not have immediate access to the expanded marijuana market, while those who do qualify will have immediate access. The adverse impact to the businesses

that will not qualify will last for only six months, until the permanent program commences and the application process for permanent licenses is opened. The Department must ensure that the temporary program is tightly regulated and ensures public health and safety. Because of the short timeframe for the temporary program, the Department has sought to meet that responsibility by requiring that temporary retail marijuana establishment licenses only be granted to existing medical marijuana establishments that have already undergone thorough vetting by the Division of Public and Behavioral Health and have a proven track record of complying with the laws and regulations that govern the Medical Marijuana Program. This necessarily means that not all marijuana businesses will qualify for a license during the temporary program.

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
April 17, 2017