PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH

LCB FILE NO. R034-20I

The following document is the initial draft regulation proposed by the agency submitted on 03/09/2020

Amendment NAC 439

TESTING AND LABELING OF PRODUCTS INTENDED FOR HUMAN CONSUMPTION

Section 1. *Definitions. As used in Sections 2 - 14, inclusive, unless the context otherwise requires, the words and terms defined in Sections 2-14, inclusive, have the meanings ascribed to them in those sections.*

Sec. 2. *"As received" means the unaltered state in which a sample was collected, without any processing or conditioning, which accounts for all mass, including moisture content.*

Sec. 3. *"Cannabidiol" or "CBD" has the meaning ascribed to it in NRS 453.510*

Sec. 4. *"Cannabinoid" means THC, tetrahydrocannabinolic acid, CBD, cannabidiolic acid, and cannabinol.*

Sec. 5. *"Division" means the Division of Public & Behavioral Health of the Department of Health & Human Services or its successor.*

Sec. 6. *"Hemp" has the meaning ascribed to it in NRS 557.160*

Sec. 7. *"Independent Testing Laboratory" has the meaning ascribed to it in NRS 453A.368*

Sec. 8. *"Intended for Human Consumption" has the meaning ascribed to it in NRS 557.270.*

Sec. 9. *"Regulated entity" means an individual, business, agency, establishment, or other organization which is regulated, licensed, or permitted by the Division under NRS 439, NRS 444, NRS 446, or NRS 585.*

Sec. 10. *"Substantial health hazard" means any factor or condition which has the potential to risk or cause injury to public health.*

Sec. 11. *"Substantiated" means supported or established by evidence or proof.*

Sec. 12. *"Terpenoid" means alpha-bisabolol, alpha-humulene, alpha-pinene, alpha-terpinolene, beta-caryophyllene, beta-myrcene, caryophyllene oxide, limonene, and linalool.*

Sec. 13. *"THC" has the meaning ascribed to it in NRS 453A.155*

Sec. 14. *A person shall not sell or offer to sell any commodity or product intended for human consumption which contains hemp or product derived from hemp unless such a commodity or product:*

1. *Has been tested by an independent testing laboratory certified by the Department of Taxation under the provisions NRS 453A.368 and NAC 453A.650 through NAC 453A.678, inclusive; and*
2. *Is manufactured in accordance with state and federal law and regulation, and the regulations adopted by reference in Section 19.*
3. *Is labeled in a manner that is not false or misleading and is in accordance with the applicable provisions of Chapters 446 & 585 of NRS, federal law, and the regulations adopted by reference in Section 19.*

Sec. 15. *A commodity or product containing hemp intended for human consumption shall be deemed to be adulterated if:*

1. *It contains THC in excess of the limit allowed by federal law;*
2. *It contains any pesticide residue not approved per NAC 453D.786 or the United States Environmental Protection Agency; or*
3. *It contains any other ingredient or additive or has been produced or handled in a manner which renders it adulterated per the state and federal laws and regulations applicable to that commodity type.*

Sec. 16. *Required quality assurance tests; submission of hemp intended for human consumption for testing.*

1. *A commodity or product containing hemp intended for human consumption which is manufactured, processed, packed, transported, distributed, received, held, imported, or sold in Nevada must be tested by an independent testing laboratory as specified for marijuana per NAC 453A.650 453A.678, inclusive.*
2. *Such tests shall include an analysis of the THC content on a dry-weight basis and an analysis of any other cannabinoids and terpenoids which are listed in the ingredients of the product or for which claims are made in the product labelling. The hemp producer or manufacturer must retain*

the final certificate of analysis containing the results of testing pursuant to this section for at least two years after the sale or distribution of the product.

3. *The hemp producer or manufacturer must make the certificate of analysis available upon request of the health authority.*

Sec. 17. *Performance of testing to verify homogeneity of the THC content of products containing hemp intended for human consumption.*

1. *Except as otherwise provided in subsection 2, the homogeneity of the THC content of a product containing hemp intended for human consumption shall be verified by testing multiple samples from a single production run.*
2. *A product containing hemp intended for human consumption for which the homogeneity of the THC content of the product containing hemp intended for human consumption has been verified by an independent testing laboratory and which has not undergone a change in recipe may be verified by testing one or more single units or servings from a production run of the product containing hemp intended for human consumption.*

Sec. 18. *Division of Public & Behavioral Health authorized to collect fee for costs of investigating complaint if substantiated.*

1. *The Division of Public & Behavioral Health may charge and collect a fee from a regulated entity that is involved in a complaint submitted to the Division by a consumer or public agency to recover the costs of investigating the complaint after the investigation is completed if the complaint is substantiated. The fee will be based upon the hourly rate established for each investigator as determined by the budget of the Division.*
2. *If in the course of an investigation the Division determines there are reasonable grounds to suspect that the commodity or product processed or prepared by the regulated entity may constitute a*

substantial health hazard, the health authority may require that the entity have its product tested for the presence of contaminants typically associated with the suspected health hazard. The entity

a. *Is responsible for the cost of the testing; and*

b. *May perform such testing itself or cause the testing to be performed by a third party.*

3. *Testing conducted pursuant to subsection 2 must be consistent with recognized laboratory standards appropriate for the commodity type.*

4. *If the testing required pursuant to subsection 2 indicates that the commodity or product tested is contaminated, the person or entity that conducted the testing shall, within 24 hours after obtaining the results, report those test results to the Health Authority.*

Sec. 19. *Adoption by reference of certain provisions of Code of Federal Regulations.*

1. *The Division of Public & Behavioral Health hereby adopts by reference the most current editions of the following parts of Title 21 of the United States Code of Federal Regulations:*

a. *21 C.F.R. §70.20-70.25, inclusive*

b. *21 C.F.R. §73.1-73.615, inclusive*

c. *21 C.F.R. §74.101-74.706, inclusive*

d. *21 C.F.R. Part 81*

e. *21 C.F.R. §82.3-82.706, inclusive*

f. *21 C.F.R. §100.155*

g. *21 C.F.R. Part 101, excepting §101.69 and §101.108*

h. *21 C.F.R. Part 102, excepting §101.19*

i. *21 C.F.R. Part 104*

j. *21 C.F.R. Part 105*

k. *21 C.F.R. Part 106, excepting §106.120*

l. *21 C.F.R. Part 107, excepting §107.200-280, inclusive*

m. *21 C.F.R. Part 109*

n. *21 C.F.R. Part 129*

o. *21 C.F.R. Part 170, excepting §170.6, §170.15, and §170.17*

p. *21 C.F.R. Part 172*

q. *21 C.F.R. Part 173*

r. *21 C.F.R. Part 174*

s. *21 C.F.R. Part 175*

t. *21 C.F.R. Part 176*

u. *21 C.F.R. Part 177*

v. *21 C.F.R. Part 178*

w. *21 C.F.R. Part 180*

x. *21 C.F.R. Part 181*

y. *21 C.F.R. Part 182*

z. *21 C.F.R. Part 184*

aa. *21 C.F.R. Part 186*

bb. *21 C.F.R. Part 189*

cc. *21 C.F.R. Part 190*

dd. *21 C.F.R. Parts 700 to 740, inclusive*

2. *The parts named in section 1 may be obtained online through the Electronic Code of Federal Regulations at* https://www.ecfr.gov *at no cost or at* https://bookstore.gpo.gov/ *at the following prices:*

a. *Volume 21 C.F.R. Parts 1 to 99, inclusive……..$45*

b. *Volume 21 C.F.R. Parts 100 to 169, inclusive……..$55*

c. *Volume 21 C.F.R. Parts 170 to 199, inclusive……..$56*

d. Volume 21 C.F.R. Parts 600 to 799, inclusive.....$20