

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R092-17

1. A clear and concise explanation of the need for the adopted permanent regulation

The need and purpose of the proposed permanent regulation is to establish procedures for the issuance, suspension or revocation of licenses issued by the Department of Taxation, provide operating requirements to licensed marijuana establishments, require monthly filing of returns and remittance of tax imposed on the sales of marijuana, require the maintenance of certain records, and provide for the inspection of such records relating to the regulation and taxation of marijuana pursuant to NRS 453D.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary

The Department of Taxation solicited comments from the public by sending the notices of the workshop and hearing by email and fax as follows:

<u>Date of Notice</u>	<u>Workshop/Hearing</u>	<u>Date Held</u>
July 6, 2017	Definitions, Application and licensing requirement of education and training; Civil penalties, security, disposal and taxes	July 24, 2017
July 6, 2017	Distribution, delivery and storage; Retail stores	July 25, 2017
July 7, 2017	Cultivation; Testing facilities	July 26, 2017
July 7, 2017	Production and Manufacturing; Packaging and labeling; Signage, marketing and advertising	July 27, 2017
Dec. 16, 2017	Public Hearing	Jan. 16, 2018

The mailing list included 264 members of the Department's interested parties list and 511 members of its marijuana-specific interested parties list. The Nevada Taxpayers Association also mailed the notices of workshop and hearing to its list of interested parties. Notices were also posted at the Nevada State Library, various Department of Taxation locations throughout the state, and at the main public libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties lists maintained by the Department.

Summary of public responses

The following general responses were received by email and mail prior to the adoption hearing:

- Request deletion of Section 242 that relates to confidentiality of any person who facilitates or delivers services.
- Request that publicly traded companies' 5 percent owners be exempt from the sundry requirements for owners.
- Provide impartial evaluation for awarding marijuana establishment licenses; grant higher merit points to non-retail license holders and those who have made a greater investment in building in the industry.
- Provide for language that allows for a third party or intermediary business to advertise delivery to consumers provided that the advertising lists the name of the licensed retail marijuana store and that any digital platform or other platform used meets the publicly disclosed criteria for such delivery as approved by the Department.
- Funds provided under Section 235, subsection 1 should be used to supplement, not replace, general fund revenues and their use should be limited to costs directly related to impacts from marijuana such as public safety, public health and social services. The distribution in subsection 2 based on population should be done so that incorporated cities receive credit for the populations within their corporate limits and counties receive credit for populations living in the unincorporated areas of the county.

Testimony given at the adoption hearing

- One person testified and asked to add hexa hydrocannabinol to the list of substances tested because it causes users to become sick.
- One person testified that tracking of purchases is too restrictive and causes users to turn to the black market.
- One person testified that advertising is too restrictive; the requirement to submit every advertisement to the Department is excessive and the time for approval by the Department is between 4 to 6 weeks which is too long; language is vague as to whether non marijuana product also needs to follow label requirements.
- One person testified that the language regarding sale of seeds and plants is vague.
- One person testified that unusable marijuana should be allowed to be recycled into various products.
- Seventeen people testified that the language related to scoring entities to determine which entity will receive a retail marijuana store license is vague and ambiguous; application process should be fair and impartial; the scoring does not represent the Nevada population; percentage allowed for each scoring category should be listed out in the regulation; many dispensaries already have cultivation license and end up buying their own product which eliminates the competition and creates a monopoly; vertical integration results in dispensaries having complete control of pricing.
- One person testified that the testing for Aspergillus results in a zero tolerance policy; the decision to test this product is based on a white paper from Colorado and not based on peer review or science. Thus, the testing requirement does not increase safety for the patient and is overly burdensome on industry.
- One person testified that section 86 subsection 5 regarding summary search and seizure power is too broad.
- Four people testified that they support the regulation and understand that the Department will work with industry to implement the regulations.

- One person testified and asked for language that allows for a third party or intermediary business to advertise delivery to consumers provided that the advertising lists the name of the licensed retail marijuana store and that any digital platform or other platform used meets the publicly disclosed criteria for such delivery as approved by the Department.
- One person requested deletion of Section 242 that relates to confidentiality of any person who facilitates or delivers services.
- One person requested that section 235 that relates to local government distribution should be related to the direct costs to the local government for safety.

An audio recording of the workshop and adoption hearing, or a copy of the record of proceedings of the adoption hearing, may be obtained by calling the Nevada Department of Taxation at (775) 684-2059, or by writing to the Department of Taxation at 1550 East College Parkway, Carson City, Nevada 89706. They may also be obtained by going to the Department's website <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/R-092-17-V6-Department-Track-Changes.pdf> or e-mailing the Department at ghritz@tax.state.nv.us

- 3. The number of persons who**
 - (a) Attended the hearing: 144**
 - (b) Testified at the hearing: 27**
 - (c) Submitted written comments: 6**
- 4. Contact information for each person identified in paragraphs (b) and (c) of number 3 above, if such information was provided to the agency conducting the hearing:**

Testified at the adoption hearing:

Cindy Brown
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 Electronic mail address: abigpurplediamond@yahoo.com
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Mikel Alvarez
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 Name of entity or organization represented: Terra Tech

Frank Fosco
 Telephone number: not provided
 Business address: not provided
 Electronic mail address: not provided
 Name of entity or organization represented: citizens of Nevada

Dr. Nick Spirtos
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Business address: 1771 E Flamingo Road, Suite 201A, Las Vegas, NV 89119
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Name of entity or organization represented: Players Network and Green Leaf Farms

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Name of entity or organization represented: Growsmith

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Name of entity or organization represented: THC Nevada

Geoffrey Lawrence
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Name of entity or organization represented: Players Network

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Name of entity or organization represented: Silver Sage LLC

Andrew Hallenbeck
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Name of entity or organization represented: WeCan (Wellness Education Cannabis Advocates of Nevada)

Craig Rombough
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Barry Smith
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Name of entity or organization represented: Nevada Press Association

Wes Henderson
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Name of entity or organization represented: NV League of Cities

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Provided written comments:

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The written comments can be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation at 1550 East College Parkway, Carson City, Nevada 89706. They may also be obtained by going to the Department's website https://tax.nv.gov/FAQs/Marijuana_Proposed_Temporary_Regulation_T002-17/ or e-mailing the Department at ghritz@tax.state.nv.us.

5. A description of how comment was solicited from affected businesses, a summary of their responses and an explanation of how other interested persons may obtain a copy of the summary

In July 2017, the Department of Taxation prepared and disseminated draft language for the proposed permanent regulation R092-17 seeking input and information from small businesses regarding the impact of the language. The notice of workshop, agenda and proposed language were:

- Emailed by the Department to 264 members of its interested parties list, including members of a marijuana-specific interested parties list of 511
- Emailed by the Nevada Taxpayers Association to its list of interested parties

The workshops on the proposed language were held on the following dates:

- **Monday July 24, 2017**
 - Definitions
 - Application and licensing requirements & education and training
 - Civil penalties, security, disposal, and taxes
- **Tuesday July 25, 2017**
 - Distribution, delivery, and storage
 - Retail stores
- **Wednesday July 26, 2017**
 - Cultivation facilities
 - Testing facilities
- **Thursday July 27, 2017**
 - Product manufacturing facilities
 - Packaging and labeling & signage, marketing, and advertising
 -

Thirteen (13) interested parties submitted public comment. Eleven (11) of the responses were from Nevada-based marijuana businesses or their representatives, one response was from local government, and one response was from a medical marijuana patient advocate.

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

- **Labels and Packaging** - Respondents said that fruit images should be allowed on labels and packaging; requiring both stamping and individually wrapped edibles is excessive; provide alternatives to packaging of glass bottles and liquids; allow a smaller font size for smaller products; allowing variance of +/- 15% is overly broad.
- **Department Preapproval** - Respondents asked to add animals to the allowable images for logos or names; approve logos of licensed product from another state; clarify what sources for non-marijuana ingredients need approval; allow for branded products to be sold at retail marijuana stores; shortened review time.
- **Definitions** - Respondents asked to include that industrial hemp is not marijuana; update growing unit definition.
- **Disposal** - Respondents asked to provide alternatives to grinding roots and stalks; require notice to the Department of unusable marijuana; provide the ability to return product if unusable.
- **Penalties** - Respondents asked to remove language regarding impaired staff; add bad faith complaints; allow establishments to obtain investigative file during discovery; do not issue civil penalties unless establishment is grossly negligent, refuses to correct violations, or repeatedly violates the same regulation.
- **Concentrated Cannabis** - Respondents asked to increase the purchase limit of THC in concentrated cannabis and that total THC concentration should be noted in a percentage and the total quantity of THC noted in milligrams as appropriate for the product.

- **Advertising** - Respondents said that fruit images should be allowed in advertising; photographs of approved products should be acceptable; allow submission of data on youth viewership for advertising approval; do not require preapproval if falls within advertising guidelines; do not require preapproval of social media, websites, blog posts, e-mails, and text updates; consider not allowing advertising on motor vehicles used for private transportation.
- **Distributor Requirements** - Respondents asked to adjust amount required for liquid assets; maximum load limits should be changed; do not require distributor vehicles to maintain a temperature of 41 degrees; cash management for transportation/distribution (trackable/traceable to a specific customer and invoice) should be included in the regulations.
- **Application and Licensing** - Respondents asked that we give preference for an establishment who has local government approval but no medical marijuana registration certificate; add additional reasons when a license will not be renewed.
- **Testing** - Respondents requested that we keep testing consistent with medical marijuana regulations; update minimum sample size; remove shelf-life testing; remove the requirement to test for any pesticide not approved by the Department of Agriculture at any detectable amount.
- **Local Governments** - Respondents asked that we prohibit outdoor cultivation; include local authorities during inspection; notify law enforcement of surveillance system malfunctions; provide application information for both establishments and agent cards to local government; provide a fee to the local fire protection agency; allow for local inspections.
- **Taxes** - Respondents requested that we clarify that retail excise tax does not apply to non-marijuana products.

Anyone interested in obtaining a copy of the summary of responses can call the Nevada Department of Taxation at (775) 684-2059 or write to the Department at 1550 East College Parkway, Carson City, Nevada 89706, or e-mail the Department at ghritz@tax.state.nv.us

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change

The Department adopted the proposed regulation with extensive changes made after the workshop and public comment period. The changes were made to address many of the themes identified in item #5 above. After further consideration, research and analysis, if a requested change was not made, it was rejected because it did not comply with the statutory provision or was not in the interest of public health and safety.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public:

(a) The estimated adverse and beneficial economic effect

To business:

The proposed permanent regulation presents no foreseeable or anticipated adverse economic effect on the businesses which it is to regulate. On the other hand, the businesses that qualify for

marijuana establishment licenses will realize the beneficial economic effects of expanding from a medical-only market into a medical and adult-use market.

To the public:

There is no foreseeable or anticipated adverse economic effect to the public. Conversely, the proposed permanent regulation provides a beneficial economic effect to the public by providing the public an opportunity to purchase lab-tested product from a state-licensed and regulated retailer. Excess program revenues are transferred to the State Distributive School Account, and revenue from the retail excise tax is transferred to the state's "Rainy Day" fund.

(b) Estimated immediate and long term economic effect

To business:

The businesses that qualify for marijuana establishment licenses will realize immediate economic effects of expanding from a medical-only market into a medical and adult-use market. The proposed permanent regulation presents no foreseeable or anticipated long term economic effects to business.

To the public:

The public will realize an immediate economic effect of increased public safety and protection due to the stringent regulatory requirements. The proposed permanent regulation presents no foreseeable or anticipated long term economic effects to the public.

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

The proposed permanent regulation presents no significant anticipated cost or decrease in costs for enforcement other than the costs to implement the statutory provision.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary; If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency

In some cases, the regulation does overlap or duplicate the medical marijuana provisions found in NRS 453A and NAC 453A and to the extent possible mirrors those regulations so as not to subject businesses with dual medical and adult-use licenses with conflicting regulations. The overlap is necessary because medical marijuana provisions are provided in NRS and NAC 453A and adult-use provision are found in NRS and NAC 453D.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. If the 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.

Section 85 provides for the reimbursement of costs incurred by the Department to conduct a preliminary

walk-through prior to an inspection; Section 92 provides for the reimbursement of all costs incurred by the Department to review or investigate a change in ownership; Section 94 provides for an application fee for an agent card; Section 102 allows a fee for the oversight of a marijuana establishment; Section 109 requires the marijuana establishment to pay a fee assessed by the independent contractor for using the seed-to-sale tracking system; Section 115 provides for reimbursement of all costs incurred by the State or a locality in cleaning up, mitigating or remedying any environmental damage; Section 240 allows for the Department to collect a fee for costs of investigating a complaint. These fees are not additional fees but mirror the fees provided for in NRS 453A and NAC 453A to bring the adult-use marijuana program into conformity with the medical marijuana program. As such, the Department does not believe there will be significant additional revenue generated. All fees will be deposited in accordance with NRS 453D.