SMALL BUSINESS IMPACT STATEMENT 2015

PROPOSED REGULATIONS FOR NAC 453A: THE MEDICAL USE OF MARIJUANA

LCB File No. R148-15

Based on the response received regarding the Small Business Impact Questionnaire, the Division of Public and Behavioral Health (DPBH) has determined that the 2015 proposed regulations for NAC 453A should not have any adverse economic effect upon a small business or negatively affect the formation, operation, or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes NRS 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees.

The small business impact statement complies with the requirements of NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provide the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

1) 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.

Background

During the 2015 Legislature, Senate Bill 447, Senate Bill 276, and Assembly Bill 70 were passed in the interest of the Medical Marijuana Program. SB 447 makes various changes relating to marijuana and revising the crime of counterfeiting or forging a registry identification card for the medical use of marijuana; defining certain terms, including "concentrated cannabis"; revising the definition of marijuana for certain purposes; making it unlawful to extract concentrated cannabis; revising the provisions pertaining to trafficking in marijuana and concentrated cannabis; providing for the issuance of a letter of approval to certain children that allows such children to engage in the medical use of marijuana; revising certain exemptions from state prosecution for marijuana related offenses; revising provisions governing the return of seized marijuana, paraphernalia or related property from certain persons; providing that certain records created by the Division of Public and Behavioral Health of the Department of Health and Human Services relating to the medical use of marijuana are not confidential; authorizing the Division to issue a registry identification card; revising provisions relating to the location and operation of medical marijuana establishments; authorizing law enforcement agencies to adopt policies and procedures governing the medical use of marijuana by employees; providing penalties; and providing other matters properly relating thereto. SB 276 revising provisions governing the registration of certain medical marijuana establishments. AB 70 relates to medical marijuana; providing for the administration and enforcement of taxes on the sale of marijuana, edible marijuana products and marijuana-infused products by medical marijuana establishments; eliminating certain duties of the Department of Taxation relating to the rates of such taxes; providing for the collection of a fee by an agency of a local government from a medical marijuana establishment for certain costs of the agency; authorizing an independent contractor to provide labor to a medical marijuana establishment in certain circumstances; providing penalties; and providing other matters properly. These bills were heard in the 2015 legislative session and public input was elicited and taken into consideration by the legislators. They were passed and signed into statute by Governor Sandoval.

Regulation 148-15, Implement S.B. 447, S.B. 276 and A.B. 70 (78th Nevada Legislature)

- Clarify confusion in existing regulatory language (lab testing sampling procurement, lab result reporting, re-test protocols, definition of "batch" and "lot")
- Establish serving sizes for edible and infused products (mg of THC or other cannabinoids)
- Establish limits on edible and infused products equivalent to statutory limit on 2 ½ ounces of flower permitted in 14-day period
- Reduce required DPBH notice to open application acceptance period
- Correct heavy metal testing limits in NAC 453A.658(8)

Pursuant to NRS 233B.0608 (2) (a), the Division of Public and Behavioral Health has requested input from stakeholders, owners, and officers that are likely to be affected by the proposed regulation.

A Small Business Impact Questionnaire was sent to Medical Marijuana Establishments and Medical Marijuana Cardholders along with a copy of the proposed regulations changes on December 18, 2015. The questions on the questionnaire were:

1) How many employees are currently employed by your business?
2) Will a specific regulation have an adverse economic effect upon your business?
3) Will the regulations(s) have any beneficial effect upon your business?
4) Do you anticipate any indirect adverse effects upon your business?
5) Do you anticipate any indirect beneficial effects upon your business?

Summary of Response:

Summary of Comments Received

16 Responses were received out of the 2,884 SBIQs send out (281 of those to MMEs)
Small Business Impact Questionnaires distributed;
- **7 Laboratories**
- **4 Cultivation/Production,**
- **2 Production**
- **1 Dispensaries.**

2 responses did not directly respond to the SBIQ

Will a specific regulation have an adverse economic effect upon your business?	Will the regulation(s) have any beneficial effect upon your business?	Do you anticipate any indirect effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
12 – Yes 1 – Not Sure 1 – No	2 – Yes 1 – Not Sure 11 – No	11 – Yes 3 – No	3 – Yes 11 - No

2) Describe the manner in which analysis was conducted.

Analysis was conducted by the MMP staff using a spreadsheet formatted to quantify total responses and comments. Division staff analyzed all monetary impacts and "tested" the adverse impact claims made by all small business respondents. Claims were tested by performing calculations based on "worst case" and "most likely" scenarios in order to truly quantify adverse impacts of implementing the new changes to the regulations.

The Division determined there would be some detrimental outcomes to the revenues of independent testing laboratories, and adjusted the proposed regulations to mitigate the detrimental outcomes. Division mitigation efforts included getting rid of new provisions that would decrease the opportunities for labs to test medical marijuana, as well as adding other provisions that would provide labs with additional opportunities to increase revenues (i.e. new R&D testing). Throughout the Small Business Impact process, the Division has made a concerted effort to determine all impacts, mitigate the adverse ones and enhance the beneficial ones.

3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

Negative comments from laboratories revealed there was a loss of income with the additional language added to the "Production Run" definition to include "of any quantity". After several meetings, MMP staff changed the language to read "Of a quantity no more than 15lbs. of usable marijuana"; which will decrease laboratories expected loss of income by 95%. With the language added to Section 61, "Research and Development" of the proposed regulation, laboratories will be able to compensate their 5% income loss, which concludes the economic impact for laboratories will have a neutral effect. Medical Marijuana Laboratories also revealed an adverse economic impact with the proposed regulation language adding daily inventory recording. MMP staff deleted language excluding laboratories implementation of the required inventory control system, which will alleviate the adverse economic impact on laboratories.

Additional negative comments from Medical Marijuana Establishments were gathered regarding renewal fees. However, the renewal fees are set by NRS 453A.344; the MMP cannot increase nor decrease the set fees.

Medical Marijuana Establishments revealed an adverse economic impact with residual solvent testing omitted from list of required marijuana or marijuana products tested. This was a mistake made by DPBH and residual solvents will be added back to the table of required testing.

4) Provide a description of the methods that DPBH considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used any of those methods.

The Division of Public and Behavioral Health provided several opportunities for the public and the regulated community to provide input regarding the proposed regulations and the impacts that could result upon implementation. Through the Small Business Impact Questionnaire and Public Workshop processes, the Division learned that the most significant impacts of the proposed regulations would be borne by the independent testing laboratories. By proposing regulations that would effectively limit the number of opportunities available to labs to test medical marijuana, the Division would be imposing an unfair negative financial burden on labs while simultaneously lightening the financial burden on dispensaries, cultivation and production facilities. As a result, the Division reworked the proposed regulations to mitigate the negative effects on labs, and also provided additional opportunities for labs to generate a new revenue stream through the creation of an R&D testing program. The R&D testing program not only allows the industry as a whole the flexibility to pioneer and refine new products, but also allows labs to prosper through the resultant increasing demand for lab testing services. Again, the Division has made a concerted effort to determine all impacts that would result from the implementation of the proposed regulations, and further, has responded accordingly to mitigate potential adverse effects, and enhance beneficial ones.

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

At this time, the medical marijuana program foresees the need of two full-time contracted employees: Management/Analysis and an Administrative Assistant to enforce the proposed regulation.

6) If the proposed regulation provides a new fee or increase an existing fee, the total annual amount DPBH expects to collect and the manner in which the money will be used.

There is no additional funding attached to the proposed regulations. Collected fees are set by NRS 453A.344.

7) An explanation of why any duplicative or more stringent provisions than federal, state, or local standards regulating the same activity are necessary.

At this time, there is no duplicative provisions or more stringent provisions due to no federal, state, or local standards and regulations being set.

8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

The agency concludes the proposed regulations will produce a negligible effect on small businesses. Although the decision to reduce the frequency of laboratory testing in some instances will have a negative effect on independent testing lab revenues, it will lower costs for cultivators and production facilities, which will translate to lower price points for patients at the dispensaries. The negative effect on labs will be offset by the provision to allow research and development testing in order to propel the industry forward and to develop new marijuana strains and products to provide a wider variety of medication options for patients. For labs, R&D testing represents an unforecasted revenue stream which should offset their losses in other testing areas.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Steve Gilbert, Program Manager at the Division of Public and Behavior Health at:

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Steve Gilbert, Medical Marijuana Program, Manager
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I, Cody L. Phinney, Administrator of the Division of Public and Behavioral Health, certify to the best of my knowledge or belief, a concerted effort was made to determine that the impact of the proposed regulation on small business and the information contained in this statement was prepared properly and is accurate.

Signature: [illegible] on behalf of C Phinney Date: 8/31/2016