CANNABIS COMPLIANCE BOARD
STATE OF NEVADA

ccb.nv.gov
CARSON CITY OFFICE
3850 Arrowhead Drive, Suite 100
Carson City, Nevada 89706
Main Line: (775) 687-6299

LAS VEGAS OFFICE
700 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119

JOE LOMBARDO
Governor

JAMES HUMM
Executive Director

MICHAEL MILES
Deputy Director

ADRIANA GUZMÁN FRALICK
Chair

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

Nevada Cannabis Compliance Regulations

1. Background

The Cannabis Compliance Board drafted proposed regulation changes to Nevada Cannabis Compliance Regulations ("NCCR") 5, 7, and 11 to establish requirements relating to the inspections, certifications, and laboratory testing policies, procedures and guidelines, and to provide other matters properly relating thereto.

2. A description of the manner in which comments were 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.

On September 26, 2023, the Cannabis Compliance Board ("Agency") held a workshop to gather input from the public for possible amendments to Nevada Cannabis Compliance Regulations ("NCCR") 5, 7, and 11, and all public comment was considered.

On January 31, 2024, the Cannabis Compliance Board ("Agency") held a meeting to gather Solicitation of Input from the public for possible amendments to Nevada Cannabis Compliance Regulations ("NCCR") 1 through 15, and all public comment was considered.

On March 22, 2024, the Cannabis Compliance Board ("Agency") notified the public of the proposed changes and upcoming workshop by posting a notice of workshop, proposed language, and survey on the CCB website.

Draft language provided proposed changes to the following NCCRs:

- Regulation 5. Licensing, Background Checks, and Registration Cards
- Regulation 7. Cannabis Sales Facility
- Regulation 11. Cannabis Independent Testing Lab

A twenty-eight-question survey solicited input and information from small businesses to gauge what impact proposed language would have on their businesses.

The survey and a link to the proposed language was distributed as follows:

- via Agency Listserv to 8,475 members of the public and members of the cannabis industry
- Posted on Agency and local chamber social media

The questionnaire was open for sixteen (16) days. During that time, 33 people completed the survey. Many of the respondents did not provide additional comments beyond indicating whether the regulations would have adverse or beneficial effects. Nongermane comments were omitted from the results.

Responses provided the following major themes:

- **Concerns on the impact of standardizing lab practices**
- **Desire for additional guidance regarding updates**
- **Desire for a mechanism for laboratories to recover debt owed by cultivators/producers for services rendered**

65% of respondents identified themselves as owners/officers.
84% of respondents identified themselves as affiliated with licensed cannabis establishments. Other respondents identified as non-cannabis energy product producer (1 of 31), consultant (2 of 31), medical cannabis advocate (1 of 31), or did not identify an organization (1 of 31).

94% of respondents identified as having less than 150 employees but five respondents identified as non-cannabis establishments (consultants, medical cannabis advocates) or did not identify an organization.

26% of survey respondents indicated the proposed change to the regulations would result in direct **adverse** economic impact to their business.

13% of survey respondents indicated the proposed change to the regulations would result in direct **beneficial** impact to their business.

13% of survey respondents indicated the proposed change to the regulations would result in indirect **adverse** impact to their business.

10% of survey respondents indicated the proposed change to the regulations would result in indirect **beneficial** impact to their business.

Regulation 5 Adverse Impact

71% responded no or unsure/not affected 19% responded yes.

Explanations included:

- Concern that increased costs to labs will get passed on to the facilities and consumers
- Concern over increased bureaucracy
- Additional comments were not related to proposed regulation changes but related to Time and Effort billing charges which have been previously discontinued, how vertically integrated non-lab facilities get inspected, and excessive packaging

Regulation 5 Indirect Adverse Impact

94% answered no or unsure/not affected, 6% responded yes.
Explanations included:

- Concern over staffing requirements during a laboratory inspection **lab inspection team can work around staff absences, return for follow-up visits**
- Concern by non-lab facility over potential delay third-party vendor fulfilling orders

Regulation 5 Beneficial Impact

84 % responded no or unsure/not affected 16% responded yes

Explanations included:

- Beneficial impact to non-lab facilities of lower cost due to reduction in aspergillus testing
- Beneficial impact of reduced disruption of daily laboratory activities during inspection
- Additional comment was a perceived reduction in cost for a laboratory inspection due to fewer hours charged for Time and Effort billing, which has been previously discontinued

Regulation 5 Indirect Beneficial Impact

97% responded no or unsure/not affected, 3% responded yes

Explanations included:

- Indirect beneficial impact of increased confidence in laboratory testing leading to increased consumer confidence in the products sold in Nevada

Regulation 7 Adverse Impact

94% responded no or unsure/not affected 6% responded yes.

Explanations included:

- Comment not related to proposed regulation changes includes a desire for the CCB to allow dispensaries to sell full-hemp-derived products, including CBD tinctures and synthetic delta-8 concentrates

Regulation 7 Indirect Adverse Impact

97% answered no or unsure/not affected, 3% responded yes.
Explanations included:

- Comment not related to proposed regulation changes includes restrictions on sale of full-hemp-derived products will potentially send consumers to the unregulated market

Regulation 7 Beneficial Impact

97 % responded no or unsure/not affected 3% responded yes

Explanations included:

- Beneficial impact that heightened regulation will provide more confidence to the consumer

Regulation 7 Indirect Beneficial Impact

87 % responded no or unsure/not affected, 13% responded yes

Explanations included:

- Indirect beneficial impact of inspections providing increased confidence to consumers
- Indirect beneficial impact on consumers and cannabis brands by providing copies of COAs

Regulation 11 Adverse Impact

48% responded no or unsure/not affected 52% responded yes.

Explanations included:

- Concern that homogeneity testing changes could impact potency target values
- Concern that defining responsibility for payment in a lab investigation initiated by the CCB restricts the free market system
- Concern that ISO17025 and AOAC Guideline requirements conflict with the standardized documents added to the regulations **ISO17025 and AOAC Guidelines are the broad framework of quality systems with not much detail. Standardized documents/methods provide the details. There is no conflict. Proposed move towards standardized methods and documentations levels the playing field and reduces lab shopping. It was also at the request of the labs**
- Concern that geographic restriction on scientific director will reduce pool of candidates **Scientific director has full responsibility for the oversight of all lab activities, including a very comprehensive Quality Assurance program and complex tests and instrumentation. There is no substitute for their oversight and expertise. Two licensed labs that had long-distance directors have not fared well—one is permanently closed, the other currently suspended**
- Concern that changes to lab personnel requirements will reduce the pool of candidates **ASTM D8347 provides for a 3-year phase in training program until employee meets experience and body-of-knowledge requirements so minimal to no impact**
- Desire to keep the 90-day limit for interim director
- Desire to define deadlines as days rather than hours
- Concern that reduced testing requirements could impact the final product test result
- Concerns regarding impact of increasing the test sample size. **may need possible increase in storage capacity, depending on number of samples the lab receives**
- Concern about the impact of cannabis facilities bearing investigation costs **testing labs are doing this work for free even when the issue being investigated was not the testing lab's fault, facilities being investigated need to pay**
- Concern about impact of transition to standardized methods **labs currently use the same or similar methods/vendor kits as the new regs propose to make a requirement. Little to no change in cost, same or similar chemicals and supplies**
- Concern that removing required tests will require the laboratories to increase their prices per test to facilities
- Concern about the impact of implementing an OSHA lab safety standard **Lab safety is not currently addressed for Nevada cannabis labs. Hazardous chemicals are in use daily. The OSHA lab safety standard exists for employee safety, and it also protects against cross-contamination in the lab. All cannabis facility types (including labs) currently are required to have OSHA training for all employees, so this is not an unusual concept or requirement to them. Labs in every type of lab industry utilize OSHA lab safety rules**
- Explicit ethics requirement not needed, implicit in ISO 17025 requirement. **ethics requirement as proposed in the reg changes is standard-of-care in every regulated lab industry. Defined and explicit codes of ethics required in medical field, legal field, financial field, government, laboratory field, etc. Unsure why implementing this would be a problem, particularly in a regulatory compliance environment**

- Desire for payment responsibility in an investigation to be applied to regular compliance testing, as non-payment has adverse effect to labs
- Desire for more guidance on the standardization documents
- Concern about impact of QC requirement change **most labs have little problem achieving the proposed limits, which reflect best practices and existing standardized testing methodologies from various lab industries. When they do have problems, it is usually due to poor quality control/quality assurance and inadequate instrument maintenance**
- Desire for labs to be permitted to retest without restriction before reporting results on the COA **Inappropriate and excessive retesting practices has led to failing samples being retested until passing result is achieved and bypasses required regulatory retest process in NCCR 11.075. This has also led to enforcement actions regarding potency inflation and health advisories for failing products being retested until passing, misleading and potentially harming consumers**
- Concern about impact from increased glove change requirement during sampling **preventing contamination during sampling is key for integrity of lab results**
- Concern that labs are owed outstanding debts by cultivators and producers and there is no requirement for these facilities to pay for services rendered
- Desire for mechanism to require payment by cultivators and producers to labs or to allow the labs to withhold test results until payment
- Desire for consistency in the retesting and appeals process to reduce lab-shopping
- Concerns about increased lab sample storage requirements. **may possibly need increased storage capacity, depending on how many samples the lab receives**
- Desire for further discussion with CCB before implementation of regulatory changes
- Concern over the sampling requirement to collect from each container in a production run leading to increased testing costs **this is a misunderstanding and was not the CCB's intent. The wording and intent can be clarified at the workshop**

Regulation 11 Indirect Adverse Impact

61% answered no or unsure/not affected, 39% responded yes.
Explanations included:

- Concern about fulfilling a COA retest labelling requirement without a mechanism to inform labs when a sample is a retest
- Desire for parity of detection limits for pesticides testing
- Concern that if labs cannot retest at will without limitation that there will be more testing failures **inappropriate internal retesting practices lead to failing samples being reported as passing, potentially harms consumer, and must be restricted to known best lab practices. Inappropriate retesting practices have also led to enforcement actions regarding potency inflation and health advisories for failing products being retested until passing, potentially harming consumers. The concern should be reporting accurate, objective test results, not pleasing the client**
- Concern about impact to labs due to increased regulation and lack of payment from facilities
- Desire for industry as a whole to be held accountable for erroneous or misleading results
- Concerns about burdens or potential conflicts imposed by implementing testing method changes
- Desire for parity in glove use requirements among all facility types
- Desire for more guidance on new regulations

Regulation 11 Beneficial Impact

81 % responded no or unsure/not affected 19% responded yes

Explanations included:

- Beneficial impact to lab employee safety
- Beneficial impact by increasing parity and greater standardization between laboratories
- Cost benefits to non-laboratory facilities
- Reduction in testing failures and cost for facilities due to reduced required lab testing

Regulation 11 Indirect Beneficial Impact

87 % responded no or unsure/not affected, 13% responded yes

Explanations included:

- Indirect beneficial impact due to increased consumer confidence and safety due to increased standardization
- Indirect beneficial impact of less edible sample testing failures for homogeneity if weight is not factored into the homogeneity verification

3. **The manner in which the analysis was conducted, including the methods used to determine the impact of the proposed regulation on small businesses.**

The Agency used informed, reasonable judgment in determining that there would be minimal impact on small businesses due to the nature of the regulation changes. The proposed permanent regulations make minor changes to requirements already established and in place by license holders, and primarily seek to clarify and codify existing guidance.

The Agency analyzed the written responses from the Small Business Impact Survey and public comment from the September 26, 2023, workshop and January 31, 2024, solicitation of input meeting to determine the likely impact of the proposed permanent regulations on small businesses. This analysis included categorizing responses to identify themes and the frequency with which impacts were named. The Agency also looked at issues named with less frequency but could potentially have impact. The Agency has determined that there will be minimal impact to small businesses after making these revisions.

4. **The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:**

Direct and indirect adverse effects

The Agency finds that there is minimal economic effect on small business.

The changes make updates to existing regulations by updating requirements upon small businesses in a manner that would not impose substantial burdens.

Direct and indirect beneficial effects

The Agency anticipates that those cannabis businesses that may be impacted will realize the beneficial economic impacts by providing clarity and standardization to the testing requirements made by the updated regulations. Additionally, restricting internal retesting to limited, established best practices may allow small business laboratories to gain savings in chemicals and supplies, and increase confidence in lab results. Ensuring highest-quality data and a level playing field reduces lab-shopping by cultivators and producers requires these facilities to be more compliant, increases consumer confidence in results, and ultimately may benefit the entire industry in increased sales. Further, any nominal costs to laboratories may be offset by both trust in the new testing requirements and regulations, as well as the current competitive climate, as active laboratory licenses have lowered from ten to seven in the past year.

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 agency considered the feedback from the public and determined that revisions to the proposed language were not necessary to reduce the impact on small businesses but may be valuable to some extent for clarity and understanding.

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

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. The proposed changes merely make updates to regulations that are already in effect.

7. **If the proposed regulations provide a new fee or increases to existing fees, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulations do not increase or introduce new fees.

8. **If the proposed regulations include 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 permanent regulations do not overlap or duplicate any regulation of other federal, State or local governmental entities, but do reference regulatory authority granted by NRS 678A through NRS 678D.

9. **The reasons for the conclusion of the agency regarding the impact of these regulations on small businesses.**

The Agency has determined that there will be minimal adverse impacts to small cannabis businesses after revising the proposed permanent language based on comments received. Conversely, the Agency has determined that there will be beneficial impacts to small cannabis businesses based on the small changes required by the proposed updates to existing frameworks.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulations on small businesses and that this statement was properly prepared, and the information contained herein is accurate.

Dated this 12th day of April 2024.

James Humm
Executive Director
Nevada Cannabis Compliance Board

To receive a printed copy of this Small Business Impact Statement, contact:

Attn: Small Business Impact Summary – 4/30/24
Cannabis Compliance Board
700 E. Warm Springs Road #100
Las Vegas, Nevada 89119
Email: regulations@ccb.nv.gov