

Cannabis Administration and Opportunity Act

LCB perspectives

General Thoughts:

- Federal standards will be critically important for continuity and consistency of legal products involved with interstate commerce, to mitigate:
 - Lab shopping in various states with lower testing and safety requirements
 - On-line sales conflicts with packaging and labeling

General Positives:

- The tax sections of the discussion draft should benefit efforts to provide banking for all licensees.
- Once cannabis is legal at a federal level, cannabis licensees will get a tax break and only pay taxes on net income, not gross income (280 E issue)
- Like alcohol, the draft creates a threshold for smaller businesses - this is a good idea and would benefit many of WA licensees since they are not “big players” in the marketplace

A Few Overall Key Points from the Analysis of the Draft:

- 1) **Federal regulators should set a floor, not a ceiling**, allowing states to continue to be responsive to urgent regulatory needs to protect both public health and safety, and markets in each state.
 - The cannabis industry is dynamic, and products evolve rapidly.
 - Regulations need to keep pace with emerging issues in a timely manner
 - Federal regulation, as with FDA rule deeming, has traditionally been slower to respond, which may create disruptions, conflicts, and inconsistent responses.
- 2) **Minimum standards are needed for lab testing, ingredients and additives, packaging, and labeling.** In the absence of federal engagement, states develop their own standards, methods, and thresholds for testing cannabis.
 - States create their own approaches for reviewing and evaluating the safety of new product additives, and develop approaches to packaging and labeling to inform consumers of potential harms.
 - Challenging issues include regulating structure and function claims of products, treating cannabis like a dietary supplement (page 138), and language indicating truthful and not misleading, page 114 (H)(3).
 - Federal minimum standards and clarity are needed to support state regulation of cannabis.
- 3) **Additional clarity between hemp regulation and cannabis regulation is urgently needed, as well as establishing regulation of impairing cannabinoids other than delta-9 THC.** Currently, several psychotropic, impairing compounds are being derived from hemp and are available online and in hemp marketplaces with no or little regulation.
 - In some states, hemp products can legally contain more THC than products on the state-regulated cannabis marketplace.
 - Hemp products are also not subject to the same testing and product safety standards

- Federal structure for cannabis regulation needs to clearly include product types such as delta-8, delta-10, and other intoxicating cannabinoids as they are being derived from hemp.
 - The discussion draft seems to take a general approach to “cannabis products” and “any THC-measurable cannabis product,” as observed in the taxation section 5901, page 66; however, in sec 5906, page 92, on tax drawbacks, it calls out the more specific delta-9 tetrahydrocannabinol concentration. This appears to create confusion and possible conflict in taxation rates of other impairing cannabinoids. To **include the new proliferations of other THC products, a tax approach on THC** in general may be a more uniform approach.

4) Possible Medical Cannabis Impacts for Washington State

- **Medical cannabis impacts for WA**
 - Page 30 (Consideration of State and Other Precedent): Indicates the Secretary shall consider...(C) whether unique standards for cannabis specified for medical use under State law are necessary or appropriate.
 - This creates uncertainty for states, and patients if the federal government has discretion from state to state to choose whether or not to address medical programs and allowances
 - This ties in further with sec. 1103 “Misbranded Cannabis Products” (page 113), as language on page 115 (subsection 8) includes “if it is intended for consumption or application by an individual under 21 years of age”. In general, this would not be a concern, but creates confusion for medical patients under 21 years of age.
 - Sec. 5902 (Definitions): Page 72-73 defines producer for purposes of cannabis enterprises; and provides an exception for “personal or family” use. This exception focuses on the individual and in a sole capacity. This may conflict with RCW 69.51A.250 which allows for medical cooperatives registered with the LCB, and is structured to have multiple individuals with shared responsibility.

5) Social Equity definitions may create significant differences with states.

- Automatic expungement is a positive idea
- Expungement exceptions (page 59) may have variable implications due to various original approaches and application of an “aggravating role adjustment”, creating an underlying concern of continued inequity.
- Social Equity program implications - WA may have different definition of social equity applicant (page 44)
- Possible point of contention – definition of social equity applicant vs recommendations from WA SETF (page 44)
- Criminal penalties identified in the discussion draft may continue to perpetuate barriers for social equity applicants, as enforcement approaches in different states and by the federal government may not be in line with other state approaches.
- Disqualifying offenses for federal permitting, page 144, creates concerns impacting equity. As states may vary in enforcement approaches, a currently licensed business in Washington could unexpectedly be disqualified for a federal permit, which in turn would place their state license at risk.

6) Employment and Contracting (pages 15-16)

- De-scheduling cannabis and continued drug testing allowances may cause confusion
- Will the continued drug-testing impact employees working for companies contracting with the Federal Government?

7) Other Concerns:

- The use of terms like “inadvertent” as related to delivery of hemp, page 151 section 303, may cause issues as it suggests proving knowledge or intent of non-compliance.
- With the 10-pound limit – is this addressing only flower, or will there be different limits for concentrates and edibles?
- Related to Title II - Research, Training, and Prevention
 - There seems to be data points that will be difficult to capture and review, such as high school dropout rate correlation with cannabis use. The same comment for sick leave usage, as employers may be at risk for seeking excessive medical information from employees.
 - Should include impacts of poly-drug use on impaired driving Pro - Gathering the data would be beneficial for assessments and long term impacts for legalization.
- Packaging and labeling:
 - Appears more restrictive – may impact WA to ensure federal approval. Will add an additional step in our process, and will slow approval times down, as we have seen in the federal government approvals. (page 100)
 - Language indicating truthful and not misleading, can be challenging for implementation and regulatory oversight – (page 114 (H)(3))
- De-scheduling from schedule 1 may change the post prohibition approach to state regulatory structures (exception base vs prohibition based), which may require time for legislative reconstruction in states.
- Congress should specify whether or not states may maintain residency requirements for cannabis licensing, to avoid unnecessary litigation to resolve that issue.