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From: Pento, Nico <npento@terrapincarestation.com>
Sent: Monday, April 5, 2021 1:13 PM
To: DH, MMRegulations
Subject: [External] Terrapin Investment Fund I Comments to Medical Marijuana Proposed Regulations
Attachments: Terrapin IRRC Comments.pdf

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Director Collins,

Attached please find Terrapin Investment Fund I's comments on the Department's Medical Marijuana Proposed Regulations. Thank you for allowing us the opportunity to provide feedback on these important matters. I look forward to continuing to work with the Department to continue to strengthen the Medical Marijuana Program.

My best,

--
Nico Pento
VP of External Affairs
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Terrapin
5370 Manhattan Circle #200
Boulder, CO 80303

April 5, 2021

VIA Email to:
RA-DHMMregulations@pa.gov

John J. Collins, Director, Office of Medical Marijuana
Department of Health
Health & Welfare Building, Room 628
625 Forster Street
Harrisburg, PA 17120

Re: Medical Marijuana Regulation #10-219 (IRRC #3290); Proposed Permanent Medical Marijuana Regulations by the Pennsylvania Department of Health

Dear Director Collins:

Thank you for the opportunity to submit comments on the proposed permanent regulations for Pennsylvania's medical marijuana program.

Terrapin is proud to have received one of the first twelve Phase I licenses to operate a medical marijuana grower/processor. Terrapin's Pennsylvania grower/processor facility is located in Avis just outside of Lock Haven in Clinton County. We've grown our business to employ nearly 100 Pennsylvanians who produce, process, and package medical marijuana. This summer, we invested an additional $6 million into capital improvements for the facility, doubling our capacity and workforce. Our products are manufactured in our facility and sold to dispensaries throughout the state.

As we approach the five year anniversary of Act 16 and have operated under the temporary regulations since the inception of the program, our comments reflect meaningful operational experience in the program and the understanding of what needs to change.

We respectfully submit the following comments for the regulatory review process:

I. §§1151a.26 and 1161a.31 Security and Surveillance[1]

The current temporary and proposed permanent regulations require a minimum two years of data retention for video surveillance systems, which on its own, is an insurmountable economic burden for Pennsylvania medical marijuana operators. The two-year data retention standard runs up facility security costs hundreds of thousands of dollars. It is an outlier requirement that far exceeds the data retention standards established in other state markets, and other similarly regulated industries.

Pennsylvania MMOs are currently subject to some of the most stringent video retention requirements of any program in the country. Pennsylvania will remain an outlier if the proposed permanent rules go into effect as written. For comparison, the next highest data retention requirement is at Illinois cultivation sites, requiring a mere 180 days of video retention, and allowing for the use of motion-activated cameras. Maryland, Massachusetts, New York, and Ohio all require 90 days of video retention at dispensary and cultivation sites. Codifying this two-year data retention standard will only perpetuate this unnecessary and insurmountable cost, and place Pennsylvania medical operators at a competitive disadvantage into the future.

The requirement to continuously record on premises without interruption further serves to increase the failure rate of these systems, and in turn, makes the facilities *less* secure. By requiring 24/7 continuous recording without reprieve, the "burn rate" or failure of surveillance hardware and hard drives increases, which could result in missing video retention of relevant activity. The increased failure rate also increases up front and ongoing maintenance costs. The amount of data required to be stored by this new requirement equates to terabytes and would include countless hours of recordings of dark, inactive rooms, providing no value to operators, regulators, or investigators from a compliance or security standpoint.

Together, these requirements place an unjustifiable economic burden on the medical marijuana industry as a whole, ultimately passing security costs onto patients. This regulation should therefore be reviewed on the basis of an insurmountable economic burden that has adverse effects on the price of goods. *See* 71 P.S. § 745.5b(b)(1)(ii).

More importantly, neither of these security requirements provide any additional benefit to the safety or security of dispensary and grower/processor facilities, or provide relevant investigatory or compliance value.

For context, a cost estimate of the data storage and maintenance for continuous surveillance recordings is set forth below:

Dispensary Costs: Two-Year Continuous Surveillance and Data Retention

- 24/7 Data Storage -- 730 days $100,000
- Software System $24,000

[1] We adopt the recommendations set forth in comments relating to §§1151a.26 and 1161a.31from the Pennsylvania Cannabis Coalition submission.

- Backup Generator Capacity $10,000

Total Cost Per Dispensary / 2 yr. **$134,000**

Cultivation Costs: Two-Year Continuous Surveillance and Data Retention (32K sq ft facility with 6K sq ft of Canopy)

- 24/7 Data Storage -- 730 days $500,000
- Software System $72,000
- Backup Generator Capacity $20,000

Total Cost Per Cultivation Site / 2 yr. **$592,000**

As a reasonable solution, Terrapin proposes a reduction in the video retention standard, from two years down to the commonly accepted standard of 90 days. A three-month lookback period is well-established in other state medical marijuana markets and other regulated industries, and allows a substantial period of time for regulators or investigators to flag relevant video for further inspection. Once the relevant video is flagged for retention and transferred to regulators and investigators, it can be retained as evidence, for training, or other relevant compliance purposes, as long as necessary.

Further, Terrapin proposes to codify motion-activated cameras, a technology that was previously accepted by the Department, into the security and surveillance standards for medical operators. In accordance with the plain language of Act 16 and the accompanying standards in regulations, this technology will effectively record "all activity" that takes place within a medical marijuana facility, 24 hours per day, seven days per week.

Our proposed language follows:

§1151a.26

(a) (2) A professionally-monitored, motion-activated security and surveillance system that is operational 24 hours per day, seven days per week and records all activity in images capable of clearly revealing facial detail. The security and surveillance system must include all of the following:

(a) (4) The ability to record and store all images captured by each surveillance camera for a minimum of 90 days in a format that may be easily accessed for investigative purposes. The recordings must be kept:

(b) (5) The grower/processor shall designate employees to ~~continuously~~ monitor the security and surveillance systems at the facility.

§1161a.31

(a) (2) A professionally-monitored, motion-activated security and surveillance system that is operational 24 hours per day, seven days per week and records all activity in images capable of clearly revealing facial detail. The security and surveillance system must include all of the following:

(a) (4) The ability to record and store all images captured by each surveillance camera for a minimum of 90 days in a format that may be easily accessed for investigative purposes. The recordings must be kept:

(b) (5) The grower/processor shall designate employees to ~~continuously~~ monitor the security and surveillance systems at the facility.

It is with the above in consideration, we reference the Pennsylvania Regulatory Review Act 71 P.S. § 745.5b standard that regulation should be reviewed for, "Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business." A change in the regulation is warranted based on the above review and in consideration of Pennsylvania's Regulatory Review Act.

II. Electronic Tracking Systems and the Application Program Interface ("API")

Application-programming interface (known as "API") is a commonplace computing language that allows two different applications to communicate with each other and is the standard for business in other state level marijuana programs.

When the Pennsylvania program started, API integration was "open" but it has inexplicably been closed.

Allowing for an API to link with MJ Freeway will prevent human error from duplicate record keeping and permit businesses to operate software seamlessly.

API integration will increase overall operational efficiency.

To determine whether a regulation is in the public interest, 71 P.S. § 745.5b(b)(3)(v) permits the commission to consider whether a regulation is based on acceptable data. As explained above, the prohibition of API is based on flawed data and we therefore recommend the following changes to § 1141a.21; § 1151a.30; 1151a.39; § 1171a.27; and § 1171a.31:

§ 1141a.21. Definitions.

Electronic tracking system — An electronic seed-to-sale system with open application-programing interface between each medical marijuana organization's inventory, accounting, and point-of-sale software with the software of the Department or its vendor with regard to that operator that excludes patient data, approved by the Department that is utilized by:

. . .

§ 1151a.30. Inventory data.

(a) A grower/processor shall maintain the following inventory data in its electronic tracking system with open application-programing interface between each medical marijuana organization's inventory, accounting, and point-of-sale software with the software of the Department or its vendor with regard to that operatortor, which must include an accounting of and an identifying tracking number for:

§ 1151a.39. Electronic tracking system.

A grower/processor shall use the electronic tracking system, which shall have an open application-programing interface between each medical marijuana organization's inventory, accounting, and point-of-sale software with the software of the Department or its vendor with regard to that operatortor, prescribed by the Department containing the requirements in section 701 of the act (35 P.S. § 10231.701).

§ 1171a.27 Sampling procedures for testing

(9) Entering all required information into the electronic tracking system via open application-programing interface between each medical marijuana organization's inventory, accounting, and point-of-sale software with the software of the Department or its vendor with regard to that operatortor.

§ 1171a.31 Test results and reporting

(b) The test results for each sample collected pursuant to § 1171a.28(c) (relating to selection protocols for samples) shall be entered into the electronic tracking system via open application programing interface and shall only be accessible to the grower/processor submitting the sample and to the Department.

Please note that growers/processors do not have access to patient data and the above comments and changes only reference data integration used for business operations.

III. Removal of Redundant "Double Testing" of Medical Cannabis Products[2]

Current temporary regulation § 1171.28(c) requires cannabis to be double tested -- that is, tested once at the time of harvest, and then again after manufacturing. Simply put, this double testing requirement is an outlier when compared to other state regulations, placing an unnecessary burden on approved testing laboratories, and an unnecessary cost on cannabis businesses -- which is

[2] Our comment adopts and mirrors commentary on § 1171.28(c) set forth by other grower/processors in the letter "*Medical Marijuana Regulation #10-219 (IRRC #3290); Proposed Permanent Medical Marijuana Regulations by the Pennsylvania Department of Health,"* 4.2.21.

carried over to the medical patients that they serve. The experiences in other states where a single laboratory quality assurance test at the end of the manufacturing process is required before products can be transported to dispensaries, shows that the streamlined single-test protocol is sufficient to ensure a high quality and safe cannabis product for consumers.

By state-to-state comparison, Michigan's Marijuana Regulatory Agency requires a single passing quality assurance test prior to a batch being "released for immediate processing, packaging, and labeling for transfer or sale."[3] Similarly, the Illinois Department of Agriculture requires a single quality assurance test "immediately prior to manufacturing or natural processing of any cannabis or cannabis-infused product or packaging cannabis for sale to a dispensary."[4] Connecticut's regulatory language matches that of Illinois.[5] Ohio also follows this standard and requires a single quality assurance test from a batch "prior to packaging any plant material intended to be sold to a patient or caregiver through a dispensary."[6] New York's Department of Health also mandates "testing shall only be performed on, the final medical marihuana product equivalent to the sealed medical marihuana product dispensed to the patient," but permissively allows the cultivator or processor to seek testing through state-approved laboratories on components of the product or cannabis extract, "at the option of the organization."[7]

In the development of cannabis testing policies, it is clear that a single test prior to sale or distribution to a dispensary is the model standard that has been adopted and implemented with safety and success in states similarly situated to Pennsylvania. Through discussions with technical experts, the grower/processors have received consistent feedback that Pennsylvania's double testing requirement adds no enhanced health protections to consumers, but rather places a redundant requirement that unnecessarily hinders production, forces disposal of otherwise good biomass, and inflates costs.

Our recommendations provide a less costly method of achieving the goal of the double-testing requirement pursuant to 71 P.S. § 745.5b(b)(8)). Accordingly, Terrapin recommends revision of §1171.28(c) by deleting subsection (1) to more closely align with other state cannabis regulations and established industry standards:

§1171a.28(c):

While at a grower/processor facility, an employee of an approved laboratory shall identify and collect the following for testing:

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[3] *See Michigan Department of Regulatory Affairs, Marijuana Regulatory Agency* Rule 31(10): Testing; safety compliance facility; available at https://www.michigan.gov/lara/0,4601,7-154-89334_79571_83994-454554--,00.html

[4] *See* 8 Ill. Admin. Code Title 8, Section 1000.510: Laboratory Testing; available at https://www.cyberdriveillinois.com/departments/index/register/volume44/register_volume44_issue_11.pdf

[5] *See* Regulations of Connecticut State Agencies, Sec. 21a-408-58. Laboratory testing; available at https://portal.ct.gov/-/media/DCP/pdf/laws_and_regulations/REGMEDICALMARIJUANAFINAL06Sept2013pdf.pdf?la=en

[6] *See* Oh. Admin. Code 3796:2-2-06: Laboratory Testing

[7] *See* 13 N.Y. Adm. Code 1004.14(c)&(d)

~~(1) Samples at the time of harvest.~~

(1) Samples of medical marijuana product before being sold or provided to a dispensary.

(2) Test samples at other times when requested by the Department.

Terrapin strongly disagrees with the unnecessary suggested changes set forth in 1171a.29 which require testing from two separate approved laboratories; one test at the harvest stage and a second test from a different approved laboratory at the final products stage.

Indeed, Terrapin currently uses one testing lab for both harvest and final form product testing. This system works well with operational logistics. Having two gardens and a great relationship with our testing lab allows us to send harvest samples out on two scheduled days every week on a consistent basis. Our testing lab has worked through logistics to accurately test and achieve results in a timeframe where final form products can be turned around rapidly.

Adding a second laboratory into the fold brings that efficiency crashing down. Bandwidth and logistics of a new lab can't be as efficient as the relationship we have currently built. This will result in a slow down of medicine getting to patients and also increasing the potential of the medicine sitting in process longer and reducing the freshness that the PA medical patients have come to rely on.

We suggest that the Department also keep in place the ability to use the same laboratory for both harvest batch testing and final product testing.

We thank the Department for your consideration of the above comments.

Sincerely,

Nico J. Pento

VP External Affairs