Washington State
Liquor and Cannabis Board

Washington State Liquor and Cannabis Board Meeting

Wednesday, July 8, 2020, 10:00 a.m.
This meeting was convened via conference call

Meeting Minutes

1. CALL TO ORDER

Chair Jane Rushford called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, July 8, 2020. Member Ollie Garrett and Member Russ Hauge were also present.

Chair Rushford: Welcome to our July 8 Board meeting. We hope you are all staying safe and well out there. We'll begin this morning with consideration of the June 24 meeting minutes.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the June 24, 2020, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

Chair Rushford: Thank you. So moved. Moving to alcohol related rulemaking. Audrey, thanks for being with us.

3. ALCOHOL RELATED RULEMAKING

TIMELINES
Presenter – Audrey Vasek, Policy and Rules Coordinator

Ms. Vasek: I'll provide an update today on the alcohol related rule timelines. For the breweries and wineries rules project, the CR 101 filed with the code reviser after the last Board meeting. That information posted to the LCB website. Student tastings and permits rules and the distilleries alternating proprietorships rules projects, we should have the CR 102 packages by August 19 and the CR 103 packages by [audio drops]

Ms. Vasek: I'll resume where I left off with the student tastings project. Draft rule language was received back from the code reviser on June 20 and an internal work group convened to review the draft

conceptual language and determined what changes need to be made before the CR 102 proposals to be filed.

Feedback regarding the distilleries alternating proprietorships project was received from industry members on draft conceptual rule language. An internal workgroup will be convened to determine what revisions need to be made before filing a CR 102 proposal. With respect to implementation of the alcohol related legislation, out of the five bills that will likely require rulemaking, four can be combined into two separate rule projects tentatively aiming to bring the CR 101s for these two rulemaking projects forward for Board consideration soon. Happy to answer any questions.

Chair Rushford: No questions. Thank you very much, Audrey. Kathy, moving to our public hearing.

PUBLIC HEARING (A)

3A – Second Hearing for Special Occasion Licenses Rules Review
Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUTS 3A 1).

Ms. Hoffman: Good morning, Chair Rushford, Board members Garrett and Hauge. For the public hearing today, I'd like to provide a brief background and timeline regarding this matter set for hearing regarding chapter 314-05 WAC regarding special occasion licenses.

In January 2019, we began the initial stages of rule review regarding special occasion licenses. This regulatory review was designed to determine whether the rules described in current chapter 314-05 WAC should be retained in their current form, amended or repealed. The review also concentrated on rules or portions of rules that have been the subject or source of complaints, concerns, or other difficulties that related to matters other than the specific mandates of the statute or statutes on which the rules are based.

The original CR 102 regarding special occasion licenses was filed on November 13 of 2019 and set a hearing for January 8 of 2020. A number of comments were offered before and during that hearing that resulted in reconsideration of the original rule proposal and as a result, some suggested substantive changes were made to the original proposal. Consistent with RCW 34.05.340, the board approved filing of a Supplemental CR 102 on May 27 of this year, setting a public hearing for today. The proposed rule revisions amend existing rule related to special occasion licenses.

Specifically, the proposal:

- clarifies that a special occasion license is a retail license
- updates application requirements and add information from the current online application
- provides clarifying updates for special occasion events
- adds statutory references to clarify requirements for alcohol and monetary donation, advertising, ticket and alcohol sale and payment information.

These proposed revisions more clearly describe existing processes and are anticipated to result in increased access to and use of online licensing resources by applicants and licensees, as well as consistent rule application, interpretation and guidance designed to support applicants and licensees'

success. To date, two comments have been received on the supplemental proposal. May I answer any questions?

Member Hauge: No questions.

Chair Rushford: No questions, Kathy.

Ms. Hoffman: Great. Thank you very much.

Chair Rushford: We'll move now to the public hearing and I do not have anyone indicated to speak. Dustin, did you get any additions to that at this time?

Dustin Dickson: No additions for this hearing, no, Chair.

Chair Rushford: Since we don't have anyone signed in to speak today this concludes the public hearing. Thank you again, Kathy.

Ms. Hoffman: Thank you very much, Board.

Chair Rushford: We move now to the cannabis related rulemaking. Casey. Welcome again today.

4. CANNABIS RELATED RULEMAKING

TIMELINES AND ACTION ITEMS (A-C)
Presenter – Casey Schaufler, Policy and Rules Coordinator

ACTION ITEM 4A – Board Withdrawal of CR 101 for Retail License Certificates
Mr. Schaufler began the briefing with materials (HANDOUT 4A 1).

Mr. Schaufler: Thank you. Good morning, Chair Rushford, Board members Garrett and Hauge. Thank you for the opportunity to be here today. I've got a couple quick timeline updates.

We will continue to accept public comment on true party of interest through to our scheduled public hearing on August 5.

The marijuana voluntary compliance project is on track with a request to move forward on the CR 102 tentatively on August 5.

We also conducted two listen and learn sessions related to marijuana Tier 1 expansion and we are still compiling comments gathered during, and since, those sessions. We will possibly host in the future a deliberative dialogue specifically with Tier 1 producers only as many of our participants in the listen and learn sessions were not themselves Tier 1 producers. We're tentatively aiming for September 16 for CR 102 filing

In terms of timeline updates that concludes what I have before I move on to our agenda items for today. Are there any questions?

Chair Rushford: No questions. Please continue, Casey.

Mr. Schaufler: First agenda item, 4A: this is a request for the Board to withdraw a CR 101 for retail license title certificates. Board Interim Policy (BIP) 04-2018 was adopted to allow retail licensees prevented from opening due to a local prohibition on retail sale cannabis. The interim policy allows these licensees to apply for a title certificate that reduced license requirements, particularly those related to the establishment and security of a physical location while a local prohibition is in place.

In conjunction with the interim policy, a CR 101 (WSR 18-09-117) was filed in April 2018 for adopting rules that would formalize title certificate. The interim policy calls for review of title certificates after four years. This puts the first review at the earliest in April of 2022. Based on consultation with LCB licensing staff, the interim policy is sufficiently addressing the title certificate needs of licensees and local jurisdictions with retail cannabis sales prohibitions. I am requesting that the Board move to withdraw WSR 18-09-117 related to title certificates allowing the interim policy to remain in place. Any questions at this time?

Member Hauge: No questions and I will move the approval to withdraw the CR 101.

MOTION: Member Hauge moved to approve Withdrawal of CR 101 for Retail License Certificates

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4B – Board Approval of CR 101 for Marijuana Certificate of Compliance – Implementing ESSB 6206

Mr. Schaufler began the briefing with materials (HANDOUTS 4B 1-3).

Mr. Schaufler: Thank you. Item 4B: this is request of approval for CR 101 for marijuana business certificate of compliance. This item is necessary for the implementation of Substitute Senate Bill (SSB) 6206, which became effective June 11, establishing a marijuana certificate of compliance. SSB 6206 requires that LCB issue a certificate of compliance for marijuana business applicants when their premise is determined to meet location requirements at the time of application. The certificate of compliance will allow the applicant to operate the business at the proposed location notwithstanding a later occurring, otherwise disqualifying factor. This certificate is not a license to produce, process, research, or sell marijuana at the location. All other marijuana licensing requirements must be met in order to receive a license or to continue operating under an existing license. I'm requesting approval to file the pre-proposal statement of inquiry, CR 101, for rulemaking. I'm happy to answer any questions.

Member Garrett: I have no questions. Russ, did you have questions?

Member Hauge: I don't. Thank you.

Chair Rushford: No questions.

MOTION: Member Garrett moved to approve the filing of CR 101 for Marijuana Certificate of Compliance – Implementing ESSB 6206.

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4C – Board Approval of CR 101 for THC Vapor Products – Implementing HB 2826
Mr. Schaufler began the briefing with materials (HANDOUTS 4C 1-3).

Mr. Schaufler: Thank you. Item 4C. This is request for approval CR 101 for marijuana vapor products. This is a CR 101 package to implement requirements of House Bill 2826, which clarifies the authority of the LCB to regulate marijuana vapor products. This bill authorizes the Board to adopt rules prohibiting any type of device used in conjunction with a marijuana vapor product, as well as the use of any type of additive, solvent, solvent ingredient, or compound in the production and processing of marijuana plant products, including marijuana vapor products.

In adopting rules, the LCB determined, following consultation with the Department of Health or any other authority the LCB deems appropriate, that the device, additive, solvents ingredient, or compound may pose a risk to public health or youth access. I am requesting approval to file the pre-proposal statement of inquiry, CR 101, for rulemaking. I'm happy to answer any questions that the Board may have.

Chair Rushford: Doesn't sound like there are questions. Is there a motion?

MOTION: Member Hauge moved to approve the filing of CR 101 for THC Vapor Products – Implementing HB 2826

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

Chair Rushford: So moved. Thank you, Casey.

Mr. Schaufler: Thank you very much Board members and Chair. Thank you.

Chair Rushford: Kathy, we move now to the public hearing on the marijuana quality control rules.

PUBLIC HEARING (D)

PUBLIC HEARING 4D – Marijuana Quality Control Rules
Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUTS 4D 1).

Ms. Hoffman: Thank you. So, again, good morning, Chair Rushford, Board members Garrett and Hauge. I'm going to take some extra time this morning to describe the background of this rule project since we've been working on it since before I came to LCB and continuously thereafter.

In early 2018, several stakeholders including medical marijuana patients, consumers, and licensees asked the LCB to require producers and processors to test recreational crops for pesticides and heavy metals. These partners asserted that such a move, already adopted in other states, would inspire confidence among consumers, increase access to medically compliant products, and bolster sales. In August of 2018, we began the initial stages of rule development regarding marijuana quality control and

product requirements. Among the rule changes being considered and identified in the CR 101 with whether all marijuana products be tested for both pesticides and heavy metals because neither test was currently required for recreational products in Washington State.

I've been working on this rule project since late 2018. Current testing requirements for recreational marijuana are intended to ensure that products set for sale are safe and have accurate potency levels. Although not precluded from doing so, many producers and processors do not test for pesticides and heavy metals. Based on a number of elements, including consumer concern and national best practices, it's become evident that standardized testing for all marijuana products produced, processed, and sold in Washington State is necessary.

And I want to make sure that we retain focus on the main goal of this proposal. So increased access to safe, thoroughly tested marijuana products that reduce the risk of harm or potential harm to all consumers. And that focus is especially heightened during this time.

There is no guidance available to the LCB from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule 1 drug. This represents regulatory challenges the LCB and regulators throughout the country, since there's limited funding to support research on how marijuana changes with potential toxin effects on humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, again, the overarching goal of the LCB is to protect public health and safety and to assure that all products sold within the I-502 market are safe for all consumers.

I'd like to describe this extensive and protracted work that we've done to bring this rule project and proposal before you today. First, after we filed the CR 101 in August 2018, we received more than50 comments, nearly all in support of requiring pesticides and heavy metal testing for product. Shortly after I arrived at LCB in late 2018, we began contracting with an economist through the Governor's office of regulatory innovation and assistance to help us with the preliminary small business economic impact statement consistent with the requirements of chapter 19.85 RCW.

The analysis required under the Regulatory Fairness Act (and that's chapter 19.85 RCW) does not require us to perform a forecast of the economy, its present or future health, and how the economy may or may not affect the businesses we regulate. It does require us to analyze impact as compliance with proposed rules on those businesses. It simply describes the proposed rule, who must comply with the proposed rule, the probable cost of compliance, including the cost of equipment, supplies, labor, and other elements.

In April of 2019, we held our very first “listen and learn” session at the agency. We asked licensees to offer language, suggestions, and alternative proposals to WAC 314-55-101, 102 and 1025. Messaging on this session went to all of our licensees and other interested parties, which represents over 10,000 subscribers (GovDelivery). During this initial three-hour session, many licensees became acquainted with this method of engagement and participated, although we were not able to identify thematic consistency in the responses offered and none brought proposed rule language to the agency for consideration. We then completed the preliminary small business economic impact statement in June of 2018 and continued to review and analyze scientific research that eventually became the cited evidence in our significant analysis. I believe there are about two pages of citations to current research regarding the use of pesticides and marijuana attached to that document. We also continued to collect comments during this time.

During the summer of 2019, we began to think about and develop the phase-in plan that is reflected in the rule proposal before you. We put significant time, effort, and thought into this plan, coupled with the research we'd performed and comments collected. We personally visited farms, labs and had multiple in-person meetings with licensees, their representatives, and the few labs that reached out to rule staff directly.

In August of 2019, we hosted a second "listen and learn" session, asking licensees to provide us with ideas around statement plans and mitigation strategies. And I want to emphasize here that our "listen and learn" sessions by this time had gained recognition and were being announced in Leafly as well as other media sources with a national reach. So, our outreach had broadened significantly by that time and the attendance at "listen and learn" sessions had increased in scope to include individuals from other states, including both Oregon and Colorado.

Over the course of the two "listen and learn" sessions, through email and other forms of communication, we received in excess of 300 comments. These comments were sorted, analyzed to the extent possible, and provided to you and the public with the first rule proposal presented in January of this year. Although summarizing comments to provide brief descriptions of issues and themes related to the proposed ruleset is our general practice, doing so in this context was extremely challenging because the comments represented a very broad, often conflicting range of opinions and positions, some offering feedback on draft conceptual rules but again, few offering rule language. As a result, thematic organization was difficult and that is represented in that comment matrix. So, we preserved public comment in native form to assure that each commenter was offered the opportunity to review exactly what other commenters had offered. Some of the suggestions received require legislative action or other actions beyond the Board's regulatory authority and again, were offered only in concept rather than in rule language for the agency to consider.

Eventually, I brought the original rule proposal to you in January of 2020. As a result of the pandemic and our state's response to it, we had to pause this project and refile the CR 102 in May of this year. This added about four months to our phase-in plan so hypothetically, if rules became effective in September of 2020, there would be nominal change to the current testing protocols but generally, rule language would be updated and modernized.

Under this updated phase-in plan, licensees will be required to test for pesticides in addition to the current I-502 suite of tests beginning March 1 of 2021. Then, on September 1 of 2021, licensees would be required to test for both pesticides and heavy metals, in addition to the current I-502 suite of tests. Under that timeline, licensees who do not routinely test for pesticides and heavy metals have a year and a half to phase-into this testing protocol.

I'd like to point out that we've heard a suggestion that we wait for the Department of Ecology to complete their lab accreditation process before we move these rules forward. And to be clear, these rules concern marijuana product standards and LCB is statutorily required to establish and maintain those standards, regardless of who performs lab accreditation, RJ Lee or eventually the Department of Ecology four years from now, and regardless of what laboratory quality standards are established in the future.

In conclusion, I'd like to redirect us back to the reason we originally initiated this rule project two years ago: to increase access to safe, thoroughly tested marijuana product that reduces the risk of harm or potential harm to all consumers. That responsibility to reduce the risk of harm or potential harm to consumers is embodied in this proposal. Thank you for your time and I'm open to questions if you have any.

Chair Rushford: Any questions from the Board?

Member Garrett: No questions.

Member Hauge: No questions. Thank you.

Chair Rushford: Kathy, thank you so much. This has been a lengthy and very important project. We appreciate your leadership and commitment along with the commitment of many who participated in the process. Thank you.

Ms. Hoffman: Thank you, Chair Rushford.

Chair Rushford: I've also heard many commendations about "listen and learn". This has been a wonderful addition to our engagement repertoire and has meaning beyond what we expected. Thanks to you, and Casey and Audrey, for assuring that we have that in place.

Ms. Hoffman: Thank you very much.

Chair Rushford: We'll move now to the testimony. I want to say in advance of it that everyone is limited to four minutes. You will receive a 30-second cue from Dustin when you're at three and a half, he'll say 30 seconds, and at four minutes we'll conclude by shutting off the audio. Please know that we're not cutting you off. We're trying to be consistent so that everyone is engaged in the same manner. We have several people, I believe 10, signed in to speak. Dustin, do we have anyone additionally before we begin the testimony?

Mr. Dickson: Not at this time, Chair, no.

Chair Rushford: Thank you. Once we begin this portion of the agenda, we do not take additional names for the testimony. Welcome Crystal Oliver.

Crystal Oliver – Washington Sungrowers Industry Association (WSIA)
Thank you. This is Crystal Oliver with the Washington Sungrowers Industry Association. We appreciate the efforts the LCB has made to ensure cannabis products are safe for consumers. We've submitted more detailed comments but ultimately believe that the arbitrary lot size limits should be abandoned and cannabinoid mycotoxin and microbial testing should focus on strain harvest level.

We also believe pesticide testing should focus on random sampling of usable marijuana and other material at the farm level, similar to other agricultural testing methods, and that heavy metal testing should focus on vape cartridge hardware as the most likely source of heavy metal contamination and concentrates. Thank you.

Chair Rushford: Thank you, Crystal. Steve McCombs.

Mr. Dickson: Chair, we had Steve McCombs signed in to speak but I do not see him online right now.

Chair Rushford: I'll move him to the bottom of the list in case he's having some technical difficulties. Well move to Chris Marr. Welcome, Chris. Chris, are you on the line? Apparently not. If you get an indication from him, Dustin, let me know. But we'll move to Lukas Hunter. Welcome, Lukas.

Lukas Hunter – Harmony Farms
Good morning. I'm Lucas Hunter, the director of compliance and government affairs with Harmony Farms. I just wanted to say that as exciting as it is to work on this section rule it is a rather dense area to open up. I'm sure you guys are well aware of that at this point. And I just wanted to say kudos for going into this rule change with a phase-in approach. This is going to greatly help with the financial burden that the industry and labs are going to need to adjust to over the entire phase-in period.

At this time, the industry has also been rather focused on a number of other cannabis rule changes. And even though the QA rule changes are rather significant and the entire industry is on board to make sure that these rules are fair and well thought out prior to implementation, it has definitely been another level for us to think about. And I know that there's been some slight panic within the industry to make sure that we address these rules and it's been challenging.

Anyhow, I just wanted to bring to attention the current revisions to the section rule. I do see a hole in the current pesticide testing. We are moving towards mandatory pesticide testing with a subset of pesticide analytes that we're testing for, which is fantastic to have that unification across the industry and will greatly increase the safety of all the products on the shelves of our cannabis retail stores. However, I'd like to push for a higher level of testing to not be mandatory but to be available to the cannabis industry. Currently, the largest number of pesticide analytes that we can test for through a certified cannabis testing lab is far less than what can be tested for at the WSBA Yakima Pesticide Testing Lab, meaning that we cannot test their process to see if they are truly pesticide free to the same standard the state holds us to if we're under investigation. And this local pesticide testing is definitely cost prohibitive to make mandatory, although I do think having the ability for us to test, for those who wish to test to a high standard would provide a better level of pesticide compliance as well as consumer safety for those companies that wish to test at that higher bar.

This is just my primary concern at this point and it's something that I haven't really heard being talked about at this point. And in order to just keep my testimony concise, I just wanted to touch on that. I'll follow up with more thoughts and concerns after the meeting via email. I just have to say I genuinely appreciate all the efforts that have gone into this chapter as it's not an easy section to tackle and I appreciate all of your work. Thank you.

Chair Rushford: Thank you, Lukas. Jade Stephano.

Mr. Dickson: Chair, Jade Stephano sent an email to register to speak but I do not see her online today.

Chair Rushford: Thank you. Gary Green.

Mr. Dickson: Chair, again, that's going to be the same situation with Mr. Green, he signed in via email to speak but I do not see him online.

Chair Rushford: Thank you, Shawn DeNae.

Shawn DeNae – Washington Bud Company
Yes, thank you. Thanks for allowing my testimony. I'm the CEO of Washington Bud Company in North Snohomish County. We all agree we want to have clean cannabis products for consumers, whether

they're medical marijuana patients or recreational users. We also agree that a form of pesticide and heavy metal testing is necessary to keep the industry honest no matter the intended use for purpose or for pleasure. The devil's just in the details.

Our company was the very first to test for pesticides and heavy metals and gain the ability to use the Department of Health symbol form medically compliant products. I've put a great deal of thought into this particular rulemaking based upon actual history participating in the process and I've come to some fresh conclusions that I want to share today.

Let me be clear, we already have pesticide and heavy metal testing protocols found in WAC 246-70-050. This rule set was established to supply medically compliant cannabis products authorized by the Washington State Department of Health. The Washington State Department of Agriculture guided this rulemaking by establishing the option of harvest level testing. And I propose we follow that sound advice to establish testing for the recreational market. We could practically cut and paste that into WAC.

The Department of Health's harvest level testing method is based upon sending in three grams per every three pounds harvested per strain. So the larger the harvest, the more quantity of samples are sent in for testing. Increased samples based upon harvested weight is also the recommendation proposed by the National Cannabis Industry Association. And I've also signed on to the Washington Sun Growers Industry Association suggestions on population harvest level testing. It's what Colorado does. It's what the medically-only state of Maryland does. It is what our very own Department of Agriculture felt was adequate to ensure medical cannabis patients were safe to consume cannabis flower tested at harvest level.

Lot level testing of any size will automatically make recreational testing extremely more stringent, and significantly more costly than it is to qualify for medically compliant products. It will also be in conflict with requirements established by the passage of 5052, which states that medically compliant testing be more stringent than recreational testing, not the other way around. It is common knowledge Washington's medical cannabis program has been a disappointment in serving patients. That is not due to the harvest level testing. It is due in large part to the fact that the medically compliant rules demand that growers have to destroy our crops if they fail pest or heavy metal testing. There is no remediation to sell it to the oil market. It becomes 100% lost revenue. Most growers obviously do not want to take that risk. And when you add the reality that many growers have shown skepticism in the labs' processes, sans accreditation and standardization, it is easy to see why the program really never got off the ground.

Thus, I make the recommendation that recreational testing follows in large part the established rules for medically compliant products with the allowances that failed product can be sold to the oil market for distillation and adjust the sample size to three grams per every 15 pounds harvested per crop no matter the strains harvested. 100 pounds would require us to send in 20 grams. Colorado requires 12 grams for the same 100 pounds. That would make medical testing more stringent than recreational and comply with the RCW. And obviously consumer ready distillant cannabis and vape and dab oils need tested for concentrations of contaminants.

Last thing I suggest is to change the rules to allow a range for potency reporting on flower. It is a natural product and each flower can range more than six points up or down from the next.

Mr. Dickson: Shawn, you have 30 seconds.

Ms. DeNae: Ranges will better represent the actual potency consumers should expect and put a damper on the “high THC Holy Grail”. We do not need to be encouraged to grow “everclear cannabis” that will post the highest THC numbers. Last January I sent in my comments on ranges to the LCB.

In closing, I encouraged full utilization of the agreement with the Department of Agriculture to test finished products. This will keep everyone in the supply chain honest. Thanks again for this rulemaking effort and I sign off with be well, everybody.

Chair Rushford: You be well as well and thanks for your comments. We move now to Jim McCray. Welcome, Jim.

Jim MacRae – Straightline Analytics

Thank you, Kathy and everyone involved with these rules very extensive and I really did enjoy the change that Kathy introduced with respect to the “listen and learns”. A few points specific to these rules. On the first section, section six, which is being changed to “sample rejection or failure”. One of the portions that has being deleted there is the following statement: The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section. I question why that is removed. I couldn't find it anywhere else in the rules. So it looks like it's even a further step back from any enforcement that might be done in this space which has been relatively lacking over the past few years anyway. I don't think that's a good idea.

I am supportive of the change on the water activity and moisture to change it from an “and” to an “or”. I think that is wonderful. I've heard a fair bit of discussion around the boundaries, including some comments that have been received about the arbitrariness, or the purported arbitrariness, of the pesticide action levels that are in here. I want to point out that they're arbitrary only to the extent that they were created out of some mishmash. The WSLCB did get very specific input from the Department of Health (DOH) and the Department of Agriculture (WSDA), way back when, as to what they felt were pesticide levels that were protective of public health, public safety. Those were repeated to this Board in October of 2018 when The WSDA once again, indicated that they did not feel that the existing levels were protective of health and that they should be modified. I have not seen those modifications being done. What I did see was that the individual from the Department of Agriculture that gave that testimony was removed from pesticide responsibilities and cannabis responsibilities within a week of making testimony to this body. That's a very unfortunate thing that occurred and you know, it really doesn't augur well towards having people feel like they can give free and easy input if they are employees of state government.

A couple of other things - If you do want to find good levels, as I said, the DOH input that you've received already would be one set. Another one would be just as recommendation. The California Department of Pesticide Regulation has put some stuff in there. So if anybody's talking about arbitrary levels, we do have at least a handful of pertinent sources to go to for that.

I don't particularly agree with the change from the terminology of “quality assurance” to “quality control”. This is not a process control issue. This is an issue of assuring the safety of product for the consumers of regulated cannabis in Washington. The state has basically been enjoying a windfall of tax and fee and fine revenue from this market for the past six years now. And I’ve heard references to --

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: Thank you -- references to adopting some of the Department of Health standards that are out there for medical. Well, medical has abysmally failed in terms of adoption, in terms of percentage of the market. It exists. So to adopt a set of standards that the medical consumers of the state have effectively turned their backs on would be unwise at this time. Thank you very much again, Kathy, I appreciate your efforts on this.

Chair Rushford: Thanks for your comments. Mark Ambler.

Mark Ambler – Breeze Trees

Thanks. I'm Mark Ambler, owner of Breeze Trees up in Bellingham. I'm a Tier 1 producer/processor. In going through this, the other economic analysis was conducted prior to the COVID-19 pandemic, so it didn't factor in that we're essential businesses. It didn't factor in all the costs that we have to deal with, additional costs because of the pandemic. It also, when factoring in its economic analysis, only 341 of the producer/processor licensees out of 1441. And reasons that licensees were left out include, like us, if you lost her entire crop in 2018, you were left out. So we were left out. Also, if you can't afford employees, like me, you were left out of this analysis as well.

Another comment that I mentioned, all these are written comments that have been submitted, the sample collection procedure results in false negatives. So only collecting four nugs, which this proposed rule suggests, results in, for example - if your lot of cannabis is 10% contaminated, there's a 65% chance that you will miss that contamination and you will allow that to go into the consumer field. So that's a real big problem. Big, big problem. We think you should take emergency action to address that.

We also noticed that the proposed rules continue to allow two PPM of benzene in dabs and vapes. Okay, the thing about benzene is it doesn't get destroyed if you don't have a flame. So it gets vaporized and goes directly into your lungs if you're vaping it or dabbing it. And two PPMs of benzene will cause cancer, and that's why Ecology sets their benzene limit 0.03 PPM. They're dealing with benzene in soil and benzene in water. They're not dealing with benzene directly delivered to your lungs, especially when we know for a fact that kids are getting these vapes and taking them.

This is a really big problem. So you know, we're not against testing. We think testing, if done correctly, is a good thing for us because there are entities that are trying to shut down legal cannabis like big pharma and that's one of the things they're going to attack. You know, they'll say, "hey, Washington LCB allows two PPM of benzene in their vapes and in their dabs and they're approving this today". That's going to cause a big alarm and a big problem, as well as the sampling issue. So those are my two major issues but the fact that you left out the poorest of producer/processors in your analysis is another issue because we were left out. Thanks for your time. I yield the rest of my time to the next speaker.

Chair Rushford: Thank you very much, Mark. Jeremy Moberg.

Mr. Dickson: Chair, we did have Jeremy Moberg registered to speak but I did not see him online. If we want to go back into the queue, I know that Chris Marr had registered to speak. He had some technical difficulties. I believe I have him on the line next to go.

Chair Rushford: Okay, great. Thank you. We also received his written testimony but let's see if he's available.

Mr. Dickson: Alright, Chris, are you ready?

Chris Marr – Industry Consultant

Thank you very much. For the record, Chris Marr, industry consultant. Chair Rushford and Board members, thanks for the opportunity to comment on these proposed quality assurance rules. First of all, I'd really like to thank Kathy Hoffman and her policy and rules team and the many stakeholders who committed so many hours to this rulemaking process. I support the breadth of the proposed testing requirements as well as the phase-in of new pesticides and heavy metal testing. While it might be necessary to slightly shift phase-in dates to accommodate for rulemaking delays, I would ask that you oppose efforts to significantly delay their implementation. The industry has operated too long without robust product safety testing and we can't afford to put at risk the health of consumers who choose to buy from the regulated market because of the reassurance of oversight.

The real major concern is the decision to maintain the current five-pound lot size requirement, which will have huge cost impacts on the industry with no tangible public safety benefit. In fact, maintaining five-pound lots will only further the price disparity between regulated and illicit markets, creating greater risks to public safety.

According to the SBEIS based on higher testing cost per sample, producers will see costs ranging from 12,000 to 832,000 annually based on full implementation of new testing standards. And I have clients on both ends of the spectrum. Those costs will be magnified as markup is taken throughout the supply chain and as excise sales and other taxes are applied at the point of sale. That means the cost of the cash register could be two or three times that. The SBEIS states “it is assumed that these costs will not be passed on to retailers or consumers at this time”. Well, we know the current margins experienced by producers and processors provide no basis for an assumption that additional testing costs will be absorbed by the licensee or could be absorbed by the licensee.

We've been told that lot sizes were not increased because there was no consensus among stakeholders during the rule development process. Well, I would suggest that is because testing labs were overrepresented in the process and they see mitigating costs through lot size as a threat to their revenue stream and I can appreciate that. However, I think the interests of licensees and consumers should come first. Washington is an outlier in both lack of product testing in lot size. Oregon allows up to 15 pound batches.

Chair Rushford: Given his technical difficulties, I'm going to suggest that you submit your comments in writing, Chris. I believe you already did We appreciate those. Thank you very much. Dustin, did we have anyone that signed in before we started the public hearing that is not on the list that I have?

Mr. Dickson: I was able to find Mr. Gary Green who had registered earlier.

Chair Rushford: Alright. Gary Green, welcome.

Gary Green - Citizen

Hello, this is Gary Green. I'm one of the Tier 1 producer/processors. I own Vancouver Weed Company. The previous speaker did hit it the head on a lot of it. The increased cost just won't have the impact to increase safety. It will increase costs and lower the availability of product.

There is a concern with adding all of these new additional rules without a standard proof that there is a danger. You guys are speaking a lot about what is dangerous without anything really defective, the proof of danger, especially when related to flower. This seems to be more of a concern when it is a concentrated product into dabs, vape cartridges, things of that nature. Heavy metals are a lot higher concern and same as pesticides being concentrated in that situation.

There are better viable ways to determine if a producer/processor is using pesticides. Instead of sitting there having an individual lot by lot basis test on every single flower that they send in from their facility, it'd be a lot more cost effective and viable to actually have a testing facility come out to their grow facility and test the product or test the environment at that grow facility a couple times a year just to make sure that they're not using those products. It would be a lot more viable and cost effective method.

Also, I agree with [Crystal] Oliver on the topic of creating a THC range or cannabinoid range for a flower, which would also reduce the cost of testing. You could produce a track record for a given strain by a producer/processor after it's been tested five times or ten times to show a consistent cannabinoid range and then in the future, you wouldn't have to test for cannabinoid ranges because you'd have an established range. That would allow more money for other types of testing.

The next thing that I would suggest is that since you guys have received so much tax revenue from us and we haven't really received much reinvestment into the system in forms of loans or banking or anything of that nature, this is a perfect example of an opportunity to subsidize some of the industry with tax dollars. You guys want a higher standard of testing that's going to cost so much money, we should talk about subsidizing some of that cost with tax dollars from the industry. I think that just about covers it.

So I would actually suggest delaying the implementation of this process until you get more input from everybody involved, the shareholders. And I also do have a question about a previous statement that Kathy made, or Katherine made about a -- or Dustin, I believe you may have made this comment, one of you guys did about gathering the Tier 1s to have a discussion directly with tier 1 vendors and the rules committee. How would we be informed when that process is going to be done and when it's going to be available? That's it for my testimony. Thank you.

Chair Rushford: Thank you very much, Gary. Dustin, have we covered everyone?

Mr. Dickson: Yes, Chair. That does cover the list of registered and online speakers that we have for the marijuana QC hearing.

Chair Rushford: This concludes our public hearing. Thank you for your participation. And I also want to commend Dustin, as our administrator, for assuring that we have a degree of quality in how we receive testimony. Thank you again, Dustin, for your diligence in assuring that we are as pulled together as possible in the virtual realm.

I just got a note in the chat from David Busby. David, you are signed into a different section of the agenda, so I'm going to call upon you in a few minutes. We've just concluded the public hearing for the marijuana quality control rules. Now we're going to move to the general public comment and you are signed in for that. Thanks for sending your chat. We'll begin with Mr. Saad.

5. GENERAL PUBLIC COMMENT

Mr. Dickson: Good morning, Chair. Mr. Saad expressed interest in participating but I have not received any confirmation that he has registered to speak.

Chair Rushford: Okay. We'll move then to Gregory Foster. Welcome Gregory. Gregory Foster? I'm going to come back to Gregory in case he's having some technical difficulties and I'll move now to Jim MacRae.

Jim MacRae – Straightline Analytics

First of all, I wanted to congratulate you because today is the sixth anniversary of retail regulated sales in the state. So just give yourselves a pat on the back. This thing's been kept going for six full years at the retail level.

Chair Rushford: It's hard to believe it's been six years.

Mr. MacCrae: In the 12 months ending March of this year, approximately $507 million of direct tax revenue was benefited from the state from the retail portion of this industry. That includes excise, sales, B&O, and that's all included for the state level. That's a pretty good hunk of revenue. The question I think needs to be asked, has the Board, has the agency, has the effort adequately met the goal, the stated goal up front, of managing this market, regulating this market, in such a way that really did minimize the non-regulated channels of access for cannabis in the state and throughout the state? And you know, I'm not going to get into that right now, other than to say that there was one group of constituents, of consumer constituents, that were called out in the early modeling work done by BoTech, and that is the subsection of Washingtonians that choose to use cannabis as part of their medical and/or nutritional regimens with respect to improving their health, presumably.

There are fewer than 10,000 active registered patients in the Department of Health database today. They will tell you differently but it's really fewer the 10,000. It's not 7000, a little bit south of 10,000, 7000. Less than 2% of sales in retail are being made to patients that are holding active cards enhance our sales tax exempt. That is approximately 1/25th of what was expected in the BoTech work. They thought that a full third of consumers in the state were doing it for medical reasons. And you could reasonably assume that each of those consumers was consuming more on a daily basis than their average recreational user. So that suggests somewhere between 30% and 40% of the potential product flow in the state is not going through this system. I think that's something that you have to worry about a little bit.

One of the reasons for that, of course, is a concern. You've heard this loud and clear. And the rules we just talked about are an attempt, I think, to address that is that many of the medical people feel that the product in the regulated market is simply not safe. It's not worth their effort to go through, it's not of the quality they need, it doesn't have the qualities they desire. So as you go to Cannabis 2.0, I encourage you to really take that segment of the consumer population into account very, very directly and very, very explicitly. Leverage the patient representative you have on the Cannabis Advisory Council and try to fix the mess that the Patient Protection Act has made of medical cannabis in the state. And then finally, just with respect to the overall quality assurance thing…

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: The Leaf system, as it is now, does not allow regular, reliable linkage of lab test results to the product that's on the shelves of retail stores. So right now, effectively, the consumer is taking it on

faith that the label reflects what is actually in the product. And I do not believe that your traceability system allows you to be able to put any sort of enforcement over that at all. So as long as you have a faith based market --

Mr. Dickson: Jim, that's your time.

Mr. MacRae: -- control, it's not going to work. Thanks.

Chair Rushford: Thank you very much for your comments. David Busby.

David Busby – Unnamed Affiliation

Excellent. Thanks. So I noticed you guys are going to remove BIP 13-2019. But the LCB has not had any meetings with the integrators. They canceled the last two meetings that we were supposed to have at the last minute. There's still some outstanding problems in the system that necessitates some of these workarounds, and you've been given information that says a lot of these workarounds have been aged out and the problems have been corrected. That is not true. And now with the staff at the LCB canceling those integrator meetings, we don't even have an ability to communicate those technical issues with the LCB staff. So we're kind of blocked from even discussing the workarounds that we still need in the system, even though you're going to remove those workarounds from our systems. So there's a little bit of a catch-22 right there, and I would really like the Board to make sure that these meetings actually take place when they're scheduled. When integrators submit agenda items to the LCB for review at these integrators meetings, especially to discuss these workarounds that we're now going to be removing, it's a vicious cycle.

Secondly, with regards to the lab results and on point with what Jim just said and with what other folks have talked about on the lab results. At this moment, the reporting system has less than 50% of the product on the shelf with an accurate track in the reporting system proper lab result. We used to have 80%. But starting with the most recent version of this Leaf data system, the one that we say the problems have been fixed, we've now moved to less than 50% being able to be represented to an accurate lab result. So this is -- we are reducing the accuracy of the reporting and if we have a mandate to increase access to safe cannabis and to reduce consumer risk, we can see from the reporting system right now that the safety and the risk, the safety has been decreased and the risk to the consumer has been increased. I yield my time.

Chair Rushford: Thank you for your comments, David. Aaron Barfield. Welcome, Aaron.

Mr. Dickson: Good morning, Chair. This is Dustin. We did have Mr. Barfield registered to speak but he is not online with us today.

Chair Rushford: Did we have anyone else that's signed in for this agenda item, Dustin?

Mr. Dickson: Greg Foster had registered. We had some technical difficulties earlier but he believes he has them worked out. I can unmute him now.

Chair Rushford: Great, thank you. Welcome, Gregory.

Gregory Foster – Cannabis Observer

I hope that you and your families have been safe, healthy, and happy as can be given the current circumstances. You know, we've had a sat together in the public meetings that you host for years now. And the absence of those meetings is felt, I think, by all of us. I'm here today to talk to you about the openness and transparency of the LCB and the challenges that have necessitated adjustments to that openness and transparency as a result of the pandemic and as a result of the state's response to the pandemic.

I've shared written comments with you, which go into much more depth than I'll be able to today, but just to provide the context for the recommendations and asks that I'm going to make. And so, I'm just going to go ahead and jump to those so we make sure we cover it.

I've got three recommendations. One, I'd like to see the agency embrace a culture of digital archiving and to be sure to record all these webinars that you're hosting both external public meetings and I think that there are benefits to be gained by recording the internal webinars that you're hosting to facilitate remote meetings with agency staff as well. For instance, I'm not even sure that you're recording this particular board meeting looking at the interface that usually shows that.

The second recommendation that I'm going to make is regarding the marijuana odor task force, which we haven't heard that much about from the agency since the legislature inserted this budget proviso that requires the LCB to convene and staff this new task force. The LCB was appropriated $30,000 of cannabis consumer excise tax dollars, actually, to convene the task force to bring together several state agencies, there's several different members on the task force and to put together a report regarding marijuana odors and emissions and potentially harmful impacts of those. I think that this is something that's in the public interest and I've recommended that the agency make these meetings public. And if the agency is not able to make those meetings public, that you, again, please record those webinars because I think that that subject matter, which is kind of curious, is of interest to all of your producer and processor licensees, their neighbors, the farmers of the vast fields of hemp that is also quite pungent, but somehow not included in the scope of this task force, as well as all of the local and regional authorities throughout the state who are sometimes doing something about this and extracting [indistinct] from your licensees about it.

The last recommendation or request that I'll make to have the Board demonstrate its really admirable approach to openness and transparency.

Mr. Dickson: Greg, you have 30 seconds.

Mr. Foster: I've had opportunity to observe many of your peer agencies at this point. And I think the LCB did a pretty good job of hosting a lot of public meetings and being transparent. But I've been concerned that the executive management team (EMT) meetings have been effectively canceled since February 12. This the last time you hosted one of these meetings and that's 21 weeks in a row. And supposedly the agency was going to reevaluate posting those again. It's just very important. Those meetings are very unique and provide really unparalleled perspective and information.

Mr. Dickson: Greg, that's your time.

Mr. Foster: So please bring those EMT meetings back. Thank you.

Chair Rushford: Thank you for your comments. Regarding all of our speakers today, if staff would follow up with updates that seemed pertinent and worthwhile. Please consider connecting with those speakers.

And to your point, Gregory, we miss our public meetings as well. This has been a very challenging time for all of you, first of all, for our communities, certainly for those of us who are working to assure that we're covering what's needed for our employees and what's needed for licensees in terms of policy changes and allowances. We miss the opportunity to see each other. So thank you for all of this. And if there are no other comments today --

Mr. Dickson: Chair, I do have somebody else had registered for the public comments. Mr. Gary Green.

Chair Rushford: Great.

Mr. Dickson: Yes. He made comments for the QA hearing and is again registered to speak for public comments.

Chair Rushford: Alright, thank you very much, Dustin. Gary, welcome back.

Gary Green - Citizen

I just wanted to respond on a couple of the things that have been brought up, especially since we're talking about increasing testing requirements and increasing regulatory requirements. Like one of the previous speakers brought up, the traceability system is not current and up to date and viable currently in any way shape or form. Under 50% of the test results as they were saying are actually directly linked to products. Products are given wrong numbers, identification tags, ever since we switched from a 16-digit identifier, like as in the WAC Code to an alphanumeric code which was not compatible with our system, it has caused havoc throughout the entire system. And traceability is not currently functioning. You guys probably could not in any way say what is or what is not happening important to traceability.

The other thing that was brought up was that commission on emissions from cannabis production. It's a natural based product that produces very little emissions and it may produce a smell. But that is a common practice throughout a lot of industrial civilized America. I mean, how many towns do we run into that have a paper mill or have a large dump or a large thing of that nature that could actually pose a risk to the people around. This is a viable product that is actually increasing oxygen and pulling toxins out of the air and out of the ground from people. So this is actually having a positive impact on our environment as a whole. I don't understand the process of trying to charge us more money so that you guys can control the emissions from a natural plant that is producing oxygen. It's a very unique thought process to go through and try to regulate that when we haven't addressed that as an industrial nation in general too much.

That's pretty much it. I just wanted to bring up how messed up traceability is and to continue to talk about providing a safer product to consumers. The biggest issue that we seem to come across as there's not a safe enough product or a high enough level testing on a large scale for these medical patients but yet the medical industry has shrunk in such a scale because of access to available products. So it's a catch-22 to increase testing when people aren't willing to get on a list or they have to pay to get on a federal list. And then on top of that they included taking away people's Second Amendment rights for getting onto a cannabis list. That is a very concerning process and they really need to reconsider infringing on people's Second Amendment right for them having a medical condition or using a medication. Thank you.

Chair Rushford: Thank you, Gary. And thanks again to Board members Garrett and Hauge, to Kathy, Audrey, Casey today and Dustin and to everyone who participated or listened in. Have a great couple of weeks. We're back for another Board meeting this month. When is that, Dustin?

Mr. Dickson: Good morning, Chair. The next Board meeting should be scheduled for July 22, two weeks from now. And I think Kathy wanted to make some closing remarks as well.

Chair Rushford: Thank you. Kathy.

Ms. Hoffman: I just wanted to speak to Mr. Green's question that I think it was offered as public comment with respect to quality control, quality assurance rules, but he was asking about how LCB would reach out to Tier 1 processor/producers with respect to our Tier 1 work that's currently open under a CR 101. I just wanted to respond that we're going to reach out in the same way that we have for all of our "listen and learn" sessions. It's going to be a few weeks off in the future, maybe into mid-August before we can do that work because there's a lot of work emerging. We've received a significant amount of public comment today that we need to consider before moving forward on quality control rules and other works in progress. But, that messaging and that outreach will occur through GovDelivery, as it always has, and through our messaging in Board meetings and caucus meetings. So I just wanted to say that to assure that the stream of information was going to come in the same way that it has for the last couple of years. We intend to make sure that outreach is thorough. Thank you.

Chair Rushford: Thank you, Kathy. With that, we have completed the agenda for the day and are now adjourned. Thanks again everyone. Stay well.

ADJOURN

Chair Rushford adjourned the meeting at 11:13am.

Minutes approved this 5th day of August, 2020.

		Not Present
Jane Rushford Board Chair	Ollie Garrett Board Member	Russ Hauge Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

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