



Washington State Liquor and Cannabis Board Meeting

Wednesday, November 18, 2020, 10:00am

This Meeting was Held 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 10:00am on Wednesday, November 18, 2020. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

Chair Rushford announced that the consideration of the October 28 Board meeting minutes was suspended until a later date.

3. GENERAL RULEMAKING AND TIMELINES

ACTION ITEM (A)

ACTION ITEM 3A – Board Renewal of Emergency Rule (CR 103E) Regarding Chapter 314-12 WAC – General – Applicable to All Licensees to Establish Summary License Suspension and Stay Provisions to Enforce any Governor’s Proclamation

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-4).

Ms. Vasek: Good morning Chair Rushford and Board members Garrett and Hauge. Thanks for the opportunity to be here today. Today I am presenting a CR 103E package to renew emergency rules establishing summary license suspension for enforcement of the Governor's proclamations issued as a result of COVID-19.

For background, on February 29, 2020, Governor Inslee issued proclamation 20-05 that confirmed the person to person spread of COVID-19 in Washington State and proclaimed a state of emergency for all counties throughout the state based on the outbreak in the United States. On March 16, Governor Inslee issued proclamation 20-13 imposing statewide limits on food and beverage services in areas of congregation to limit opportunities for disease exposure and transmission in the state. On March 23, Governor Inslee issued proclamation 20-25 entitled “stay home stay healthy”. And on November 15, 2020, Governor Inslee issued proclamation 20-25.8 extending and amending previous proclamations

entitled “safe start stay healthy county by county phased reopening”. The safe start plan extends and amends the four-phase plan for opening state of Washington incorporates all the previous issued and mandatory proclamations. Establishments licensed by the Board are subject to all of the Government's proclamations, and although some establishments licensed by the Board are considered essential, others are not or subject to specific limitations.

The Board has statutory authority to enforce the governor's proclamations and consistent with that authority these emergency rules which were originally adopted in April of this year, extended once on July 22, served a two pronged purpose. These rules allow the Board to serve an order of summary license suspension after preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any Governor's proclamation issued as a result of the COVID-19 outbreak and that immediate cessation of licensed activities were necessary for the preservation of public health and welfare. the rules also provide a framework and process for an effected licensee to petition the Board for a stay of summary suspension consistent with the provisions in chapter 34.05 RCW. If no action is taken, the current emergency rules will expire on the 19th of November. If the CR 103 package is approved today, I'll file it with the Code Reviser's office and the rules will take effect immediately. This will extend the rules for another 120 days until March 18, 2020(sic)[2021].

MOTION: Member Hauge moved to adopt the emergency rules as described.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

Chair Rushford: Motion carries. Thank you very much, Audrey. Now to the alcohol related rulemaking timelines.

4. ALCOHOL RELATED RULEMAKING AND TIMELINES

TIMELINES

Ms. Vasek: Thank you very much. I have an update on the rule project related to implementation of Engrossed Second Substitute Senate Bill 5549 related to distilleries. For background, this is the bill that modified the privileges and requirements for distillery and craft distillery licenses and established a new offsite tasting room license available beginning January 1, 2021, for distillery and craft distillery licensees authorizing operation of an off-site tasting room. The bill also authorizes jointly occupied and cooperated offsite tasting rooms and jointly operated conjoined consumption areas under certain circumstances.

We held a virtual “listen and learn” session on WebEx yesterday afternoon from 1:00 until 3:10pm to gather public feedback and suggestions for revisions in conceptual draft rule language. There were around 48 people in attendance at the peak of the event yesterday. I want to thank everyone who participated or listened in to the “listen and learn” session. We appreciate your participation and feedback and we will review and analyze the feedback received with staff before preparing CR 102 package. We tentatively plan to present the CR 102 package to the Board for approval on or after December 23. Are there any questions I can answer about the 5549 rule project?

Member Garrett: I have no questions.

Member Hauge: I have no questions. Thank you.

ACTION ITEM (A)

ACTION ITEM 4A – Board Approval of CR 102 for 2020 Legislation Implementation – HB 2412, ESSB 5006, ESSB 6095 and SSB 6392

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-6).

Ms. Vasek: These four bills include House Bill 2412, which increased the number of retail liquor licenses that a licensed domestic brewery or microbrewery may hold from two to four and exempt licensed domestic breweries and microbreweries from certain keg registration and identification requirements.

The second bill, which Engrossed Substitute Senate Bill 5006, which created a new type of endorsement allowing a licensed domestic winery to sell beer by the single serving for on-premises consumption and allows a licensed domestic brewery or microbrewery to sell wine by the single serving for on-premises consumption under certain circumstances. The annual fee for the new endorsement is set by law at \$200.

The third bill in this rule package is Engrossed Substitute Senate Bill 6095, which made changes to the interstate common carrier license and create new exceptions to the money or money's worth restrictions and three-tier system for alcohol regulation.

And the fourth bill is Substitute Senate Bill 6392, which created a new type of license for local wine industry associations. The annual fee for that license is set by law at \$700.

The purpose of the rule proposal and the CR 102 package before you today is to align the existing rule language in the WAC with the legislation I just described. Specifically the rule proposal amends two WAC sections on 314-20-017 and 314-02-115 to align existing rule language with the changes related to the keg registration requirements. The package also creates two new rule sections to implement the brewery/winery on-premises consumption endorsement bill and amends a series of rule sections to align in total five rule sections to align existing language in those with changes made related to the common carrier license or money's worth restrictions. It also creates a new rule section, WAC 314-24-270 to implement the new local wine industry association license.

For background on the development process leading up to this point, the CR 101 was filed on July 22, 2020 and conceptual draft rules were developed after several collaborative internal project team meetings with LCB staff from Licensing, Enforcement, Finance, and Public Health involved. These conceptual draft rules were offered for informal public feedback through GovDelivery to LCB subscriber lists in September. We received 11 emails in response to the GovDelivery messaging and the public feedback we received is available in a table attached to the CR 102 memo as Attachment A.

Most of the feedback received mentioned Engrossed Substitute Senate Bill 5006. And the most frequent suggestion was to establish a sliding scale for the fee to help smaller breweries and wineries obtain the on-premises consumption endorsement, however the \$200 fee set by statute is not something that can be changed in rule. We did receive and incorporate one suggestion related to the keg registration

requirements bill to align the rule with statute, that a brewery or microbrewery’s licensed retail locations are also exempt from keg registration identification requirements when selling kegs of beer from their own production. That change is included in the CR 102 package before you today and if it is approved, I will file it with the Code Reviser’s office and the public hearing date will be set for January 6, 2021 with an adoption date no earlier than January 20, 2021.

Timeline

November 18, 2020	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery rules distribution list. Formal comment period begins.
December 2, 2020	Notice published in the Washington State Register.
January 6, 2021	Public hearing held and formal comment period ends.
No earlier than January 20, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written and oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery rules distribution list.
February 20, 2021	Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).

Ms. Vasek then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve the filing of CR 102 for 2020 Legislation Implementation – HB 2412, ESSB 5006, ESSB 6095 and SSB 6392

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

Chair Rushford: Thank you very much. So moved. Thank you, Audrey. We'll move now to the introduction of the public hearing.

PUBLIC HEARING (B)

4B – 2019 Legislation Implementation and Rules Review for chapter 314-38 WAC (Student Tastings/Permits)

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4B).

Ms. Vasek: This public hearing is on proposed rules related to the 2019 legislation implementation rules review, this is the student tastings and permits chapter.

For background, this rule project was initiated in May of 2019 to implement 2019 legislation - Engrossed House Bill 1563 concerning special permits for alcohol tastings by students at least 18 years of age enrolled in certain degree related programs at community or technical colleges, regional universities, or state universities. In addition to implementing 2019 legislation, this rules project includes a rules review of the permits chapter 314-38 WAC.

The proposed rule revisions amend, reorganize, clarify, and modernize the existing requirements related to permits. These proposed rules are needed to support WSLCB permit applicants by confirming existing standards through language clarification modernization and align rules with the laws established by EHB 1563.

We held a virtual “listen and learn” session for this rule project on September 3, 2020. Based on the feedback received during the “listen and learn”, we made a couple changes to the rule language before the Board was asked to adopt the CR 102 on September 30. For example, the rule sections related to the special brewery permit and the special winery permit, in those sections we added the phrase “on-premises” in addition to “off-premises” to be consistent with the RCW. The public feedback received during that “learn and learn” session is documented in Attachment A to the CR 102 memo. Other than the feedback received during that session or prior to filing the 102 only one written comment on the rule proposal has been received to date.

In terms of next steps after the public hearing today, we tentatively plan to ask the Board for approval to adopt final rules and file a CR 103 on or after December 9. Are there any questions I can answer?

Member Garrett: No questions.

Member Hauge: No questions.

Chair Rushford: Thank you very much, Audrey. We'll move now to the public hearing. We have Jim MacRae signed in to testify. Thank you, Jim.

Jim MacRae – Straightline Analytics

My name is Jim MacRae. I'm testifying basically as just a member of the public today. The testimony I'm giving - I noticed in the section where you are amending WAC 314-38-100, one of the editorial type changes you're making semantic is to change the “WSLCB” to “board”. Now, I have given similar testimony in another context but I wanted to reiterate it today. I believe that board should be capitalized in this case, just for proper grammar. It's out of respect, but the board in this case unambiguously refers to the Washington State Liquor and Cannabis Board. And as such, it's considered proper and should be capitalized. If it was just a general board, that would be great but it's not. All references to it in this section are to the WSLCB as an entity. And as such, I believe the title should take it.

Now, I'll repeat the tongue in cheek suggestion I made at a "listen and learn" last year. But if we can take liberties with grammar and do board lower case, I would submit as alternate language to capitalize board and to put the letters "da" before it for "da board". Thank you very much. That's all I have for this section.

Chair Rushford: Thank you for your comments, Jim. This concludes the public hearing for student tastings. We'll move now to the cannabis related rulemaking and timelines. Casey.

5. CANNABIS RELATED RULEMAKING AND TIMELINES

TIMELINES

Casey Schaufler: Good morning, Chair Rushford and Board members Garrett and Hauge. Thank you for the opportunity to be here today, I'll start with timeline update.

With respect to the Tier I extension rule project, the second iteration of the Tier I licensee survey closed on October 30. Of the 78 recipients invited to participate, 25 completed the survey. This brings the total to 116 respondents between both surveys. Staff will review this data along with that information collected from the "listen and learn" sessions and we'll update the project steps accordingly.

Implementation of 2826 - marijuana vapor products - continues with preparation of the CR 102 package. The rule project is on track and I anticipate bringing a CR 103 for consideration on or after December 9.

Also on December 9 will be the hearing for rules to implement SSB 6206. The proposed rules allow the LCB to issue a certificate of compliance to an applicant if proposed business premises meet the minimum distance requirement as of the date the application was received by the LCB. No comments have been received to date for this particular rulemaking. Please let me know if there are any questions on the timeline update. Thank you.

Member Hauge: No questions.

Member Garrett: I have no questions.

Chair Rushford: Thank you very much, Casey. No questions.

Mr. Schaufler: If you're ready, Chair Rushford, I'd like to move to the public hearing portion. I have a statement prepared before we hear from the public.

Chair Rushford: Yes, thank you very much.

PUBLIC HEARING (A)

PUBLIC HEARING 5A – Hearing for the Supplemental CR 102 for Marijuana Quality Control Rules

Casey Schaufler, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5A).

Mr. Schaufler: Alright, thank you. Good morning again, Chair Rushford, Board members Garrett and Hauge. I'm going to take some extra time today to describe the protracted history of this project and address some mischaracterization of the proposed rules we've become aware of.

First, I'd like to emphasize the multiple opportunities for licensees, stakeholders, interested parties, and the public to participate in this process over the last two and a half years. I'll walk you through the timeline in a moment, but the "listen and learn" sessions regarding this project began back in April 2019. Messaging went to all GovDelivery subscribers and that messaging was shared by Leafly and other local and national media sources. Our messaging was so widely distributed that our second "listen and learn" session was attended by parties from Oregon and Colorado.

Hundreds of comments have been received since the project began two and a half years ago and many discussions have occurred with licensees and other interested parties who chose to participate in this process. To date, no actual language proposals supported by an analysis of cause or by verifiable data have been received. And as of this morning, less than ten of those comments offer language or rule amendments beyond last minute pleas to further delay these rules. Many form letter comments have asserted that this proposal will unduly affect small businesses including what are termed "craft cannabis" and "organic cannabis" farms compared to what are characterized as large corporate cannabis farms. It's important to note that an estimated 98% of cannabis licensees meet the definition of a small business under the Regulatory Fairness Act. And to be clear, craft cannabis is not a recognized or standardized product since there is no statutory definition or regulatory structure for it. And similarly, the same is true for organic cannabis because the USDA does not recognize cannabis as an agricultural product. To create these product types, legislative action is necessary at both the federal and state level.

These arguments against standardized testing for all adult use products are not new to this project or previous projects around cannabis testing. However, added now is a suggestion that we add third party sampling without a proposal of additional language to frame it, or a verifiable data supported analysis of how this would impact the overall cost of testing. It has been asserted that only third party sampling would ensure the integrity of quality control measures. The LCB analysis of third party testing indicated that it would cost a rural cannabis farmer as much as \$700 per sample in total to engage a third party sampler, since it would require licensing or certifying such an entity and establishment of that license type of certification will require legislative action before any regulatory structure could be designed. The cost of that third party testing would be shouldered by the licensee. This is true in states where this type of sampling occurs and these states indicate that such testing does not necessarily increase sampling or chain of custody integrity.

With respect to the increase in testing costs that these rules may impose, it has been asserted that this proposal would add an additional \$400 in cost per test, leaving out the remainder of the analysis. The LCB SBEIS (small business economic impact statement) clearly states on page six and seven: based on interviews with a subset of producers/processors and prices available from labs, we estimate the potential range of testing costs per sample to add pesticides and heavy metal screening. These costs are expected to range from \$165 to \$400. The cost of testing varies by lab and we understand that labs are willing to work with licensees during the phase-in period offered in this proposal. But the choice of lab is entirely up to the licensee and they may use their discretion to select the best pricing for their business needs and operational models. And the full suite of tests would not be required until the final phase-in period that begins on February 1, 2022.

To be clear, continuing to delay updates to cannabis product quality testing does not accomplish the Liquor and Cannabis Board's legislatively mandated responsibility to Washington citizens to protect

consumer health and safety. I-502 went beyond merely legalizing cannabis in Washington but was designed to result in regulation that would ensure consumers who choose to purchase Washington produced cannabis have access to products that are safe for consumption and free of adulterants. The state by state legalization of medical and recreational cannabis remains overshadowed by its federal status and any risk to public health and safety in any of those legalized states threaten to legalize cannabis markets nationwide. And even though one of the first two states to legalize recreational cannabis, Washington yet remains the only cannabis market without pesticide and heavy metal testing for all adult used products.

We recognize the optimism among many that the federal legalization of cannabis may be on the horizon. And many are interested in helping to prepare the Washington cannabis industry for interstate trade. Not enacting quality controls puts Washington at the distinct disadvantage of being the only state with adult use cannabis that is not tested for pesticides and heavy metals. For Washington cannabis products to be competitive in a national interstate market, it is necessary for those products to have a verifiable reputation for quality and safety compared to products in other states that long ago enacted these measures. If we are not prepared to meet quality standards in future destination markets, we will not be eligible to participate in those markets, which brings us to the proposed rules.

By way of background, in early 2018, several stakeholders, including medical marijuana patients, consumers, and licensees urged 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 another state who would inspire confidence among consumers, increase access to medically compliant products, and bolster sales. In August 2018, the LCB began the initial stages of rule development regarding marijuana quality control and product requirement. Among the rule changes being considered and identified in the CR 101 was whether all marijuana products be tested for pesticides and heavy metals because neither test is currently required for recreational products.

Current testing requirements for recreational marijuana are intended to ensure that products for sale are safe and have accurate potency levels. Although not precluded from doing so, many producers and processors voluntarily chose not to test for pesticides and heavy metals. Based on a number of elements, including consumer concern and national best practices, it has become evident that standardizes testing for all marijuana products produced, processed, and sold in Washington is necessary.

Kathy Hoffman previously shared the following timeline of events and I believe it is important to share this timeline again in light of recent assertions that the LCB has not adhered to both the administered procedures and/or regulatory fairness acts.

First, after filing the CR 101 in August of 2018, the LCB received well over 50 comments, nearly all in support of requiring pesticide and heavy metals testing for all products. We analyzed these and some appear in the significant analysis, particularly those of consumers who are under the impression that all products were tested for pesticides and were concerned to find out that they weren't. In late 2018, LCB began the process of contracting with an economist through the Governor's Office of Regulatory and Innovation Assistance to help with a preliminary small business economic impact statement consistent with the requirements of chapter 19.85 RCW. RCW 19.85.040 provides, in relevant part, that the agency must provide a description of how the agency involved small businesses in the development of the rule and that the agency may survey a representative sample of affected businesses. The agency met both of those requirements to "listen and learn" sessions, individual meetings, and a representative survey of licensees. This project was not initiated by the previous rules coordinator using a pilot program formed in negotiated rulemaking.

Further, the analysis required under the Regulatory Fairness Act 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 businesses the LCB regulates. It does require the LCB to analyze the impact of compliance with proposed rules on those businesses. The SBEIS describes the proposed rule, who must comply with the proposed rule, the probable cost of compliance and the steps an agency has taken to mitigate those costs. In fact, this was the specific focus topic of the second “listen and learn” session in August 2019. We used the same resources and tools to calculate those costs in every agency in the state. These tools were developed by the Governor’s Office of Regulatory Innovation and Assistance and incorporate verifiable statewide data from the Department of Revenue, the Employment Security Office, and other verifiable data sources.

In April of 2019, the LCB held the 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 the session went to all of our licensees and other interested parties, which represents well over 10,000 subscribers. 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.

The LCB completed the preliminary SBEIS in June of 2019 and continued to review and analyze scientific and academic peer reviewer research with verifiable data and replicable methodologies that eventually became the cited evidence in the LCB’s significant analysis. There are approximately two pages of citations to current research regarding the use of pesticides on marijuana attached to that document. We continued to collect comments during this time as well.

During the summer of 2019, we began to think about and develop a phase-in plan that is reflected in the rule proposal. It is modeled closely after California’s phase-in plan and was suggested by licensees during the early development of these rules.

Between April 2019 and December 2019, LCB staff visited farms, labs, and they had multiple in-person meetings with licensees, their representatives and the few labs that reached out to rules staff directly. LCB staff visited labs, attended industry meetings, and provided information on rule development projects. We asked licensees to reach out with questions and concerns and asked them to become involved in the rule development process.

In August of 2019, LCB hosted a second “listen and learn” session asking licensees to provide ideas around phase-in plans and mitigation strategies. By this time, our “listen and learn” session model had gained recognition and opportunities were being announced in Leafly as well as other media resources. Outreach had broadened significantly by that time and the attendance at the listen and learn sessions had increased in scope to include individuals from other states as previously noted. Again, the clearly stated goal of that session was to engage industry partners, to share ideas on mitigation and phase-in strategies for draft conceptual marijuana quality assurance testing rules. Many licensees and labs said they would propose alternative language in writing and to date, only one licensee has offered substantive alternatives for us to consider.

Over the course of both “listen and learn” sessions, through emails to the LCB, and through other forms of communication, we received an excess of 400 comments. These comments have been sorted, analyzed to the extent possible, and provided to you and the public with a first rule proposal presented in January of this year. Many of the suggestions received through the “listen and learn” process and in the

more recent stream of identical form letters require legislative action or other action beyond the Board's regulatory authority and again, offer non-substantive comments that were discussed early in this process rather than actual rule language or alternative proposals for the agency to consider.

The original rule proposal was introduced in January of 2020. As a result of the pandemic and our state's response to it, the LCB was forced to pause this project and refile the CR 102 in May of this year. A hearing was held in July 2020 on that proposal. And based on the only common theme from that hearing that could be offered in rule, which was an increase in lot size and other minor revisions, we filed a supplemental CR 102 on September 30, setting a hearing for today.

To be clear, we have now delayed these rules for an additional nine months, pushing full implementation out to February 1, 2022. Under the updated phase-in plan, licensees would be required to test for pesticides in addition to the current I-502 suite of tests, beginning August 1, 2021 and on February 1, 2022 licensees would be required to test for both pesticides and heavy metal in addition to the current I-502 suite of tests. Under that timeline, this allows licensees who do not routinely test for pesticides and heavy metals more than a year to phase into this proposed testing protocol after adoption following two and a half years of rule development.

Finally, we have heard the suggestion that LCB wait for the Department of Ecology to complete their lab accreditation process before we move these rules forward. And although the most recent feedback seems to have moved off that assertion, it is necessary to make clear that these rules concern marijuana product standards. LCB is statutorily required to establish and maintain those standards regardless of who performs lab accreditation, be it RJ Lee or eventually the Department of Ecology, and regardless of what laboratory quality standards are established in the future.

In closing, please reflect on the reason the LCB initiated this rule project over two years ago, as that remains the same today: to increase access to safe, thoroughly tested cannabis 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 the proposed quality control rules that are designed to position Washington State to participate in a future interstate marketplace. May I answer any questions?

Chair Rushford: Any questions, Ollie or Russ?

Member Hauge: No questions.

Member Garrett: No questions at this time.

Chair Rushford: Casey, thank you for the thorough review of the many significant steps taken to be here today. We greatly appreciate the substantial considerations.

We'll move now to the public hearing unless you have something additionally, Casey. Anything before we start?

Mr. Schaufler: No, I appreciate the time, I appreciate the work of colleagues and the many stakeholders that contributed to this. Thank you all for your time.

Chair Rushford: We appreciate all of the engagement that brings us to this public hearing. I want to remind those who have and those who haven't testified with us that we have a four-minute limit. With 30 seconds remaining, Dustin will signal this, and then we cut off at four minutes. We want you to know that

is not intended to be disrespectful. We're trying to hear from a lot of people and its one way we can assure fairness and accessibility. Today we have a number of people. We welcome all of your comments and begin with Micah Sherman. Welcome.

Micah Sherman – Raven Grass

Thanks for the opportunity to speak on the issue today. I am asking that the Board delay the implantation of these rules as proposed for a variety of reasons. I've participated in this process as robustly as I knew how throughout and I've also encouraged a lot of my colleagues and people that I know in the industry that are farmers to reach out to you and give their feedback throughout the process. I know that everybody's done their best to contribute meaningful ideas that would move this process forward. And despite our lack of being professional rule writers, I think we've done a pretty good job of giving meaningful feedback to this process that based on the rules that are being proposed now has largely been ignored and discounted.

The main concern that I have with these rules is that it is going to dramatically increase the costs for me to operate my small craft-scaled production operation. So I'm either going to have to spend a lot more money for testing or I'm going to have to actually change the way that I operate my business to more closely model a large-scale production operation to be able to absorb the dramatically increased cost of this process.

I agree that including pesticide testing on products is incredibly important and I think we in the industry have been pretty consistent that harvest and farm-level testing that differentiates between allowable, disallowable, and heavy metals testing and takes those processes individually as distinct things that need their own sampling and testing requirements - this is the only way to effectively tell consumers that the products they're buying are safe. The rules as they are proposed now will not do that. They don't understand the science of pesticide testing. They don't understand the science of sampling and they have not accurately incorporated what it is we need to keep consumers safe and do so in a way that's efficient and effective at the farm level.

It would be very easy to propose these rules in a way that allowed for farm and/or harvest level testing and that is what we need to pursue - building a pesticide and heavy metal regime on top of a lot level system that has shown again and again to not be an effective way to show the analysis that we're spending a lot of money paying scientists to conduct and that we need a testing system that is responsive to the reality of what farmers are experiencing. These rules do not do that. They build upon a system that is not working as it is right now and adding more things within that framework is going to continue to exacerbate the difference between small farmers and big farmers. Big farmers can absorb these costs much differently by creating larger batches, homogenizing their products, making more mass-produced types of products. It is definitely going to make small scale processes not possible to do in this marketplace anymore and we're all going to be worse off for that. That's the conclusion of my comments. Thank you.

Chair Rushford: Thank you, Micah. We'll move now to Anders Taylor.

Anders Taylor – Citizen

My main comment was, well, I have not been following this process very closely. I have been, frankly, too busy with just trying to run the business because this has been a very challenging industry to navigate, given what I perceive to be many times an overreach by the LCB. I do realize that you guys have spent a

lot of time talking about these new potential testing regulations and that there's a serious problem with testing as well.

The main problem that I see is that there's not a real chain of custody with the testing. And it feels to me like the Board has not done anything since the very beginning where these -- this chain of custody issue has been apparent from day one. If you have growers taking their own samples, sending them to labs and using those as your quality assurance tests, it's bound to cause problems within the industry. Pesticides, obviously, our industry is also using far less harmful pesticides than is typical in traditional agriculture. So I think, broadly speaking, our industry is actually much safer than the rest of traditional ag. So, it's a little bit disappointing to see this stance by the Board that effectively is asking us to test every ten pounds of our harvest when there's no parallel in agriculture at all.

The way in which they do testing in traditional ag (sic)[agriculture] is they go out and they do farm level testing at randomized intervals and that makes sense because it's not clear to you when you need to be altering your tests in order to get favorable results. But the way the Board has set up the testing system in the state, it's far too easy for bad actors to game the system. And I feel like that has been completely ignored by the Board.

Additionally, I feel like the Board has completely ignored the history of agriculture in this country where there's widespread contamination throughout the state and throughout our environment, which the EPA has specifically gone out of its way to go and figure out what are appropriate levels of contamination in our environment for different kinds of products related to consumption. Now, it's something where the Board should be going out and looking at those recommendation that the EPA has made in other industries to try to understand, what might the impacts be to our industry. And it feels like that has been completely ignored in this process. I'm not sure why that's the case but it's something that really needs to be considered more directly.

Dustin Dickson: Anders, you have 30 seconds.

Mr. Taylor: I don't think the Board really understands how profound an impact the current proposed rules might have on the process or on the industry as a whole, rather. So anyway, hopefully my comments can be received in the productive light that I'm trying to put them in. I really would like to be able to have a more safe industry for consumers. But at the same time, I'm worried about just the specific ways --

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

Chair Rushford: Thank you very much Anders and Dustin. Steve Walzer.

Mr. Dickson: Chair, I do have Steve Walzer registered to testify but I do not see him online. Steve, if you've registered to testify under a different name than you did with me to sign up, please let me know and we can come back to you later in the hearing. With that, Chair, we can move to Jade Stefano who is next.

Chair Rushford: Thank you, Dustin. Jade Stefano.

Jade Stefano – Puffin Farms

Hi, I'm a co-founder at Puffin Farm. We're a Tier III producer/processor and we've been licensed since 2014.

Chair Rushford: Please state your name for the record. Thank you.

Ms. Stefano: My name is Jade Stefano, co-founder of Puffin Farm. And we were one of the first farms in Washington to adopt voluntary pesticide testing. We're certified both clean green and [indistinct] and went through organic certification so we take this very seriously. And we do believe in pesticide testing for cannabis.

However, the proposed rules have several faults that make them incompatible with science-based systems and good economic policy. The proposal is the most expensive way possible to test with the cost being filtered disproportionately by small and midsize producers and processors. Problems that I see include the samples are self-selected, which will fail to catch the most egregiously deceptive operators. The samples are taken from finished flower loss, which may fail to catch the use of illegal and dangerous pesticides in the workplace and put employees who may be applying these substances in harm's way. Many growers only use pesticides on their mothers and clones. This methodology may be touching product many months after the application and detectable residues may no longer be present. And I see this as a really big problem because I know a lot of growers do only bomb their plants in that stage and those pesticides will be long gone by the time they test that and those workers are getting exposed to dangerous levels of potentially illegal pesticides.

The proposed rules are the most expensive way to test possible, and have the largest impact on smallest producers. The ten-pound lot will only help larger producers offset the additional cost and therefore further disadvantage smaller producers in an already cutthroat competitive environment.

Regarding heavy metals, there's no evidence of heavy metal contamination in flower in other states that have been testing for heavy metals. And we can provide you with documents on this later. There is evidence of heavy metal contamination in vape carts, however, originating from the hardware. The heavy metal component of his testing is by far the most costly and should be approached with a scalpel not an axe. It doesn't make sense to test for heavy metals in flower will where it will not be found when the most likely source is the vape hardware. Pesticide and heavy metal testing does not need to be commingled with existing potency and QA (quality assurance) testing, which already has issues that need to be resolved.

I see a better system for testing would include the following features: testing the farms and not the finished flower. And regarding Casey's comment about a \$700 farm visit, that is nothing compared to a \$400 per sample test for every single lot because the farm visits would not be for every lot. It would be quarterly or biannually or harvest level. Samples can be taken from different stages of growth at the farm as well as soil and water which are likely sources of contamination for heavy metals. And they will also catch the use of pesticides in early propagation stages by testing this way and avoid workplace exposures that are putting employees at risk. And it will be cheaper and safer. It'll be cheaper for the producer/processor, safer for the employees.

The Board should also increase end product testing by the WSLCB collected at the --

Dustin: Jade, you have 30 seconds.

Jade Stefano: Okay. Increase testing at the retail level already in stores and focus on vape cart. Regarding Casey's comments, stakeholders shouldn't be required to craft legal language as we do not have resources to do this. We're not trained attorneys or legal experts. That's not our job. And if you do

have money for a lawyer, great, but that's not most of the industry. And interstate commerce if that becomes a thing producer/processors can implement the necessary testing at that time to be compliant with the interstate regulations.

Mr. Dickson: Jade, your time is up.

Ms. Stefano: Thank you.

Chair Rushford: Thank you very much. Nolan Marcelin.

Mr. Dickson: Chair, Nolan Marcelin is registered to testify but I do not see him online.

Chair Rushford: Okay, we'll look to Clayton Sperry and if Nolan attempts to join us, we'll come back to him. Clayton Sperry.

Mr. Dickson: Chair, Clayton also registered to speak but I do not see him online today.

Chair Rushford: So again, if he indicates that he's available, we'll come back to him. Jessica Straight.

Jessica Straight – Eagle Trees Farm

Hi, I'm Jessica Straight and together with my brother, we own and operate Eagle Trees Farm, which is a Tier II sun-grown farm near Bellingham. We are also pretty much an organic farm. We don't use any chemicals at all or even pesticides or even chemical fertilizers. But this law really doesn't get to what we need to get to which is people that are doing illegal things, like using illegal pesticides, for example, you can easily manipulate a self-sample system. And I feel like we need to take the sampling out of the farm level and bring it to the LCB level, potentially.

As a cannabis industry, we pay so much money to the state. And yet, none of that money seems to really be helping us do our job or even becoming more effective or healthier for the system. It's just so easy for bad actors to get away with whatever they get away with right now. There are so many laws on the books, so many laws, and so many law breakers and it creates a system where people like us who follow every rule diligently are competing against people that don't follow the rules. And that's not fair in this cutthroat industry.

I would propose that you take the sampling away from the individual farms and do a random sample like Jade was talking about or any kind of thing like a random test sample at store level, even. Go do secret shoppers. Use some of that money that's coming in to actually keep consumers safe. That's pretty much all of that to say.

Chair Rushford: Thank you, Jessica. Tina Morelli and just a reminder to everyone to please state your name for the record. Thank you.

Mr. Dickson: Chair, Tina Morelli is registered to speak but I do not see her online today.

Chair Rushford: If she arrives we'll come back to her. I do not have a last name but I have the name Ty with Top Valley Growers with the next speaker.

Mr. Dickson: Chair, Ty registered but I do not see him online.

Chair Rushford: Okay, Scott Berka.

Scott Berka – Aloha Botanics

Good morning. My name is Scott Burka. I'm the owner of Dreaming Green Farms, a Tier II, Full Throttle Farms, a Tier III, and Fresh Productions, a Tier II. I'd like to take a few minutes of your time and share my objections to the plan pending rulemaking efforts for CR 102.

I currently own a 97-acre farm property here in Okanagan County with four 502 licenses located on it. When I purchased my defunct Okanagan cherry tree farm in 2016, I proactively took multiple water and soil samples across the first 33-acre parcel to test for heavy metals and every type of possible soil contaminants to ensure the previous commercial cherry tree operation did not leave any trace amounts of harmful toxins in the water or soil that could hamper my future planned operation. In subsequent years, I've spent thousands of dollars testing previously used soils to ensure that my operation was not damaging the soil or soil strata around me and also to test future areas of plant growth.

At present one of my largest budget line items besides payroll is the fees expense related to quality control testing. And I'm referring to the total cost of ownership, of quality control production, which includes the exorbitantly priced approved pesticides, integrated pest management, organic nutrients in the equipment to brew teas, additional labor costs for certified spraying staff to keep my employees safe, additional cleaning procedures to ensure harvesting equipment and other containers do not harm my material that is intended for retail sale after harvest.

Yes, change is required but please take note, CR 102 in its current format is missing the necessary ingredients to achieve increased public safety.

And now I'll be addressing lot level testing versus fine level testing. Production is evolving, especially outdoor production and so should rulemaking as it relates to lot size and QC requirements. For example, for us to keep up with production demands, we've had to make drastic changes to our production philosophy since 2015. Today, we're growing fewer strains, much like Micah referred to. And instead, we're growing more of the same strain and in some cases, an entire farm may only be one or two strains, all of which are grown in the same soil with the same production program with regard to IPM (integrated pest management) preventative spraying, nutrient regiments and defoliation in an attempt to increase overall plant health. All of which contributes to the argument that five-pound lot sizes need to be expanded to meet larger yields of the same strains that are grown the exact same way.

Farm level testing. I suggest the LCB work to develop a program to certify farm properties is step one and abandon the idea of burdening lot level pesticide and heavy metal testing. Furthermore, please take this objective responsibility of pesticide and heavy metal testing out of the control of farmers. I'm sorry to say that not all owners feel it is their responsibility to provide the public truly safe and pesticide-free recreational cannabis. The ones that do, much like Stefano mentioned, are incurring the added TCO (total cost of ownership) expense to produce pesticide free material. And we are the ones that need to have the protection from those who don't.

Therefore, I strongly believe that independent third party testing is required.

Mr. Dickson: Scott, you have 30 seconds.

Mr. Berka: Thank you. It's been extremely challenging to build a business that will be considered by other professionals as successful and professionally run companies. But issues that other small companies will never have to face will drag down our growth due to excessive and burdensome "one size fits all" rulemaking. And it is the bad actors out there that are cutting corners and putting the recreational cannabis consumers in Washington at risk. The WSLCB should be putting more effort to thwart the continued --

Mr. Dickson: Time.

Mr. Berka: Thank you.

Chair Rushford: Thank you, Scott. We move now to Greg Harrison.

Mr. Dickson: Chair, Greg Harrison registered to speak but I did not see him online today.

Chair Rushford: Again, if you have notification from Greg, we'll come back to him. Joe Rammell.

Joe Rammell – Plant Factory

Thank you, and thank you for taking up this issue that's been going for a long time. And thank you for letting us be a participant in this discussion. I'm a Tier III grower in eastern Washington at The Plant Factory and I'm Joe Rammell.

I have been campaigning for pesticide testing for years. Katherine and I have had numerous conversations about this. So this is a serious issue but we need to get it right. And the bad news is I don't believe that this rule, as it stands, will do that for two reasons.

One, and this has been talked about numerous times, chain of custody, self-sampling will not work. And if that doesn't make any sense to you, I can grow two plants in my bathtub and I will never flunk a pesticide test, if you get what I'm saying. And so because people will do these things, the self-sampling is absolutely not a solution. A year ago, we went through for about six months with Confidence Analytics and what we were doing when there's so much discussion about what's been tested and what hasn't, we had a Confidence Analytics driver, when they come up to pick up the 502 sample, take some pesticide samples. And that worked pretty good.

The perfect solution just came to my attention the last couple of days. Our LCB enforcement officer happened to be outside and she took two pesticide samples out of our finished inventory and said she was going to send them to Yakima and it wasn't going to cost me anything except for the \$50 worth of products she took. That is the ultimate one but at least let the labs that have the pickup service and let them do the sampling.

And the final thing is, as many people have said, make it one sample per harvest and forget this lot thing. If you're spraying pesticides, it's going to be in everything. It's not going to be in one or the other. So anyway, those are my comments and I appreciate your time.

Chair Rushford: Thank you, Joe. Gary Green.

Gary Green – Vancouver Weed Company

Hello. My name is Gary Green. I'm a Tier I producer/processor. I own Vancouver Weed Company. I've been engaged with the Board on a couple of occasions, talking about some of the rulemaking processes. I am here to vote down this new proposed rule because of exactly many of the issues that have been brought up by these other growers. This is going to increase the cost and burden tremendously on the farms, especially on small farms that are going to un-proportionately take the cost then have to eat it.

There is no viable way on an end product that's being sent in by an individual to be tested, and have it known to be from the same lot or from the same farm or even from the same area. The only way to have valid pesticide testing is to do it at the farm level because as they've stated, if it was sprayed in the farm, it's going to be in the farm level. It's going to be identifiable. Many of these toxic pesticides have half-lives of up to a year to two years. It should be quite obvious if somebody is breaking the rules using some of these products. And you can identify that by actually doing your enforcement or actually using some of the money that we've provided to the state to come out and do that style of testing.

Currently, testing is usually between 80 and \$100 for us on an individual lot of flower. And many of us small farms already can't even produce five pounds of one individual strain. So your rulemaking process is forcing us as businesses to limit our amount of SKUs and amount of products available because it is not possible to produce in a cost effective manner with the rules as they are currently set up.

Now you are proposing increasing that cost by 400 to 700% on each of our farms on each lot. That will instantly destroy most small businesses and there's no way they can absorb that kind of cost. You have created a rule structure where we already produce a product that has very high demand, has no shortage of customers. But yet due to rules, we have to sell that product for an extremely low price to retailers who then get the mark it up by 300%. That retailer does not have any of the responsibility that we have every time we have one of these rulemaking session.

You are talking about imposing rules and cost on a producer/processor when we already paid for production, we already paid for employment, we pay for packaging, we pay for testing, we pay for transportation. It is a very unbalanced system and it is taking much of the profit and really the viability of a small business to be able to operate an I-502. It's to the point that you can only produce one or two, maybe three strains, meet the standard of testing and cost. And then you're at a risk of a market that does have an ever changing customer base that may this month like this strain and may next month not. And while every decision we make takes three to four months to implement because that's how long it takes to take a product from seed to sale.

This will damage the industry massively if it's not implemented correctly and we need to find a cost effective way to do farm level testing. I just faced a similar situation as the previous guy described where the LCB came --

Mr. Dickson: Gary, you have 30 seconds.

Mr. Green: -- and they personally took a sample for pesticide testing to see if it was necessary for enforcement. And the results came back fine. It was of no cost to me and they got the answers that they needed that my farm is not using illegal or bad pesticides. There is no reason that that methodology can't be implemented on a larger scale. Thank you.

Chair Rushford: Thank you, Gary. Vicki Eneas.

Mr. Dickson: Chair, we had Vicki Eneas registered to speak but I do not see her online..

Chair Rushford: Okay, if contacted, we'll come back to her. Bethany McMartin.

Bethany McMartin – Citizen

Hi. So my name is Bethany McMartin and I own Olympus Horticulture and BC Labs. We have a tier three, a tier two, and another tier two with BC Labs. I just wanted to add my comments that I am very concerned about the additional cost that is going to impact the industry, specifically with the smaller farmers.

We started out growing organically in the sense that we reinvested everything back into our grows. So when we first started, our sales were 50 to 80,000 a month. And at that size, there's just no way we could have hit those ten-pound lot increments. So I'm concerned that this is going to negatively impact smaller farmers, which for me, I think it's so important that we protect the craft part of this industry because it really creates the diversity and the overall quality that Washington State has over a lot of other states. So for me, the cost is a concern.

Also, I just think that there's a better way to do pesticide testing as far as doing total harvest instead of putting it to our lots. And I agree with what everyone has really said so far. I just feel like the suggested laws right now are just not quite hitting the mark on what we need to make sure that consumers are safe. Our farm is also "Clean Green" certified. And so, for us, just making it to where we have standards that everyone is able to meet that are not going to negatively impact smaller farmers over larger ones is important to me. Thank you.

Chair Rushford: Thank you for your comments. Bethany. Lo Frieson. Lo, we are unable to hear you. Dustin, please note that we'll come back to Lo.

Mr. Dickson: Of course.

Chair Rushford: And we'll move now to Steven Jensen.

Stephen Jensen – Mountain High Organics

Hi, this is Stephen Jensen. I have a Tier III in eastern Washington, we're sun-grown. I'm all for pesticide, heavy metal testing. Baseline is just "Yes, let's get it done. Let's have the consumers feel comfortable and confident in the products that are going out there".

So with that said, I would say let's pretend for a moment that I'm a bad actor and my product is sprayed with pesticides. I use all the wrong things in my product. But I know I'm going to get lot-tested at the end of the season. So in that scenario, how will I get my products approved, even though I'm using the wrong kind of stuff? It's easy. It would be easy for me to do that. I would set aside a few plants in the corner of my grow. I would give them organic fertilizer. I would not spray them with pesticides. And when it comes to testing, I would take those and use those as my lots. The rest of my product might be horrible, may be covered in pesticides but I would be approved because of the lot system. So what I would suggest is like everybody else, do what USDA does with organic produce, et cetera. They don't trust the farms or lots. They come out and do some testing on the farm level once or twice a year and verify that everything's okay. So that's all I had for my comments and I would suggest that we consider that option as well and it may be more financially viable for small farms as well. Thank you very much.

Chair Rushford: Thank you, Steven. Crystal Oliver.

Crystal Oliver – Washington Sun growers Industry Association

Thank you Chair Rushford and LCB Board. I'm Crystal Oliver, Executive Director for the Washington Sun growers Industry Association. We represent 54 businesses holding more than 100 LCB producer/processor licenses.

The current QC proposal is unfortunately a long way off from offering a workable program that effectively protects consumers and employees from illicit pesticide use while allowing Washington's diverse craft cannabis producers and processors to remain viable. Its continued reliance on self-selected samples is incredibly problematic. An honor-based system will not allow the LCB to readily identify those who disregard existing pesticide regulations. \$700 a test on an annual or quarterly basis would be fine. It would accomplish the goals of this rulemaking for far less cost in this proposal, which appears designed to enrich the labs.

The testing of 10-pound lots for both pesticides and heavy metals is excessive and unnecessary. While cannabinoid concentration may vary throughout the plant, the use of pesticides does not vary throughout the harvest. No other state with pesticides and heavy metal testing have such a small lot or batch size. Washington will not be able to compete with other states on cost with this arbitrarily low lot size.

The phase-in approach and increase in lot size to ten pounds does not effectively mitigate the disproportionate impact these rules will have on small businesses in accordance with the Regulatory Fairness Act. While the second "listen and learn" session did list this as a topic that could be discussed, we only have the draft conceptual rules before us at that time and there were so many issues present with proposal that mitigation options seemed secondary. Had the LCB informed us that the draft conceptual rules were what the final rules were going to be, it would have been more obvious the comments on the mitigation options should be prioritized and presented with greater force at that time.

The changes craft producers and processors will make to remain viable should these rules be adopted as currently drafted will have a number of unintended consequences, including decreased production of low THC flower, decreased production of low potency concentrates, and increased production of high potency distillate at very low prices.

The Administrative Procedures Act does not require the public to provide comments in the form of regulatory language in order for them to be considered valid. Requiring comments to be in the form of suggested language makes the rulemaking process inaccessible to non-attorneys and we're disappointed to see that the LCB utilizes this as one of the primary justifications for dismissing previous comments that have included outlines of proposed programs.

WSIA proposes the LCB treat pesticide and heavy metal testing differently than cannabinoid testing, rather than lumping them all together under the same sampling program. Pesticide testing should be done on a regular basis at the farm level and sampling should be done by a third party to protect employees and consumers. Heavy metal testing should focus on soil and vape cartridges as the most likely source of heavy metal contamination. We also request that the LCB establish a committee to assess the cost of the proposed rules and a more effective means of reducing the cost for small businesses in accordance with the Regulatory Fairness Act.

We've also sent a number of written comments providing additional context, descriptions, and recommendations for your consideration. Thank you.

Chari Rushford: Thank you, C. Haider Tareen

Dustin: Chair, Haider Tareen registered to speak but I did not see him online today.

Chair Rushford: Okay, we'll come back. Gregory Foster.

Gregory Foster – Cannabis Observer

Good morning, Chair Rushford and Board members. Thank you for hosting the public hearing today. I'll get right to my comments here. This is Gregory Foster with Cannabis Observer.

I had occasion to be looking back at the QC rules and the draft conceptual rules and wanted to draw your attention to a new section in WAC 314-55-102 (3)(A)(iii). It's in the potency analysis section, which describes the standard battery of cannabinoid concentration calculations conducted by the labs. And there was a new addition in August 2019 in the draft conceptual rules that said "any psychoactive cannabis derivative intentionally added to the formula of a product must be tested for potency, including but not limited to Delta-8". Whereas in the newer proposed rules that's been modified at some point. It now says "any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency". So, it drops that example of a particular cannabinoid that is regarded as a psychoactive. I just thought that it was curious because it's, on the one hand, very vague and has been made more vague. And, as well, there's this qualification that it is the intentional addition and only in that circumstance it must be tested for.

I've been in other contexts where your enforcement education chief has made it clear that it is often very difficult to prove intention in context like this. So I think that that's a problem to begin with. And then as well, it's not really clear what cannabinoids are intended to be tested for here. There is this look back and you can say Delta-8 was on the agency's mind. But according to Miss Hoffman's conversation with the Prevention and Public Health folks last week, it does sound like there is an interpretive statement underway at the agency regarding Delta-8 that hasn't been publicly disclosed at this time.

Moving on with the time that I have left, I did want to address the small business economic impact statement also. Much has been made of the fact that the Office of Regulatory Innovation provides this calculator. But looking at the calculator, it seems that the data that is being relied on to actually make the calculations is at issue and not representative of the actual --

Mr. Dickson: Greg, you have 30 seconds.

Mr. Foster: -- transactions that take place in the cannabis marketplace. And that really makes me wonder, well, we have this very expensive traceability system that documents every transaction from seed to sale, but we're not using that data to actually determine what the impacts on small business are. I'd like to see us actually use that data for something and maybe get a more representative indication of what the actual impact is going to be on small businesses. Thank you.

Chair Rushford: Thank you, Gregory. Mark Ambler.

Mark Ambler – Breeze Trees

Chair Rushford, members Ollie and Russ, thank you for the opportunity to speak. Again, my name is Mark Ambler. I just registered a DBA, Stoney Creek Edibles.

I stand by my written comments, I emailed them on October 20 to Casey and Kathy. They were essentially two tables. The first table was a state health based action limit table that included benzene. These limits were adopted by that state in order to protect human life in a scenario where humans are exposed to benzene vapors in indoor air. Indoor air limits are for workers or residents who are exposed to contaminants that might accumulate in the breathing space in buildings. And the second table, there's just two tables that I emailed, the second table is the EPA (Environmental Protection Agency) regional screening levels, the RSLs (regional screening level) for benzene.

I've seen these limits used when there's an emergency response and the EPA needs to react quickly in order to protect people living in that area. They even have an app for these health-based RSLs or regional screening levels. It's really good. You guys should download it, take a look at it because they have limits or suggested screening levels, not just for benzene but for all contaminants across the board.

In both cases in these tables, the limits for benzene vapors are 0.36 parts per billion. So the rules that you're voting on today potentially set the benzene limit for dabs and vapes, for example, at 2000 parts per billion versus 0.36 parts per billion. That's 5555 times what the EPA publicly considered safe. That's really alarming to me and that's why in the past they've asked for emergency action on this.

But honestly, benzene isn't my own only concern. These rules also crushed a lot of my dreams that I've had over the last couple years about, such as "you pick it" cannabis or "fresh cannabis food". These rules also ban beneficial insects, I was surprised by that today. And they make Washington exports more expensive. And to boot, they're being considered during a global pandemic and an economic crisis.

So, Kathy, you mentioned that these rules align with other states. And I took a look at it. Yeah, there's two ppm benzene allowed in other states on the west coast. Colorado even increased their limit from one ppm to two ppm. But I don't think we should wait for the universe to move on this. I think we have an opportunity to take the lead. We have all these amazing comments coming in from industry professionals and it sounds like everyone's ready and willing to help. And I think we should recognize that and let all these professionals help us. Therefore, I simply ask the Board to vote no today if it comes up on these rules. Thank you for your time.

Chair Rushford: Thank you, Mark. Point of order, we won't be voting today. Time today is dedicated to the public hearing. Thank you very much for your comments. Jeremy Moberg.

Jeremy Moberg - Cannasol

I'm Jeremy Moberg, president of Cannasol Farms and also president of the Washington Sungrowers Industry Association and spent a previous career as a biologist sampling populations. So it gives me a unique perspective on developing sampling standards such as these.

I'd like to take issue with Casey's suggestion that somehow we need to be professional code revisers and actually be providing rule language. That is not our job. It is our job to provide comments and outline the comments for the LCB to act and to use the code revisers for the professional change that you have at your access to be able to turn our comments into rules. So I really take issue with that.

I also take issue with the statement made that a third party selecting at the ten-pound level. We're not suggesting that. We're suggesting a third party select at the farm level instead of a \$400 payment for testing at the ten-pound level. We're talking about a single, depending on whether it's annual or biannual test done at the farm level.

The proposed CR 102 for pesticides and heavy metal testing, as we've heard from other people's testimony is clearly fundamentally flawed. While we'd like to see a smarter approach to pesticide testing that protects consumers without putting unnecessary costs on producers, this is not it. Pesticide testing at the lot level, regardless of the size is not a scientifically valid approach to testing. The system would rely on self-selection of samples for testing, opening the door to the kinds of abuse that we've already seen in this industry. No other state has adopted testing that relies on self-selection of samples for pesticide testing and consumers will not accept the validity of testing regime based upon self-selection of samples.

The WSIA has provided extensive comments detailing a much more robust approach to pesticide testing that is conducted at the farm level. There are numerous advantages to third party testing at the farm level. While lot level testing of self-selected samples may be appropriate for cannabinoid testing it is not appropriate for pesticide testing. Any robust testing system must rely on samples collected by a third party from all areas of producers, from mothers, clones, mature plants, and dried materials. Collecting samples in this manner eliminates the possibility of cheating the self-selection process.

The current proposal is setting up a system for abuse, with producers able to target illegal pesticide use on mothers and clones that will not be detected. This system effectively punishes operators that closely adhere to pesticide rules by requiring them to pay for expensive and redundant tests with the same results each time. Farm level testing does not create a disadvantage to small growers that lot level pesticides does. The cost is much lower with a much higher rate of compliance than self-selection. Consumer patients will have much more confidence in a system that relies on surprise and random testing at the farm level. Using the existing relationships between the LCB and the WSDA, which we've heard testimony of people having the LCB arrive and take samples, is what we should be doing. That relationship should be leveraged and expanded and it's clearly the most effective and most cost effective way to implement pesticide testing. This is happening as we speak and --

Mr. Dickson: Jeremy, you have 30 seconds.

Mr. Moberg: Regarding heavy metal testing, this is a solution without a problem. There has been yet to show evidence of high heavy metals in flower. Also, we do need to wait for the DOE (Department of Ecology) accreditations. The legislature knew this and created the law and we do need a way to have confidence in this system. Thank you very much.

Chair Rushford: Thank you, Jeremy. Sabina Boehm.

Mr. Dickson: Chair, we had Sabina registered to speak today but I do not see her online.

Chair Rushford: Okay, we'll come back and if folks aren't able to get into the queue for public hearing today, please encourage them, Dustin, to submit any comments in writing before the deadline later today. Jeff Merryman.

Jeff Merryman - Citizen

My name is Jeff Merryman. I have a Tier II here in our system. My concern is when it comes to testing your 10-pound lots, I've seen a lot of bad actors that have thankfully left our system on other testing. So I think farm level's kind of where it's at. I know a lot of people say "heavy metals, we don't see big things". Maybe we're not testing for the right heavy metals, because we all have that dirty little secret called Hanford that was doing the green run secret testing all the way up to 1962. They were finding heavy metals all the way up to Wenatchee. And so maybe we're just not testing for the right stuff because the cannabis plant, hemp and marijuana included, picks up some of the heaviest metals known to man. I know the green run was the experimentation of Iodine-131. So just for that reason alone I don't trust a lot of our product that comes from the east side of the state.

The thing that really concerns me with all this government overreach we have, the one good thing about everything that you guys are doing is you're making the black market come back very strong. The latest numbers I heard this year was, stores are paying \$1.40 a gram on certain flowers while black market was paying \$2 a gram on the same stuff. So I do applaud you guys for helping the black market grow extensively in our state.

Other than that, I have emailed the two research papers to Dustin that has forward them on about the heavy metals and a little knowledge on the plant. I do ask that you do farm level testing, especially soil samples and maybe include that catalog to be a little bit bigger on types of heavy metals just because of what Hanford has done to our sacred Earth, especially on the east side. Thank you.

Chair Rushford: Thank you very much, Jeff. Vincent Lee.

Mr. Dickson: Chair, Vincent Lee registered to speak but I do not see him online currently.

Chair Rushford: Okay. Again, we'll hope that Vincent can join us. Marianne Kaufman.

Mr. Dickson: Chair, Marianne Kauffman also registered to speak today but is not with us online.

Chair Rushford: Bart Ramsey.

Bart Ramsay – Cascadia Cannabis Company

Good morning. Bart Ramsay with Cascadia Cannabis Company and Lifestyle Cannabis. We're a Tier III craft producer in Gold Bar. I wanted to comment and endorse the previous comments of my fellow industry professionals, particularly the comments of Crystal Oliver and Jeremy Moberg from the Washington State Sun Growers Industry Association. Their points are very salient and I do expect the Board to take those comments seriously.

Going back all the way to the beginning of the session with Mr. Schaufler's timeline and report of this process. I think that that needs to be called into question, with all due respect to Mr. Schaufler that, although this has taken a long time and there have been many delays it has resulted in a flawed product. Proposed rule change CR 102 is simply not going to achieve the legislated requirements of consumer safety. It simply misses the mark and has produced a flawed set of rules that do not meet that goal.

Specifically, the heavy metals are found in post growing and in the cartridges and concentration sections of the process of producing product. So, it completely misses testing products at the retail end. I also feel that one place where the set of rules misses the mark is that we do have a traceability system from seed

to sale. If the goal is consumer protection, we should be actually sampling consumer products. That is - concentrated vapor cartridges and other products that are available at the retail stores.

Although there should be farm level testing, there needs to be much more emphasis on the actual consumer safety of the products that the consumers are actually purchasing at the retail level. So, I do endorse that you rejected these rules as proposed when they come up to a vote.

One last element that I wanted to mention was that we are a craft small business in Gold Bar, and we are a minority owned business, one of the very few that are owned by people of color. We feel that this whole process has really missed, including the DEI goals of the LCB, which are the Diversity Equity and Inclusion goals that the LCB has stated. These rules will disproportionately impact us and other minority owned businesses within the I-502 system and other licensees. We don't feel that this has been significantly recognized - perhaps that would include some exceptions for fees and testing and other kind of policy supports for DEI which might be found in another element of the LCB rulemaking. I want to emphasize that these set of rules actually disproportionately impact all of us minority owned growers. That's very frustrating because the LCB is telling us one thing and proposing something else. Thank you very much for your time.

Chair Rushford: Thank you very much, Bart. Royce Reid.

Royce Reid – Free Rain Farms

I'm Royce Reid. I work for Free Rein Farms, a Tier III greenhouse in Ferndale, just confirming you can hear me.

Chair Rushford: We can hear you well.

Mr. Reed: Good morning, thank you Chair Hoffman (sic)[Rushford] and Dustin for connecting me . I share the opinion of Jade, Jessica, and Crystal and I think that it represents very clearly the opinion a lot of grow houses, especially the ones that are very proud of the product that they put out on the market [audio dropout] and we've sold a lot of our wholesale flower to facilities that extract and test for heavy metal and pesticides. We stand by our product 100%. It is grown entirely organically, we use no chemicals, we use no heavy metals. And at no point in time, have we ever failed for any of these products.

I liken the testing system that's in place now and I'd like to draw a comparison to the airline testing program. I imagine this scenario where the FAA lets the pilots choose when they're tested. Once they show up for testing, if they don't actually check their ID, you'd have 100% pass rate. Random testing taken from the actual crop or the drying room without prior warning is the only way that this works for us, or as it's supposed to. It doesn't seem to make sense when there's a greenhouse grow using no chemical additives [audio dropout] growing small lots to be tested for products that we've never failed for and will never use.

I'd like to acknowledge the time and thank the Board directly for the time to speak. That's it from me.

Chair Rushford: Thank you Royce, we had a bit of a fracture in your speaking time. Would you mind submitting your comments also in writing? It was minor but I'm not sure what we missed. This is a way to protect your important comments. Thank you. Luke Hunter.

Lukas Hunter – Harmony Farms

Hi, Lukas Hunter representing Harmony Farms. I'm the director of compliance and government affairs. We've heard a lot about testing at farm level. First and foremost, you think when you can move forward and have some form of pesticide testing and heavy metal testing that's effective, that is equal, and I understand that you spent all this time in developing these rules and where they are at. I'm sorry, I want to just check everyone can hear me.

Chair Rushford: We can hear you but you're a bit muffled.

Luke Hunter: I did want to point out, as these rules have evolved over the lengthy rulemaking process, certain things have been added. Specifically, I want to call out 314-55-102, I believe, iii(g), which is talking about terpene testing. Terpene testing has moved from the packaging and labeling rules to this section of rules. It was less concerning prior to the vapor rules that are being worked through right now. Specifically, section I states producer/processor that they state terpene content on product packaging. They must look for terpene presence in concentration. The second section addresses if a producer or processor adds terpenes to their product. I'm not necessarily sure what this is accomplishing.

When we look at terpene presence in concentration, especially when we look at concentrates with botanical terpenes added to them, I'm not really sure what the presence of Myrcene or Limonene coming from a non-cannabis product is really adding to consumer safety. I see it as an added burden to the industry.

I do think that when you look at adding terpenes, we could have something as simple as a CO2 extracted oil in which the processor separates out the terpene fraction in the extraction process and adds it back into the original product. So, you're adding the base terpenes from either that batch of extraction or part of the batch extraction back to the CO2 oil. In that scenario, the processor would then be required to provide a terpene test on top of that. Now I can kind of get behind that because we're talking cannabis terpenes in cannabis, but when we look at products, like distillate, that are incredibly prevalent within the market, we have a product that doesn't really have much flavor to it or any characteristics really. Then we have botanical terpenes that are always going to be thrown on top, which then will require terpene testing additional to all of these concentrate products across the market.

Further, I do think that if you are stating that you have a terpene content in your packaging, that is already covered and the packaging and labeling rules under false or misleading claims. So I think that the first part of the section I is duplicative of what's already in the rules.

Mr. Dickson: Luke, you have 30 seconds.

Mr. Hunter: Okay, then, my last one quickly is 314-55-1021. It's essentially asking us to provide testing on all constituents that go into the cannabis product. Are we talking about having flour tested and sugar tested for edibles? Are we talking about having our soil tested for all of these? It seems like an incredible tax to throw on our industry at this time.

Mr. Dickson: Lukas, that was your time.

Chair Rushford: Thank you, Luke. We'll move to Ryan Savigny.

Ryan Sevigny – Landrace Brands

Good morning, Chair Rushford and Board members Garrett and Hauge. Thank you for taking the time to indulge us farmers again on this topic. As stated, my name is Ryan Sevigny. I'm the owner of a Tier II producer/processor in Okanogan County. I wanted to make a couple brief comments, many of which we've already heard today but directly wanted to comment on some of Casey's remarks.

I've participated in this process to the extent that I've had the time for and the resources for. I participate heavily in trade associations. I am an adjunct board member with Cannabis Alliance. I am on the traceability workgroup and I joined these organizations because the sum of the whole is no greater than the individual part. I wanted to make that point clear because I lack the skillset to write draft language to be submitted for the Board to be implemented as rule and I feel that that's a little overreaching to make that proclamation.

Furthermore, I think the comments of Crystal Oliver were on point. Though I'm not a member of WSIA yet, I probably should be soon. I think she clearly articulated the main concerns from the farmers around the state.

As a small craft cannabis farmer in the state, I really do appreciate the effort and the duties of the LCB for drafting these rules to better protect consumers. But I feel like the current draft rules do little to protect the consumers while maximizing the cost on us farmers and dramatically increasing the revenue for the testing labs.

My main points are that the costs for us would increase significantly. I think your own economic small business impact statement shows a spend of potentially about \$40,000 a year per farmer. That's a lot! I would gladly pay \$700 per quarter, biannually, or once a year, gladly do that, to get a better representative sample of pesticides. We've heard a lot about self-selecting samples. This is a non-starter for us as well. There are nefarious actors in this industry. And there are ways, as has been illustrated prior to my comment, that testing can be manipulated and without the third party collection, we can't eliminate or prevent some of these nefarious actors from participating in our system.

I do think that harvest level testing is a must. Again, we shouldn't necessarily be required to prove that we are not using pesticides on a Tier II 50 or 100 times over. One test should suffice and it should be done at random intervals and times throughout the year to provide (sic)[prevent] sandbagging the system, if you will. We should collect all soil samples of plant tissues at all stages of growth to really prevent those nefarious actors.

Those are pretty much my comments. Again, I wanted to thank all the effort. I do sincerely appreciate it all. And I look forward to hopefully continuing the conversation to make sure that we get these rules right. Thank you.

Chair Rushford: Thank you, Ryan. Jeff Wilhoit.

Mr. Dickson: Chair, Jeff Wilhoit registered to speak but is not online today.

Chair Rushford: Nichole Michel.

Nichole Michel – Queen Kush

My name is Nichole Michel and my wonderful husband and I own and operate a Tier III producer/processor in Othello. I'd like to state a few concerns regarding the implementation of the revised quality control test rules, as well as agree with my colleagues here, especially Crystal Oliver who really articulated her astute observation and suggestions for going forward with these.

This pandemic has had a major impact on our economy and finances that will take years to recover from. The testing rules should include effective mitigation techniques to reduce the cost imposed by the rule on small businesses such as annual or early testing rather than lot based testing for pesticides and heavy metals.

I would like to suggest a pilot program that would allow for volunteer licensees and/or licensees chosen at random, that would be held at a similar standard as a research license to evaluate these proposed rules and make adjustments as necessary to ease the financial burden, as well as the logic to these rules. That's all I have to say. We appreciate you.

Chair Rushford: Thank you very much. We appreciate your comments. Alison Kutz.

Mr. Dickson: Alison messaged me earlier and appreciated the opportunity to speak. She had to leave the meeting so she's going to submit her comments in writing.

Chair Rushford: Thank you, Dustin. Xzavier Kelly.

Mr. Dickson: Xzavier registered to speak but is not online with us today.

Chair Rushford: Colin Lukey.

Mr. Dickson: Colin had registered to speak but is not online with us currently.

Chair Rushford: Thank you, Dustin. For those who are not able to speak at this public hearing I hope that they will submit their comments in writing before the deadline today. Shawn Stuart.

Shawn Stuart – Fresh Kind Farms

Hello, this is Shawn Stuart. I operate a Tier II producer/processor called Fresh Kind Farms. First, I'd like to apologize for getting involved so late in this process. Unfortunately, running a producer/processor doesn't leave a whole lot of time to get involved in these types of things and that's unfortunate because this is so important for our industry.

That being said, I have to strongly oppose the rules as they are structured, mainly for the two reasons you've heard from previous people providing testimony.

Number one, the proposed rules don't do very much to actually achieve the goal of the legislature to protect consumers. The two main issues that have been described are the self-selection process and the way this can be manipulated. Flower lot levels testing also isn't the way that this should be done. It should definitely be done, I believe, at both the farm level and as recently described, since the goal is to protect consumers, I propose that there needs to be a lot more testing done at the retail level of products that are actually being sold. This would actually show and discover the bad product that is passing through to consumers.

The second is cost. For example, at our farm, the proposed rules would add to our current cost of testing between \$5,000 and \$10,000 a month depending on production levels in our facility. For us, this would mean the reduction of probably two full time employees if we are unable to pass these costs along. The unfortunate side effect of this rule and the costs that it will drive will be to reverse the progress that we've made in this state by reducing black market sales. This increased costs when it passed through to the retail level will definitely be pushing more consumers back into the black market and reverse the inroads that we've made in this industry.

I certainly support testing but our position is that we would like to see it at both the farm level and at the retail level and not at the lot level. Thank you very much for the opportunity to speak.

Chair Rushford: Thank you, Shawn. John Kingsbury. John, are you still in the queue?

Mr. Dickson: We have John registered to speak and I do have him online. He's unmuted on our end.

Chair Rushford: I'm sorry we can't hear you, John. Something isn't working so I'll come back to you. If you hear from him, Dustin, please let me know. We'll move then to Dave Varshock.

Dave Varshock – Citizen

My name is Dave Varshock, I'm in Okanogan. I am among other things here at the farm, the lead grower for Dreaming Green Farms, Fresh Production, and Full Throttle Farm.

I'd like to support the comments of the vast majority people that are here today, specifically crystal Oliver with WSIA, Gregory Foster and Jeremy Moberg, among others. Their comments were succinct, relevant to the topic, provided constructive ideas moving forward. I had a whole litany of written comment to read off today but I'm going to defer that and instead provide that in written comment later this afternoon.

But to address Casey's comments in his recapture of all this, provided I haven't been as involved as I should have been based on trying to run the conglomerate of farms and keep up on everything else going on in this industry, but maybe somebody who hasn't been that involved or just getting involved, Casey's comments were anything but inviting to be a part of this process. It's very intimidating when you have somebody telling you that in order to provide feedback, they need to be an attorney and provide attorney language and ready to go rules for the Board to implement. It wasn't an inviting place to be.

Just to keep this very succinct, farm level testing versus lot level testing is pretty obvious in this one. Retail level testing is absolutely necessary, especially in light of "vape-gate" and all the independent tests that have shown that these cheap Chinese cartridges are one of the main culprits for this heavy metal. Readiness for interstate commerce has got to be in the purview of the Board. It's coming. The more and more states to get on board with this, the closer we get to that.

In closing I support all the people that have taken the time out of their day to provide feedback on this and I encourage them to keep going. Thank you very much, have a nice day.

Chair Rushford: Thank you very much, Dave. Robert Seto.

Mr. Dickson: Chair, Robert Seto registered to speak but I do not see them online with us today.

Chair Rushford: Thank you, Dustin. Glenn VanCorbach.

Mr. Dickson: Glenn had registered to speak but is not online.

Chair Rushford: Jim MacRae.

Jim MacRae – Straightline Analytics

Good morning, Chair Rushford and Board members. First of all, I want to thank Kathy, Audrey, and Casey. The process for this has been lengthy but it's also been very impressive. I want to remind you of the extraordinarily positive and broad feedback that followed the first "listen and learn session", which I believe occurred on this topic. And then the subsequent one, it was a dramatic change and in my impression, and I think a lot of others, improvement in the process. And I give them kudos for that. This has obviously been a very difficult process and complicated.

I will suggest one specific rule change, 314-55-1025. Again, I really do believe that if you're changing "WSLCB" to "board", that it should be capitalized. If you wish to use the diminutive form, that's fine. But I really, at least in principle, I don't think a Board should be viewed as a diminutive.

In changing the terminology from "quality assurance" to "quality control", it's put forward as a technical matter. It is a technical matter but it's also a matter with meaning. Quality assurance effectively is something where the end consumer can have some assurance that the product that they're going -- meets the quality and safety standards, et cetera, et cetera. Quality control is a little different and it's a little bit upstream. I see it as a semantic move away from consumer safety and protection if the change is implemented as proposed towards "quality control".

On the delay of implementation of these rules as proposed, that's a bit of a false need now, after a couple of years of rulemaking, plus the fact that it's been pretty clear that pesticides are going to be on the agenda, since we are rather unique in not having that to protect the one plus million consumers of cannabis in this state. It's a false need, effectively, to think that there's no lab capacity. That's just ridiculous. There's five labs now that are certified for pesticides and three that are certified for heavy metals. To think that it's a surprise to the farmers and the processors is, again, a little ridiculous. It's a bit self-serving but it's a little ridiculous.

Cost avoidance seems to be one of the fundamental drivers of the majority of the testimony that I'm hearing. Not all of it by any means, but the majority of it. Cost avoidance or minimization. Well, I don't know. Every other regulated farmer in the country pays for pesticide testing so put that aside. There's something fundamentally, structurally wrong if they really can't afford it. And there are some things structurally wrong.

Lot size. Increasing the lot size is not, as Crystal suggested, arbitrary. The five-pound lot is not arbitrary. Increasing the lot size to 10 pounds was arbitrary. And it looks like it was put into place to try to mitigate the concerns expressed by licensees about the increase in cost. Looks like a little bit of regulatory capture going on. But what do I know? I'm not a professional with that stuff. If you want verifiable data sources that are relevant to this, look to the WSDA testing that you do --

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: -- look at the hundreds of failed pesticide tests and recognize the urgency immediately of getting something done on this. To that end, I suggest you put in a set of emergency rules to immediately bring in pesticide testing on the existing structure of five-pound lots and go back to the drawing table and get these rules right. Thank you very much. Bye.

Chair Rushford: Thank you, Jim. Ben Potter.

Mr. Dickson: Ben Potter did register to speak with us but is not online.

Chair Rushford: Thank you, Dustin. Caitlein Ryan.

Caitlein Ryan – Cannabis Alliance

My name is Caitlein Ryan. I'm the Interim Executive Director for the Cannabis Alliance. The Cannabis Alliance is a member driven industry organization dedicated to the advancement of an available, ethical and sustainable cannabis industry. I want to thank the Board and staff for hearing comments today.

We would also like to acknowledge and express gratitude for the dedication of industry stakeholders who have devoted a significant effort in participating in this lengthy process. The complexities and history of quality assurance testing run deep and we appreciate the multiple challenges in brokering agreement on the comprehensive ruleset. We concur with, and are in support of, the themes in the comments that we've heard here today so far.

We've provided results from a survey we conducted in October, including specific suggestions for language alterations to the rules in its current form. However, our primary recommendation is broader in scope.

In general, much of the concern around the proposed rules boils down to an apprehension regarding the scientific reliability of the proposed testing. While it has been crucial to the process to rely on stakeholder input, product testing standards must be developed by dispassionate scientists and industry experts. Our recommendation at the time of approval is the development of a detailed implementation plan that addresses the need for third party scientists to develop product testing standards and include the detailed timeline for a standards efficacy review.

The Cannabis Alliance is asking that the quality assurance testing standards to be in a continued state of development immediately upon approval. And, we would like the WSLCB to convene a taskforce of scientists and industry experts, along with stakeholders, to provide a defensible answer to the question, "what product testing do we require to meet all the reliable standards for safe product?"

We are not asking for a delay, however, we cannot see an unbiased path forward without consulting non-stakeholder scientists and product testing experts. The Department of Ecology (DOE) has convened a task force for the purpose of setting lab standards but their work does not address the product testing level. The standard set by the WSLCB will continue to be embroiled in strife without engaging in a similar level of due diligence as the DOE taskforce. We deeply appreciate the work of everyone at WSLCB who have been involved in this enduring effort and we continue to value our collaborative effort in the service of healthy adult use cannabis market in Washington State. Thank you.

Chair Rushford: Thank you, Caitlein. Jason Poll.

Mr. Dickson: Jason did register to speak today and was online earlier, but I do not see him with us any longer.

Chair Rushford: Thank you. I want to mention to all who are listening in to submit anything in writing if you're not able to stay to peak. . Kelsey Taylor.

Kelsey Taylor – Girl Gardens

Hi, I'm Kelsey Taylor. I own a Tier III out in eastern Washington called Girl Gardens in Okanagan County.

I wanted to speak first off to say that I support the enforcement of current pesticide restrictions. The rationale for testing pesticides is pretty clear. Illegal pesticides should not be in products. That said, I do want to reiterate that these proposed rules are built upon an already flawed testing system that breaks the chain of custody and it does nothing to keep consumers safe. It allows bad actors to thrive in the current system where private labs profit at the expense of small farmers.

I also wanted to speak about how I think that heavy metals testing and pesticide testing should be decoupled as [indistinct] and impact of heavy metals is highly uncertain. And the current rules do not consider EPA guidance in any way.

I think that these rules further enrich private for-profit labs by taking even more money out of the pockets of small farmers like myself and they do not make a lot of sense. We need to wait for DOE guidance and the testing should be in the hands of the WSDA at the farm level.

Furthermore, I wanted to speak to the SBEIS and significant rule analysis. Because it seems as though it was written by a lobbyist for well capitalized indoor producers, frankly. Here's a snippet: "Licensees are responsible for selecting and implementing their own business models, and as a result, marijuana growers operate on a wide spectrum of sophistication. Some grows are tightly controlled in technologically advanced indoor facilities. Plants are grown in climate controlled chambers where every aspect of the plants cultivation is monitored. Other growers are comparatively low tech, set outdoors dependent on seasonal cycles. Which grow model a licensed producer chooses, either indoors or outdoors is entirely a business decision of the licensee".

Does it not occur to the LCB that women and minority owned businesses may not have had as much access to the capital that the large, high tech indoor grows have had? It wasn't entirely a business decision of mine because I don't have rich friends who work at hedge funds. It's much more expensive to set up an indoor grow. This is a textbook example of how systemic sexism and racism work. The small business impact statement reads as though it was written by industry lobbyists who are threatened by outdoor grows and our costs being lower. As a result, it seems to me as though this legislation or this rulemaking seems to be written to help indoor grows and labs profit and hurt outdoor growers.

That is my main concern here. I think we need to decouple heavy metals and pesticide testing and reduce the costs here so that we're testing in a way that actually helps consumers. We can do this by looking at what agriculture (sic)[Department of Agriculture] already does.

This is not something that we have to reinvent. We don't have to reinvent the wheel here. So, I thank you for your time. That is what I would like to say.

Chair Rushford: Thank you very much for your comments. Kevin Oliver.

Mr. Dickson: Chair, Kevin Oliver did attempt to register. I sent the link to him but I do not see him online with us. y. If we can go back, I was able to connect with Tina Morelli from earlier in the hearing if that's okay.

Chair Rushford: Tina.

Tina Morelli – Morelli Enterprises LLC

Hi, my name is Tina Morelli. I own a Tier I producer/processor in Okanagan County. I'm an indoor facility.

There's multiple problems that I have had. I feel like the testing is absurd. Every five pound lot - I'm just a tier one - so we need to keep in mind that I'm only 2000 square feet. So, if I'm producing 80 pounds and I have to test every five pounds, I mean, we can do the math.

I haven't profited. I've been doing this for five years. I haven't made a penny. I don't have, as the other girl said, "rich friends that can help me".

When I started this business, I had no idea what I was getting myself into. I ended up having to sell my home to keep this company afloat. I feel that all of the pesticide testing, they're fraudulent. I've sent in two samples of the same product but getting two separate testings done. One passed, one failed. How is that even possible? I've used the same company since I started, Analytical 360. Another example is I just sent in a five pound lot for testing. They tested everything but pesticide, but I'm being charged for it. That's the one thing you guys do expect to have done. I don't use pesticides because I don't believe in them. We use ladybugs. Nature does its thing.

I feel that the guidelines that are put in place do not help Tier Is at all. I am to the point where it's kind of a life or death situation for me. It's either I close down -- I've already lost my home, so I don't really know where I would go from here. I have no choice but to stay in this. I think that testing each lot is extremely excessive. Outdoor harvest, even indoor, we use the same thing. I don't understand why every five pound lot has to be tested. It should be done by a third party at farm level.

The Washington State labs are not certified by the Department of Ecology, so I don't understand how you guys expect us to, like she said, we don't need to reinvent the wheel here. Right? It's already being done in orchards around us. I am in Okanagan county as well. Lots fail for bacteria, but what they should be testing for is E-Coli, salmonella, those kinds of things.

I feel that there needs to be an appointed committee to assess the cost of the rules for small businesses, especially. Being a Tier I, like I said, I don't know how I'm ever going to make money. I work here literally for free. I feel that the rich keep getting richer. These hedge fund investors are getting rich and the poor stay poor. And I don't know, at this point, where to go from here. If the state doesn't step in and do something different, I'm going to have to shut my doors.

I also concur with every comment that I have heard from all of the other people. We need industry experts from the Department of Ecology to come in and regulate. That's all I have. Thank you.

Chair Rushford: Thank you for your comments. We're going to go back now to Haider Tareen.

Haider Tareen – High End Farms

I own two Tier 1s right now. And I'm kind of involved in both of these subjects, the pesticide and Tier 1, trying to save the Tier 1 craft cannabis in Washington right now. It seems like the way it's going right now is that the pesticide ruling will drastically hurt Tier 1s. At the same time, we're trying to figure out how to save Tier 1s on another discussion. So it seems like something definitely needs to be reworked in the whole system on how to do this.

I agree with a lot of people on here about testing. It should be a third party system or something like that. A whole crop-wide test would be nice because, like a lot of people said, if it's correct that we only -- we treat the crop the same no matter what strain it is. But to get it tested based on strain the same way we would test potency or something based on lot sizes doesn't make any sense. It just seems like it's adding a lot of cost into what we're doing. And it just seems that a lot needs to be rethought on that platform there.

So, one of the things that the small business impact study even said was that it doesn't really matter if Tier 1 farms or small producers stopped producing because large producers will just increase their production and will take upon those employees that would have been lost on the small businesses. That to me seems completely counterproductive to what we're trying to do here to save Tier 1s.

I'm just concerned about that, honestly, and how to how to manage my business for the next year going forward. We're thinking if the pesticide rule comes into place and it does increase testing the \$300 - \$400 a test, we're looking at \$30,000 - \$40,000 extra every year that we have to get tested now.

I was talking to the Craft Cannabis Coalition about it. And they said "yeah, well, it sounds like it's going to have to be a statewide price increase anyways and that we recognize that". The difficulty with that is, you can't mandate a company to raise their price. You have a lot of players in this industry that are operating on huge dollar margins and can weather the storm out and watch smaller farms fail while they have to raise their price, and other ones aren't, and the competition just gets slaughtered out that way. I have a lot of concern with how it's going to go forward with the new pesticide testing and saving Tier 1s at the same time.

Chair Rushford: Thank you very much for your comments. I'm glad we could put you into the queue. I'd like to go back now to John Kingsbury. Is he able to join us Dustin?

Mr. Dickson: I have him checked in. Hopefully we can hear him.

John Kingsbury – Citizen

My name is John Kingsbury. I'm a medical cannabis patient. I am very heartened by this presentation because safe and tested was a critical component of cannabis, one would point out.

I would like to bring up two issues that I have written about in submitted comments, but they didn't show up in the rules. The reason I bring this up is because it seems to me that probably when this gets implemented that LCB and other state agencies will say, "Well, you know, medical and recreational cannabis are the same now". So, I think it's very important that we not waste this opportunity and set a floor for testing standards that says, "Okay, this is actually medically appropriate quality assurance".

So I want to bring up my two issues. One is mold. And I won't go into the long story. But there was a point where patients were handing me, short of announcing, "this stuff is making me sick". And so we went

through a long process trying to figure out why product that was meeting testing standards was making so many people sick. What we came up with is that once mold levels came to a certain level that that seemed to be the common factor. So, I would like to advocate here that, like other states that there be a minimum standard for mold testing. Every other state allows 10,000 CFUs, colony forming units of mold. That's the standard in other states. I would like to suggest that it would not be too radical to say, in Washington State, you can allow 50,000 or 60,000 CFUs of mold because this stuff really is making people sick. If people are handing you ounces of weed and saying "This stuff is making me sick", or "Here, test it or throw it in the garbage". There's a problem. I've seen many, many examples of that. I've got a whole shelf full of this stuff.

The other element - if we're going to make the claim that this meets a minimum standard for patients is we need to look at neem oil and neem oil concentrates and derivatives, your Azimax, stuff like that. This stuff is not as safe as they say it is. There's a lot of research out there about this, especially when it's being inhaled. It's very persistent and it is systemic.

I would strongly urge that if the agency is going to claim that they are meeting medical standards now and patients can avail themselves of this stuff that those two issues be addressed.

The third thing I would say, because I've heard it so many times, it's clear to me from talking to a lot of farmers that self-sampling is fraught with hazards. I know it's complicated not to do it that way, but since we're five years out on this promise of "safe and tested" that we not waste this opportunity by making a mistake like self-sampling. Thank you. I appreciate the opportunity.

Chair Rushford: Thank you, John. I believe that Jason Pole has now been able to join us. Jason?

Mr. Dickson: Chair, I've been working with him to try to get online with us and it doesn't appear that he was able to log on.

Chair Rushford: Thank you. Again, I'd like to encourage those who were not able to join us for the public hearing to send their written comments in.

With that, we have concluded the public hearing. Thank you very much, everyone, for your comments.

6. GENERAL PUBLIC COMMENT

Chair Rushford: We move now to the general public comments. Gregory Foster, you're first.

Greg Foster – Cannabis Observer

Good afternoon, now, Board members. So, just very quickly, I want to thank you for patiently listening to so many thoughtful and passionate and well informed people present you with an indication that this rulemaking project needs more work. I hope that you all move forward in that direction.

This morning, I wanted to talk with you again about transparency and about the challenges that everyone has been facing with the pandemic and with the challenges all around. It has been a 2020.

In the past, I have come and talked to you about how -- I understand how challenging it is to adapt to a purely digital context to continue with the functions of state government. I appreciate the work that you

have done in that direction. However, I've been sad to see that we're still not privy to the information that's provided within the executive management team meetings.

I came to you last time to ask you to reinstate those, and Chair Rushford, I appreciate you making the commitment to host those monthly. However, after that first EMT meeting again in September or rather August, I think it was, the last two months, we still haven't seen that.

I'm not privy to the pressures that are existing within the agency itself, the time constraints that people are under, the budget constraints that people are under. However, in order for your stakeholders and the public to be meaningfully engaged, we need good information about what the Board is thinking and doing. And those EMT meetings are the best places for that to happen because that is where you are interacting with staff directly and where you're holding staff accountable directly, as well. We look to you for that guidance that you provide to the agency and for your engagement with the work of the agency. In that absence of that and in the terseness with which the Board caucus meetings have been conducted lately and the lack of updates that you're providing to us -- in the absence of information, people fill in the gaps without information. So please, do what you can to continue pushing the envelope as far as the amount of transparency.

Mr. Dickson: Greg, you have 30 seconds.

Mr. Foster: You've had 47 opportunities. There's been 47 weeks that have passed this year. And you've hosted the EMT four times in that whole time. I appreciate the work you do. Thank you so much for doing the work and for doing a hard job. You have our support and we'll talk to you again here soon. Thank you.

Chair Rushford: Thank you Gregory. Sami Saad.

Mr. Dickson: Chair, Sami did register to speak but is not online with us today.

Chair Rushford: Jim MacRae.

Jim MacRae – Straightline Analytics

It was said earlier, Casey mentioned at the beginning of the lab presentation that the choice of a lab is up to the licensee. So, it was in the context of cost being different from one lab to the other. I want to again, put it down to the focus -- the real core focus of the LCB is supposed to be concerning itself with consumer safety, public safety, presumably a degree of health now that we've got medical cannabis being regulated.

There's something fundamentally not working in the way the consumer perceptions of safety, informed consumer perceptions of safety, are being met or not being met by this market. You mentioned earlier in some of the investigations you did about these rules that the lack of verifiable data sources necessitates things like going elsewhere, doing surveys, things like that. I want to reiterate something Gregory said earlier, Gregory Foster, which is that you have a significant verifiable data source in your traceability system or as Ms. Mueller likes to call it, the compliance reporting system.

I have done work without data. As imperfect and incomplete as the current Leaf stuff is, you can still get little signals out of it once in a while, such as going back to this notion of the consumers can go whatever labs they want to, they certainly are doing that. And you can see, even in the imperfect Leaf data, a dramatic concentration of the consumers - in this case, these are licensees that are having product tested

- going to a handful of labs. Five of the labs represent almost 75% of the testing volume in the state right now by my last count.

When you look at those five labs, four of them are labs that have significant history with the LCB's oversight of the certification of the labs. One had been suspended for a year -- sorry, one is a new iteration of one that had been suspended for a year. One had been suspended for six months. But in both instances, apparently looking at the RG Lee reports for egregious inability to fulfill the mission of having their lab testing efforts be a downstream assurance of consumer safety and indeed, product safety, in this case.

Your own efforts with the WSDA in their first two years showed some 228 instances in which products taken from farms or processors failed pesticide testing. In that entire two year period of time, there wasn't, per a recent public record request, which is not complete, I will admit, not a single LCB mandated product recall occurred. So, the only data that we've seen, and it's verifiable on websites out there, that look at this market, represent over 100 tests now. But, there are a lot of tests out there that are showing a pretty consistent 25 to 35 percent failure rate for pesticides when you look at product that's taken from the shelves that's for sale today to consumers. That's unacceptable. That really -- something is falling short of that.

Mr. Dickson: Jim, 30 seconds.

Mr. MacRae: So I'm not asking that we litigate the notion of these rules we just read. But I'm going to say this: the current status of the market is not protecting consumer safety. And I implore the Board, before the next meeting or as soon as you can, to please consider putting into place an emergency testing protocol, an emergency rule wherein pesticide testing is required today. Thank you. Bye.

Chair Rushford: Thank for your comments.

We're going to go back for a moment to the public hearing. We overlooked Shawn DeNae today who had registered early and so I'm going to suspend the rule and go back and allow her to speak. We apologize Shawn, thank you.

Shawn, if you're speaking we cannot hear you. We will give it a few more seconds and then we will move to adjournment. I'll encourage that, again, all who were unable to speak or did not have technical connection to please submit comments in writing to us.

I still don't hear Shawn. Dustin, I deduce a technical difficulty.

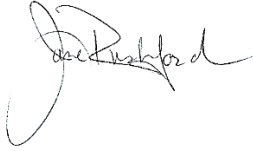
We have completed the orders of the day. Thank you, everyone, for your participation. This has been a very important meeting.

We hope that you and your families are safe in the days ahead. Wishing you a happy holiday season next week. Take care and we'll be back to you soon. Thank you.

ADJOURN

Chair Rushford adjourned the meeting at 12:28pm.

Minutes approved this 23rd day of December, 2020.



Jane Rushford
Board Chair

Not Present

Ollie Garrett
Board Member



Russ Hauge
Board Member

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

LCB Mission - Promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws.

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