



## Washington State Liquor and Cannabis Board Meeting

Wednesday, February 2, 2022, 10:00am  
This Meeting was Convened Via Web Conference

### Meeting Minutes

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#### 1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, February 2, 2022. Member Ollie Garrett was also present.

#### 2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the January 5, 2022, Board meeting minutes.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

#### 3. RULEMAKING TIMELINES – ALL INDUSTRIES

Presenter – Kathy Hoffman, Policy and Rules Manager

Ms. Hoffman: Good morning, Chair Postman and Board Member Garrett. I'm going to provide our monthly brief rules update, and this is consistent with the semi-annual rules agenda that I filed with the Code Reviser last week, and that's available on our website with agendas from our previous reporting periods.

So, starting on the alcohol side, we do have a "listen and learn" session scheduled for tomorrow at 10am on our axe throwing rules. The rule proposal on that project should be presented to you on March 2nd and under that timeline the public hearing would be held in mid-April with the final rule package for adoption available on or about April 27.

On the horizon for general alcohol rules, there is our housekeeping and organization project that we're looking forward to opening in spring that will be designed to remove duplicative and outdated rules sections and correct minor non-substantive clerical errors that happen in rulemaking sometimes. I like to call it "rule hygiene", but it really will be just a general housekeeping project, very technical in nature.

Moving on to general rulemaking, Robert will be providing you with a briefing on the electronic service rule project, so, he'll be talking about the rule inquiry that he'll be offering today for your approval.

Moving on to cannabis, our social equity conceptual rule drafting is coming along well, and that project is well underway and we will be concluding that drafting in the coming weeks. We're looking forward to holding an informational session on how to get involved in rulemaking on the evening of February 17. That will allow anyone who's interested in participating in our rulemaking process to learn about the process and what the Administrative Procedures Act requires us to do as an agency, and the many ways that people can get involved in that process. We are on target to bring that project to you, the rule proposal, on April 13. That would set our public hearing for mid-March, and an adoption date in early June, so on or about June 8 for that project.

Moving on, Jeff will be briefing you on the CR 101 package concerning technical corrections to pesticide action levels as they're listed currently in WAC 314-55-108.

And then on the horizon with cannabis rules, we do expect that the current legislative session will result in some rulemaking on the cannabis side, so we're holding space to assure that we have appropriate staffing levels to be able to get to that work right away.

And then finally, Jeff will be providing you with a briefing on the CR 102 proposal that is scheduled for a hearing today. And I wanted to offer, just briefly, a couple of highlights before Jeff presents on his project. First of all, these rules concern cannabis products standards, they are not related to the work of the Cannabis Science Task Force, and that work is essentially done.

And then also, not related to current legislation in progress, that's House Bill 1859, and those concerns testing lab standards, so it's a different issue there. Currently, there are 5 certified labs that can test for pesticides, and of these, three also test for heavy metals. That information is available on the LCB website, it's been there for quite a while, and we're happy to direct folks to the link so they can see which labs those are if they're interested in learning.

And then finally the proposal that Jeff will be speaking to you about does not require any producer to test up to 50 pound lot sizes. The rules set minimum and maximum standards, and sample sizes up to 50 pounds, so if a Tier I producer still wishes to test a five pound lot, they can. Larger producers can flex upwards to 50 pounds if they wish, so that does provide some flexibility to our producers.

That concludes my update, I'm happy to answer any questions before I move on.

Chair Postman: No, although I just was glad you mentioned the bill on labs, because we do have parallel tracks here, like we do with the THC compound bill as well, so that's interesting. And the combination of the two really puts us in, I think, a better place. That's the goal, right? That we have both certifications for the labs that are doing the testing, but this work today is not related to lab certification and the legislation is not related to mandatory testing.

Ms. Hoffman: It is not; the legislation is not related to cannabis product standards.

Chair Postman: Right, good, thank you.

Ms. Hoffman: Thank you, Chair Postman.

Chair Postman: And so now, are we going to hear from Robert on the E-Service Rules? Well there you are, good morning, hello.

#### 4. GENERAL RULEMAKING

Presenter – Robert DeSpain, Policy and Rules Coordinator

##### **ACTION ITEM 4A - Board Approval of CR 101 for Electronic Service and Filing Rules**

Robert DeSpain, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4A)

Mr. DeSpain: Good morning Chair Postman and Board Member Garrett. This brief is related to our request for approval to file a CR 101 related to electronic service and filing rules, and the accompanying memorandum.

The WLSCB's considering creating or amending sections entitled 314 WAC to allow us to electronically serve notice and accept documents related to license applications, and appeals. RCW 66.08.030 grants authority to the Board to designate the manner of notice. Establishing rules for electronic service and notice should improve efficiency within our agency by creating a standard operating procedure across all divisions. This will in turn enable us to streamline our business and adjudicative processes. So if approved by the Board, a rule project team consisting of members across multiple divisions will convene to draft conceptual rules.

##### Tentative Timeline

February 2, 2022	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Informal comment period begins.
February 16, 2022	Notice is published in the Washington State Register under WSR #22-04.
March 18, 2022	The informal comment period ends.
March 30, 2022	Board is asked to approve filing proposed rules (CR 102). CR 102 is filed with the Office of the Code Reviser. LCB webpage is updated and notice is circulated by the rules distribution list. The formal comment period begins.
April 20, 2022	Notice is published in the Washington State Register under WSR #22-08.
May 11, 2022	Public hearing is held and the formal comment period ends.
May 25, 2022	Board is asked to adopt rules, if no substantive changes are made (CR 103). Concise explanatory statement is provided to individuals offering written or oral comment at the public hearing or during the formal comment period under RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage is updated and notice is circulated by the rules distribution list.

June 25, 2022	The rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).
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Mr. DeSpain: That concludes the brief on this rule project. As always I'm happy to answer any questions.

Chair Postman: Great, no questions from me. Member Garret, anything before we take a motion on this?

Member Garrett: No.

Chair Postman: Ok. And is there a motion to approve the CR 101 for electronic service and filing rules?

MOTION: Member Garrett moved to approve the CR 101 for Electronic Service and Filing Rules

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

Mr. DeSpain: Thank you.

Chair Postman: Thank you, appreciate that. And now we will hear from Jeff Kildahl, Policy and Rules Coordinator on the cannabis side. Good morning, Mr. Kildahl.

## 5. CANNABIS RELATED RULEMAKING AND TIMELINES

Presenter – Jeff Kildahl, Policy and Rules Coordinator

### **ACTION ITEM 5A - Board Approval of CR 101 for Pesticide Action Levels**

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

Mr. Kildahl: Thank you, good morning Chair Postman, and Board Member Garrett. This morning, I would like to request your approval to file a CR 101 proposal statement of inquiry to allow for possible rulemaking to amend WAC 314-55-108, regarding marijuana pesticide action levels.

This rulemaking is needed to update pesticide variety information in WAC 314-55-108, update rule language regarding remediation of marijuana that has failed quality assurance testing, and amend rule language to change the term “quality assurance testing” to “quality control testing”. This possible rulemaking would protect public health and safety by keeping pesticide action level information and remediation guidelines current.

#### Tentative Timeline

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	Informal comment period begins.
February 16, 2022	Notice is published in the Washington State Register under WSR #22-04.
March 18, 2022	The informal comment period ends.
March 30, 2022	Board is asked to approve filing proposed rules (CR 102). CR 102 is filed with the Office of the Code Reviser. LCB webpage is updated and notice is circulated by the rules distribution list. The formal comment period begins.
April 20, 2022	Notice is published in the Washington State Register under WSR #22-08.
May 11, 2022	Public hearing is held and the formal comment period ends.
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June 25, 2022	The rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

Mr. Kildahl: Thank you, and may I answer any question?

Chair Postman: The only question I have is, is there any -- so this is in conjunction with what we're going to hear in a minute, which is the bigger testing rulemaking, is that correct? We need both these things?

Mr. Kildahl: Yes, it is, and part of it is just updating some information about the individual types of pesticides, and, the two changes will be made to be consistent with the quality control testing rules are the terminology of changing "quality assurance testing" to "quality control testing" in this section and then also updating the guidance for when marijuana may be remediated.

Chair Postman: Is there any timing concern or what might we end up with our overall testing rules in place without this update in place, and if so is that a problem or will they catch up to each other at some point and both be effective in generally the same time?

Mr. Kildahl: I anticipate that the quality testing control rules will be completed first, and then this will follow shortly after. And this change will help WAC 314-55-108 conform to the other changes. So, it's for consistency.

Chair Postman: Great, ok, thank you. I'm not seeing any other questions, then, we would be ready for the public hearing. Do you have a presentation for the public hearing, Mr. Kildahl, or should we just open that for testimony at this point?

Mr. Kildahl: I have a short introduction that I'll...

Dustin Dickson: Chair, if I could interrupt for a moment please, sorry, this is Dustin. We need a motion, for the CR 101 for pesticides.

Chair Postman: Yes, thank you. Is there a motion to approve CR 101 for pesticide action levels?

MOTION: Member Garrett moved to approve the filing of CR 101 for Pesticide Action Levels

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

Mr. Kildahl: Thank you, Chair Postman.

### **PUBLIC HEARING 5B – Marijuana Quality Control Rules**

Jeff Kildahl, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5B).

Mr. Kildahl: The rule proposal before you today for public hearing concerns changes to current rules that would require all marijuana products produced and sold in Washington state to be tested for pesticides in addition to the currently required suite of I-502 tests. As you are aware, this has been a lengthy project that involved exhaustive stakeholder engagement, and multiple rule proposals. The proposed rules would also allow the Board to conduct randomized, or investigation-driven, testing for heavy metals in marijuana products.

In addition to the proposed cannabis quality control testing rules mentioned above, this proposal also includes

- Revised licensee sample collection and storage procedures,
- Increasing the maximum amount of cannabis flower that may be represented by a single I-502 panel of tests,
- Revising the number of one-gram flower samples required for testing,
- Elimination of the ability of certified labs to return unused portions of samples to licensees,
  
- Revised guidance to labs regarding when to reject or fail a sample,
- Updated and expanded information regarding testing levels for water activity, potency analysis, foreign matter inspection, microbial screening, micro toxin screening, and residual solvent screening.

This proposal also includes updated rule language regarding product testing, remediation of failed lots, the expiration of certificates of analysis and the referencing of samples. Finally, this change would update reporting requirements for lab proficiency testing.

We anticipate the effect of these rules will be to promote the overarching goal of the Board to protect public health and safety, and to help and ensure that all marijuana products sold within the I-502 system

are safe for all consumers. With the recent increase in hemp-derived delta-8, delta-9, and other unregulated products entering the I-502 market, it is important at this time to require the addition of pesticide testing and allow for random or investigation-driven heavy metal testing for adult-use marijuana products.

We want to make sure that these products are safe for everyone. This CR 102 was approved and filed on December 8, 2021. Since then, we have received approximately 40 separate comments on the proposed rules.

This concludes my introduction, may I answer any questions?

Chair Postman: None from me. Seeing no others, no, thank you. We'll move to public hearing, thanks, Mr. Kildahl.

We have a lot of people signed up, we have 21, I believe. We're going to keep it at four minutes for everybody, because that's what we all thought. I would urge people to be concise. Most importantly, listen for the warning at 30 seconds, you'll hear from Dustin that your time is about to run out, and then finish on time. If somebody's already said what you wanted to say, you can give them a "ditto", and see if we can move along.

We also have some people signed up for general public comment. We might have to compact that from 4 minutes a person to 3 minutes depending on how this goes, so just a head's up on that.

A couple other reminders -- the meeting is recorded of course, we ask you to state your name and affiliation before you speak. It's four minutes, you'll get the 30 second warning, and we understand it often takes a second for people to get unmuted and everything like that, so don't worry, we're going to be patient, you please be patient. If you have a technical problem, we will come back to you and try again.

The last thing is that I saw some hands up. We don't have the ability to answer questions online during the meetings, so you're going to have to follow up through Dustin at the conclusion of the meeting.

And with that, we will open the public hearing. The first person I have signed up is Lukas Hunter.

#### Lukas Hunter – Harmony Farms

Good morning members of the Board. Lukas Hunter, representing Harmony Farms. Thank you for the opportunity to have four minutes to talk, I'm used to two minutes, now, from the legislature.

I just want to say first and foremost, thank you for taking the time on this set of rules. It's been a lengthy process but it's also a very challenging set, as we're balancing public health and safety, economics, survivability for businesses and labs, so there's a lot going on there.

I have submitted written testimony already to the rules and policy staff. I'll forward that to you guys as well, but ultimately Harmony would like to see lot sizes actually decrease down to five pounds as opposed to raised to 50. What we see is it's disproportionately affecting smaller businesses, and putting an excessive tax (on them). Labs will most likely raise the cost of QA testing to a standard for a test regardless of the lot size. What we would like to see is actually a harvest-level test -- because harvest is already defined within rule -- to take representative sample from the harvest, I suggest three grams, just because that's what's required by whatever amount of samples you would take, and to apply a charge for

pesticide test at a harvest level. I think that this would be the best way to allow for an even taxation on the cannabis industry, and it won't promote larger lot sizes, it'll promote an ability to have smaller lot sizes as well.

While going through this rules set, I also have seen other pain points. One that we've seen is, once you pass your mandatory QA test, an inability to re-test, in the form of remediating a problem further. Let's say for butane, you have a PPM maximum of 5,000, well if you pass at 4,900, you can't further refine that product and re-test it, because it's already passed QA testing. Well, that passing test result may not meet standards for a company. So, what we would like to see is an ability for licensees to autonomously be able to re-test and further refine product for pretty much for everything for everything except potency. And this is really just to improve the product safety out there. Also as a back-end of this, it would allow for licensees to not have to pay for non-mandatory tests, to pre-emptively see if their product meets quality standards.

So, those are the two main things, another one is, if there would be an ability for, once again, autonomous testing, re-testing if a licensee were to fail QA testing. Once again, in my submitted testimony, I talk about the way that Colorado handles this, with providing two additional samples from the same batch or lot, and allowing those to go to separate labs, or to be re-tested at the same lab. That's fully detailed out. But, I think that would be a more robust system, once again, allowing it to reside within the industry side, to allow for a more rapid turnaround as opposed to making requests to the Liquor and Cannabis Board. And once again, this is intended to further reduce the taxation of non-mandatory tests to make sure a product meets internal standards as well as state provided guidelines.

I'm trying to keep my testimony as short as possible, I wrote a whole novel for you guys, so you're welcome. Thank you so much.

Chair Postman: Thank you, we'll take a look at it, we appreciate the comments. Next on the list is Shawn DeNae. Shawn I just saw your hand go up, but I don't see you.

Mr. Dickson: I found her, Chair. If I may interject for just a moment... If the attendees that are planning on speaking give me just a moment to track you down, when you raise your hand it moves you in the list, and so once I think I found you, you kind of jump your spot. So please be patient for just a moment, there's no need to raise hands, I will find you.

Chair Postman: Okay, thank you.

#### Shawn DeNae – Washington Bud Co.

Good morning, everybody, and thank you for this hearing. And I also need to give a big shout out to you, Mr. Postman for your rebuttal that was recently published in the Tacoma Tribune, thank you for that, spot on, glad to see it.

When this CR 102 was re-presented right before Thanksgiving with the small business economic impact study, today seemed like it was far off. Here we are all of a sudden, here. We've faced the holidays, the surge of Omicron as waded through our community, then we have the CCRS to deal with, all the cannabis bills to prepare, the synthetic bills that really freaked us out and took a lot of our focus, and the other bills that are important to us, like the commission, and the craft cannabis endorsement. Now, here we are on a vital topic that will affect us all while we're trying to run our small businesses. So, forgive that all the comments came in kind of late, and hot, and heavy, but that's just kind of how it worked out.



I'm a little tired, and overwhelmed, and I'm seeking simplicity, the "kiss theory" seems to be the simplest to me. What I want to ask is, what if we separate the pesticide testing from the regular QA? There's no need to combine them together. What if we expand upon the third-party collection that the LCB is currently doing and sending tests to the WSDA? What would happen if we expanded upon that? The word on the street is, Washington doesn't have any mandatory testing program, but we really do. The LCB came through my farm last fall, collected samples and sent them into the WSDA for pesticide testing.

It's concerning that this rule set is still based upon self-selection. It comes down to a trust issue. We've seen that there are players in this industry that just cannot be trusted, and by creating a huge loophole for self-selection, that does not ensure that our products at the end-shelves are safe. The only way to ensure that is to do robust final end-product, from the store shelves, taken by third party, sent to the WSDA lab, and tested thoroughly for pesticides. We already have that program in play, and I would like to keep it simple, and just make that current program more robust. The current CR 102 already relies upon that sort of system for heavy metals. Heavy metals are proven to be completely unsafe when consumed, so, if that method is okay for heavy metals then it ought to be okay for pesticides. You know, we saw with the small business economic impact statement that the current proposal would negatively affect 72% of us. I think that's a little low, but all the same, with the amount of tax revenues that cultivators-

Mr. Dickson: Shawn, you have 30 seconds.

Ms. DeNae: All right, I'll wrap it up. We also need to address the 5,000 PPM for the butanes, hexanes, propanes, that's what too much; industry standard is well under 500. So let's move to a lower standard. And I also have a question about the usage of the term, "test samples from larger quantities of marijuana flower" the term "lot" is not used, so I wonder if that is meant to allow us to combine several strains that represent up to 50%? I just can't find cl-

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

Ms. DeNae: Thank you so much, I appreciate it.

Chair Postman: Thank you Shawn, and I'm sure somebody will get back to you to answer that last question you had for sure. Appreciate your comments. Next on the list is Scott Berka.

#### Scott Berka – BroCo Investments

Good morning, ladies and gentlemen, and members of the Board. My name is Scott Berka, owner of Full Throttle Farms in Okanogan, Washington. I'm a member of the Washington State Sun and Craft Association. We've been in business 7 years as a sun-grown craft cannabis producer. We have proactively pesticide tested at the harvest level for 7 years. I'm here today to speak against the proposed CR 102 rule related to quality control testing in its current format.

As an I-502 stakeholder, I wholeheartedly support pesticide and heavy metal testing, at the harvest level, randomly collected by a state agency, or its contracted agent. At an industry minimum, we need to make sure all regulated cannabis material being sold to Washington retail customers is free from harmful substances. This requires a rule that tests every farm, every year, in order to meet the desired goal of the new proposed rule, or why do it?

The current language is well-intentioned but is incomplete for a number of reasons. In its desired scope, it doesn't address testing all farms equally in its understanding of the actual financial impact on small businesses because of incomplete conclusions in their SBEIS analysis, or in its ability to protect consumers in its enforcement across the entire industry. Why does this rule allow self-sampling selection by producers for material being tested for pesticides and not testing all farms equally?

An excerpt from the actual CR 102 – “Licensed businesses that produce only flower marked for extraction would not be affected by this rule”. The LCB has the much larger responsibility to test all producers' material, whether at the farm or harvest level, whether intended for retail or extraction. If QA pricing is based on 50 pound lot sizes, how can the loss of sellable material under 50 pound lots be quantified? Most small producers don't grow enough to fill a 50 pound lot in a year.

Less than half the labs in Washington have the necessary lab equipment to run pesticide tests. Equipment, which would require a steep learning curve, and time to become experts in the use of, this fact alone should cause us pause, as we consider these proposed rule changes. We are just not ready.

In other rule language, it's suggested that producers pass on increased testing costs in the form of higher prices to retailers. Have you guys met our retailers? Not likely to happen. The SBEIS study was based on 10 pound lots, and not 50 pound lots. Testing labs were not included in SBEIS, and proposed cost increases to address 50 pound lot sizes could be substantial. Therefore, it should not, it cannot be used for rulemaking in its current form.

Proposed solutions -- we understand the pressure that Washington state and the LCB are under to address pesticide testing in the I-502. I agree we need to implement proper rules that fairly address, and equally spread the cost across the entire industry. But for now, we still need to make a living. So adding a disproportionate, non-recoverable cost to our small businesses, because of a hastily thought-out remedy or rule is unconscionable at this time. Don't implement a rule based on a SBEIS report that utilizes data that is knowingly incomplete and inaccurate.

Mr. Dickson: Scott, you have 30 seconds.

Mr. Berka: Keep QA lab testing separate from pesticide and heavy metal testing. Pesticide testing needs to be conducted by the LCB or an agent of the LCB at every farm to prevent loopholes and self-selection. Add language for QA testing for lot sizes for processors, and increase lot sizes to 10 pounds. Thank you very much for your time today.

Chair Postman: Thank you for your time, appreciate it.

Mr. Berka: Appreciate it.

Chair Postman: Next up is Mark Ambler.

#### Mark Ambler – Breeze Trees

Hi, my name is Mark Ambler, I'm a Tier I producer-processor up in Bellingham. I'm opposed to this rule, because I don't use any of the pesticides that are on the list, the banned pesticides, and the five or six percent of the approved pesticides that are on the sampling list, I don't use any of those. So, to tell me, to sample for those, and then tell my customers that this product has been sampled for pesticides, it's misleading.

And for those that have gone all the way to using beneficial insects or no pesticides at all and just having such clean facilities that they don't need pesticides at all, to make them sample for something they don't use, and for things that -- you guys have checked, you guys came to our facility and checked that we don't have those things anywhere in our facility. You opened all the cabinets. So you have a program in place to keep dis-approved pesticides from getting applied to cannabis in the market.

I don't think adding testing for all cannabis in perpetuity really helps, and it really dis-motivates people from going to beneficial insects. It dis-motivates people from getting rid of pesticide use, because why get rid of pesticides if you've got to test for it anyway? Just don't use the ones that are on the list, right? So, there's a lot of issues here.

And there's also the legal issues. Say we did use one of the pesticides that you wanted us to test for, and we follow the label instructions, and everything recorded on security cameras -- so we're following instructions, we're keeping records per label, and it doesn't pass the test at the end. What do we do? We can't go back to the pesticide company and be like, "you guys have got to change your label, because it's wrong for cannabis". There's no legal recourse. So it's a really big issue, and this is the starting point of that long, big issue. So, if you fix it now, you won't have that 20 years from now, where this is a huge problem. That's essentially my comment, I'll give my time to everyone else. Thank you.

Chair Postman: We appreciate it, thank you for joining us today. Next up is Gregg Allen.

#### Gregg Allen - Zoobees

Good morning to the Board, my name is Gregg Allen, with Zoobees, a Tier II producer/processor out of Liberty Lake. We've been in business since August the 1st, 2014.

Mostly, I'd like to echo Scott Berka, from Full Throttle's comments, he's a lot more eloquent than I am. We have serious concerns around, more or less, fixed testing costs per panel. The cost per panel is not going to change with lot size, unless some guidance is handed down to allow for that. If a five pound lot costs the same to test as a 50 pound lot, it's going to be hugely detrimental to anybody who's not going to be able to meet that 50 pound mark.

On the topic of the pesticides themselves, pesticide testing is great. I'd also like echo Scott's comments that that should be handled at the harvest level by LCB agents, or appointed agents of LCB. I have little else to add, Scott I think nailed it for the rest of us, and in the interest of time I'll close off there.

Chair Postman: Great, thank you, we appreciate it. Next is Micah Sherman.

#### Micah Sherman – Raven Grass

Good morning, thanks so much. My name is Micah Sherman, I'm a co-owner of Raven, we're a Tier II producer/processor here in the Olympia area, and I'm also joining you today to ask for some re-evaluation of these rules as proposed.

I'd like to reiterate the comments made earlier about the implementation of this significantly larger scale of testing of the 50 pound lot. Over the years, my comments on this ruleset has always been that we need to start separating the individual tests and do those tests at the scale that they make the most sense. So, some things make sense to do at the strain lot level, some things make sense to do at the harvest level,

some things make sense to do at the farm level. This particular pesticide sampling, I think, could be effectively done at the farm or the harvest level.

One thing I'll bring up that hasn't yet been mentioned is, we have testing that needs to be done for dis-allowed pesticides that has a completely different set of considerations than tests for allowable pesticides. And right now the ruleset doesn't really distinguish between the method of sampling and the method of tracking those different compounds which do have much different considerations and much different concerns. So I worry a bit, that that aspect of the ruleset is not fully developed, and it leads me to believe that we need to work more with our experts at the WSDA -- which I know there's a bill going right now that's going to help with that process -- and I think that we have quite a bit of work left to do here to get this right.

Our organization, the WSCA, has proposed some options that could allow us an intermediary state where we can start testing for pesticides at a broader scale, and then work to refine that. I think we have work left to be done here, if we do want to get some kind of pesticide testing into the system. But as it is right now, just for example, for my business, this would more than double my testing costs in a year. I don't grow 50 pounds of hardly any strains, even in the course of a full calendar year. My business model is entirely based on small-batch, craft cultivars. This would make it so my business model is not viable anymore. This would make it so the research and development that we do for new strains would not be viable, to be able to actually do that and have it be something that we could afford to do. So, this is really going to hurt our ability to innovate, to breed, to come up with new strains, and all of that work is really important. It's already very hard and difficult to do financially, or margins are very, very slim, and this will put us into a position where we just really can't afford to do our craft business models anymore.

We need this ruleset to apply equally in the compliance costs, whether you're a giant person making a completely homogeneous highly processed product, or a small-batch person that's making one-off lots. And so, we need to figure out a way to make sure...

Mr. Dickson: Micah, you have 30 seconds.

Mr. Sherman: ...these compliance costs are evenly spread across all of those different business types, and I think it's worth spending a little bit more time to get it right, and we're here to do that with you. Thank you.

Chair Postman: Thank you for that, and I see that you emailed your testimony as well, so I'll take a look at that. I appreciate it.

Mr. Sherman: Thank you.

Chair Postman: Next up is Jessica Straight.

#### Jessica Straight – Eagle Trees

Thanks for taking my testimony. I'm Jessie Straight, and together with my brother we own Eagle Trees, it's a Tier II producer/processor up in Bellingham -- near Bellingham -- between Bellingham and Mt. Baker. I'm just wanting to talk about this testing stuff.

Already, so many rules that have taken effect have hurt us, financially. We're a really small business, we gross less than \$500,000 a year, and with that we have to pay quite a lot of costs. For example -- we get

about, probably around 30% of the cost of our products at retail. To compare that to what the state gets, is about 47% of the retail cost of the product that we work so hard to produce. That doesn't sit quite right with me, truthfully, that the state makes more money on our products that we create, through our blood, sweat, and tears. That just doesn't sit right with me. And then to create a bill, to create more costs for us, that we have to pay, is just, I think it's just ludicrous.

I think that, along with the other speakers that have so far spoken, the five pound lot makes a lot of sense for what we're doing now, for potency and whatnot. The pesticide test makes more sense on a harvest or farm level, along with the heavy metals. We personally, we don't use any pesticides at all, we use no chemicals, we use no chemical fertilizer. We use nothing. We use no products on our products. Actually, we would love the state to test product for pesticide and heavy metal. That would allow our product to stand out in the marketplace. That would be great, and for the amount of money that our industry is providing for our state, I think we can earmark just a little bit of that, get a little group going that would go and buy product at the shops, because that ultimately is what people are buying. That is the health and safety -- what people are actually buying at the actual shops. So in order to keep those products safe, I think there needs to be some kind of group through the LCB or the state, or whatever, that tests those products on the shelf to make sure they're safe, because that, ultimately, is what we all want, we want safe products for the consumers. We want safe products for the consumers because for the cannabis industry, we want to continue to create a good name for ourselves, and I think the state wants to protect consumers.

So I think we're all in agreement what we want, and it doesn't make any sense whatsoever to allow people, players, to self-sample, because the bad actors are going to act badly, we all know that.

Mr. Dickson: Jessica, you have 30 seconds.

Ms. Straight: So we can't leave it as an honor system, we just can't. Especially for pesticides and heavy metals that are actually going to affect peoples' health, potentially. So, it really needs to be at the farm level, great -- and, at the retail level. Secret shop -- get in there, buy product, and test it for pesticides and heavy metals, it makes the most sense.

And I agree with a lot of people that came before, and I think that's pretty much all I have to say, thanks so much for taking my thoughts.

Chair Postman: Great, thank you, Jessie. Jeremy Moberg.

#### Jeremy Moberg – CannaSol

Good morning, thank you Board members, for the opportunity to comment on what really is an impactful set of rules on the industry, and particularly on small businesses. My name is Jeremy Moberg, I'm the owner of CannaSol Farms, and a board member of the WSCA.

I do want to commend the LCB on the conduction of the small business economic impact statement. This is the first time that I think we've seen a small business impact statement that really dove into the impacts on small businesses. And, I think its findings are interesting. I think they basically state that there is a disproportionate impact to small businesses. Some of the small business impact statement seems to rely on these larger lot sizes as a mitigation effort against that, but it actually has the opposite effect.

Large companies will utilize the 50 pound lot size, and that will decrease overall testing that labs are conducting, which will result in increasing costs from labs. We've heard testimony from labs, written testimony, conversations with labs -- that if the large players adopt the 50 pounds, that they will actually, in order to cover their costs, have to increase the costs on all cannabinoid testing, and that's disproportionately going to injure small farms as they cannot take advantage of the larger lot sizes.

I think we all agree that we need pesticide testing, and sooner than later. I'm hopeful that we can make some modifications in a single extension of this rulemaking that could satisfy the need for pesticide testing while acknowledging other efforts within the legislature, and the fact that we're moving towards a more broad governance of this industry that is going to include input from agencies that traditionally handle these sorts of testing requirements.

The other thing that the SBEIS asserts is that small businesses will take advantage of these larger lot sizes, and that's just not true, and asking farms to change their practice and act like a big farm when they're a small craft producer is really not a practical suggestion.

Another big issue here is that we don't have very many labs that are able to do this testing right now, and effectively, on day one of this rule going into effect, we're going to lose over half of our labs. There will be no reason to send a sample to the lab that I currently work with, True Northwest, who does not have the capacity to adopt pesticide testing. I would not send them a sample, only for them to package that sample up and send it to one of their competitors, and then their competitor is going to -- are they going to prioritize that sample above their own samples that they have?

Mr. Dickson: Jeremy, you have 30 seconds.

Mr. Moberg: Thank you. So that's a big consideration.

Another consideration that I really think we really need to look at is there doesn't seem to be a provision for any sell-through, and this would be hugely detrimental and chaotic for the industry, as you know. I have 50 grams of an extract lot left, and I have to now get that pesticide tested? Our solutions are varied, but the biggest one is that we could create a batch system, a pesticide batch system...

Mr. Dickson: Jeremy, that is your time.

Mr. Moberg: where individual lots could go together and be tested. So, we have some suggestions out there. I've also written testimony, so I thank you for your time and your consideration on this issue.

Chair Postman: Thank you, Jeremy. Joshua Rutherford.

#### Joshua Rutherford – Dutch Blooms

Hi there, thanks, I'm Joshua Rutherford, I own a Tier II producer/processor by myself, and I work it myself. I have to -- truth be told I haven't had a chance to go through these rules -- I'm going to emulate a lot of thoughts that have come up. I fully support pesticide and heavy metal testing in our industry, and I think that it could be achieved in a different way.

Looking at seasonal for outdoor growers, testing their soil, and coming by and getting a seasonal leaf sample would be sufficient. Maybe for indoor or greenhouse cultivation, doing it per crop, rather than throwing the thing on the final product for the producer.

And then also I agree with Jessie, the secret shopper program would be invaluable. I mean we do have a ton of, excuse my language, shitty pesticide-laden product on the market and it is an issue, and I think we need to meet the standards similar to California, because as we look forward to federal legalization, we need to be on point or we're going to be stuck only able to move our product within state.

So I appreciate the efforts, but I think we need to have better conversations with farmers, and really suss out the best way to approach it to be a program to be successful for everybody.

So, I'll keep it short and sweet. I'll be happy to contribute if you guys have questions. I'm involved in the industry. I'm driving back from California right now after having given a seminar. So, thanks for the time, guys.

Chair Postman: Great thank you, appreciate you joining us. Next up is Matthew Fregone?

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

Chair Postman: Okay, then we will move to the next -- Ryan Sevingy? Good morning.

#### Ryan Sevigny – Landrace Labs

Thank you for taking the time to review this very robust issue. I think we see with the attendance today that there's a lot of opinions, and I think there's a lot of opinions on the same side of the table. I've already emailed my comments, so I'll keep them short here, because I don't want to continue to reiterate.

But, good morning Chair Postman, and Board Member Garrett. My name is Ryan Sevingy, I'm the owner of a Tier II sun grown farm, I'm also a board member of the Washington Sun and Craft Association, and an adjunct board member of the Cannabis Alliance.

Just like you've heard today from a multitude of people, I wholeheartedly support the adoption of pesticide testing. I think our industry and the patients definitely need to have peace of mind when they go to the retail stores, to know that the products on the shelves are safe. However, as you've heard, I think that there's a lot missing from this rule set. I also want to commend Kathy, for her diligent work on all these issues, she's fantastic.

But just to kind of quickly bullet point my comments, the small business impact statement did not consider the economic impact on the labs. They're not stakeholders, and so I think from that standpoint, a lot of the data set is skewed, for not seeing the full picture, I think I've mentioned here, less than half, five of the 11 labs in the state are able to test for pesticides, and I got that from the frequently requested lists on your website. I think there might be one more coming online or something, but those five labs are definitely going to have a large head start, and I do think that there's going to be consolidation as Jeremy eloquently illustrated in the supply chain if he were to continue testing with True Northwest.

The small business impact survey also had assumptions based on five and 10 pounds, and not 50. In fact when I participated in that survey, 50 pounds was not mentioned to me at all. It was all conducted in the context of five and 10 pounds.

Again, being a small craft producer, we don't produce 50 pounds of a single lot. We've heard Micah talk about changing business to accommodate testing rules, and I don't think that is a fair application of the

rules. I think that we need to maybe re-focus, and drive some changes that I think could be accomplished in the next 30 days, with an extension. Those simply are to uncouple the 502 testing panel with pesticides, they can be conducted in two separate tests to achieve the same total results. And then also allow the pesticide test to be handled in a manner similar to heavy metals. I think Shawn mentioned it, and a couple of people mentioned it as well, and that includes 3rd party sampling.

So using an approach like this I do think would help small farmers from realizing some devastating effects, and gutting the backbone of this industry which was developed to be craft and small production.

I'll yield the rest of my time, and I just would like to say, I appreciated your article yesterday, sir.

Chair Postman: Thank you, thanks, for I did see your testimony pop up in my inbox, so I'll take a look at that. And I promise next time you're here I'll get your last name right. Thank you, sir. Bernard Kessler.

#### Bernard Kessler – Orange State Cannabis

Good morning, I'm going to read this, because I've got a few things that I want to cover. So, my name is Bernard Kessler. My son and I are the owners and the only parties of interest at Orange State Cannabis in Elk, just north of Spokane, and we are a producer/processor.

The rules LCB are proposing regarding QA/QC may not only not safeguard products, it will financially impact in an inequitable manner most of the producer/processors in the state, and very possibly would possibly put me and my four employees out of work. If I sound a little bit passionate, that's why.

Starting with a process to safeguard products, how can the LCB ever imagine that a producer who is willing to cheat on his pesticide use reporting, either not consult a PICOL list, or even worse, purposely use a bad pesticide, and then wouldn't cheat on his sample collection? The grower may simply not collect the samples in the manner required, he may have untreated plants to test from, or may just go purchase flower from retailers that have successfully passed testing. To think a pesticide cheater wouldn't do that borders on negligence.

The proposed sampling process sounds a whole lot to me like folks not in the industry developing that on its surface is a simple solution, but does not lead to increasing safeguards which we are all in favor of.

As far as the cost of testing as proposed, most farms in this state are small business, and many of us carry many strains of smaller quantities. Again if the LCB had a better understanding of the industry, it would realize that almost no retailers would buy only one or two strains from a producer, as strain trends shifts quickly at the retail shops, we have to keep a variety of strains. Large lot testing only makes the problem worse, as testing labs have to charge much higher prices per test to cover their fixed costs over fewer tests. Regardless of if it's a five pound or 50 pound lot size -- that's immaterial to this calculation.

Again, the few large producers with multiple large lots would fare the best, and the smaller producers, never mind the smaller tier or craft producers, will suffer disproportionately.

And speaking of suffering disproportionately, the LCB has a social equity task force that lists one of its responsibilities as, "Advising the Governor and Lieutenant Governor on policies that will increase social equity in the cannabis industry". Is this position just lip service? Is this just an effort to appear socially responsible? What does the LCB think the person looks like who is suffering the most from social inequity? The large business owner/grower with the infinitely deep pockets and multiple investors? Or is it



the small-time farmers counting every dime to make sure he can make payroll without filing yet another \$75 cannabis additional funding application? To be true to its stated social equity responsibility statement, the LCB should consider this as an opportunity to reduce small operators' cost, not increase them.

I'll not be critical about offering alternatives, the Washington Sun Craft Growers Association has close connections with growers, and primarily to those that are not the few big box growers that this proposal seems to favor. The process proposed by the WSCA addresses the financial impact and inequity of the LCB proposal and solves the issue of potential sample adulteration. I'm sure you have their contact info, and if not I would be happy to provide it to you. Thank you.

Chair Postman: Thank you, and I'd appreciate if you could email your written statement as well, it would be helpful to us.

Mr. Kessler: I will, thank you for that.

Chair Postman: Thank you for your time. Next up, Caitlein Ryan.

#### Caitlein Ryan – Cannabis Alliance

First of all, I want to thank the Board for hearing testimony today. My name is Caitlein Ryan, interim Executive Director for the Cannabis Alliance. We're the largest member-driven industry organization dedicated to the advancement of a vital, ethical, and sustainable cannabis industry. I want to say thank you to the Board and staff. We would like to acknowledge and express gratitude also for the dedicated industry stakeholders who have devoted significant effort in participating in this lengthy process. The complexities and history of quality assurance testing is robust, and we appreciate the multiple challenges and brokering agreement on comprehensive ruleset. We know we will not see full agreement today.

The cannabis alliance represents the spectrum of feedback you will hear, many of our farmer members are signed on to the letter presented by the Washington Sun and Craft Growers association illustrating the depth of challenge in finalizing the fair implementation of a testing program too long delayed. Additionally, our patient and medical members continue to abandon the regulated market for more reliable products grown by their known legacy market sources due to low confidence in the safety of I-502 cannabis. Many patients conduct their own product testing with stakeholder labs to ensure their medicine is safe, because there is no regulatory framework to provide guidance.

We acknowledge that there are significant areas for improvement in this proposed rule set, and to that end, we would like to make a conceptual proposal. Upon completion of this rule set, we would ask LCB to take the lead on establishing a task force to proactively evaluate the impact of these rules during the first year of implementation. While we know there is a structure in place for requesting rule changes, what we are asking for is an acknowledgement that there will need to be adjustments as the impact of the significant and important shift is implemented. A stakeholder task force would provide a formal forum for problem solving in the areas of concern, such a third party testing and lot size, and it would also be a powerful advisory tool for stakeholder input and agency transparency, should the inter-agency collaborative team be established later this year with legislation currently in session.

Despite clear areas of needed improvement, the imperative for these rules to be in place still remains. We must come into alignment with all other adult-use states and live up to our medical legacy by implementing pesticide testing in Washington state, and we urge you to pass these rules today. Thank you.

Chair Postman: Thank you Caitlein. John Kingsbury.

John Kingsbury – Citizen/Medical Patient

Okay, thank you for the time. My name is John Kingsbury, I'm a medical cannabis patient. I've listened to a lot of the concerns -- which I appreciate the business concerns -- but I'd like to speak to the other end of these rules, as a consumer.

Before I list my concerns about this proposal, I need to say one thing. A lot of the work has gone into this, this has not been a simple or short task, and I appreciate staff for all of this work. Even where I disagree with some of it, the seriousness, thoroughness and thoughtfulness of it is clearly visible, so thank you staff for that.

My highest hope for the results of this project is that we'll get it to a place where the quality assurance standards for our recreational product would meet the standards for medical product. Unfortunately, these rules do not get us there. So, now I may need to ask for more rulemaking from this agency, and from DOH, for medical products, which is down the road, so that'd be frustrating. Listening to Caitlein's idea though, that may be an approach to address that.

These are not the rules that I would have written, although I would have not expected that to happen. So as it stands now, these rules would not personally bring me into the regulated market, but there is a lot of good in here.

In terms of quality assurance for recreational products, I think the action limits are fine. I'm okay with at-will heavy metal testing for now, unless problems reveal themselves down the road. And the number of samples per weight is a creative approach, and it would give me confidence as a consumer, I think, for recreational product.

In the not-ok column, again, self-sampling is an obvious flaw. My preference would be to go to a publicly funded sampling system. As a consumer, I would gladly pay extra for testing in order to get out of the illicit market. But I also recognize that would require legislative action, and I don't think that we should wait to implement some rules.

I've expressed concerns about total molds. I believe that the extraordinary high levels of total molds is disturbing, and making patients and consumers sick, and I wouldn't recommend any vulnerable patients touch 502 products, until it is tested for total molds.

Testing end-product -- the way I read the proposal on page 12, 4(c), it says the only testing for final product of concentrates will be for cannabinoid levels? If I'm reading that right, I'm guessing the assumption here is that some intermediate product will be tested, then end-product tested, and pesticide testing will be covered by intermediate testing? I think it would be terribly naive to assume that what the intermediate product is will necessarily be known, and I strongly advocate testing for pesticides at the end product of concentrates, so there's not another problem down the road.

The presence of Azadirachtin and other neem-oil derivatives is understandably a deal-breaker for many patients. My preference is that Azadirachtin and other neem-derivatives be prohibited from use on cannabis, but that may not be realistic, and I would simply settle for labeling. If I can know there's cattle

hormones in my milk, I'd also look at the cannabis label, and identify whether there are any desiccants or antecedents in them.

Mr. Dickson: John, you have 30 seconds.

Mr. Kingsbury: That's why transparency should be fundamental. Having said that, we are seven or eight years down the road into 502, and I think it is important that we get rules into place. I don't think we should let the perfect be the enemy of the good, and I strongly recommend that the Board adopt these rules and move forward from here. And I think that covers it from me, thank you.

Chair Postman: Thank you John. Jason Poll. Dustin, have we found Jason out there?

Mr. Dickson: Yes, and he has the ability to turn his camera and microphone on.

Chair Postman: Jason, we might skip and come back to you, unless you're right there un-muting. Why don't we do that, and we'll call Jeff Newton up?

Mr. Dickson: Chair, Jeff Newton registered online to speak but is not with us today.

Chair Postman: Okay. I'll make another call here for Jason Poll.

#### Jason Poll – Gorge Gold

I'm Jason Poll, a Tier III grower. My farm is in Grant County by the Gorge Amphitheater, and a Washington Sun and Craft Association board member. So I'll echo what everyone's already said, and just point out again that we're trying to employ people, keep ourselves alive. This is very difficult, as a small sun growing out in the sun and indoor craft grower, it's a huge burden, and I've seen a lot of change in the LCB and how you guys are handling things, so I'm pretty confident that you guys are going to take into consideration our issues, and I will end it at that. Thank you for the time.

Chair Postman: Great, thank you Jason, appreciate that. Next up, Vicki Christophersen.

#### Vicki Christophersen – Washington Cannabusiness Association

Thank you. My name is Vicki Christophersen. I'm here today as the Executive Director for the Washington Cannabis Association, testifying on behalf of our 85 licensed cannabis businesses.

WACA members direct our policy priorities and have been committed since day one to a safe, quality controlled and fully regulated cannabis system in Washington. I'm here today to encourage you to adopt quality control regulations. This conversation, amazingly, started four years ago, and after four years, it's safe to say that the concerns have been heard, evaluated, and reflect input from all stakeholders. There has been an ever-changing target for testing and safety. When testing and safety should be one of the most bedrock values of our system. In particular, as the industry evolves, adopting these rules underlines what should be a fundamental tenant, that cannabis products from Washington must be safe, quality controlled, and fully regulated.

When we say we care about what's going into products and thus consumers' bodies, we have the ability to prove we mean what we say, and require testing. When we say we're worried about the development of products and processes we don't understand, we have the ability to address this concern by requiring

testing. When we agree that the illicit market continues to thrive and that products claiming to be cannabis are appearing outside the regulated market, we have the ability to guarantee a safe regulated alternative. With testing, we can erase the mystery and fear, or we can identify a problem through testing and address it to protect consumer safety.

After four years, these rules now say heavy metal testing is optional. In other words, the longer we go on, the more we drift away from the consumer, which is who should be centered in this conversation.

While Washington was the first to approve adult use cannabis, at this point we are the last to ensure testing of cannabis products to ensure their safety. We urge you to move forward with adopting these rules, we appreciate the process that it has taken to get here, it is long past time to move forward. Thank you.

Chair Postman: Thank you, we'd appreciate seeing written testimony if you have it, that you could share.

Ms. Christophersen: We will, for sure. Thank you.

Chair Postman: Next up, Bonnie Jo Peterson.

Bonnie Jo Peterson – Industrial Hemp Association of Washington

Hello, thank you for the opportunity to testify today. I am Bonnie Jo Peterson, the Executive Director and founder of the Industrial Hemp Association of Washington. I am, like most, definitely want to see pesticide and heavy metal testing, and it was mentioned that the end-concentrate end of things is really a concern for the hemp industry if CBD and other cannabinoids are allowed from the hemp industry into the regulated market to be added to products since that's the only thing that is allowed -- that those products are being tested with heavy metals and pesticides

And as mentioned, you know, the heavy metals can be dealt with at this juncture, but I do have the feeling that there should be some cost-reduction, some incentives, for the small growers, whether that's some kind of tax incentive, or specific fees. I'm also in support of having the WSDA or a specific agency that comes out and takes those samples, or whether it's a point of delivery -- but we do need to make sure that things are tested by labs that actually have the capability as well as having that -- fair and equitable end of things from farm level to end-user.

So again, I commend, like a lot of other people, the LCB -- it has taken a long time, but we're at a good place where we can make this work with some more conversations. And the solutions, I really believe, are going to help the market evolve with having the end-consumer know what they're getting.

And thank you for your time. And I do want to do a shout-out to Kathy -- thank you, you're wonderful, and keep up the good work. Thanks.

Chair Postman: Thank you Bonnie Jo. Next up is Jim MacRae.

Jim MacRae – Straightline Analytics

Thank you for the opportunity to speak. I also want to commend Kathy and her group on developing these rules. The process -- this is specifically about the process -- you know it's hard to believe it was almost three years ago that we had our first "listen and learn" session on this, and indeed I think this was the first

“listen and learn” session on this, and indeed I think it was the first “listen and learn” session that the agency had -- it was a new method of increasing engagement, and give breath to stakeholder input, and it was commendable.

This process has gone on quite a bit longer than I think anybody expected. I am just by summary, not in support of the rules as they are currently written. There are probably three or four primary reasons for that.

One is -- and I've said this again and again in previous commentary, so I don't have written comments today, but I've said most of this stuff before -- I do not believe that it is appropriate to change the naming of these rules from “quality assurance” to “quality control”. I've made that comment before. But if you even look at the purpose of the rules as written in the CR 102 --you know, you make a couple of references to the overarching goal of the WSLCB being to protect public health and safety and to -- emphasis added -- assure that all products sold within the I-502 market are safe for all consumers. You've got a little bit of semantic stuff going on in the explanation trying to justify this move away from “assurance” to “control” -- but in reality I see this as a move toward shifting the bar closer to what the agency has actually been able to achieve for the past seven years, rather than what should be. Certainly “assurance” is better than “control” from a consumer perspective.

Second concern I have is the focus on pesticides and heavy metals, that's wonderful, that's obviously been a gross thing missing from this state's product safety suite, relative to the rest of the country. It's becoming more and more apparent as the rest of the country comes on board with legalized cannabis -- to see pesticides now finally, years into this process, being mandated, that's great, but then now to see heavy metals go into a status they already had, which was the ability to be randomly tested, or part of an investigation. The agency has always had that ability, it's not a big add here, it's basically just doing nothing new with pesticide with heavy metals that I see. The failure to address the repeated concerns about how this state shows -- I believe it was 2018 -- to remove molds and mildews from testing, which at the time were probably the biggest single reason for flower, particularly, failing test, just remove it, that's not a good thing. The agency's been told that dozens and dozens of times. I don't see those being added back into these rules, that is an inadequacy.

And finally, this lot size thing. I don't know where 50 pounds came from, and I'm not going to speculate, other than to say that {inaudible} being part of and been involved...

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: ...for five years in this process -- thank you, Dustin -- is that the alternate was a 10 pound lot, maybe a 15, maybe a 20, regardless -- the lot size increase was clearly an effort to mitigate any increased costs for this increased testing. It's a cost that every other legalized producer in this country bears. Our producers should bear it.

I do not support these rules, I really don't hope, I hope you do not approve them as they are. We need to go forward, but not with these rules. Thank you very much.

Chair Postman: Thank you Jim. Next up is Tania Sasaki.

Tania Sasaki – Confidence Analytics

Good morning. First of all, I want to say thank you for the opportunity to comment about these rules. I'm the Chief Science Officer at Confidence Analytics which is a cannabis testing lab in Redmond, Washington, and we've been testing cannabis products for almost eight years, and are one of the five labs that are currently accredited for pesticides.

As we all know, this has been a long topic of debate, and the legislators approved formation and funding of the Cannabis Science Task Force about three years ago and the goal was to improve testing standards and quality, and make it more consistent across all the labs in the state. I've been on five different working groups for that, to help outline the standards for the testing methods -- not only to ensure testing quality but also standardized testing.

I'm here because I would like to voice my support for passing these rules as-is. The original date for pesticide testing was supposed to be May 2020. We all know the coronavirus pandemic, among other things, had different plans for that. And so, we've been deliberating this topic for as mentioned for about five years now, to get to this current state of the CR 102. As demonstrated by our early adoption -- as we've been testing pesticides for about six years -- our early adoption shows that we believe in the importance of pesticide testing to ensure clean product for the patients and consumers.

I've heard a lot of discussions and concerns about smaller craft producer/processors about testing costs. Probably the majority of our clientele are these smaller producer/processors, so when we look at the increase to cost, it's not going to go up five-fold, ten-fold, because of the increased lot sizes, because most of our clients are the small ones that are having these smaller lots. We'll never reach that 30, 40, 50 pound lot size.

So, for those reasons, I think this needs to pass as-is, as it's long overdue to ensure the public health and safety of the patients and consumers.

And then finally, I would also like to take this opportunity to remind the Board that the task force had two significant -- we call them parking lot items -- and they've been talked about here, and that's a third party sampling, and I think a lot of people have mentioned that so I don't think I need to comment on that anymore.

But then also the ability for labs to obtain clean material from their clients in a bulk manner, because for testing, we do need clean matrix match our quality controls and calibrations so that we'll get more accurate results. And currently there's not a good cost-effective way to do that. And I know that's beyond the scope of this CR 102, but I just wanted to put that out there.

In closing, I'd just like to thank the Board for the opportunity to present my opinions, and for your time and consideration. Thank you.

Chair Postman: Thank you. Can I ask you one quick question?

Ms. Sasaki: Sure.

Chair Postman: About lot size costs, which you just mentioned, and it's one thing we've heard a lot about and I've taken some notes on that -- it seems to me the concern is that if we go to this 50 pound, that labs would just have a 50 pound charge for that. Are you saying that that's not the case, that if I came to you with 15 pounds, I'd be charged a 15 pound rate -- or is it going to be one size fits all?

Ms. Sasaki: It's not. The cost is not going to scale with lot size. The cost to test a sample is the cost to test a sample.

Chair Postman: Whether it's ten pounds, or 50 pounds, your costs are generally going to be the same, you're saying?

Ms. Sasaki: Generally, yes.

Chair Postman: Very interesting. Thank you for all the time you've put into this, we do appreciate it.

Ms. Sasaki: Thank you.

Chair Postman: The next person signed up is Dave Varshock.

#### Dave Varshock – BroCo Investments

Good morning Board and staff, my name is Dave Varshock, I'm the general manager for Full Throttle farm in Okanogan, as well as a complex of farms comprising multiple licenses and multiple tiers. This complex has been a contributing part of the I-502 since 2016. We proactively test our crops at harvest level for pesticides, our grounds are tested for heavy metals. We're an organic sustainable farming practices farm. We improve our soils, and we absolutely pride ourselves -- if we won't smoke it, we won't sell it.

First, before I go any further, I'd kind of like to offer an apology to Chair Postman, for some comments I've made in the past, and some assumptions I've made, especially based, and in light of some of the media that's been present the last couple of days, and I commend you for shining some light on some otherwise dark nooks and crannies of what is going on here.

The CR 102 -- I'm here today to voice my opposition for it, as written. One of the problems I think is -- if I'm correct is CR 102 has been out since November or so, and we've had the holidays in there, and while this has been a long ongoing subject, the actual written language hasn't been around for very long, especially in consideration of COVID, the holidays and so forth and whatnot.

So, to save a lot of time, here, I have provided my written testimony, but I'd like to support a lot of what people have said along the way. A couple of exceptions, Bonnie Jo with the Industrial Hemp Association - I'm not really in support of hemp being a part of our regulated market and our products. There are a lot of untested substances in those things as a result of those conversions, and I think we need a deeper dive into, so I'm not supportive of that at all.

I've heard a couple of recent ones about "we've been at this a long time and we just need to pass it". I couldn't disagree more. If there's questions or something undiscovered, then we need to take the time to figure it out before we pass something like this because it's going to affect upwards of 70% of the people that are involved in this industry. And those are people -- there's people attached to those businesses -- it's not inanimate objects, those are peoples' livelihoods and lives.

So I want to voice my support for the Washington Sun and Craft Growers. They've put in a lot of legwork and a lot of time, more time than I've had to develop this. They've given you guys some great ideas about how we could move forward right now, and make some good changes, and keep this going.

I believe the small business economic impact (study), while awesome and a great thing to do, I do think it fell short of diving deep enough into the economic impacts of this CR. I think there's some costs that are going to go way up, and put a lot of folks out of business. And that scares the heck out of me.

Third party testing. The ability for people to choose their own test samples is ludicrous. The bad actors are going to exploit this, they're going to use this and we're going to end up with a lack of confidence in the products that are on the shelves that are in the marketplace, and that's the last thing I want to see.

I've provided some ideas in my written testimony. Thank you very much for your time, and keep up the good work, Kathy. Thank you.

Chair Postman: Thanks for your comments, and the last person we have signed up is Greg Harrison.

Mr. Dickson: Chair, Greg Harrison sent me an email and said he's having a bit of trouble connecting, so I don't see him online with us today. But, Jeff Newton from a couple of speakers ago has been able to join us online.

Chair Postman: Ok great, then we'll go to you, Jeff.

Jeff Newton – Unnamed Association

I think everything I would have to say has been stated today, but some I'm against, some I'm for.

I do think that pesticide testing is very important, I do think that the lot size of 50 pounds, although it was probably well-intentioned, to save money, I'm not sure how that's going to play out in the end, because of the economics for labs. And I've heard what Tania from Confidence Analytics said, so that would be interesting to see. I think that maybe a 30-day reprieve to look at it closer, to the details for the economics as well as the process of collecting samples would be a good idea.

One thing that I heard Tania say that I completely agree with, if I understand what she was saying correctly, is that I think it's very important for labs to have access to clean product that's coming in. When it goes through one lab, and is passed onto another, I don't know that that's clean product, and I don't know that there's any way to track and make sure that that product actually even came from the farm that it said it was from. If the farms were able to submit samples directly, whether it's by third party choosing that sample or by that farm choosing it, I think that's important. Because once you send it off to a processor for instance, for anybody -- you don't know if the sample that they've sent in for the pesticide testing is really yours or not. And in addition, you don't know if the lab is receiving product is clean or if their cleaning processes are proper. So I have no problem with pesticide testing, but I think there are a few more details to work out. I would like there to be another 30 days where we can talk about it. Unfortunately, I just found out about the issue, because I'm not that informed on this topic, about four days ago, or else I might have more insight into it.

Chair Postman: Okay, thank you. And that closes public hearing on our marijuana quality control rules. I do want to thank everybody who testified for keeping it concise. It was good, we heard a lot of people, and some questions from all sides. I appreciate that it was delivered in constructive ways, and it was just good to hear people from all sides of this issue. And now we'll take this back, it's an important piece that the rulemaking, and I know that Kathy and Jeff Kildahl are not just listening now but will follow up with all the written testimony to see what we can do. I have some questions that I will follow up with staff as well, and we're going to stay engaged on it. So again, thanks to everybody who took the time today to do that.



And if there's somebody listening who didn't sign up and wanted to talk, please do submit testimony in writing soon as you can.

## **6. GENERAL PUBLIC COMMENT**

Chair Postman: We are to the part of the agenda where we have general comments, we've got several people signed up, I'm going to go ahead and keep it at four minutes. It's going to be a hard four minutes, so you're going to get cut off at four minutes but will get a warning at three and a half minutes with 30 seconds left. I ask you again to be concise, state your name and affiliation for the record. Please be respectful, and listen for when that warning comes. First up is Sami Saad.

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

Chair Postman: Okay – Peter Manning.

### Peter Manning – Black Excellence in Cannabis

Thank you Mr. Postman, the head of the Board, and Ollie, for holding this meeting today, I have a couple of issues.

I just want to point out one thing. Social equity is important. Today we were at the meeting, and I sat back and I watched it. We've got to make that more diversified, we need to have more participation by people of color in these meetings, talking about these different issues that they're going through. We don't have any black -- we have like, what, two black growers, we have three retailers, I mean -- I truly believe David Postman and Ollie Garrett can bring about social equity. I think when I met Governor Inslee back in 2020, he said he was going to make changes, and I see those changes now. Inslee, I believe, is doing a great job as far as pushing this social equity agenda. I am pleased with the Board, I don't have any gripes with the Board, I think you guys are on track, from Black Excellence Cannabis' viewpoint, where we stand, and our constituents, which we have a rather large constituency. I just want to say that we believe in you guys. We're behind you, we're going to support you, because I think you guys can make it happen. You guys are new at this, you guys have done a lot of stuff so far, I think it's beautiful.

I have to comment on some of these -- I don't know where some of these new groups come from that don't really have a background on social equity issues. I've been fighting in cost since 2014 / 2015. I'm well entrenched in this battle and this fight for social equity. I tell everybody, let Google testify, as far as who's who. Go look at social equity and see who's been there from the beginning until now. Black Excellence in Cannabis has been there, we've helped, at some point, draft, or helped to write, at some point HB 2870, we're sincere about this, we think you guys are doing a fine job, and you guys have a nice day.

Chair Postman: Thank you Mr. Manning, we appreciate your comments. Next signed up is Marilyn Olson.

### Marilyn Olsen – Integrity Labs LLC

I signed up to talk under the WAC 314-55-101, but as long as I get to talk, that's fine.

Chair Postman: You go ahead and we'll make sure it's included in our comments on the rules too, please, go ahead.

Ms. Olson: Thank you, my name Marilyn Olson, I'm the co-founder and scientific director of Integrity Labs, we've been in business since about 2014, and I've also written my testimony, and e-mailed it to you.

There's a number of problems with this, one of the things is that testing should always be called "quality assurance testing". Quality control is actually a subset under quality assurance testing.

We're definitely for pesticide testing, and would like safe products for our consumers. We believe that consumer safety should be maintained, not relaxed. When we increase the size of the lot, I feel like that's relaxing the testing. When you think about it in terms of pounds, or grams or product, 50 pounds is a huge amount.

According to the Washington State Liquor and Cannabis Control Board, Economic Impact Statement, 99.3% of the producers and processors are small businesses with under 50 employees. This size change will only help the large businesses. A 50 pound lot of cannabis is around 23,000 grams, and when you think about doing one suite of tests, one potency, one micro-screen, one water activity, micro-toxin, and foreign matter, for that amount of cannabis product, that doesn't give us data points to really come up with what the actual number is, that's just way too much. Even if we go down to 10 pound lots, that's actually over, it's close to 5,000 grams, which is also too much, so why not stay with the 5 grams and change the ways we change pesticides separately.

I think due to the increase in sample – decrease I'm sorry, in sample volumes that labs will receive, yeah, we're definitely going to have to increase costs, and also the cost to -- for instrumentation for pesticides -- is just an extravagant amount, which a lot of labs won't be able to go with. Pesticide testing should have its own lot size, we believe, and possibly should be tested separately.

We're also concerned that the small business impact statement did not include certified laboratories. When I asked about this, I was told by two different LCB employees that they do not regulate the laboratories. Well, if they don't regulate the laboratories, who does? A lot of rules seem to be being made for us and yet you don't regulate us. So who do we speak to? Who are our regulators?

There's a number of things that need to be addressed in the WAC. Third party sampling needs to be incorporated, the high-residual solvent levels should not be in existence. What do you mean by -- on page 8, 2(e) in the WAC -- what do you mean by 'test as-is, or as received,' does that mean that we cannot homogenize the sample before we test? What exactly does that mean?

We think that perhaps the pesticide testing should be tested at farm level, or at harvest level, like most crops, in the state of Washington, apples and such. There's just a lot more work to be done with this, and I really appreciate being able to send my comments in. Thank you.

Chair Postman: Great, thank you, sorry we got you on the wrong list, but glad you had the chance.

Ms. Olson: No problem.

Chair Postman: Great, thank you. Mike Sherman.

Micah Sherman – Raven Grass

Hi, again for the record, my name is Micah Sherman, and I'm actually here with my WCIA hat on, which is Alliance of Integrators that have been working on making sure that our CCRS system and the interoperability between licensees has remained smooth and operational.

I've been asked to make a comment about the reporting requirements that require that within 24 hours they report the data that they've gathered -- but there's a one-week reporting requirement for licensees -- so we're starting to see a lot of conflicts in this CCRS system as a result of this lag between the requirements on one side, and the requirements on the other. So we would ask that in the same way that there was an interpretive statement, about the 16-digit ID code, we might be able to do something that would allow the labs to report on the same cycle as the licensees, and would avoid a lot of the reporting conflicts that are resulting from that.

I'm happy to follow up with anybody on the details on that situation, but it would be very helpful to make that all work well, and the WCIA has done a lot to make sure that things still work while we make this transition and are available to help directly as needed.

Chair Postman: Ok great. Micah, yeah, if you could just send me a short note on it, although I'm sure they're listening now, but we can make sure the CCRS team takes a look at it.

Mr. Sherman: Great, we'll do that.

Chair Postman: Appreciate it. Jeremy Moberg?

Jeremy Moberg – CannaSol

Hello, for the record I'm Jeremy Moberg, owner of CannaSol Farms, and board member of the WSCA, thanks for the opportunity, Board Members Postman and Garrett to comment again.

I, in this comment, would like to commend the LCB on some work that I think has been very beneficial to the industry, and that is surrounding canopy enforcement. We, for a long time in this industry, the honest players that have stayed within canopy have been at a real disadvantage when, for years, there seemed to have been an allowance of mega-canopy without any enforcement action.

We saw various enforcement actions this last fall, that I think got a lot of these peoples' attention. We also saw the LCB enforcement division put out some clarification on how they are going to measure it and a little bit of, I think, admission, that they had not paid as close attention to this issue as they should have. I think the industry has got the memo, I think it would be helpful if more clarification was put out to the industry ahead of harvesting so anybody that has -- I means some of these places have four acres, ten acres -- and if they're really compliant, they're going to be using a sliver of their pen that they have allowed for canopy.

So, this is progress that is much-needed. I think it's going to have an immediate effect, or not immediate effect, but a pretty good effect on overproduction and the problems that that causes. So, I'm just here to say that our association and the industry appreciates the LCB's on the work on this issue, thank you.

Chair Postman: Great, thank you, Jeremy, we'll make sure that the Enforcement and Education team hear your comments. The last person I have signed up is Jim MacRae.

Jim MacRae – Straightline Analytics

A couple of things -- first of all, I enjoyed your op-ed the other day in the Tacoma paper. Thank you for doing that and thank you for pointing out the ongoing dishonesty that is coming out of at least one of the industry organizations out there. It's nice to see folks in public life not just sitting back and taking it, when it's inappropriately put out there, so I commend you on that.

Two other things. With respect to -- you got me thinking about the Board function, when I read your op-ed the other day, and when I've read some of the criticisms and legislation that's out there to propose a change, and it got me thinking a little bit about what the Board does. A couple of things have come up today that bring up, to me, that puts clarity on a couple of questions.

One of them is, in the quality assurance rules, there's a mention on page five of the 157-page project, about how in November of 2020, there was a hearing held on the rules -- it was CR 102 at the time -- we thought we were going to be getting to file a rule, but following the hearing the Board reviewed all feedback and determined that a new approach was necessary. Obviously you were not here then, Chair Postman, Russel Hauge is gone, so Ms. Garrett is, Board Member Garrett is, the only person who was in that session when the decision was made to take a different approach. Well we see the result of that. Obviously the Board does important things when you see that. The Board also does things that they did today of approve all kinds of stuff, and vote on all kinds of things, it's not always approval, I suspect. But if I look at the thing that was done earlier today on pesticide action levels -- the CR 101 -- if you look at page three of that, "reasons why the rules may be needed" -- and it basically says two things being done. Rulemaking is needed to update information in the existing rule language, and that's just a tautology, it's circular, it doesn't add any extra information. And the updated rule language regarding remediation of marijuana that has failed quality assurance testing. There's no statement about why that is needed, it's a statement about what is going to be done, what is proposed to be done.

And it says "updated rule changed to change the term quality assurance testing to quality control testing", which again it doesn't, it never says why. And I fail to see that in any of the materials. It's just saying here's what we're going to do.

So a piece of advice would be, if you're going to vote on things, particularly if you're going to vote unanimously that it's approved and all that, and there's stuff that right up there might just ask the question of if there's a section that says why these rules might be necessary -- and it doesn't really say to my reading anything about necessity, you can read that quality assurance testing is needed to be consistent with the rules that are still underway, but those aren't in place yet. I would hate people to see it as you're just a rubber stamp organization, in terms of the Board oversight. I have in the past suggested that there might be problems with oversight of agency operations...

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: ...Thank you, Dustin. I really do believe that the Board, as my understanding of it, plays a crucial role in just the proximal oversight of the agency, and I think from what I've seen you do a decent job of it. You certainly try to. But I do believe you also give staff a little too much leeway, at times, to do things like put out a bunch of reasons that have no reasons in them, and then sign off on that stuff unanimously.

So thank you very much. I, again, liked your op-ed. I hope WACA doesn't have their way this session.

Chair Postman: Thank you very much, Jim, that is the last person we had signed up, so we're at the end of our agenda. Unless Member Garrett has anything to add before we close down

We will adjourn the board meeting for February 2, thank you all very much. We really do appreciate the constructive input, we heard from people on all sides of this, and we're going to now go ahead and keep working on it led by Jeff Kildahl. So thanks to him and Kathy and to all of you. Have a great day.

## ADJOURN

Chair Postman adjourned the meeting at 11:47am.

Minutes approved this 2<sup>nd</sup> day of March, 2022.



\_\_\_\_\_  
David Postman  
Board Chair



\_\_\_\_\_  
Ollie Garrett  
Board Member

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

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