



Notice of Permanent Rules

Regarding Amendment to WAC 314-55-075 – Marijuana producer license – Privileges, requirements and fees.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to WAC 314-55-075 expanding the plant canopy square footage for licensed Tier 1 marijuana producers.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Kathy Hoffman, Policy and Rules Manager, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

RCW 69.50.345(3) directed the Washington State Liquor and Cannabis Board (WSLCB) to adopt rules establishing the “maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law.” WSLCB implemented this directive in rule as WAC 314-55-075(6), establishing a three-tier system based on the amount of actual square footage designated as plant canopy. Within that system, the Tier 1 category authorizes a producer licensee to designate up to two thousand square feet of their premises as plant canopy.

Rules related to canopy assure that a single business is prohibited from producing beyond a certain point within set boundaries for the three tiers of production. The number of production licenses for an individual business is limited to maintain production boundaries for individual businesses. Thus, the three tiers of production provide defined spaces for businesses of different sizes.

The complete background, including market analysis, for this project is extensive, and explained more fully Attachment A, CR 102 Memorandum.

These rules are needed because Tier 1 licensees have experienced business sustainability and viability challenges based on canopy space restrictions. The option to expand production capacity is anticipated to support Tier 1 producer viability and sustainability in the competitive Washington State cannabis market.

Rulemaking history for this adopted rule:

CR 101 – filed December 18, 2019 as WSR #20-01-171.
CR 102 – filed April 28, 2021 as WSR #21-01-040.
Public hearing held June 9, 2021.

The effective date of these rules is August 7, 2021.

Public comment received on the rule proposal:

There were five written comments received on the rule proposal filed April 28, 2021.

1. Email received from Kenny Hubbard, May 11, 2021:

Hopefully you are doing well and staying safe. I just wanted to let you know that I really appreciate how you and your team are helping in addressing the concerns of the tier 1s. The expansion of canopy maybe a lifeline for some of the struggling little farmers. And for that I thank you!!

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

2. Email received from Danielle Rosellison, May 25, 2021:

My name is Danielle Rosellison and I am the CEO and Co-Founder of Trail Blazin' Productions, a licensed Tier 2 in Bellingham WA. We have been licensed and active since 2014 and are a majority woman owned company.

I am writing to express my intense disapproval for Tier 1 expansion without more information.

It feels like the WSLCB is moving the goalpost in the middle of the game for one Team but not the other.

The WSR 21-10-040 Memo states `` Unlike cannabis retailer licenses, there was not a predetermined cap on producer licenses."'. While this is technically accurate, there was a 2million square feet of canopy limit written into the WAC. However, the LCB blew past that, licensing almost 20million square feet of canopy instead. Those of us (like myself) who rushed to get a location and a license in order to not be shut out of the 2 million square feet of canopy, were ultimately hindered by the LCB's decision to not adhere to their own WAC. And now the LCB is looking to increase that canopy even more.

Those who applied for a Tier 1 or purchased a Tier 1, and are having a difficult time making ends meet, have made a poor business decision. It is not the LCB's job to fix it through policy changes at the expense of those of us who have made better business decisions.

As I said in my email on June 11, 2017, "If a Tier 1 wants to increase their canopy because they are doing so well, the new rules allow them to own up to 3 licenses. This is a better solution than increased canopy for expansion of Tier 1's."

I have included my email from January 21, 2020 (below) to remind you of all the data that suggests that Tier 1 expansion is NOT a good idea. If the goal is to increase Tier 1 profits, they can do that within the existing rules. It is the processing license, not the producing license, that has the potential for exponential income. Furthermore, it's imperative that we separate "Tier 1 canopy expansion" from "DOH product accessibility". As one of a couple farms that have produced DOH certified product for years, I have a lot of expertise in why and why not producers are growing DOH product. In my email below, I go over all those reasons.

Anecdotally, I have spoken to Tier 1 farmers and I always ask the same question, "why don't you utilize your processing license if you want to make more money?" "I don't want to", they say. That's just being bullheaded, in my opinion. Entrepreneurs need to pivot as the market changes, and thus our business plans need to change in order to stay viable. I also ask "have you done your numbers with increased canopy?" and to this day I have never seen any numbers nor have I been convinced that anyone actually did them.

If a tier 1 farmer wants to make more money, they need to factor processing into their business plan, just like the successful Tier 1's, 2's and 3's.

And...just asking...I see two main scenarios that cause me to pause:

1. A tier 1 is growing all they can grow and are successful. Then use that profit to purchase another license or two. No rule change for canopy expansion is necessary.
2. A tier 1 is growing all they can grow and they are not successful. **How, then, if they aren't making ends meet, are they going to afford to expand the canopy?** Doubling canopy means twice as much room (increased rent if not moving altogether), twice as many lights, twice as many environmental controls...that all takes a LOT of money, and with a lack of access to traditional capital this seems like a huge undertaking. Will the LCB pay close attention to all the Tier 1 expansion financials to make sure the money is coming from legitimate sources?

I believe that growing cannabis should be an open market, but that's not the system WA currently has in place. And I understand that increasing Tier 1 production is a "little" thing compared to the overall market. However, I believe it is incredibly unfair to those of us who made good business decisions, and pivoted within the regulatory framework, and ultimately a Tier 1 expansion doesn't fix company profits or the other issues around increasing accessibility to DOH products.

Thank you for your time and I appreciate all that you do to regulate this industry!

(Copy of email from Danielle Rosellison, dated January 21, 2020, copied into email dated May 25, 2021):

Thank you for having the CR101 open to discuss expansion of Tier 1 canopy and increasing the availability of DOH product. Below are my comments on the topic.

TIER ONE CANOPY EXPANSION

- There are tier 1’s that do a million dollars a month in sales.
 - T1 P/P sales have risen from a low in Nov 2016 of \$1,967,270 to a high in May 2019 of \$5,086,823 (250% increase in sales) indicating the processing side of that license has exploded up (since canopy is limited)
 - The number of T1 P/P have remained stable at around 80
 - T2 P/P monthly sales have remained under \$20mil/mo. With June 2019 being the high at \$19mil
 - The number of T2 P/P were a high of 277 in June 2017 to low of 212 in June 2018 (24% decrease in producing Tier 2 between 2017 and 2018)
 - T3 P/P monthly sales have widely fluctuated from a high of \$34.7mil in May '19 to a low of \$15.1 in Nov 2016 (June '19 shows an anomaly of \$90.8mil so was not used to average sales)
- Tier 1’s have a processor license. I realize they want to grow more, but growing more does not = more profit. **The processing license is how any/all of us can increase our profit margin.** Think about it...in what agricultural industry do the farmers make the money? They don't. It's always the processors or manufacturers.
 - Buy a license if you want to grow more. Tier 1 = \$10000, Tier 2 = \$65000
 - What do the actual numbers look like if you’re trying to grow canopy? How much for lights, dehu, more square footage, more cameras, etc? Probably close to \$10,000 minimum.... at that price, why not just buy another license and not actually change the rules?
 - If they don’t have money to buy a license, what makes them think they will have the money to expand canopy?
- It is not the LCB’s job to keep businesses afloat. I would argue it is the LCB’s job to make sure that small businesses (once defined) have an opportunity to be successful since the voters voted to approve a system that encouraged small businesses.
- NUMBERS (source topshelfdata):

July 2019	Tier 1 (104)	Tier 2 (275)	Tier 3 (244)
Over \$500,000	2/104 (1.9%)	10/275 (3.6%)	31/244 (12.7%)
Over \$100,000*	16/104 (15.4%)	81/275 (29.5%)	92/244 (37.7%)
Over \$50,000	28/104 (26.9%)	131/275 (47.6%)	131/244 (53.7%)
Over \$20,000	53/104 (51%)	171/275 (62.2%)	168/244 (68.9%)
Over \$10,000	64/104 (61.5%)	202/275 (73.5%)	188/244 (77%)
Under \$10,000	40/104 (38.5%)	73/275 (26.5%)	56/244 (30%)

*more than TBP’s average

- You can see from the numbers above, even though Tier 1’s have 1/5 the canopy as Tier 2’s, percentage wise, they make about 1/2 as much money. Based on these sales numbers, Tier 1’s are doing better (proportionately) than most Tier 2’s.
- Trail Blazin’ is a T2 license that only has +/-5000 square feet of canopy. We averaged about \$65,000/month in 2018.
- Fairwinds is a T2. I’ve been to their facility. They can’t have more than 3000 of canopy. And they do about \$500000 a month.
- More canopy does not = more profits.

- It is common knowledge that big companies went and bought up all the tier one's a few years ago with the intent of increasing canopy. If they can buy a tier 1 for \$10,000 instead of a Tier 2 for \$60,000 and then just use their lobbyist (who they are already pay) to increase the canopy, They just made \$50,000 and 5x their canopy and earning potential.
- **Tier 1's need to change their business model, not the rules, if they want to increase profit.**

Medical Product:

- I've heard the LCB make claims that there is no medical product on the market and that's due to testing costs. That is true for some, but it's a very small part of it.
 - WA Bud Co grows 8 strains per harvest so they would have 8 P/HM tests per harvest. That was too expensive for them.
 - Trail Blazin' grow one strain per harvest, so there is only 1 P/HM test per harvest.
 - Most companies DOH costs = \$400
 - Others=\$70
 - Point – DOH testing can be incredibly affordable if you structure your business correctly
- Why does everyone get to call it “medical marijuana” except the people growing and packaging it?
 - The DOH has a website page dedicated to “medical marijuana”
 - <https://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana>
 - The LCB has a website page dedicated to “medical marijuana”
 - <https://lcb.wa.gov/mj2015/medical-mj-faqs>
 - <https://lcb.wa.gov/mmj/med-mj-transition>
 - <http://wslcb.maps.arcgis.com/apps/View/index.html?appid=a84ba123b8d94a65aa03ae573a65c1aa>
 - Retailers get signs that say “medical marijuana”
 - <https://lcb.wa.gov/mjlicense/add-medical-mj-endorsement-to-an-existing-retail-license>
 - P/P can't use the word medical, medical marijuana, mmj, or a green cross. **Why, when we (p/p) do ALL the hard work to make clean product, can't we use the terminology that consumers and patients understand?**
 - I've asked the LCB if I can use the “medical marijuana” logo that the endorsed stores get to (on top of the DOH logo) and I was told no, I would be too confusing to patients. I still do not understand the logic behind the statement.
 - Consumers and budtenders don't know our product is medical cuz we can't say it.
 - DOH logo is ambiguous; no one knows what it means.
 - We are working with the DOH to try and address this, but it takes rule making and thus a solution is at least a year out.
 - People/budtenders think that all product is pesticide tested.
 - Rick was on stage during the EO and made the following statement:
"Although products are tested, they are only tested for those elements required by the Liquor & Cannabis Boardand the Department of Health....potency, moisture, pesticides, heavy metals..."

- I understand why he said it, to ease consumer fears. But it adds to consumer and budtender confusion when the LCB is making statements that sound like all regulated product is pesticide tested.
- A better statement may have been “Although regulated products are tested, they are only tested for those elements required. Adult use product is tested for potency and moisture among other things. DOH products, with the DOH logo on them, are additionally tested for pesticides and heavy metals.”
- Medical endorsed stores don’t have to carry medical product.
 - **The EASIEST thing the LCB could do to increase medical product is to require medically endorsed stores to carry medical product.** The LCB has told me that this is already the case. However, without enforcing this, there is no incentive for p/p to grow medical product. Send a memo out to all licensees stating that Medical Endorsed stores are required to carry DOH product and that if they are found at any point to not have DOH product, their medical endorsement will be revoked. We should see an increase in supply as soon as the demand goes up!
- LEAF
 - Medical was an afterthought. We do more testing than anyone else, to ensure consumer safety, and LEAF does NOT understand the process and flow. We spend time with GrowFlow almost every day trying to sort out test results, when we have all the COA’s that say we passed. We just need LEAF to understand!
- Budtender turnover-
 - The last data I saw from Headset stated that the average budtender is employed at a store for 3 months. That’s a lot of turnover. Therefore, if it’s not perfectly clear on the package, that it’s medical and tested for pesticides while nothing else is required to be tested for pesticides, then it’s an uphill battle getting budtenders to know. This is one of the reasons the Alliance has advocated for “NOT TESTED FOR PESTICIDES” to be identified on all products unless pesticide tests for that lot/harvest can be produced.
- Retailers tell us ALL THE TIME that all product is tested for pesticides.
 - So if retailers and consumers think that all product is pesticide tested, then they don’t know or understand the value (increase the demand) for DOH product
- Only giving patients sales tax off isn’t enough. They need the 37% excise tax off (legislative).
 - Help with legislation to remove the excise tax for DOH product for registered patients.
 - It would get more people on the registry and get more p/p to grow medical product
- 30-40% of regulated product has illegal amounts of pesticides.
 - Use the current contract to test concentrate companies.
 - Confidence Analytics experience that more than 50% of concentrates fail pesticide testing.
 - Use the WSDA contract to strategically pesticide test concentrates that are most pervasive on the market. The industry will self-correct...
- None of these by themselves is the straw that will break the camel's back, but all of them together makes ZERO incentive to create DOH product.

ACTION STEPS:

- **ACTION STEP: Look at the canopy teams report. Review tier 2's and 3's and see how much canopy they are ACTUALLY using and what their sales are.**
 - Does this proposed rule allow Tier 1's to be larger than current Tier 2 and 3? If so, is that actually helping small, craft cannabis? Or just the people who bought Tier 1's for pennies on the dollar?
 - I would use sales from DOR, NOT LEAF.
- **ACTION STEP: How many licenses aren't active or reporting sales?**
- Can Tier 1's partner up with those licenses to grow more? Seems like a viable solution instead of changing the rules
- **ACTION STEP: What kind of risk is the LCB opening themselves up to if they change the rules now, (moving the goal posts in the middle of the game for a few players) to help some Tier's and not others?**
 - Changing the rules in the middle of the game for participants but not others is unfair and will likely be met with litigation.
 - If you move Tier 1's to the upper end of Tier 2 PLUS direct sales, that disadvantages the Tier 2's and Tier 3's who thought ahead and applied (or purchased) the correct license from the beginning.
 - Logistics of increasing canopy. Most Tier 1's didn't rent/buy a place that accommodated 8,000 of canopy. So they would have to move. And buy more equipment. And pay for a larger space while waiting to be approved for more canopy. By the time they do all that, they could have just bought a different license.
 - The LCB cancelled anyone who applied for more than one license in 2013. But now they are considering allowing those that applied (or bought) the smallest license to grow more? How is that fair? Is the LCB opening themselves up to litigation?
- **ACTION STEP: Allow DOH product to use the word medical marijuana, mmj, green cross, the WSLCB "medcial marijuana" logo.**
- This will increase DOH product sales.
- **ACTION STEP: Send out a memo to all licensees stating that all medically endorsed stores need to carry DOH product and that enforcement will be cracking down on this. If you don't carry DOH product, you will lost your endorsement.**
 - Increase demand, and the supply will increase.

Thank you for your time. I appreciate you and am always available for comments, questions or concerns.

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

The agency notes that the highlighting and bolding of text are original. The agency also notes that Top Shelf data referred to in the email attachment dated January 21, 2020 is more than 18 months old. Updated data was not offered for consideration. With respect to suggestions regarding canopy reports, the agency relied on the canopy reports referenced in these comments to complete the analysis on which these adopted rules are based. Further, the agency did not move forward with concepts connecting Tier 1 canopy with the production of medically compliant product.

While the agency appreciates and honors the strongly held position these comments represent, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

3. Email received from Juddy Rosellison, June 8, 2021:

To whom it may concern,

I am writing to let you know that I don't think that it is a good idea to expand Tier 1 licenses. I feel this way primarily because it seems like it would be 'moving the goalposts' in the middle of a game, and because I believe it would only really affect very few license holders.

- 1) How many Tier 1 license holders are using their full canopy allotment? It looks like only 10% are using their full allotment according to the chart in the memo. So 10% of 175 Tier 1 license holders amounts to only 17 license holders that *could possibly* benefit from this change?
- 2) How many have the space where they're at to increase to the proposed allotment, and how many would have to find a new location in order to increase their canopy?
- 3) How many have the money to be able to increase their canopy?
- 4) Why don't they buy a Tier 2 or 3 license if they want to increase their canopy? According to the numbers in the memo, there's about 200 licenses that are not 'active'.

Even if they are allowed to grow more cannabis, that doesn't guarantee that they are going to be able to sell it to retailers, which could lead to more diversion from the 502 market.

I can tell you that as I have been 1 of 3 (that I know of) producers that have been providing DOH compliant products (me since March 2017), retailers don't care *at all* about DOH products. So if you think that allowing Tier 1's to sell DOH compliant products is going to help anything, you're sorely mistaken, because I've been trying to get my DOH product onto the shelves for 4 years with very disappointing results. I'd be glad to share my experiences with you if you are interested, as I feel that there's not many people that have my perspective of DOH products.

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

This comment consists largely of questions answered in both the Tier 1 survey and the CR 102 memo. Additionally, the agency did not move forward with concepts connecting Tier 1 canopy with the production of medically compliant product. While the agency appreciates and honors the strongly held position these comments represent, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

4. Email received from Mark Ambler, TiPA, June 8, 2021:



Tier 1 Producer Association (TiPA)
4833 Guide Meridian
Bellingham, Washington 98226
t1producerassociation@gmail.com

June 8, 2021

Dustin Dickson
Executive Assistant to the Board
Washington State Liquor and Cannabis Board (WSLCB)
dustin.dickson@lcb.wa.gov

Subject: Comments for Meeting Scheduled for June 9, 2021 (6/9)

Mr. Dickson,

We have reviewed the agenda¹. We believe there are a few small typos in some important areas. On pages 4 and 5, the Tables showing Tier levels and data related to canopy, it lists Tier 1s as having a "Max." of 2,000 ft². Tier 1s have a non-inclusive "limit" of 2,000 ft². We recommend an asterisk [2,000*] with a footnote [* - limit, not Max.] Here's how the WAC 314-55-075 (6)(a) currently reads (underline added):

"(a) Tier 1 – Less than two thousand square feet;"

Also, on page 7, we recommend the following:

"Amended Subsection. WAC 314-55-075(6)(a): Increases Tier 1 square footage designated as canopy from ~~up to~~ [less than] two thousand square feet to up to four thousand square feet."

Thank you for the opportunity. I look forward to the meeting to talk more about the potential of this canopy action to support sustainable and steady acceleration of value for licensees, regulators, and the community as a whole.

Regards,

Mark Ambler

TiPA

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

This comment concerns the CR 102 memorandum, and language used in reports that is accurate as to the reports and analysis (referred to in the comment as to pages 4 and 5 of the memorandum). Additionally, a *description* of the rule amendments appears on page 7 of the CR 102 memorandum, rather than the actual, proposed rule text. The relevant proposed rule text reads as follows:

- (6) The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:
- (a) Tier 1 – Less than (~~two~~) four thousand square feet;
 - (b) Tier 2 – (~~Two~~) Four thousand square feet up to ten thousand square feet; and

The agency does not intend to amend the CR 102 memorandum because it is a supporting document providing background and support for the rule proposal, rather than the actual, proposed rule text.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

5. Email received from Vicki Christophersen, Washington Cannabusiness Association, June 9, 2021:

June 9th, 2021

To:
Kathy Hoffman
Policy and Rules Manager
Washington State Liquor and Cannabis Board

From:
Vicki Christophersen
Executive Director
Washington CannaBusiness Association

The Washington CannaBusiness Association (WACA) represents Washington's licensed and regulated cannabis and hemp businesses. As the oldest trade association for cannabis and hemp businesses in the state we are committed to establishing a safe, fully-regulated system that works to keep cannabis out of the hands of children. We appreciate the opportunity to provide written comments on the CR-102 related to Tier One Expansion.

Since 2015 WACA has advocated to allow Tier One farms to expand their canopy beyond the current 2000 square feet limit. Unfortunately, in recent years several Tier One farms have gone out of business, including some of WACA's founding members. We respect the challenges of standing up a regulated system in Washington and remain ready to provide information in any way that will support the WSLCB across the myriad of issues that face the industry.

Today, as expressed in 2015, WACA strongly supports the proposed language in the CR-102 that allows Tier One cannabis producers to expand their canopy from a maximum of 2000 square feet to 4000 square feet. We believe the adjustment will help strengthen opportunities for smaller growers in a very competitive marketplace. We urge the WSLCB to not make further changes and adopt the proposed language as soon as possible.

Respectfully submitted,

Vicki Christophersen

Vicki Christophersen
Executive Director

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

6. Email received from Bethany McMartin, June 9, 2021:

To Whom It May Concern:

I am submitting my comment on the proposed rule to make amendments to expand the plant canopy square footage allowed for licensed Tier 1 cannabis producers. I would like to provide some insight through my experience in operating a cannabis business over the years as to why I believe the LCB gifting an additional 2,000 sq ft will not solve Tier 1 license holders complaints on being a profitable operation.

My husband and I started in the medical cannabis market and have been in the cannabis industry for 13 years. Market stability has always been difficult as the large amounts of product from outdoor that hits the market every October introduces instability yearly. This is something that experienced growers come to expect and adjust their sales and savings accordingly. There is an additional issue to market stability in I502 and it is an overabundance of canopy available. The only solution I see to addressing the issue of profitability that Tier 1s say they are facing is to have pricing stabilize. In my opinion the only way to stabilize the market is for LCB to start retiring inactive licenses. What I have seen happen to the I502 market is it starts to stabilize, and pricing starts to creep up and then new to the industry people go and buy an inactive license, set up cheap greenhouses or outdoor and over saturate the market and then the price comes back down.

Until inactive licenses of all sizes that are cheap to purchase at \$10k-\$100k are no longer available, we will always see the market bottoming out every two to three years. We bought a Tier 2 for \$60k for reference in 2019. We hold two additional licenses, another Tier 2 and a Tier 3, which we acquired through partnerships over the years that we have since bought our partners out of. That being said, we started out with and indoor 710 sq ft of canopy in 2015 and have organically grown our company through the revenue of sales to the size it is today. Growing 2,000 sq ft and having enough profit to purchase an additional license is eminently doable, even to this day, if you are creative in your branding and work diligently to grow your company.

I do not believe the government should be in the business of being charitable to some licenses and not others, instead I believe the government should manage the entire industry for all participants to thrive. All Tier sizes believe the price is low, all Tier sizes believe that the overabundance of canopy isn't good for stability in the market. By adding additional canopy to the market by gifting Tier 1s 2,000 sq ft of canopy the LCB will only make the market condition worse for everyone. It will only lower the price as the problem with the market is the pricing is too low for 2,000 sq ft to be profitable. The only thing that will now change is that over time 4,000 sq ft will not be enough canopy to be profitable if inactive canopy continues to be available every time the price starts to increase in the market.

By the LCB requiring that inactive licenses be retired or sold in a certain time frame of 1 year(?) it will decrease the value of licenses and give Tier 1s an opportunity to buy a license at a discounted rate. There are so many licenses that are inactive that can easily be referenced through DOR showing no sales activity for years. By retiring inactive licenses the LCB will start to establish market stability and as demand continues to grow the price will increase providing Tier 1 licenses the

ability to be more profitable. Please consider the actual market impact LCB will introduce by increasing canopy for some in an already excessive canopy market.

Kind Regards,
Bethany McMartin
BC Labs, Olympus Horticulture

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Public Hearing, June 9, 2021:

Micah Sherman

“For the record my name is Micah Sherman and I am one of the co-owners of Raven, a Tier 2 producer processor in Olympia, and just for context we may have about 4,500 feet of canopy under production at our facility so we’re kind of operating at what would be a similar size, to this, uh, new proposed Tier 1. Uh, the, my initial response to hearing this proposal as the solution for Tier 1’s is there’s an old joke that says, you know, we lose money on every sale but we’re going to make up for it with volume. Um, and that is a little bit like what this solution feels like, um, is that it’s not necessarily a bad thing and I’m not opposed to adding this canopy for Tier 1 licensees, but, um, I would strongly encourage the board to not look at this as a solution to the problems that exist with the Tier 1 license, uh, I don’t think that this is gonna do, um, a lot for very many people, I think it’ll do some small measure of good for a small group of Tier 1 producers, but I think overall the problems that Tier 1 producers are having surviving in this marketplace are, are the same problems that all small cannabis farmers are having and that’s related to market structure, and our opportunities to get our product to market in only one particular way and we’ve all seen the direction that that’s brought the industry overall of a lot of conglomeration, a lot of consolidation, a lot of failed Tier 2 farms, a lot of failed Tier 3 farms, so again, I’m not at all opposed to this, it’s good to bring those farms up to more parity with other operators, but this would be a very small gesture towards a solution that, um, is is much bigger and broader than is gonna be able to be dealt with by canopy space alone so I would, um, encourage all to continue to look at that larger situation of how it is the market is structured and continue to look for solutions that are gonna help small farmers, that you know, are gonna basically join me in bein’ um a small farmer that’s strugglin to make it at the same size and I just really don’t think that this is, um, gonna gonna solve it for a lot of people and I would keep workin on this problem in the broader context of where we are. Thanks.”

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Jim MacCrae

“Chair Postman, Board, staff, thank you very much for the opportunity to address you. Uh, my name is Jim McCrae, uh, I run a consulting company called Straight Line Analytics, fairly centric on the data produced largely by this agency. Uh, on the Tier 1 expansion, first of all I want to commend staff on a very focused and brief and extremely understandable set of rules changes. It’s so rare, that you know, there’s no cross-referencing or anything like that, you know it’s really elegant, it gets to the point, and it addresses the expansion of the Tier 1s. I think that’s a good thing. I do regret, I think it’s unfortunate, that any reference to the medical, production of medical, that was part of the original discussions about the need for this are not here. I think I understand it, it’s unfortunate, um, you know, if the department of health were more engaged in things we might be able to make more progress along that line. However, it’s a good thing.

I do want to make a couple of comments about the history that’s in the document that was done to prep for this, very good document, very good history, again, thumbs up. Um, some of the wording and some of the subtleties, this often defines history in the future, but I wanted to emphasize that, you know, being there and being part of the process from day one as were many of staff, but the ones that were writing this perhaps were not, the emphasis on having Tier 1s and keeping things fairly small, was not just to keep down the large, organized crime gray market illegal suppliers, it was to give an opportunity, not only for the people who were underground and growing at a small scale, but more to the point, it was to put in place an opportunity for small mom and pop-type businesses to do their thing. Basically, what I think most of us would consider to be craft, you know, somebody who doesn’t have a huge production line producing their goat cheese as craft, that type of thing. So this certainly helps those folks. I do think that there’s a couple of things in the rules, after having commended on simplicity, that maybe should be discussed at least, so that we know what the long-term ramifications might be, if any. And those are looking at the same 314-55-075, you know, (7)(a) and (8) in there still make reference to the Board’s, the agency’s ability to decrease the canopy of licensees under a few conditions, such as them not using 50% of their space, blah blah blah, it’s optional but it’s a power that the Board has. Given the data, I wonder if those are even needed anymore given that by rule the maximum canopy is defined as that which is licensed. It’s kind of an insane back and forth, it’s circular, but that’s, I think (7)(a) and (8) aren’t necessary given that other rule position that what is licensed is what is needed or is allowed.

Um (7)(b), the ability to decrease, to basically force a decrease in canopy, it was interpreted if somebody is not at 50% of their canopy at a tier, that was often interpreted as down-tiering someone if they didn’t hit the minimum threshold. Given some of the data that was shared in that wonderful summary document, you know you’re looking basically at, I’ll just cut to the chase, you know, today Tier 1s represent 179 out of about 1,088 licensees, um that’s as of June 1, 16.5% of the licensees. If the Board were to take a position, using the data that are in this document about how many farms are underutilizing their canopy, you would take, it’s conceivable that if this rule were adopted, the Board could shift it to that there were a total of 702 licenses that are forced into Tier 1 because they are currently, years after being licensed,

not even doing 4,000 feet of canopy. So I just, and if anything else, the rules force a bunch of Tier 2s into Tier 1. Thank you very much, appreciate it.”

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Mark Ambler

“Mark Ambler, Tier 1 Producers Association. And, um, I’m also a Tier 1 producer for Breeze Trees (unintelligible) owner with my wife for that, um, and what I wanted to say was pretty brief. I feel like this action is going to get us closer to an industry where licensure is available to all people, regardless of physical, societal, or economic status, um, so if you think about it, you know, if you are in a wheelchair, you know, or if society has placed you in a position, uh, maybe together with you economic status, you can’t break into the cannabis industry, um, this gets us closer. And, it, so I think anyone should be able to acquire a license, build their brand, and either pass that on to their children or sell it. You know, that should be across the board. Um, so with this new canopy, what I think we should do is focus on brand value and profit versus revenue. Uh, so everybody’s talking about revenue and, when all these IPOs go it’s all going to be about revenue. But if you talk to a real, non-speculative investment, uh, group or person, they’re gonna wanna know more than just revenue, uh, they wanna know is it profitable, and how valuable is your brand, uh, when we go IPO. So this canopy helps us move on new areas as they open up as well, like non-psychoactive cannabis products, you know, if we want to create something as simple that is, like, clothing, you know, or rope, um, we’re gonna need more canopy for stuff like that. Um, and for example, like last month I was talking to Western Washington, I was talking to them about their research, and their like, okay, we can’t do research with your facility yet, um, but if somebody flips the switch in the federal government it’s going to be a huge little thing, you know, that we need to start developing business models for, things like that. So I talked to the guy and I told him, you’re gonna be one of my first calls, he reciprocated, uh, and so I’m really excited for this moment, you know, this moment in time, now until whenever fed legalization happens, if it happens, I don’t know if anyone’s stiling if it happens, um, and so I’m really, I hope that everybody is as excited for this, I hope you vote yes today, and that’s it, you know, I yield my time, that’s the thought I wanted to get across.”

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Changes from Proposed Rules (CR-102) to the Rules as Adopted:

There were no changes to the proposed rules.