



Ace Analytical Laboratory

November 9, 2022

Re: Sierra Cannabis Coalition Petition submitted 10/28/2022
Proposed public workshop for deliberation and amendment of NCCRs 1 ,6 , and 11

Dear Chair Douglas and members of the Cannabis Compliance Board:

ERP, LLC dba Ace Analytical Laboratory opposes the proposed changes to NCCRs 1 ,6 , and 11 proposed in the Sierra Cannabis Coalition Petition for the litany of reasons discussed in the attached document. It is essential that the board be provided accurate information and be made aware of the profound ramification of the changes proposed. We are certain that if the changes proposed in the petition are adopted, they would destroy the carefully crafted cannabis testing industry in Nevada. The purported rationale behind the proposed changes appears to be minimizing the testing costs associated with getting cannabis products to the marketplace. The proposed changes target cutting out 'lab related testing costs' by eliminating and minimizing proven and reliable testing methodologies and standards. Not only does the letter from Mr. Adler convey quite erroneous information regarding the relative cost of cannabis testing, it also takes out of context the testing 'limits' related to "batch" sizes and "production run(s)" found in California, Oregon, Colorado, and Washington.

The meticulously crafted legislation and regulations in Nevada carefully balance the needs and safety of the cannabis consumers and all industry participants. Any changes, such as those proposed, deserve serious study and input from all industry participants including the consumer. The reputation Nevada has achieved for safeguarding the cannabis consumer's well-being could be seriously damaged by consumer driven lawsuits such as those which have recently occurred in Florida, Arkansas, Colorado and California.

It's imperative that the true motivations behind such irresponsible and sweeping changes to the industry be explored. A determination of the impetus behind the nature and timing of these proposed changes should be made as this issue is discussed.

We appreciate your attention to this extremely important matter and would welcome the opportunity to discuss these issues, in detail, with you at your earliest opportunity.

Respectfully,

Bruce Burnett, M.D., Cofounder and Manager
Kris Madsen, CEO, Cofounder and Manager

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Re: Sierra Cannabis Coalition Petition submitted 10/28/2022
Proposed public workshop for deliberation and amendment of NCCRs 1 ,6 , and 11

Chair Douglas and Members of the Cannabis Compliance Board:

I represent ERP,LLC DBA Ace Analytical Laboratory, an independent cannabis testing laboratory in Las Vegas Nevada. We respectfully request that the Cannabis Compliance Board consider the following.

We have reviewed the petition submitted by the Sierra Cannabis Coalition related to the proposed public workshop for the deliberation and amendment of NCCR's 1 ,6, and 11 and determined that the proposed petition would violate the intent of the statutory language which was precisely crafted by the Nevada legislators as well as have a profoundly adverse impact on those licensees who relied upon the current statutory framework. While Mr. Adler makes clear that, "This petition was crafted with the economic concerns of the members of the Sierra Cannabis Coalition", and it might benefit this special interest group in the short run, it fails to take into consideration the long term and second order effects that these changes will, in all likelihood, bring. We believe these changes would negatively impact the industry in the short run, while jeopardizing the safety of the cannabis consumers in Nevada and significantly impairing the progress that Nevada has made in establishing itself as the gold standard for implementation of a state run cannabis program.

The proposed changes to NCCRs 1 ,6 , and 11 are fraught with problems when analyzed from a statistical and scientific standpoint. The fact that the independent cannabis testing laboratories were not notified of nor invited to the recent "roundtable discussion" (other than one possible phone call notification to one laboratory) when these profoundly significant proposed significant revisions were first made begs the question of why these changes have been rushed out with such haste. This is not the first time such a proposal has been brought forth to effectively do away with the 5 pound "lot" as a testing size and replace it with a much larger alternative. While these proposed changes are done with the intent of improving the "economic" well-being "of the members of the Sierra Cannabis Coalition, they would do so by jeopardizing the safety and well-being of Nevada's cannabis consumers and tourists and could seriously complicate and undermine the safety



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standards envisioned and enacted by Nevada's legislators.

The rationale behind the proposed changes is clearly to minimize the testing costs associated with getting cannabis products to the marketplace. Unfortunately, the proposed changes target cutting out costs by eliminating and minimizing proven and reliable testing methodologies and standards. It would be irresponsible for the regulators to cater to those within the cannabis industry who are positioned to reap significant profits when such changes may negatively impact the safety of cannabis consumers, tourists and locals alike. As set forth below, there are significant issues with the proposed changes which place the industry and its consumers at risk.

I. THE CURRENT LAWS HAVE BEEN CAREFULLY DESIGNED UTILIZING STATISTICS AND SCIENCE TO PROTECT CANNABIS CONSUMERS AND NEVADA'S 'GOLD STANDARD' REPUTATION

The cannabis testing laboratories work with the state and are the gatekeepers for the cannabis industry, safeguarding the consumer's well-being. The cannabis testing laboratory regulations found in each state have been carefully designed to implement the regulations for that state. One would be ill-advised to simply lift one section of regulations from one state and drop it into another without considering the direct implications and second and third order effects on a state's testing and overall cannabis program.

All of the components of Nevada's cannabis testing regulations have been carefully and thoughtfully designed and integrated since 2014. To single out a change in "lot size" while ignoring the science and statistics that resulted in determining the sample size, selection method, analyses to be performed in order to deliver safe cannabis to the consumer will be fraught with problems. The direct effects on the independent cannabis testing laboratories and the second and third order effects resulting from that must be considered if the integrity of the cannabis program in the state is to be preserved.

To exemplify the benefits of the existing laws, one need only look to the careful analysis performed in the State of Washington by the BOTEK Analysis Corporation (Sampling Cannabis for Analytical Purposes- November 15, 2013) which details the rationale for determining the size of the unit of usable cannabis from which a sample should be pulled in order to obtain a representative sample given the significant heterogeneity of the cannabis plant. The State of Nevada adopted "lot" size and "batch" definitions which closely followed the results of the analysis performed in Washington. Currently, in Washington, 'WAC 314 – 55 – 101 Quality control sampling' details the sampling protocols for quantities of cannabis flower, and specifically states at "(f) for cannabis flower weighing 40 pounds or more but not more than 50 pounds, a minimum of 19 samples must be taken." Hopefully, this puts into better context and helps clarify Mr. Adler's comments related to, "Washington removed



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their 5-pound lot limit for testing and, instead, based their testing samples on harvest size through a sliding scale of up to 50 pounds.”

The American Herbal Pharmacopoeia sets forth standards for analysis of cannabis using detailed and established methodologies related to the acceptable limits for microbial, fungal, metals and pesticides. The testing for pesticides is discussed in great detail and affirms the testing methodologies as "recommended by the EPA Residue Analytical Methods or those of the Food and Drug Administration (FDA Pesticide Analytical Manual (PAM), should be employed when appropriate." These findings clearly acknowledge the necessity of testing the plant material prior to any processing.

The American Herbal Pharmacopoeia, when discussing microbial and fungal limits, points out that “limits must also be appropriately applied to the various preparations being made. Typical microbial and fungal limits may not be appropriate for materials that are to be subjected to processing, such as infusing, decocting, or extracting with heat, alcohol, or other processes that introduce a microbial reduction step prior to consumption.” Testing of the plant material prior to any processing is standard in the food testing industry wherein organizations, such as the International Commission on Microbiological Specifications for Foods, set standards which require the testing of plant material prior to processing. The FDA's Bacteriological Analytical Manual goes through great lengths in setting out standards for food substance sampling and homogenization strategies to ensure safety in products which are consumed by the public.

Similarly, the FDA's Pesticide Analytical Manual (PAM) serves as a repository of analytical methods used in FDA laboratories to examine food for pesticide residues. Only since the start of the cannabis testing programs, such as Nevada's have methods been developed and validated to examine cannabis extracts, rich in THC, for pesticide residue. The standard analysis for residual pesticides in products consumed by people begins with analysis of the food matrices. Here, such would involve analyzing the cannabis plant material, as is mandated by the NCCR's. A few years ago, the discovery that many cannabis plants had been contaminated with pesticides in CO resulted in large product recalls, the destruction of the contaminated material, and a class action lawsuit.

II. ASIDE FROM THE CONSUMER CONCERNS, THE PROPOSED CHANGES WILL NOT ULTIMATELY CREATE A COST SAVING.

A determination related to the maximum lot size for testing should be determined by the likelihood of properly achieving statistically valid sample analyses in this incredibly heterogeneous plant taking into consideration the trade-off



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between the acquiring an adequately representative sample for a given cost. The “lot” size is only one component of the entire testing program , which would need to be entirely changed to account for such a “lot” size change.

Currently, in Nevada, the charges to the client associated with cannabis lab testing for all of the state mandated analyses is significantly below what those same analyses would cost in any other industry.

The CCB can readily obtain the 2021 revenue figures from each lab either by directly requesting it from the laboratory or gathering those amounts reported to the City of Las Vegas and Clark County, depending on the lab’s jurisdiction. I am quite certain that such a simple analysis will clearly demonstrate that the testing costs discussed in Mr. Adler’s letter, “In speaking with licensees, between 5% and 10% of the final retail cost of cannabis can be traced back to laboratory testing expenses” drastically overstates such costs.

Nevada certainly does not want to have its reputation tainted with contaminated cannabis making its way to the cannabis tourists. It would certainly be prudent, in the best interest of the cannabis consumer, and the state of Nevada to err on the side of caution rather than substantively change the carefully structured rules currently in place without statistically sound, scientific analysis demonstrating such changes would not jeopardize the consumer’s well-being.

III THE PROPOSED REGULATIONS WOULD IGNORE ESTABLISHED TESTING PRINCIPLES AND CREATE INCENTIVES FOR COLLUSION BETWEEN THE LABORATORIES AND CLIENTS .

Basic principles of food sampling call for a representative sample to be acquired when the pathogens or toxins are sparsely distributed within the substance and for the sampling to be applied to a statistically significant representative sample from the designated lot(s). If the proposed regulatory changes are enacted, when there is an issue of a contaminated cannabis product making its way to consumers, the extremely large volume of cannabis allowed to be combined into a single "lot or batch" will make the ability to trace the contamination effectively impossible. Also, with these proposed increasingly large “lot” sizes there is a perverse incentive to never fail a “lot” .

The CCB is well aware of the need for cannabis laboratories to maintain impartiality when testing. These proposed lot size changes would dramatically exacerbate the incentives that cultivators and producers would have to “work (only) with labs” that would protect their monetary interests without regard for consumer safety. The cost of a “failed” lot would be so overwhelming to a cultivator or producer that the incentives to “cheat” would grow proportionate with the lot size.



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Additionally, given the fact that most processes used to concentrate cannabinoids also concentrate pesticides a 'failure' of a 'production run' would be exceedingly costly. By serving to make a test 'failure' so prohibitively costly the process would serve to create a massive incentive for cultivators and producers to shop for a lab that would provide 'passing or compliant' results. This would serve to distort the carefully structured procedures enacted by the Nevada legislators in the NCCRs.

IV SUCH SUBSTANTIVE CHANGES TO THE NCCR'S SHOULD NOT BE MADE WITHOUT A THOROUGH ASSESSMENT OF THE DIRECT AND INDIRECT EFFECTS ON THE LABORATORIES AND THE OVERALL CANNABIS PROGRAM IN NEVADA

We wholeheartedly support research and development within the cannabis field and believe that the proposed changes to **"11.045 Limited testing for research and development purposes"** would benefit the industry. We support this change to the NCCR 11.045 allowing for more and simpler R&D testing.

In summary, we oppose some of the extreme and substantive proposed changes to NCCR 1, 6, and 11, for the reasons discussed above. We believe that enactment of the proposed changes would be economically devastating to the cannabis testing lab program in Nevada.

Many of the changes are made to allow the combination of excessively large quantities of cannabis plant material to be extracted and only have that extract be subjected to a single set of newly imposed tests. The analytical testing of cannabis and cannabis derived products required by the current Nevada regulations is very complex. The creation of valid, cost efficient, reliable testing which can be implemented in a timely manner has been carefully developed since the program's inception. Nevada should rely on **proven and established** methods and techniques for cannabis testing until such time as science, not the lobbying efforts of a small group seeking to maximize their profits, can prove the safety and reliability of new standards.

Respectfully submitted,

ERP,LLC DBA

ACE ANALYTICAL LABORATORY

Bruce T Burnett M.D., Cofounder
Kris Madsen, CEO, Cofounder, and Manager
Abdou Mekebri, PhD



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Scientists for Consumer Safety

Nov 10, 2022

Honorable Michael L. Douglas, Chairman, Cannabis Compliance Board

Tyler Klimas, Executive Director, Cannabis Compliance Board

555 E. Washington Street

Las Vegas, Nevada 89101

Dear Sirs:

Scientists for Consumer Safety (SCS) is a group of Nevada cannabis laboratories dedicated to the safety of cannabis consumers through the establishment of appropriate, science-based regulations for cannabis laboratories. SCS has been advocating for increased oversight and transparency in the regulation of cannabis laboratories to protect the consumer from unsafe cannabis and fraudulently represented products. The comments below are provided in response to Sierra Cannabis Coalition's Petition submitted on Oct. 28, 2022 and included in the CCB's Nov. 15, 2022 Board Meeting as agenda item VII.

Laboratories are a key part of the cannabis industry

Laboratory representatives were not included in the Sept 22, 2022 "industry" roundtable discussions which were the genesis for this petition. Laboratories are one of the most important components of the regulated industry and are suffering under the same economic pressures and regulatory burdens as the rest of the industry. Testing is the #1 factor that distinguishes the regulated industry from the black market.

As explained by the Director of the Sierra Cannabis Coalition, Mr. Will Adler, in his June 2018 interview with Northern Nevada Business Weekly, Nevada is the "gold standard" in cannabis "because we set standards where our marijuana is tested to a pharmaceutical grade."

Taking any action on the petition issued by Sierra Cannabis Coalition without additional roundtable discussions with laboratories at the table would pose a great disservice to the regulated industry and would open the door to the decimation of Nevada's already struggling testing program.

50 lb. flower lots are simply too big to fail

Failing a \$90,000 lot would not be possible in this industry. Doing so would all but guarantee that there will be tremendous pressure on laboratories to generate passing test results and will further escalate potency shopping issues. Taking notes from markets like California where the regulated industry is failing- resulting in consumers turning to that state's \$8B illicit market- a move to increase lot size is irresponsible, ill-advised, and not something we are looking to emulate for Nevada.

Scientists for Consumer Safety

Representative Samples

Nevada currently considers a single, 10g flower sample to be adequately representative of a 5-pound harvest lot. This equates to 0.4% of the material in the lot. In the World Health Organization document “Quality control methods for medicinal plant materials”, the recommended sample size of bulk plant material is 10% of the harvest lot. Considering the current inability to achieve representative sampling of a harvest lot with Nevada’s 10g flower sample size, proportionally scaled samples from a 50lb lot would be even less representative as a result of the ‘bundling’ of a larger number of plants in a single harvest lot. 50lb lots would need multiple samples and higher pricing for sampling, processing, storage, and logistics. Also, if any of the samples failed, the whole 50lbs would fail. This is a lose-lose proposition.

Recalls

Thousands of consumers can be impacted by the recall of a single 5lb lot, but 20,000+ may be impacted by a 50lb lot.

5%-10% of retail cost for testing is a grossly overstated number

Last year the industry made about \$1B in retail sales, which means that 10% would represent \$100M in revenue split among the state's 10 licensed labs. Considering that one of the larger publicly traded labs, Digipath, did \$2.5M in 2021 (including CBD and non-cannabis testing), it becomes obvious that that number is completely incorrect - if every lab did on average the \$2.5M that Digipath did, then the cost is closer to 2.5% of the total cost - a cost that's in line with other necessary COG considerations like packaging. This is a small price to pay for peace of mind that a product is safe and that its active ingredients are accurately labeled.

Cannabis laboratories are already charging far lower prices for the same tests in other industries

You can't have low prices, fast turnaround, and high quality - one must give way. Quality is always the first pillar to fall. Moving the industry in this direction will put labs in a position to fail at their most important task – quality.

We understand that the cannabis industry is struggling, as we are part of it, and our outstanding AR balances continue to grow. There are sensible regulatory changes that can be proposed by the industry to increase the size of market, to ease operating within that market and improve the regulations under which the industry operates; however, this hasty and ill-conceived petition does not represent such a change and will only serve to degrade the safety of the regulated market, creating further problems. We urge the board to withhold any action on this agenda item until further discussions can be held.

Respectfully,

Scientists for Consumer Safety

Scientists for Consumer Safety (SCS)

11/14/2022

Silver State Cultivation
250 S. Stanford Way
Sparks, NV 89431

Chair Douglas and Members of the Cannabis Compliance Board:

Silver State Cultivation would like to express our support for the petition for regulatory change submitted by the Sierra Cannabis Coalition. This amendment is a good first step in creating an improved economic environment for Nevada cannabis licensees to operate in the future. The cannabis industry has struggled this past year with depressed pricing, increasing operating costs, customer inflationary pressures, rising workforce costs, and a burdensome state tax system. Many operators have struggled to remain open. Without reform targeted at cost reductions for Nevada's cannabis industry, the long-term viability of Nevada's entire cannabis market is in question.

We believe that granting this petition would be a first step toward alleviating some costs operators have continued to endure. This petition allows us to better utilize our existing facilities and workforce eliminating the requirement to create single small batches of usable cannabis for testing. The flexibility provided in this amendment will allow our operations to simplify how and when our tests are done, counter to waiting to fill five-pound increments as we do today.

Again, we ask that you grant this petition its request for a regulatory workshop. Nevada's regulations need to grow and change as its cannabis industry evolves. We have never taken the opportunity to review what we test, why we test it, and how often it is tested. We ask that you take that opportunity through this petition.

Thank you for your consideration on this matter,

 11/14/22

Sonny Newman



Chair Douglas and Members of the Cannabis Compliance Board,

Jushi would like to take this opportunity to ask the Cannabis Compliance Board to act upon the petition submitted by the Sierra Cannabis Coalition (SCC). Nevada's cannabis economy is facing a period of decline and the SCC's petition offers an opportunity to support this tax-paying industry, which creates significant employment in our state, at the same time as it will assure the same clean, quality product to the consumer that current regulations produce.

This petition will solve one of Jushi's continual frustrations with Nevada's cannabis testing program, which is limited lot sizes. Nevada is the only State that limits cannabis cultivators to testing cannabis flower/bud and trim to 5 pound and 15 pound lot increments. Leaving lot sizes where they are currently is arbitrary and doesn't take into account the realities of a real cultivation's operations, workflow, or the different batches sizes that our cultivation harvests. The task of dividing this identical material into separate 5-pound lots costs our operations man hours, materials, and the cost of additional tests. A 50-pound lot size will provide an upper ceiling that allows our operations to simplify its pre-testing workflow practices by testing our batches regardless of their total weight.

Cannabis products in Nevada are known for being tested at the country's most stringent standard, and we feel that this should continue. The ability to pass or fail Nevada's current testing standards will not be changed. What will change is when cannabis will require a test in Nevada. Jushi would like to second the change requesting that only finished cannabis products require a final cannabis test. Cannabis consumers only come in contact with finished cannabis products. Testing usable cannabis before it is a finished cannabis product is redundant and provides no additional security to Nevada's cannabis consumers.

In these strained economic times, even a small change can make a large difference to our cannabis cultivation. The changes proposed in the Sierra Cannabis Coalition petition will help streamline workflow and limit some of the redundant tests that raise the cost of the cannabis leaving our cultivation. This increase in cost is ultimately passed on to the retail cannabis stores, which are already struggling to compete with cheap, untested illicit-market cannabis.

Again, we urge the consideration and ultimate approval of the Sierra Cannabis Coalition's petition for regulatory change. Nevada's cannabis testing regulations have long needed a second look and a regulatory workshop now will do much to update this nonfunctional portion of Nevada's cannabis regulations.

Thank you,

Trent Woloveck
Chief Commercial Director

Monday, November 14, 2022

Via email:

Cannabis Compliance Board
CCBmeetings@ccb.nv.gov by

Re: Sierra Cannabis Coalition Petition to amend NCCR 1, 6 and 11.

Chair Douglas, Director Klimas, and members of the Cannabis Compliance Board,

On behalf of Green Thumb Industries, Inc. ("GTI"), I respectfully submit this written comment in support of the Sierra Cannabis Coalition's petition to amend NCCR 1, 6, and 11. GTI operates over 75 retail locations and over 15 cultivation and production facilities in 14 highly regulated cannabis states. Across all our markets, Nevada stands out as having lot sizes that do not match industry norms and, therefore, operational cost for laboratory testing well exceed any other state. GTI is proud of our Nevada operations, as the dispensaries in Nevada were amongst the first GTI opened in 2016, but we agree that a change to testing standards is warranted. This petition seeks to place Nevada's testing standards in line with other states by redefining "lot" while also reducing required testing to finished cannabis products. We appreciate the opportunity to provide input based on our experiences and in the spirit of optimizing Nevada's cannabis industry.

From a national perspective, Nevada is the only state that limits testing increments to a five-pound lot; California allows testing at 50-pound lots and a 100-pound limit is becoming the norm in newly regulated states like New Jersey. Nevada is also the only state to put a weight limit on the amount of extracted material that can be tested in a single production run for concentrated cannabis products. In every one of our other operations, our production facilities can simply run the machine and test whatever the production run generates, regardless of its weight.

Nevada's cannabis market, like the national cannabis market, is in a period of contraction. With inflation at all-time high, continued workforce issues, and a combined federal and state tax of ~60%+, 2022 is a year when Nevada's cannabis industry must look to reform what it can to ensure its future viability. A change to Nevada's lot size would allow our operations greater flexibility in time, material, and testing allocations. Fewer tests per batch would cost us less with our cannabis testing laboratory, as well as save us in the number of man-hours required to separate those batches into separate lots.

These lots also require an intense effort to continually track through our systems, as we've created additional datapoints to input into our Metrc system, which ultimately has to be maintained in compliance with the seed-to-sale tracking program. This downstream paperwork is multiplied as you divide up our cultivated products amongst our dispensaries and those that we sell our products to. Additionally, this multitude of tests must be tracked and sorted through by Cannabis Compliance Board staff, as one lot turning into four, then being reprocessed and sold out again is a mandatory part of the seed-to-sale tracking program.

The frustration with the inflexibility in Nevada's cannabis testing system is not a frustration with Nevada's cannabis testing as a whole. It is well known Nevada still takes its cannabis testing with the utmost seriousness, and, rightfully, Nevada has earned its reputation as the gold standard. Knowing this, GTI has

taken many of the operational lessons learned in Nevada and adopted them as our best practices in other states. The stringency by which you must cultivate cannabis in Nevada requires an operator to operate as meticulously as possible in order to assure passage of our product's quality assurance test. This standard of excellence is one GTI thinks should continue, as it has become a selling feature for the products in our Nevada portfolio.

* * *

We thank you again for your consideration of this petition and we applaud the Sierra Cannabis Coalition in seeking fairness in testing standards. GTI has long sought an opportunity to discuss Nevada's cannabis testing program and where improvements to that program can be made. The workshop requested in the petition would provide exactly that opportunity. We are available to answer any questions you may have and would welcome the opportunity to provide additional information, especially as it relates to best practices in other markets.

Best Regards,

Tiffany Newbern-Johnson

Tiffany Newbern-Johnson
Director of Government Affairs
Green Thumb Industries, Inc.