Nevada Cannabis Compliance Board
Regulatory Workshop
Laboratory Regulations (NCCR)
April 30, 2024
Minutes

The Nevada Cannabis Compliance Board (CCB) held a public workshop at 700 E. Warm Springs Road, Suite 150, Las Vegas, Nevada beginning at 10:00 a.m. on April 30, 2024.

Deputy Director Michael Miles called the meeting to order. Senior Deputy Attorneys General Chricy Harris, Division Chief – Health & Safety Kara Cronkhite and Laboratory Program Supervisor Elizabeth Perez were present on behalf of the CCB in Las Vegas.

Director Miles stated that to allow for additional dialog, the public will be allowed to discuss lot sizes following the Agenda I Public Comment.

Instructions to join the meeting via Zoom for public comment were read aloud.

I. Public Comment

Abby Kaufmann from the Chamber of Cannabis discussed contract enforcement, delinquent payments and the impact that non-payment has on the industry since there is no access to traditional lending or lines of credit. Ms. Kaufmann stated that the Chamber of Cannabis' Commerce Committee identified relevant regulations including NCCRs 4, 6.082, 6.135 and advised that she provided written comment in support and asked that the CCB solicit industry feedback and provide guidance to the industry.

Will Adler representing Silver State Government Relations / Green Thumb Industries (GTI) commented that NCCR 11.085 is a great addition and suggested considering language regarding cultivation production products purchased by a legal entity through a transfer.

II. Proposed Amendments and additions to Nevada Cannabis Compliance Regulations 5, 7 and 11

Deputy Director Miles introduced Chief Cronkhite who provided an overview of the proposed amendments to NCCR 5, 7 and 11 laboratory analysis requirements. Chief Cronkhite stated that an opportunity for public comment will be opened throughout the meeting and said that she will open it for comments on NCCR 1 "lot sizes" based on public comment received. She asked that opposition to the proposed changes or additional changes be submitted directly to her in writing, along with sources, or as public comment.

Chief Cronkhite opened discussion on regulation 1, noting public comments and a report was received promoting an increase from five-pound lot size, and said that CCB has not seen scientific evidence to support an increase in lot size, but is receptive to that information for review and consideration. Discussion was opened for regulation 1.

Layke Martin from Nevada Cannabis Association thanked CCB for the opportunity to discuss increased lot sizes. Ms. Martin noted that she submitted written public comment for review and said that Nevada's flower lot size is among the smallest in the United States, and although testing, packaging and labeling is being standardized, lot size remains a concern. She requested CCB consider unlimited amounts or an amount CCB is comfortable with as long as lot size is increased.

Chief Cronkhite responded and said CCB is concerned because there is not an actual statistical analysis demonstrating the level of safety is maintained when lot size is increased, and that states who did increase lot size have expressed words of caution.

Will Adler and Glen Miller discussed lot size. Mr. Adler reminded that he previously applied for direct petition as required and asked to discuss lot sizes and it is now being discussed during a lab workshop. He said that reports can provide a variety of differing information and asked for availability of the information and listing it to aid in the discussion. Mr. Adler noted that he appreciates the discussion during the lab workshop and introduced his expert, Glen Miller, former head of ILAC who established medical marijuana testing programs. He expressed that he would like to see this as a public topic during the next workshop.

Glen Miller introduced himself as a retired professor of natural resource environmental science with a background in analytical chemistry and toxicology, and noted he was on the original ILAC committee. He expressed frustration that regulatory decisions were made and ILAC was asked if they were reasonable after passage, one of the issues is lot size. Mr. Miller stated that most on the committee decided that a 5-pound lot size was too small and that there is no scientific validity to use 5 pounds.

Chief Cronkhite stated that BOTEC provided a statistical analysis published in 2013 for Washington state OLCC.

Mr. Miller continued and said there is a risk of prices going up for 5-pound testing, and this may force people to move into illegal products that are the same quality of marijuana and THC and asked that the CCB consider this risk of not increasing the lot size may encourage people to use untested product. He suggested increasing the lot size to 7.5 pounds, then 10 pounds to get the data, and then increase to 15- and 20-pound lot sizes. He concurred that the GMP report is a good analysis and said that it is reasonable if one half a percent is tested. Mr. Miller noted that the cannabis industry is recognizing the importance of clean product and the penalties for misusing pesticides are substantial. He commented that lot size should be increased slowly, up to 20 pounds.

Abdou Mekebri Ph.D, consultant for Ace Analytic Laboratory discussed lot size for cultivation. He commented that if there is a five-pound failure, remediation cost is low, but a 15-, 20- and 50-pound failure would be a much bigger loss for the cultivator. He noted that studies show 10 to 15% of cultivation products are a loss due to the increase of lot sizes. Dr. Mekebri said that it is necessary to increase replicate sampling if lot sizes are increased due to the homogeneity of the sample being very low. Random sampling must increase, and the accuracy of the result will decrease, and public safety is jeopardized if the lot size is increased.

Adam Fulton of Jennings and Fulton discussed lot size on behalf of laboratories and smaller cultivators who are concerned about increasing lot sizes. He said that increased lot size will decrease accuracy and failure rates, impacting small businesses, minority owned businesses, and incentives. There will be financial impact to small businesses, and to the industry. Additionally, this will require rewriting many sections of Regulation 11. He summarized by saying that although an increase of lot size will benefit cultivators with giant growth facilities, the impact will be greatly felt by "little guys" in the state of Nevada.

Chief Cronkhite replied that other states provided the same information, that smaller cultivators were harmed by increased lot size, while larger producers saw benefits.

Glen Miller mentioned that the issue of microbial contamination is a difficult one, and said that although humidity issues are critical, the LCMS pesticide tests are solid and will not vary as much as the microbial tests. He stated that 5 pound lots should be allowed, but larger growers should be able to submit 10, 15 or larger lots if they want to take the risk. Mr. Miller noted that tests can be separated – microbial, LCMS etc.

Abad Piza commented that he thinks there is price fixing, going against the Sherman Antitrust Act, and asked if it could be opened to let more people in. He said there are people who don't know and who don't have medicinal standing and it makes no sense to let people do business; more people are willing to do business, and it has to do with the quality of the cannabis.

Chief Cronkhite continued with an overview of NCCR 5.075 and 7.035.

NCCR 5.074 has a single proposed change which will allow independent testing laboratories to be inspected at least bi-annually rather than annually.

NCCR 7.035 has a single proposed change requiring a sales facility to provide a copy of the COA electronically or any other medium to the consumer upon request.

Chief Cronkhite asked for public comment on proposed regulation changes.

Abby Kaufman discussed regulation 5 and provided feedback that some type of notice is typically provided and asked that additional language is included to make sure that there is no penalty if the key person is unavailable. She continued and asked for clarification regarding regulation 7, noting that it referenced NRS 557.040, which does not exist.

Chief Cronkhite clarified that a review of regulations revealed different requirements for recreational and medical and hemp being used as an ingredient. One stated that hemp must be from a Nevada licensed hemp grower, and the other did not say that, so the change is to make it consistent. Since there are now dual-licenses, hemp can be from out of state but must meet certain requirements.

Laboratory Program Supervisor Elizabeth Perez commented that NRS 557.040 was updated to a different number and is corrected.

There were no additional public comments on proposed regulation changes to NCCR 5 or 7.

Chief Cronkhite provided an overview of the changes to NCCR 11.010 through 11.030:

NCCR 11.010 makes changes to the requirements for Scientific Director

NCCR 11.015 adds requirements for a safety program

NCCR 11.020 includes a timeline to provide Board Agents with a copy of the ISO final inspection report

NCCR 11.025 clarifies specific references, standards, practices and procedures

NCCR 11.030 clarifies sample collection requirements

Chief Cronkhite opened discussion on proposed regulation changes to NCCR 11.010 through 11.030.

Adam Fulton and Alicia Ashcraft of Ashcraft & Barr discussed 11.010(3), 11.010(4) and (6). Mr. Fulton noted that he, Alicia Ashcraft and Kimberly Rushton represent all eleven laboratories in the state of Nevada and are in the process of finalizing laboratory-requested revisions which will be submitted to the CCB. He continued regarding **11.010(3)** and noted difficulty regarding an adequate pool of candidates and asked to revert to 90 days. Chief Cronkhite responded that there is a plan to implement. Mr. Fulton requested that the language be in **11.010(4)** be changed to read "three business days" instead of "within 72 hours" because many labs are not open seven days per week. He mentioned **11.010(6)** and asked for the language to be changed to read 90 days for the same reasons previously stated. Continuing, Mr. Fulton mentioned **11.015(4)** and recommended removal of OSHA requirements since they always change and may not comply with standards mandated by CCB. He recommends language to read that CCB require labs to have a safety program, approved by CCB.

Supervisor Perez noted that it was included to follow the guidelines published by OSHA specifically for Lab Safety and clarified that all workplaces must follow general industry duty clause requirements. Continuing, she said that guidance can be provided on the items required in a safety program from the existing document. Mr. Fulton expressed concern that OSHA requirements can be potentially changed in the future and put the entire industry out of compliance and asked for the language to be changed to include "an approved safety plan" instead of mandating the OSHA safety plan which could be modified at any time.

Deputy Director Miles noted that it would be necessary for the safety plan to be updated when OSHA changes requirements.

Mr. Fulton expressed the concern that OSHA guidelines may change and not be applicable to the industry.

Supervisor Perez said that the intent was to provide a guideline or framework to follow to aid in creating safety program requirement plan creation and submission to the CCB.

Mr. Fulton suggested a change to the language to read, "shall implement a safety program which is similar to applicable requirements of laboratory safety" and to include terms "may be" or "similar to" rather than "meets requirements".

Ms. Ashcraft suggested publishing ten requirements for the safety plan as a template available on the CCB website.

Mr. Fulton commented on NCCR **11.020** and said his comment will apply to many different sections. He noted that the document references change to the AOAC and ASTM standards and the concern is that unintended consequences can happen where the lab analytical methods will contradict one standard and not another. He suggested changing the language to "use the guidelines as a guide to develop analytical methods or operations" and said that it will occur again in 11.070. Continuing with **11.025**, Mr. Fulton said that all the laboratories recommend removal, and he does not recommend them for adoption. He noted that there is no issue with recommended guidelines, but the use of the word "must" pose a problem. Discussing **11.025(6)**, Mr. Fulton asked for language to be changed from "must use" to "may use" in the first sentence. Regarding **11.030(4)**, he stated that the word "condition" is nebulous and not defined in the regulations and suggested removal of the word. Mr. Fulton concluded with **11.030(15)** and recommended removing it and said the labs believe it is unnecessary.

Layke Martin discussed **11.025(8)** guidance and the references and the need to clarify what is in **11.025(8)(a)** and what is elsewhere in the regulations. Ms. Martin noted **11.025(h)** and said that there are concerns with adoption of this by CCB because the BOTEC Analysis data is not from an independent third party. She stated that they support the CCB's adoption of the ASTM standards.

Abby Kaufmann commented on **11.025** reliance on external sources, how the use of the word "must" causes uncertainty and could cause conflicts and suggested the use of the word "may" instead. Ms. Kaufmann said that **11.025(1)(b)** seems vague.

Supervisor Perez replied that it is part of the laboratory accreditation process that is currently in place, and these requirements have been in place from the beginning. Ms. Perez said that there are different accrediting agencies that do inspections and accredit for, and the cannabis appendix was being worked on; it just got published in April 2024 and is being reviewed since it is cannabis specific. The accreditation is not automatic; the laboratories must request it. There may be a possibility that CCB will require it of labs to make it part of their accreditation process.

Chief Cronkhite said it would likely be a policy that would be implemented and communicated to the laboratories.

Ms. Kaufmann concluded by stating that her committee is in support of the inclusion of an ethics policy within the QC QA program that all staff must be familiar with and adhere to.

There were no additional public comments on proposed regulation changes to NCCR 11.010 through 11.030.

Chief Cronkhite provided an overview of the changes to NCCR 11.045 through 11.060:

NCCR 11.045 clarified the font requirements, delivery method and other changes for R&D testing and creates a potential pathway for variances on R&D testing requirements.

NCCR 11.050 provides a timeline for the validity of results presented on a Certificate of Analysis (COA), created new limited testing option and removes some testing requirements for wet cannabis, and removes "total coliform" from usable cannabis testing due to redundancy. Sample size was increased.

NCCR 11.053 clarifies requirements for instrument calibration and quality control

NCCR 11.060 changes homogeneity testing for edibles

Chief Cronkhite opened discussion on proposed regulation changes to NCCR 11.045, 11.050, 11.053 and 11.060.

Steve Cantwell of Green Life Productions discussed his experience and concerns with aspergillus testing. Mr. Cantwell said he is a proponent of state testing and values the data provided on the COAs and uses the data to make decisions in his facility. He stated that aspergillus testing gives inconsistent results and provided examples of various lot, strain and room testing and the variance in results. Mr. Cantwell cited the World Health Organization's list of most toxic fungi and said that aspergillus is at the top of the list in the most critical priority group. He stated that the document is to drive research and said that the WHO reports that immune compromised individuals are the ones who are at risk of aspergillus and Azole fungicides. He said that aspergillus testing is a direct assault on organic cultivation and puts consumers at risk.

Chief Cronkhite replied that CCB is only testing for four different, specific species known to grow on cannabis and cause illness in patients and consumers, not only immune compromised individuals.

Supervisor Perez commented on mold versus aspergillus inconsistency in retesting, stating that any microbial contamination is notorious for being spotty, plant to plant and room to room; different buds on a single plant could test negative and positive. She stated that there is well documented science confirming that the four species CCB requires testing for tend to harm people the most.

Adam Fulton and Alicia Ashcraft discussed 11.045 through 11.060. Mr. Fulton said that the labs recommend that 11.045 be moved out from regulation 11 to a different section because it may be more appropriate to include it in a cultivator production regulation. He submitted the following requests: **11.053(2)(c)** remove the language "or below" from the regulation; **11.053(2)(d)** remove entirely due to carryover and creating issues of the calibration curve; **11.053(2)(e)** recommends removal because there is no added value since the curve is linear below or after the level; **11.053(2)(f)** recommends removal because it adds no value to the curve; **11.053(2)(g)** recommends removal because the regulations above have different ranges and requirements values. He continued: **11.053(5)(a)(1)** recommends changing the word "must" to "may"; **11.053(5)(b)(3)** recommends changing from "injections" to "samples"; **11.053(5)(c)(2) through (4)** recommend keeping previous values of "70 to 130% recovery of the true value for pesticides, herbicides, terpenes and residual solvents"; **11.053(5)(c)(5)** request to change for consistency and make the range "75% to 125%" like the other assays.

Gerardo Gonzalez of Talkin and Tokin' spoke on behalf of a partner on **11.050** and removing coliforms from usable cannabis. He asked why the focus is not to make sure cultivators grow correctly, and surmised it is because of the use of ozone machines. Mr. Gonzalez stated that farms do not want to invest money in equipment and there should be a focus on protecting consumers. He commented that the consumers should speak up because it is important that the consumer is healthy and stays healthy.

Chief Cronkhite commented that the CCB goes to the facilities, regulates and has very strict requirements to make sure growing is sanitary and safe, and that it will discourage contamination, and continued to explain that oversight is difficult because CCB inspects once a year or more if there are a lot of complaints or failures. She explained that coliforms are not necessarily dangerous, and they can be in water. There are other areas of greater concern in the lab results and coliforms are a secondary level of testing.

Supervisor Perez clarified that the Enterobacteriaceae is the larger group in total and the testing will provide the same information and some additional because it is an indicator of potential other toxins.

Will Adler reflected on working on aspergillus and the retest fail rate and the value of the test. He said it is rarely found and when it is, it is not found during the retest. Mr. Adler asked if there is any change in the statistics.

Chief Cronkhite replied that the concern is knowing it is in there then it is not being picked up. She stated that the four strains tested for cause harm and are different from the aspergillus found on a pillow.

Supervisor Perez opined that it is not a fair argument to protect the public to say that since the results are hit and miss that the test should not be performed. She continued to say that it is necessary to perform the testing as a matter of due diligence, and maybe a third test should be required to determine if it fails or passes.

Steve Cantwell commented that the aspergillus test is one of the most expensive, that most labs would agree it is a redundant test but the only reason they would want to keep testing is because of the cost of machines that are not yet paid for.

Supervisor Perez stated that CCB considers what may have the potential to cause the greatest harm, and that is the reason for the four aspergillus tests. She noted that the conditions in a cultivation facility are perfect for any microbial to grow and other states have larger pesticide, metals and solvent lists for testing and CCB is working to balance that to protect the public.

Tina Schellinger, consumer member of the board of the Chamber of Cannabis discussed coliform testing and said every lab says a positive test for coliforms indicates lack of PPE, basic handwashing and cleanliness issues and is part of a larger issue. She asked why coliforms are being removed if aspergillus is not.

Chief Cronkhite said that coliform testing was removed because it was a redundant test, and testing is done for a larger indicator and any coliform contamination would be captured under the Enterobacteriaceae test.

Ms. Schellinger expressed concern about the remediation process and that it does not remove what was previously tested as positive.

Abby Kaufmann asked about the Small Business Impact Statement and the increase in sample size from ten to twenty, logistical concerns, security and related issues.

Supervisor Perez explained that the increase was due to getting a more representative sample and because it is specifically in the ASTM sampling document that CCB proposes to add to the regulations and said there is an effort to standardize lab practices.

Abad Piza stated that he helped set the standards for cultivation and the issue is not about prices in the "black market" or traditional market but is about the quality of the cannabis. He continued to say that he does not want to be part of the cultivations because he believes it is greed. He set the standard high to get it from being illegal to being recognized medically and hears how greedy people want to set the standard lower.

Timothy Eli Ado commented on public safety and asked for to consider testing for plant diseases that could be detrimental to the consumers. He stated that cultivation operations are a problem and there should be a systematic way to mitigate the issue. He expressed concerns for the industry in the next three to five years and suggested the need for guidelines or regulations to aid in testing to mitigate the issues

Jeff Angermann, Founding Partner, Scientific and Laboratory Director of 374 Labs thanked the CCB for the opportunity to present public comment on NCCR 11. He concurred with comments and concerns raised by Adam Fulton, Alicia Ashcraft and Abby Kaufmann. Mr. Angerman continued to comment on proposed changes: **11.050.(3) and (4)** regarding collection of an increased amount of usable cannabis from 10 to 20 grams combined with the requirement for retention of all samples for 30 days presents a burden to cultivators and labs and recommends original provisions be left in place; regarding **11.053(2):** the ability of labs to generate standard curves for instrument calibration using traditional and widely accepted serial dilution protocol is effectively eliminated. He continued to explain that serial dilution methods present advantages over non-serial dilution methods, including high degrees of reproducibility and lower barriers to technical mastery by the analyst. Mr. Angermann urged CCB to reject the proposed change which would result in increased time and effort to prepare calibration standards without improvements in accuracy or precision. Continuing, he discussed **11.053(5)(b)** and the requirement to perform verification after every 20 injections, explaining typical Q start checks and cycle times. He proposed revising it to read after every 20 samples.

There were no additional public comments on proposed regulation changes to NCCR 11.045, 11.050, 11.053 or 11.060.

Chief Cronkhite provided an overview of NCCR 11.065 through 11.085:

NCCR 11.065 clarifies requirements for pesticide residue analysis

NCCR 11.070 specifies septic sampling requirements for the laboratories

NCCR 11.075 outlines requirements for remediation treatment and retesting

NCCR 11.085 clarifies responsibility of cost for screening or testing

Chief Cronkhite opened discussion on proposed regulation changes to NCCR 11.065, 11.070, 11.075 and 11.085.

Hadhinah Felice from the Chamber of Cannabis thanked the CCB for changing the language on 6.12. Ms. Felice commented on **11.065** pursuant to NRS Chapter 586 and CCB Public Health and Safety Bulletin published in April 2023. Ms. Felice requested the information be made easily accessible instead of needing to go through different pages and said many people do not know where to look.

Glen Miller expressed support for regulation 11 and said that the issue of the COA is particularly important for cannabinoids and said that the COA would not last more than six months or one year.

Chief Cronkhite replied that the American Herbal Pharmacopeia recorded that cannabis is expected to degrade by 10% year over year. CCB considered THC percentages and found that to be true: after one year the THC degrades 10% from the time it was tested, and that is the standard used in the pharmaceutical industry for expiration dates.

Supervisor Perez stated that after one year, depending on the storage, microbials can grow in samples and this is a potential hazard to the consumer. This regulation is to inform the consumer that the numbers may not be what is seen.

Adam Fulton and Alicia Ashcraft discussed **11.065(2)(b) and (c)**, stating there should be a requirement for the same analytical MDL LOQ for the compounds to avoid discrepancy in results between labs. He said the CCB should allow confirmation of the trace level of the ND pesticide compounds when they fall between MDL and LOQ and standardization limit of detection is needed. Continuing, **11.070(1)(b)(2)(II)** he recommends language modification to say "Samplers shall ensure there is no cross-contamination between different harvest batch or production runs" because requiring a sampler to change gloves between each batch or production run seems unnecessarily wasteful. Mr. Fulton continued: **11.070(4)** suggestion that CCB require keeping "failed" samples and said that the word "all" is not tenable with lab storage capacities. **11.070(8)** expressed appreciation for deletion but said the issue remains if the labs are still required to give the COA to CCB but under **11.070(9)(a)**test results and COA must be uploaded to the seed-to-sale system which forces labs to give COAs to cultivators without payment;

Supervisor Perez said that the CCB would like feedback on this issue and how it could practically work and said that a dialog is welcomed to see how it could work.

Chief Cronkhite agreed and said that although CCB would like the results first if an illegal pesticide is detected but understands that results may not want to be shared with a client who has not yet paid, as a standard business practice, and CCB should not interfere with business practices.

Mr. Fulton discussed **11.070(9)(c-d)** recommends removal of new language, specifically "The original laboratory results and Certificate of Analysis must be preserved by the testing laboratory for review by Board Agents upon request" because (c) and (d) discuss testing labs maintaining the original COAs for the amended report and failed samples and CCB has the original data for CCB agents.

11.075(4): Mr. Fulton observed that the same definition is used for retest and confirmation test. Retest is clearly defined in NCCR, but labs would define confirmation testing as a quality control action required for the testing lab to ensure quality before and after, documenting in the lab's testing system. He said that doing additional testing is an integral part of running an analytical laboratory.

Will Adler spoke on the payment system in **11.085** and said it is a mandatory piece of the program. Mr. Adler said that the lack of assurance of payment affects the whole program, and it is very necessary for labs. He suggested a record for non-payment, or payment due within 30, 60 or 90 days should exist.

Chief Cronkhite concluded the discussion on proposed regulation changes.

III. Public Comment.

Deputy Director Miles opened Agenda Item III and asked for public comment in Las Vegas.

Will Adler stated his appreciation for the discussion of lot size at the start of the meeting and said he has discussed the issue with cultivators, all who expressed a desire for increased lot size. He said he agrees that labs should be protected but said that there is more than one business model for a cultivator, not just those who are big, or vertically integrated. Mr. Adler said continued conversation will benefit the industry.

Tina Schellinger said she appreciates and recognizes the lowering of agent card costs for renewal or replacement and would like to see the system streamlined for recordkeeping purposes. Ms. Schellinger said it is positive to eliminate excessive testing for products that are going in production and will get blasted because it is redundant.

There were no additional public comments in Las Vegas or online.

IV. Adjournment

Meeting adjourned at 12:00 p.m.