BEFORE THE NEVADA CANNABIS COMPLIANCE BOARD

In re Adoption of Revised Proposed Regulation LCB File No. R152-24 (RP1, May 28, 2026)

BRIEF IN OPPOSITION TO ADOPTION OF R152-24 RP1

Why the Board Must Decline to Adopt the Revised Regulation at This Time, and Reject the Request to Sever SB 157's Lot-Size and Sampling Provisions

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I. Introduction and Summary of Argument

The Board is asked to adopt R152-24 RP1 – a revised regulation that, in its original form (R152-24I), was intended to implement the NCCR changes submitted by the CCB in June 2024, and that now adopts ASTM D8334/D8334M-20 by reference (Section 62) as the governing cannabis-sampling standard and commands laboratories to "adhere to" it – which , depending on how the Board or its agent interprets "adherence" to that requirement, would effectively allow larger combinations of cannabis-up to 15 pounds-to be sampled effectively granting the request of Silver State Government Relations ("SSGR"), made on behalf of Green Thumb Industries ("GTI"), to implement increased lot sizes now while deferring the sampling framework. The Coalition respectfully submits that the Board should do neither. As written, R152-24 RP1 cannot be lawfully adopted, and the decoupling request cannot be lawfully granted.

Two clarifications frame what follows. First, RP1 as drafted does not itself amend the NCCR "lot" definition (NCCR 1.125) and so does not, by its own terms, enact any lot-size increase – a change treated as separate work at prior workshops. Second, what RP1 does do is adopt ASTM D8334/D8334M-20 by reference (Section 62) and command laboratories to "adhere to" it (Sections 66, 67, and 72) – yet it adopts that standard in name only, through a defective incorporation and alongside operative provisions that fall below and contradict it, as set out below. That mismatch – adopting a private sampling standard as binding law while omitting the standard's own operative content and contradicting it elsewhere in the chapter – is itself a reason to decline adoption and return the regulation to the LCB for a complete and compliant implementation.

Five independent grounds each defeat adoption, and together they are overwhelming:

1. **Void incorporation by reference.** Section 62 purports to adopt more than thirty private publications – including the ASTM D8334 sampling standard on which the entire framework depends – without naming a single edition, by means of a floating "as … existed on June 20, 2024" device, and with a single blended price for four separately sold standards. That fails the mandatory conditions of NRS 233B.040(3). Because every operative testing provision works by cross-reference to Section 62, a void Section 62 would render the regulation unenforceable.
2. **Internal contradiction: the regulation adopts ASTM D8334 as binding yet commands a sample that violates it.** R152-24 RP1 adopts ASTM D8334/D8334M by reference in Section 62 and commands laboratories, in Sections 66, 67, and 72, to

"adhere to" it – yet it then sets a flat 20-gram sample (Section 69), precludes the collection and use of the retest and retention portions of the sample, and omits D8334's composite, specimen-count, scheme, sampling-report, and cultivation-documentation requirements. A regulation cannot adopt a standard as binding law and, in the same chapter, command compliance with provisions that fall below and contradict that standard. The result is an internal contradiction that renders compliance impossible: a laboratory cannot simultaneously "adhere to" D8334's 60-gram composite and obey Section 69's flat 20-gram rule. That is also ultra vires under NRS 233B.040(1).

3. **Contradictions among the standards the regulation adopts and the regulation itself.** Section 62 adopts more than thirty private and federal publications, and Sections 66, 67, and 72 make them binding, yet those standards conflict with one another and with the regulation's own operative provisions. Most starkly, D8334's 60-gram, ten-specimen composite collides with Section 69's flat 20-gram rule; D8334's representative, randomized aliquots collide with Section 72's command to sample every package or container; and the regulation applies a flower-only standard to extracts, edibles, and topicals the standard expressly excludes. A regulation cannot command obedience to a body of standards that cannot all be obeyed at once.

4. **Scientific invalidity.** A 20-gram sample drawn from a 15-pound lot tests 0.29% of the lot – a significant reduction from the sample-size requirement the CCB itself proposed in the original R152-24I (June 24, 2024) though the current R152-24RP1 (May 28, 2026), which at NCCR 11.050(3) required a 20-gram sample from a 5-pound lot – and the regulation specifies no scaled sample size at all for larger trim or wet lots. At these fractions, contamination detection is negligible and measurement uncertainty is so large that results are not scientifically valid. A regulation that commands accredited laboratories to issue meaningless certificates of analysis – while exposing them to loss of the ISO/IEC 17025 accreditation that the same regulation requires – is neither "reasonable" nor "necessary" within NRS 233B.040(1) and cannot be reconciled with the Board's statutory duty to protect public health and to preserve the policies of free competition.[1]

5. **Defective citation of authority and informational record.** The regulation makes more than thirty external publications mandatory through Sections 62, 66, 67, and 72, yet its informational statement attributes the testing changes only to routine revision of existing regulations and neither explains the need to adopt those standards as binding law nor cites adequate authority for doing so – contrary to NRS 233B.040(2)(a) and NRS 233B.066(1)(a).

[1]NRS 678A.005(5) (legislative findings and declarations, enacted as "the public policy of this State," directing that cannabis establishments and agents be "licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State, to foster the stability and success of the cannabis industry and to preserve the competitive economy and policies of free competition"); see also NRS 678B.010(1). The CCB's own 2025 Biennial Report identifies NRS 678A.005 as the controlling public-policy authority guiding its regulatory decisions. The detailed statistical and scientific basis for these conclusions is set out in Appendix A.

The proper course is to decline adoption now and return the regulation to staff to cure these defects–not to adopt a facially invalid rule and promise to "fix it later." A void incorporation, and a regulation that adopts a standard it simultaneously violates, are validity defects that must be corrected before adoption, not housekeeping items deferred after it. Part XII sets out the specific corrections and record requests that would make adoption lawful, and Appendices A and B document, respectively, the scientific deficiencies of sub-scale sampling and the regulatory-capture chronology that frames the decoupling request.

II. Procedural Background

After the CCB and the laboratory industry worked collaboratively throughout 2023 and 2024 to revise laboratory testing, the LCB File R152-24I was dated June 24, 2024 as a general revision of the Nevada Cannabis Compliance Regulations ("NCCR"). SB 157 was enacted in 2025 and took effect October 1, 2025. After enactment, the testing and sampling provisions of R152-24I were rewritten to carry SB 157's ASTM D8334/D8334M-aligned sampling mandate, producing the August 19, 2025 R152-24P draft and now the May 28, 2026 revised draft R152-24 RP1. The Board solicited small-business impact survey responses; accredited Nevada laboratories, including coalition members, submitted detailed responses in February 2026 documenting existential economic harm and the regulation's scientific defects. On April 15, 2026, SSGR, on behalf of GTI, asked the Board to expedite the lot-size increase independent of the sampling rulemaking.

III. The Standard Governing Adoption

An agency's rulemaking power is not plenary. Under NRS 233B.040(1), an agency may adopt only "reasonable" regulations that are "necessary to the proper execution" of its functions, and "in every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority." A regulation that exceeds, or fails to satisfy, its enabling statute is invalid. Adoption by reference is permitted only on the conditions stated in NRS 233B.040(3). Every regulation must cite its authority (NRS 233B.040(2)(a)) and be accompanied by a compliant informational statement (NRS 233B.066(1)(a)) and small-business impact statement (NRS 233B.0608–.0609); a regulation submitted without them "never becomes effective" (NRS 233B.0665). The validity of an adopted regulation may be tested under NRS 233B.110. While NRS 233B.090 affords a presumption of regularity, that presumption is rebutted where, as here, the defects appear on the face of the regulation and its record.

The grant of authority here is not plenary, and the regulation's own structure sharpens the point. Once the Board adopts a publication by reference under NRS 233B.040(3), that publication becomes part of the regulation and carries the force of law; Sections 66, 67, and 72 then independently command laboratories to **"adhere to"** the adopted ASTM D8334/D8334M standard. Having made that standard binding, the Board may not, consistent with NRS 233B.040(1), enact operative provisions – a flat 20-gram sample (Section 69) and per-container sampling (Section 72) – that **fall below and contradict the standard it adopts**. The Board's rulemaking power is in turn "limited by the terms of the grant" (NRS 233B.040(1)) and bound by the Legislature's declared policy that the industry be regulated "**to protect the public health …**

and … to preserve the competitive economy and policies of free competition" (NRS 678A.005(5); see also NRS 678B.010(1)), and by the Board's operative directive to keep the industry **"economically competitive"** and **"accessible to persons of low-income seeking to start a business"** (NRS 678A.450(1)(d)). **A regulation that produces invalid science, that falls below the representative-sampling floor the enabling act commands, and that shifts savings to the largest operators while imposing existential cost on small Nevada laboratories is inconsistent with each of these directives.**

IV. Section 62's Adoption by Reference Is Void Under NRS 233B.040(3)

NRS 233B.040(3) permits adoption by reference only if the agency (a) files one copy of the publication with the Secretary of State and one with the State Library and makes one available for public inspection, and (b) the reference "discloses the source and price for purchase of the publication." **The statute closes with a flat prohibition: an agency "shall not attempt to incorporate any other material in a regulation by reference." Section 62 violates each requirement.**

A. It identifies no edition of any standard.

Section 62 adopts "ASTM D8334/D8334M," "ASTM D8282," "D8347," and "D8244" with no edition or approval year; "the Official Methods of Analysis of AOAC International" with no edition (a continuously updated work); "ISO/IEC 17025" with no ":2017"; and the FDA Bacteriological, Elemental, and Pesticide Analytical Manuals, which are living online documents with no discrete edition at all. A reference that does not name the edition does not identify "the publication" the statute requires.

B. The "as … existed on June 20, 2024" device is not a filable publication and incorporates the "other material" the statute forbids.

Section 62's only temporal anchor is that the publications are adopted "as those publications existed on June 20, 2024." That date is the regulation's own filing reference, not the version date of any incorporated standard - D8334's only edition was approved November 1, 2020. NRS 233B.040(3) contemplates a discrete "book or pamphlet" the agency can file as a single copy and make available for inspection. A floating "whatever existed on a date" reference is not such a publication; for the continuously updated online manuals it is impossible to file a static "June 20, 2024" copy unless the Board actually captured and filed each snapshot. Adopting indeterminate content by a date is precisely the "other material" the statute prohibits incorporating.

C. The price disclosure is defective.

Section 62 states that the four ASTM standards are available "for the price of $72" – a single, blended figure for four separately sold publications. ASTM sells each standard individually and at different prices. A blended (and, for D8334, understated) figure does not "disclose the source and price for purchase of the publication" on a per-publication basis as NRS 233B.040(3)(b) requires.

D. The defect is fatal to the testing framework and raises a due-process access problem.

Material that is not validly incorporated has no legal force. Yet RP1's operative testing provisions – NCCR 11.025 (Sec. 66), 11.045 (Sec. 68), 11.050 (Sec. 69), and 11.065 (Sec. 71) – all command compliance "as … adopted by reference in section 62." If Section 62 is void, those provisions reference nothing. Separately, making a copyrighted, paywalled standard binding law, accessible only by purchase from a private corporation, is in tension with the public's interest in free access to the law – an interest courts have recognized where private standards are incorporated by reference into binding regulation. *See Am. Soc'y for Testing & Materials v. Public.Resource.Org, Inc.*, 82 F.4th 1262 (D.C. Cir. 2023), and 896 F.3d 437 (D.C. Cir. 2018); *cf. Veeck v. S. Bldg. Code Congress Int'l, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) (privately drafted model code enters the public domain once enacted as law); *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255 (2020). The Board cannot adopt a regulation whose central operative standard is, on the statute's own terms, not validly incorporated.

E. The "must be complied with only as required by specific regulation" qualifier does not cure the Section 62 defect – it confirms it.

After the Coalition raised the incorporation defect at the Board's workshop, Section 62(1) was amended to add the clause "which must be complied with only as required by specific regulation." That amendment does not cure the defect; it deepens it. "Adopts by reference" is a term of art: under NRS 233B.040(3), once a publication is adopted by reference it becomes part of the regulation and carries the force of law. The Board cannot simultaneously adopt thirty-six publications as binding regulation and disclaim their force unless some other section separately invokes them. The Board's informal position – that the clause relieves it of any obligation to follow the publications cited – is self-defeating: if the publications are not binding of their own force, then Section 62 is not a valid adoption by reference at all, but at most a making-available for limited purposes, and labeling it an "adoption" while disclaiming the legal force that term carries leaves the operative standard impermissibly indeterminate.

The qualifier is in any event illusory as to the publications that matter, because the operative testing sections expressly require adherence to nearly all of them. Section 66 (NCCR 11.025(1)) commands that each laboratory "adhere to the following publications adopted by reference in section 62" and lists ASTM D8282, D8347, D8244 and D8334/D8334M, ISO/IEC 17025, and the AOAC interpretive guide, among others; Section 66 further requires adherence to the OECD Good Laboratory Practice Series (§ 66.4(a)), to AOAC-validated methods (§ 66.6), and to the AOAC Standard Method Performance Requirements (§ 66.7). Section 67 (NCCR 11.030(15)) requires "adhering to the chain of custody and sample identification requirements of ASTM D8334/D8334M … as adopted by reference in section 62," and Section 72 (NCCR 11.070(2)(a)(2)) requires each laboratory, when collecting a sample, to "adhere to ASTM D8334/D8334M … including … the aseptic sampling procedures." Because a specific regulation does require adherence to these standards, the "only as required by specific regulation" clause excludes almost nothing, and the contradictions among the incorporated standards – and between those standards and the flat 20-gram sample fixed by Section 69 – remain fully operative.

The enforcement provisions confirm that the incorporated material is doing binding work. Section 29 (NCCR 4.060) makes it a Category VI violation to "test[] a lot which weighs more than the applicable weight limit for the lot." The "applicable weight limit" is supplied by the NCCR's own definition of "lot" – NCCR 1.125 – which RP1 does not amend. The binding lot caps therefore remain those in the existing definition: flower in a quantity weighing 5 pounds (2,268 grams) or less; leaves or other plant matter (other than full female flowers) weighing 15 pounds (6,804 grams) or less; and wet material used for extraction weighing 125 pounds (56,700 grams) or less. Those caps are materially below the larger lot sizes the proponents now seek to introduce. Two consequences follow. First, RP1 has not enacted any lot-size increase; doing so would require a conforming amendment to NCCR 1.125. Second, because Section 62 incorporates ASTM D8334 – a standard engineered around a 15-pound maximum harvest batch (§ 4.2) – and the surrounding testing framework presupposes larger lots, while NCCR 1.125 still caps a flower lot at 5 pounds and Section 29 punishes the testing of a lot over the applicable limit, a laboratory that tests a 15-pound flower lot would itself commit a Category VI violation. The regulation thus points toward a lot size that it simultaneously makes a punishable offense to test – an incoherence the "only as required by specific regulation" gloss cannot resolve.

The cure is to stop using "adopts by reference" as the operative binding verb in Section 62 and to relocate any binding force to the specific sections that require compliance, where it is visible and can be tested. The Coalition's proposed redline of Section 62(1) is attached as Exhibit A. That language should be adopted together with the conforming corrections set out in Part XII – edition-specific, individually priced incorporation in the sections that actually make a publication binding; conformance of the "adopted by reference in section 62" cross-references in Sections 64, 66, 67 and 72; and a conflict-resolution provision under which Nevada regulations and Board directives control over any incorporated publication and the Board may require measures more protective than the incorporated minimums – and, separately, with a conforming amendment to NCCR 1.125 if and when the Board lawfully implements any lot-size increase through full rulemaking under NRS Chapter 233B.

V. R152-24 RP1 Adopts ASTM D8334/D8334M as Binding Law Yet Contradicts the Sampling Requirements That Adoption Imposes

R152-24 RP1 adopts ASTM D8334/D8334M-20 by reference in Section 62, and Sections 66, 67, and 72 command laboratories to "adhere to" it. By that adoption the standard's cannabis-sampling requirements become part of Nevada law and must be followed. A regulation may set requirements more protective than an adopted standard, but it may not adopt a standard as binding and then, in the same chapter, command compliance with provisions that fall below and contradict it. RP1 does exactly that.

A. RP1 sets a sample below D8334's own mandatory composite and eliminates retest and retention.

ASTM D8334 § 4.2 (Summary of Practice) provides that a harvest batch of inflorescence "shall have a maximum weight of 6.8 kg [15 lb], unless local jurisdiction has alternative requirements for maximum batch size." That is a ceiling on the size of the batch, not on the mass of the

sample drawn from it; the standard's sampling-mass requirements are stated separately, and as minimums.

D8334 § 7.8.2 provides that the composite sample "shall be 60 g," distributed as 20 g for testing, 20 g for retesting, and 20 g for retention; § 4.3.5 requires sufficient material for a retain and for retests. RP1's NCCR 11.050(3) (Sec. 69) requires only "at least 20 grams," and NCCR 11.050(1) affirmatively bars a laboratory from using additional material "for the purposes of resampling or repeating quality assurance tests." RP1 thus requires roughly one-third of D8334's composite and abolishes the retest and retention structure the standard builds in. That is not alignment with D8334; it is deviation below it.

B. RP1 omits D8334's core representativeness requirements.

RP1 nowhere operationalizes D8334's Sampling Scheme A (the $T = \sqrt{n} + 1$ formula, § 7.10.5) or Scheme B (Table 2, § 7.11), its minimum of ten discrete specimens (§ 7.10.6.2), its mandatory sampling-report contents (§ 6.4.2), its equipment requirements (§ 6.5), its heterogeneity checks (§§ 6.2.1–6.2.4), or its cultivation/environmental documentation – light, temperature, humidity, agricultural chemicals, and while likely not applicable for indoor grows - "overspray and drift" (§ 6.1.3). **These are the provisions that make a sample representative. Their omission means a regulation that recites D8334 by name while discarding what D8334 requires.**

C. The regulation contradicts itself and cannot be complied with.

RP1 § 71 (NCCR 11.065) commands laboratories to "adhere to ASTM D8334/D8334M … including … the aseptic sampling procedures," and § 68 (NCCR 11.045(15)) commands adherence to D8334's chain-of-custody requirements. A laboratory cannot simultaneously "adhere to" D8334's 60-gram, ten-specimen composite and comply with § 69's flat 20-gram rule. **A regulation that commands two mutually exclusive things is arbitrary and provides no ascertainable standard of compliance**.

D. The remedy is to honor the standard the regulation adopts: a scaled composite at or above D8334's 60-gram floor.

Because R152-24 RP1 adopts D8334 as binding and commands adherence to it, the standard's own composite is the floor the regulation must meet. **D8334 fixes the composite sample at 60 grams – 20 g for testing, 20 g for retesting, and 20 g for retain – for any harvest batch up to its 15-pound maximum**. A regulation that adopts that standard cannot, in Section 69, require less than the standard prescribes. The scientifically sound course is to scale the composite to the lot the sample must represent: a composite of 30, 60, 120, and 180 grams across the lot bands, homogenized in full before subdivision, with laboratory-retained retest and retention aliquots. **RP1 adopts no such scaled framework, and so commands a sample that the very standard it adopts does not permit.**

E. RP1 applies D8334 outside its stated scope and against its own sampling method, and binds the party that cannot satisfy it.

D8334 is a flower-sampling standard. By its own terms (§§ 1.1, 5.3–5.4) it governs only harvested cannabis/hemp inflorescence and expressly states that it does not address processed materials – extracts, seeds, edibles, or topicals. RP1 nonetheless applies D8334-

driven sampling well beyond that matrix: Section 72 / NCCR 11.070(1)(a)–(b) direct laboratories to collect samples from production runs of concentrated cannabis and cannabis products – including edibles, liquids, and topicals – using the D8334 framework, without supplying any product-specific sampling protocol or validation requirement for those materials. A command to "align with" a standard cannot be discharged by applying that standard to materials the standard itself disclaims; doing so leaves laboratories without an ascertainable, scientifically valid method for the very product types RP1 sweeps in.

RP1 also prescribes a sampling logic that conflicts with the standard it adopts. D8334's schemes draw representative, randomized aliquots from selected trays or containers and do not require sampling every container. RP1 Section 72, by contrast, requires the laboratory to sample and test each package or container whenever usable cannabis is segregated into packages smaller than the lot, and to sample and test each container of a production run stored in multiple containers. The per-container command both departs from D8334's representative-sampling design and multiplies cost without producing the representativeness the standard is engineered to achieve – a substantive tension between the regulation and the standard it directs laboratories to follow.

Finally, Section 66(1) (NCCR 11.025(1)) makes five publications mandatory – D8334 among them – yet many of D8334's preconditions are duties of the cultivation facility, not the laboratory: a single uniform cultivar, a concurrent harvest window, common agrochemical exposure, roughly-equal containers, and documented environmental parameters. RP1 imposes only some cultivator duties (Section 72) and binds only the laboratory to D8334 (Section 72(2)(a)(2)). No provision requires cultivation to present material formed as D8334 requires, so a laboratory can never receive a "harvest batch" assembled the way the standard presupposes – and can be cited under Section 29 (NCCR 4.060) for a lot's noncompliance with conditions it neither created nor can independently verify. The regulation places the compliance duty on the laboratory while leaving control of the compliance facts with the cultivator. That mismatch cannot be engineered around at the bench; it must be cured by placing D8334's cultivation-facing duties expressly on cultivators.

VI. The Regulation Fails the Citation-of-Authority and Informational Requirements

NRS 233B.040(2)(a) requires every regulation to include "a citation of the authority pursuant to which it, or any part of it, was adopted." RP1's testing sections (62–74) make more than thirty external publications – the ASTM, AOAC, ISO, FDA, and USDA standards listed in Section 62 – mandatory law through the adopt-by-reference and "adhere to" provisions of Sections 62, 66, 67, and 72. A regulation that makes an outside body of standards binding must identify the authority for doing so and satisfy the conditions NRS 233B.040(3) places on adoption by reference; as Part IV shows, Section 62 does neither.

Relatedly, NRS 233B.066(1)(a) requires an informational statement giving "a clear and concise explanation of the need for the adopted regulation." **The Legislative Counsel's Digest of RP1 attributes the testing changes only to routine revision of existing regulations, and nowhere explains the need to adopt dozens of private and federal standards as binding**

cannabis-testing law. If the need for Sections 62–74 is to make ASTM D8334 and the other Section 62 publications govern Nevada cannabis testing, the record must say so and explain it. **The Digest's silence is strong evidence the informational apparatus has not been squared with what the regulation actually does; if the informational statement is likewise silent or mismatched, NRS 233B.0665 bars the regulation from becoming effective until corrected,** and NRS 233B.067 separately authorizes Legislative Counsel to object where the agency has not satisfactorily explained the need for the regulation.[2]

VII. The Regulation Is Scientifically Invalid and Therefore Neither "Reasonable" Nor "Necessary," and Cannot Be Reconciled With the Board's Public-Health Duty

A regulation that produces scientifically meaningless results cannot be "reasonable" or "necessary to the proper execution" of the Board's testing function (NRS 233B.040(1)), and it cannot be reconciled with the Board's statutory duty to protect public health and to preserve the policies of free competition (NRS 678A.005(5); see also NRS 678B.010(1)) or with the Board's mission to govern "through strict regulation, protecting the public health and safety of our citizens and visitors."[3] The administrative record – including the laboratories' February 2026 impact responses and the coalition's comprehensive technical analysis – establishes the following, none of which is seriously contested:

- **Collapse of the sampling ratio.** The current 5-pound lot with a 10-gram composite tests approximately 0.44% of the lot. A 15-pound lot with the regulation's 20-gram sample tests 0.29% – **The inadequacy of the sample size defeats the representativeness that ASTM D8334 – the very standard R152-24 RP1 adopts and commands laboratories to follow – is designed to ensure** . **In the (original) R152-24I (June 24, 2024) and current R152-24RP1 (May 28, 2026)**, **the CCB and industry's recognition of this inadequacy was corrected at NCCR 11.050 (3) where, for a 5 pound lot size, the CCB increased the sample size from at least 10 grams to at least 20 grams - "A sample of usable cannabis must be at least 20 grams"** .
- SB 157 specifies no sample size at all for 45-pound trim or 150-pound wet lots; even using a 60-gram composite, those fall to roughly 0.088%, and at 20 grams to roughly 0.029%.
- **Detection failure.** At these fractions, the probability of detecting a localized 5% contamination event – a mold colony, pesticide hotspot, or heavy-metal concentration – falls to statistically negligible levels, and measurement uncertainty rises to levels at which pass/fail determinations are meaningless. This would dramatically increase the

[2]The quoted "need" language is NRS 233B.066(1)(a). See https://www.leg.state.nv.us/nrs/nrs-233b.html.

[3]CCB Mission Statement and Guiding Principles ("govern the industry through strict regulation, protecting the public health and safety of our citizens and visitors while holding cannabis licensees to the highest ethical standards"); NRS 678B.010(1) (the purpose of licensing is "to protect the public health and safety and the general welfare of the people of this State"). The full statistical and scientific analysis underlying this Part is set out in Appendix A.

risk of contamination reaching the consuming public and present serious health risks in direct violation of the CCB's mandate to safeguard the public health.

- **Potency results become unreliable.** Inadequate sampling does not merely impair contaminant detection; it destroys the reliability of the reported potency value itself. Because the effective sampling rate for a 15-pound lot drops to 0.29%, the measurement uncertainty on potency at that fraction exceeds 100% (k = 1). In practical terms, flower whose true THC content is 20% could be reported anywhere from roughly −0.4% to 40.4% – a span so wide that the number printed on the certificate of analysis and the label conveys essentially no information about the product the consumer receives. A regime that produces potency figures with that range of error invites precisely the labeling distortions documented in other states and provides no scientifically defensible basis for the pass/fail and labeling decisions the NCCR requires.[4]
- **Aspergillus and immunocompromised patients.** RP1 incorporates the AOAC Aspergillus method (Sec. 62), **but at these sampling fractions Aspergillus contamination would routinely go undetected – roughly 91% of contamination at a 3% prevalence would be missed under the sub-scale practice – with direct consequences for immunocompromised medical patients.**
- **Accreditation paradox.** Section 62 incorporates ISO/IEC 17025, and NCCR 11 requires laboratories to maintain that accreditation. Yet the same regulation's sub-scale sampling would cause results to fail ISO/IEC 17025 validity. **ISO/IEC 17025:2017 (§§ 7.6 and 7.8.3) requires laboratories to evaluate and report measurement uncertainty and to ensure reported results are metrologically valid; a method that yields measurement uncertainty exceeding 50% – and, for 15-pound lots, exceeding 100% – cannot satisfy that requirement. The regulation would therefore command laboratories to perform, and certify, a method that their accreditation body must reject, forcing each laboratory to choose between violating the NCCR and forfeiting the very ISO/IEC 17025 accreditation the NCCR makes a condition of licensure**. **That is not a tension the laboratories can engineer around; it is a built-in contradiction between the sampling rule and the accreditation rule**.[5]

[4]The 0.88% sampling rate that preserves valid precision derives from the sampling relation $n = (Z \times CV/E)^2$, requiring roughly 62 independent observations for 95% confidence at a 5% margin of error, adjusted for spatial design effects. Reducing the effective rate to 0.29% drives measurement uncertainty above 100% and statistical power to approximately 0.21 (against an adequate value of 0.80). See Appendix A and the coalition's Comprehensive NCCR Analysis prepared for the March 3–4, 2026 workshops (Feb. 24, 2026), Parts I, V, and IX.

[5]ISO/IEC 17025:2017, General requirements for the competence of testing and calibration laboratories, § 7.6 (evaluation of measurement uncertainty) and § 7.8.3 (validity and reporting of results). A method whose measurement uncertainty exceeds the decision threshold cannot support a conforming pass/fail determination, so an accredited laboratory operating the sub-scale method risks a nonconformity and, ultimately, suspension or withdrawal of its scope of accreditation.

- **Documented out-of-state consequences.** Jurisdictions that paired larger lots or weaker sampling with thin oversight have suffered laboratory collapse and potency fraud. **In California, of 71 testing laboratories licensed for the adult-use market since mid-2019, only 27 remained active by late 2024; the active count fell from 37 in January 2024 to 27 by September 2024 – a 27% single-year decline** – amid an enforcement wave centered on inflated THC results.[6] [7] In Oregon – which licenses only eleven if accredited cannabis-testing laboratories – the Oregon Liquor and Cannabis Commission in September 2024 issued enforcement notices to seven of them over alleged THC inflation dating to 2023, proposing cancellations, suspensions, and fines.[8] In Washington, regulators suspended a cannabis testing laboratory's license after finding it had falsified more than 1,200 results to inflate THC. And independent testing of randomly collected adult-use flower from California, Oregon, and Colorado found that more than 70% of products fell outside a 20% THC-accuracy threshold, with nearly every mislabeled product over-labeled.[9] [10]

A regulation that predictably reproduces those outcomes – commanding accredited laboratories to issue statistically meaningless certificates while exposing them to accreditation loss and competitive pressure to inflate results – is arbitrary and capricious on its face.

VIII. The Small-Business Impact Record Documents Significant Unmitigated Harm That Adoption Would Ignore

[6]Cannabis Business Times, "Only 18 of 38 Labs Compliant to Test California's Cannabis Flower Under New Rule" (Jan. 11, 2024), https://www.cannabisbusinesstimes.com/us-states/california/news/15687043/ (of 71 labs licensed since mid-2019, four revoked, 13 surrendered, and 16 expired).

[7]MJBizDaily, "Fourth California cannabis testing lab loses license as crackdown continues" (Sept. 23, 2024), https://mjbizdaily.com/news/fourth-california-cannabis-testing-lab-loses-license-as-crackdown-continues/395730/ (37 active labs in January 2024 fell to 27 by September; one lab found to have inflated THC potency by as much as 32%).

[8]Canna Law Blog (Harris Sliwoski), "Oregon Cracks Down on THC Inflation and Testing Labs" (Sept. 2024), https://harris-sliwoski.com/cannalawblog/oregon-cracks-down-on-thc-inflation-and-testing-labs/; see also Portland Business Journal, "Oregon cannabis labs face shutdown in testing crackdown" (Sept. 25, 2024).

[9]Washington suspension reported in Ganjapreneur, "Study: THC Labeling for Concentrate Products More Accurate Than Flower" (July 3, 2025), https://ganjapreneur.com/study-thc-labeling-for-concentrate-products-more-accurate-than-flower/ (a Washington laboratory was suspended in 2020 after falsifying over 1,200 results).

[10]Study of 107 randomly collected adult-use flower products from California, Oregon, and Colorado finding more than 70% outside a 20% THC-accuracy threshold, nearly all over-labeled, as summarized in the peer-reviewed literature: https://www.nature.com/articles/s41598-025-03854-3 (Scientific Reports, 2025) and https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0282396 (PLOS ONE, Schwabe et al., 2023).

The Board solicited small-business impact responses, and accredited laboratories supplied them. But NRS 233B.0608–.0609 requires more than collecting responses: the impact statement must describe the methods the agency considered to reduce the regulation's impact on small business, and the agency must actually consider less burdensome alternatives. The laboratories' responses documented existential, disproportionate harm – fixed-cost businesses cannot offset a multi-fold reduction in sample volume, and the burden falls on independent laboratories and small cultivators while accruing as savings to the largest vertically integrated operators – and proposed concrete, less burdensome alternatives: scale the composite to lot size consistent with D8334's 60-gram requirement; adopt D8334 in full rather than selectively; prohibit return of retention samples; specify minimum increments and Schemes A and B; mandate sampling reports; and ensure free public access to incorporated standards. That distributional pattern – cost concentrated on small Nevada operators, savings concentrated in the largest multi-state operators – is also in direct tension with the Board's operative directive to keep the industry "economically competitive" and "accessible to persons of low-income seeking to start a business" (NRS 678A.450(1)(d)). **The pattern may also give rise to constitutional concerns: Nevada laboratories and small cultivators established their businesses in reliance on the existing regulatory framework and invested substantial capital accordingly. A regulation that makes it virtually impossible for those businesses to continue operating – by eliminating the testing volume that supports laboratory economics as lot sizes increase – may constitute a regulatory taking under the Fifth Amendment.** Adopting RP1 without adopting those alternatives, or stating a reasoned basis for rejecting them, would render the impact process a formality rather than the genuine consideration the statute requires. **Left unaddressed, that distributional pattern is self-reinforcing: as small cultivators are driven out of business, the largest operators grow their market share and, in turn, exert increasing influence over the laboratories – in effect dictating which laboratories survive financially by pressuring them to choose between producing the results those operators demand and ceasing operations, as an ever-smaller number of cultivators come to control an ever-growing share of the market.**

IX. The SSGR/GTI Request to "Decouple" and Implement Lot Sizes Now Must Be Rejected as a Matter of Law

In a letter dated April 15, 2026, Will Adler , on behalf of Silver State Government Relations, submitted a letter to the CCB requesting the Board to "direct staff to proceed with implementation of the expanded lot sizes authorized under SB 157 on an expedited basis, independent of any additional sampling rulemaking". This warrants the following discussion:

A. SB 157 § 3(2) is an integrated mandate the Board has no power to sever.

Section 1 of SB 157 made testing regulation mandatory ("shall adopt"). Section 3(2) then states a single, integrated set of requirements: representative-sample testing (§ 3(2)(a)), ASTM-aligned collection (§ 3(2)(b)), and minimum aggregate weights tied to lot bands (§ 3(2)(c)). The Legislature drafted these as one subsection. **SSGR's premise – that this is "sequencing, not substance" – is wrong: the statute joined lot sizes to sampling, and a "shall adopt" mandate over an integrated framework is not discharged by implementing the half that**

benefits the proponent (larger lots) while severing the half that protects the public (representative sampling). SB 157 enacted NRS 678B.649, which requires the Board to adopt testing regulations mandating that "representative samples of each lot" be tested by a cannabis independent testing laboratory, and which fixes both the definition of "lot" (flower lots of 15 pounds or less) and the representative-sample requirement in the same statutory section. Because a sample's representativeness is defined relative to the size of the lot it represents, lot size and sampling are not separable "sequencing" questions but a single, integrated statutory standard that the Legislature placed in one section. The Board has no authority to partially implement what the Legislature integrated.[11]

B. The decoupling request is contradicted by the statute's text and by the proponents' own legislative representations.

SSGR's letter asserts the lot-size change "was not conditioned on the adoption of new sampling methodologies, nor … dependent on external standard-setting bodies." Section 3(2)(b) of the enrolled bill contradicts that assertion directly–it conditions collection on ASTM D8334, an external standard-setting body. The assertion is also contradicted by the proponents' own legislative representations. Mr. Adler told the Senate Commerce and Labor Committee that proponents were "ratifying" and seeking to "codify" ASTM standards into law (Mar. 5, 2025, at 10); Mr. Wiegand told the Assembly Judiciary Committee that SB 157 "incorporates the internationally recognized ASTM standard D8334 … ensuring representative samples increase with lot size" (Apr. 29, 2025, at 25); and Ms. Martin described the bill as incorporating "ASTM standards that have been adopted nationally" (Mar. 5, 2025, at 12). A regulated party cannot represent to the Legislature that ASTM-aligned sampling is a central, intended feature of a bill in order to secure passage, and then represent to the implementing agency that the same linkage was never intended in order to alter implementation. The Board should accord those April 2026 representations the weight warranted by their contradiction of the proponents' own legislative testimony.

C. The reliability and veracity of the proponents' technical claims is in serious doubt.

The legislative record reflects that the proponents' lead technical witness, David Vaillencourt, was repeatedly addressed as "Dr." on the record although he holds no doctoral degree, lending his testimony unearned scientific authority; and that the "nationally and internationally recognized" framing of ASTM D8334 was a material misstatement of fact. Given the technical sophistication and committee roles of those who advanced it – including the chairmanship of the very ASTM committee that develops D8334 – the Board may reasonably conclude that the misstatement was not the product of innocent error. No federal agency has incorporated any ASTM D37 cannabis standard, until Nevada enacted SB157 (NRS678B.649) no state had mandated D8334 by prospective reference, and Canada's framework is independent of ASTM. The Board should discount

[11]The detailed chronology of how this situation arose – including the proponents' contradictory representations to the Legislature and to the Board, and the documented pathway from private standards development to mandatory state adoption – is set out in Appendix B.

a technical case built on those representations and weigh them against the actual federal, state, and international record.[12]

D. The claimed APA "timeline" urgency has no statutory basis.

SSGR invokes "the timelines established in the Nevada Administrative Procedure Act" and warns of delay "into or past the next legislative session in 2027." No NRS provision imposes a deadline measured from a statute's passage. The only hard adoption deadline, NRS 233B.040(4), runs two years from the date the Board submits its proposed regulation to Legislative Counsel – not from October 1, 2025, and not from any 2027 session – and its only consequence is that the agency head must appear before the Legislative Commission to explain a delay. The asserted need for haste is manufactured; the Board is well within every window Nevada law prescribes, and the complexity of implementing the lot-size, sampling, chain-of-custody, homogenization, and accreditation frameworks together justifies the time the statute allows.

E. Decoupling would compound the WK94344 risk.

The same industry interest seeking decoupling is driving ASTM Workshop WK94344 – initiated forty-eight hours after SB 157 passed the Senate, by GTI's Quality Director, who chairs the relevant ASTM subcommittee – for the express purpose of removing the 15-pound maximum batch size that SB 157 codifies. Granting larger lots now while that process matures would deliver the operational benefit immediately and leave the statutory cap exposed. While definitely suboptimal, RP1's static "June 20, 2024" incorporation is one potential defense against that maneuver and must be retained; decoupling would undercut it.

X. Additional Provisions the Board Should Review and Consider Correcting Before Adoption

Two further provisions warrant the Board's review and consideration before adoption, and the Coalition raises them so the Board may weigh whether they should be corrected as part of, or separately from, the principal defects above. First, proposed NCCR 11.085(3) (Sec. 74) makes a cultivation facility, production facility, or testing laboratory "responsible for all costs" of Board-requested investigative testing "even if no violation was discovered," without any probable-cause predicate, written-basis requirement, or appeal right. The Board should consider whether that cost allocation ought to be limited to findings-based allocation, supported by a written basis and subject to an appeal right; and, where no wrongdoing is identified, whether the State should bear the costs of the investigation it ordered and reimburse the laboratory that performed the State-directed testing. Second, Section 75 of the proposed regulation requires disclosure of post-harvest microbial treatment or remediation only "upon request"; given the consumer-safety stakes, the Board should consider whether treatment and remediation status ought to appear on the certificate of analysis and label rather than be available only on demand.

[12]The supporting record – the Assembly Judiciary minutes reflecting the "Dr." usage (Apr. 29, 2025, at 15–16), the witness's own non-doctoral self-identification (id. at 16), and the absence of any federal, state (including Washington's WAC 314-55-101), or Canadian mandatory adoption of ASTM D8334 by prospective reference – is collected in Appendix B, §§ B.3–B.4.

The Coalition also acknowledges two improvements the Board has already made – the limits of detection added at Section 71 (subsection 3) and the cultivator requirements added at Section 72(2)(b)(1)–(2) – and notes them so the record reflects which concerns have been resolved.

Beyond those fixes, and beyond the two provisions just discussed, four further provision-level matters warrant the Board's review. First, Section 62(4) requires each laboratory to "implement a safety program which adopts all applicable guidelines from Laboratory Safety Guidance adopted by reference in section 62" – a fifty-two-page document – without defining which guidelines are "applicable" or what a laboratory must actually do; the guidance in turn folds in still more material, pointing at page 13 to two OSHA fact sheets that "supplement" it, so that a single reference becomes a reference to references (for example, a designated chemical hygiene officer). The Board should consider making that publication available as a non-binding reference rather than a source of undefined mandatory duties. Second, Section 66(6) compels use of AOAC-validated methods even though several Nevada laboratories already operate Board-approved methods that exceed the AOAC methods on accuracy, efficiency, and cost; the Board should consider permitting any scientifically valid method the Board or its agent approves as fit for its intended use in cannabis matrices. Third, Section 66(7) re-adopts the whole of Section 62 by cross-reference; the Board should consider changing "shall" to "may" and reserving to itself the authority to approve quality-assurance standard operating procedures rather than compelling wholesale adoption. Fourth, Section 67(15) should be reviewed for removal in its entirety as duplicative of, and in tension with, the chain-of-custody and incorporation provisions addressed above.

XI. The Defects Require Voting the Regulation Down Now, Not Adopting and "Fixing It Later"

These are not housekeeping items that can be corrected by post-adoption guidance. A void incorporation under NRS 233B.040(3) is a validity defect that exists at the moment of adoption; guidance cannot retroactively cure an incorporation the statute never permitted. A regulation that adopts ASTM D8334 as binding yet commands a sample the standard does not permit does not become compliant by being adopted; adoption merely starts the clock on a self-contradictory rule and forces laboratories to attempt to develop new methods and standard operating procedures in an effort to adhere to mutually contradictory requirements. **And the regulation's transitory provision (Sec. 88) still routes post-June-2024 standard changes through an internal "deemed disapproved" review rather than affirmative NRS 233B rulemaking – a better default than the prior "deemed approved" mechanism, but still not the process the statute requires for a change that will bind the public. Adopting now would entrench scientifically invalid testing in the interim, trigger immediate accreditation and compliance exposure for Nevada laboratories, and be far harder to unwind than to fix before adoption.**

More fundamentally, Nevada law requires the Board to weigh, together, public health and safety *and* the statistical and scientific reliability and reproducibility of the testing it mandates; discharging that mission requires, at a minimum, sample-size requirements

adequate to produce reproducible and accurate results.[13] Those requirements are not met by a regulation that drops below the ASTM D8334 minimums it adopts, which are themselves adequate only because D8334 sets a floor rather than a ceiling. **If the Board does not adhere to at least the ASTM D8334 minimums – a 60-gram composite from a 15-pound lot, homogenized in its entirety – the testing it mandates cannot be statistically reproducible or scientifically reliable.**

The coalition therefore asks the Board to acknowledge the constitutional and statistical/scientific inadequacies of R152-24 RP1 as currently written, and to recognize the after-the-fact effort to enact a 15-pound lot-size increase that will benefit only the largest multi-state operators while eliminating the statistical and scientific validity of the testing performed and jeopardizing public health and safety – because the same entities pushing to increase lot size are, on the record, pushing to decrease the testing, with no demonstrated regard for its safety implications or its effect on small, Nevada-based cannabis establishments.[14]

The lawful and prudent course is therefore twofold. The Board should (1) decline adoption of R152-24 RP1 and return it to staff, enacting R152-24 only once it has been made consistent with the materials originally agreed upon between the CCB and the laboratories in 2024; and (2) address any lot-size increase separately, on its own merits, through full NRS 233B rulemaking that pairs it with the representative-sampling and homogenization requirements the science requires. Separating the two preserves the general NCCR revision that the June 24, 2024 record supports, while **ensuring that SB 157's integrated lot-size-and-sampling framework is implemented as the statute requires rather than as its proponents now wish it had been enacted.**

XII. Conclusion and Relief Requested

For the foregoing reasons, the Board should decline to adopt R152-24 RP1 at this time, reject the SSGR/GTI request to decouple SB 157's lot-size and sampling provisions, and

[13]NRS 678A.005(5) (public-health, general-welfare, and free-competition policy); NRS 678B.010(1) (licensing exists "to protect the public health and safety and the general welfare"); NRS 678B.649(2)(a)–(c) (requiring "representative samples," collection that "must align with" ASTM D8334/D8334M, and aggregate weights of "not less than" the stated floors); NRS 678B.649(1) (added by SB 157, 2025 Nev. Stat., ch. 335, making the Board's adoption of testing regulations mandatory – "shall adopt"); CCB Mission Statement (strict regulation to protect public health and safety). Reliable, reproducible results are a precondition of each of these duties; a sampling rule that yields measurement uncertainty exceeding 100% satisfies none of them. See Appendix A.

[14]See Appendix B (chronology of the proponents' contradictory representations to the Legislature and to the Board) and Appendix A, § 7 (the proponents' earlier presentations framed larger lot sizes principally as a cost-saving measure without a corresponding commitment to preserving statistical accuracy or reproducibility). The cost-saving framing is reflected throughout the legislative record – e.g., Assembly, Apr. 29, 2025, at 15–16 (Dr. Glenn Miller, describing "almost a ten-fold difference in the analytical cost") and at 17–18 (Mr. Vaillencourt, urging the change to "reduce these unnecessary costs") – and the history of the proponents' prior approaches to the CCB is documented in the SSGR meeting-history exhibit submitted to both committees (Senate Exhibit C; Assembly Exhibit D).

direct staff to make the following corrections and place them on the administrative record before any future adoption:

1. **Refresh the small-business impact statement** to address RP1 as actually proposed, to reconcile the documented laboratory harms in the February 2026 responses, and to adopt or give a reasoned basis for rejecting the less-burdensome alternatives proposed (NRS 233B.0608–.0609).
2. **Correct Section 62** to identify each incorporated publication by exact designation, edition, and approval date (e.g., ASTM D8334/D8334M-20, approved November 1, 2020; ISO/IEC 17025:2017; the specific AOAC OMA edition); to disclose the source and price of each publication individually; and to confirm that a copy of each has been filed with the Secretary of State and the State Library and is available for free public inspection (NRS 233B.040(3)).
3. **Fix the citation of authority and informational statement** by correcting two record defects in the testing sections: (a) citing, in the authority block, the statute(s) authorizing adoption of the Section 62 publications as binding law (NRS 233B.040(2)(a)); and (b) amending the informational statement to explain the genuine need – that Sections 62–74 make ASTM D8334 and the other incorporated standards mandatory for Nevada cannabis testing – rather than describing them as routine revision (NRS 233B.066(1)(a)).
4. **Adopt scaled composite sample weights** of 30, 60, 120, and 180 grams across the lot bands, with mandatory full-sample homogenization before subdivision and laboratory-retained retest and retention aliquots – all of which meet or exceed the 60-gram composite that ASTM D8334 §§ 4.3.5 and 7.8.2 prescribe for the standard the regulation adopts. These weights would provide the statistically reproducible and scientifically reliable amounts necessary to collect and test genuinely representative samples.
5. **Adopt the full operative content of ASTM D8334** that the regulation already adopts by reference: Sampling Schemes A and B (§§ 7.10–7.11), the minimum of ten specimens (§ 7.10.6.2), sampling-report contents (§ 6.4.2), equipment (§ 6.5), heterogeneity checks (§§ 6.2.1–6.2.4), and cultivation/environmental documentation (§ 6.1.3); and conform the NCCR "lot" definition to whatever lot sizes the Board lawfully adopts, so that the sampling design and the lot caps are consistent.
6. **Retain version-specific incorporation** of ASTM D8334/D8334M-20 and require affirmative Board rulemaking – with public notice, a 60-day comment period, and written findings – before any future revision becomes effective; reject any automatic-adoption mechanism.
7. **Add a conflict-resolution provision** stating that Nevada regulations and Board directives control over any incorporated private standard where they differ, that the Board will issue written guidance to resolve conflicts among incorporated standards, and that the Board may require more protective measures than the ASTM minimums.
8. **Review the investigative cost-shifting and remediation-disclosure provisions** and consider limiting the cost-shifting provision in NCCR 11.085(3) to findings-based

allocation with a written basis and appeal right, and requiring treatment/remediation disclosure on the certificate of analysis and label rather than only upon request.

9. **Confine D8334 to its stated scope and method** by limiting D8334-driven sampling to harvested inflorescence and supplying validated, product-specific protocols for concentrates, edibles, liquids, and topicals; conforming the per-package and per-container sampling commands in Section 72 to D8334's representative-sampling design; and placing D8334's cultivation-facing preconditions (single cultivar, concurrent harvest, common agrochemicals, documented environmental parameters) expressly on cultivation facilities.
10. **Correct the additional provision-level defects** by making Section 62(4)'s Laboratory Safety Guidance a non-binding reference, permitting Board-approved alternative validated methods under Section 66(6), changing Section 66(7)'s "shall" to "may" with Board approval of quality-assurance SOPs, and removing Section 67(15).

The Coalition respectfully submits that the present push for swift implementation should be viewed with appropriate caution. The proponents of the lot-size increase may be pressing the Board to implement the lot-size provisions of SB 157 immediately in recognition that, once the underlying scientific and statistical realities are examined carefully, and alongside material misstatements of fact made to the Legislature and/or the Board, the Board or the Legislature may conclude that the SB 157 provisions as currently interpreted endanger public health and the viability of Nevada's cannabis testing program. The Board should not permit that pressure to foreclose the deliberate, record-based review that the gravity of these defects demands.

Respectfully submitted,

JENNINGS & FULTON, LTD

Counsel for the Coalition of Nevada Cannabis Independent Testing Laboratories

Appendix A

Scientific and Statistical Deficiencies That Would Result From Sampling Below the Full ASTM D8334/D8334M Requirements

This appendix sets out, in summary form, the statistical and scientific deficiencies that would result from adopting testing regulations that do not adhere to and align with the full ASTM D8334/D8334M-20 requirements – **the requirements that fall on cultivators as well as on laboratories**. It draws on the coalition's Comprehensive NCCR Analysis prepared for the March 3 and 4, 2026 workshops, with particular attention to the sample-size deficiencies identified there and to the operative requirements of ASTM D8334/D8334M-20, the standard the regulation adopts.

A.1 The standard the regulation adopts: representative sampling and a 60-gram composite floor

By adopting ASTM D8334/D8334M-20 in Section 62 and commanding adherence to it in Sections 66, 67, and 72, R152-24 RP1 makes the standard's sampling requirements part of Nevada law. Three of those requirements control here: the sample must be genuinely representative of the lot; the composite for a harvest batch up to D8334's 15-pound maximum is 60 grams (20 g test, 20 g retest, 20 g retain); and the standard states its requirements as minimums that local rules may exceed but not reduce (§ 1.2). Read together, **they are the requirements the regulation made binding when it adopted D8334: the sample must be genuinely representative, it must meet D8334's 60-gram composite, and that composite is a minimum the Board may exceed but not reduce**. **None of the three can be satisfied by a fixed 20-gram draw applied to every lot up to 15 pounds.**[15]

A.2 ASTM D8334 sets a floor, not a ceiling – and the floor for a 15-pound lot is a 60-gram composite

ASTM D8334/D8334M-20 expresses its sampling requirements as minimums; the term "minimum" appears repeatedly in the standard, and the only maximum the standard specifies is the 15-pound harvest-batch size, not the sampling mass. **ASTM D8334 § 7.8.2 provides that the composite sample "shall be 60 g," distributed as 20 g for testing, 20 g for retesting, and 20 g for retention, and § 4.3.5 requires sufficient material for a retain and for retests. The floor for a 15-pound lot is therefore a 60-gram composite – and, to be statistically meaningful, that composite (or the full sample representing the required sampling fraction) must be homogenized in its entirety before it is subdivided into the testing, retesting, and retention portions. Because ASTM D8334 § 1.2 expressly provides that local regulatory directives take precedence, Nevada retains full authority to require larger, scientifically justified samples; what it cannot do, having adopted the standard as binding, is require less than the ASTM floor. R152-24 RP1 itself adopts D8334 (Section 62) and commands adherence to it (Sections 66, 67, and 72); the standard it adopts, at § 7.8.2, fixes the composite sample at 60 g – 20 g for full-panel testing, 20 g for retesting, and 20 g for sample retain – as the minimum for any harvest batch up to the 15-pound**

[15]NRS 678B.649(2), as added by Section 3 of SB 157, 2025 Nev. Stat., ch. 335. The statute's "not less than" phrasing is the textual signal that the weights are minimums, not maximums.

maximum. The regulation cannot adopt that 60-gram baseline and then, in Section 69, require only 20 g.

A.3 Why a fixed sample size collapses statistical validity as lots grow

Sampling precision depends on holding the sampling *rate* (the percentage of the lot sampled) constant, not on a fixed absolute mass. The lowest rate that preserves valid precision – approximately 0.88% – derives from the sampling relation $n = (Z \times CV/E)^2$, which requires roughly 62 independent observations for 95% confidence at a 5% margin of error, adjusted for the spatial design effects inherent in incremental sampling. Holding that rate constant means the absolute sample mass must scale with the lot. A fixed 60-gram composite (20 g tested) holds 0.88% only for a 5-pound lot; for a 10-pound lot it falls to 0.44%, and for a 15-pound lot to 0.29% – and if only the 20-gram testing portion is homogenized, the effective rate for a 15-pound lot is 0.29% rather than 0.88%.

Lot size	Lot mass	Fixed proposal (RP1)	Required (scaled, 0.88%)	Effective rate
< 5 lb	< 2,268 g	60 g (20 g tested)	30 g (3 × 10 g)	≥ 0.88%
5 lb	2,268 g	60 g (20 g tested)	60 g (3 × 20 g)	0.88%
10 lb	4,536 g	60 g (20 g tested)	120 g (3 × 40 g)	0.88% vs 0.44%
15 lb	6,804 g	60 g (20 g tested)	180 g (3 × 60 g)	0.88% vs 0.29%

A.4 Homogenization: the most critical – and most misunderstood – requirement

The entire sample (D8334's fixed minimum is 60 g; the 0.88% target for a 15-pound lot is 180 g) representing the required fraction of the lot must be homogenized *together, before* any subdivision into testing, retesting, and retention portions. The deck-shuffling analogy makes the point: one cannot divide a deck into three piles, shuffle only one pile, and expect cards drawn from that pile to represent the whole deck. **Subdividing first and homogenizing only a portion is what reduces the effective rate for a 15-pound lot to 0.29% and drives measurement uncertainty above 100%. Either the laboratory collects 180 grams for a 15-pound lot and homogenizes each 60-gram event-portion in full, or it homogenizes the entire 60-gram composite before splitting it into three 20-gram portions – in which case no sample remains for return to the cultivator**. Any practice of subdividing before homogenizing must be prohibited.

A.5 The quantified consequences for a 15-pound lot

Parameter	Sub-scale practice (0.29%)	Scientific practice (0.88%)
Homogenized for testing	20 g	60 g
Statistical confidence	~51%	95%
Margin of error	±17.4%	±5%
Detection prob. (5% contamination)	~12%	~31%
Detection prob. (10%	~22%	~61%

Parameter	Sub-scale practice (0.29%)	Scientific practice (0.88%)
contamination)		
Statistical power	0.21 (inadequate)	0.80 (adequate)
Conclusion	Statistically meaningless	Statistically valid

The public-health consequences follow directly: at a 3% prevalence, roughly 91% of dangerous Aspergillus contamination goes undetected under the sub-scale practice; flower with a true THC content of 20% could be reported anywhere from approximately −0.4% to 40.4% (k = 1); and measurement uncertainty exceeding 50% – to say nothing of 100% – renders results scientifically meaningless and incompatible with ISO/IEC 17025:2017 validity, jeopardizing the accreditation the state of Nevada through the NCCR requires laboratories to hold.

A.6 Cultivator and laboratory obligations alike must be adopted in full

ASTM D8334 imposes requirements on cultivators as well as laboratories, and a regulation that omits the cultivator-facing requirements cannot produce representative samples no matter how the laboratory performs. The omitted provisions include Sampling Schemes A and B (§§ 7.10–7.11), the minimum of ten discrete specimens (§ 7.10.6.2), sampling-report contents (§ 6.4.2), equipment requirements (§ 6.5), heterogeneity checks (§§ 6.2.1–6.2.4), aseptic sampling technique (§§ 6.3.2, 6.5), and – critically – cultivation and environmental documentation covering light, temperature, humidity, agricultural chemicals, (likely not applicable for indoor grows) overspray, and drift (§ 6.1.3). **These are the provisions that make a sample "representative," and they are part of the very D8334 standard the regulation adopts and commands laboratories to follow. Adopting the D8334 label while discarding these requirements is the opposite of the alignment the statute commands.**

A.7 The proponents sought larger lots without preserving testing validity – as a cost-saving measure

The entities that drove SB 157 through the Legislature now resist the requirements the very bill they advocated for imposes. The record reflects that Mr. Will Adler, Silver State Government Relations, and GTI-affiliated witnesses sought to increase the flower lot size to 15 pounds; their earlier presentations to the Board framed larger lots as a cost-saving measure, without a corresponding commitment to maintain the statistical accuracy and reproducibility of laboratory testing as lot sizes grew. A 15-pound lot tested with a 20-gram sample is precisely that cost-saving measure realized: it dramatically reduces sampling and testing burden while significantly compromising the statistical validity of the result. The Board considered–and on the merits repeatedly declined–lot-size expansion between 2016 and 2024 for exactly these reasons. The CCB recognized the need to achieve statistical reproducibility in testing and therefore in R152-24I (June 24, 2024) increased the sample size to 20 g for a 5-pound lot. The scientific and statistical basis for those prior decisions has not changed; only the political landscape has shifted.

Appendix B

Regulatory Capture and the Proponents' Contradictory Representations: From the Legislature (2025) to the Board (2026)

This appendix documents the process by which the proponents of SB 157 – Silver State Government Relations ("SSGR"), Mr. Will Adler, and Green Thumb Industries ("GTI") – made one set of representations to the Nevada Legislature to secure passage of SB 157, and now press a materially different set of representations on the Board to alter how the bill is implemented. It also documents the convergence of private financial interest, multi-state-operator government-affairs support, and ASTM committee control that frames the decoupling request.

B.1 The core contradiction

The April 15, 2026 SSGR letter asserts that the lot-size change "was not conditioned on the adoption of new sampling methodologies, nor … dependent on external standard-setting bodies or evolving technical interpretations." **That is the opposite of what the proponents told the Legislature.** The two columns below are drawn from the Senate Commerce and Labor Committee minutes (Mar. 5, 2025) and the Assembly Judiciary Committee minutes (Apr. 29, 2025), on the one hand, and the April 15, 2026 SSGR letter, on the other; the specific pin cites are set out in §§ B.2–B.3 below.

Representation to the Legislature (2025)	Representation to the Board (2026)
ASTM D8334 codification is a central, deliberate feature of SB 157.	The ASTM linkage was never intended and is causing avoidable delay.
The expert technical witness is "Dr. David."	(The Board is left to discover the witness holds no doctorate.)
The CCB refused to consider lot-size expansion administratively.	The Board should rely on its own authority to expedite implementation.
Safety at larger lots depends on ASTM-aligned sampling.	Lot sizes should be implemented independent of sampling rulemaking.

The first column secured legislative passage; the second now seeks to alter the implementation of that passage in a manner contrary to the statute's plain text. **A regulated party cannot tell a legislative body one thing to secure a bill and then tell the implementing agency the opposite to change how the bill is implemented.**

B.2 The legislative testimony

Mr. Adler told the Senate Commerce and Labor Committee (Mar. 5, 2025, at 10) that proponents were "ratifying" the ASTM International standards and "trying to codify that into law … to make sure that it's the same testing standards." He told the Assembly Judiciary Committee (Apr. 29, 2025, at 21) [Minutes 1001] that proponents "did … want to codify better practices in laboratory standards and in the sampling." Ms. Layke Martin (Nevada Cannabis Association) told the Senate Committee that the bill would proceed "safely by incorporating the ASTM standards that have been adopted nationally and have been adopted by the CCB already," so

that “representative sampling” was already in place (Mar. 5, 2025, at 12). And Mr. Brandon Wiegand (Chief Operating Officer, Jardín Premium Cannabis Dispensary, and a board member of the Nevada Cannabis Association) told the Assembly Committee that SB 157 “incorporates the internationally recognized ASTM standard D8334 for cannabis sampling, ensuring representative samples increase with lot size” (Apr. 29, 2025, at 25). The ASTM linkage was, by the proponents’ own account, the mechanism that made larger lots safe.

B.3 The misrepresentation of the technical witness’s credentials

The substantive technical case for SB 157 was presented by Mr. David Vaillencourt – then Vice-Chair (now Chair) of ASTM Committee D37 on Cannabis and CEO of The GMP Collective, a consulting firm that markets “ASTM Standards Development” services. Mr. Vaillencourt holds no doctoral credential; the Senate and Assembly minutes identify him by his actual title – “Founder and CEO, The GMP Collective” (Senate, Mar. 5, 2025, at 1; Assembly, Apr. 29, 2025, at 2) – and his own self-description before the Assembly Committee references graduate school but no doctorate (Apr. 29, 2025, at 16). Notwithstanding that, Mr. Adler repeatedly referred to him on the Assembly Judiciary record as “Dr. David” (Apr. 29, 2025, at 15), and the Committee Chair, taking that at face value, addressed him as “Doctor” (id. at 16). Conferring an unearned doctoral title on the witness whose representations carried the entire technical and public-health case lent that testimony scientific authority he had not, in fact, established.

B.4 The “nationally and internationally recognized” framing was a material misstatement of fact

The proponents framed ASTM D8334 – and ASTM D37 cannabis standards generally – as established national and international regulatory consensus. The independent record does not support that framing:

- **No federal incorporation.** No federal agency has incorporated ASTM D8334 or any ASTM D37 cannabis standard into binding regulation. The USDA Domestic Hemp Production Program (7 CFR Part 990) directs licensees to USDA’s own sampling guidelines, not ASTM; the FDA points investigators to those same USDA guidelines; and no ASTM D37 standard appears in the Code of Federal Regulations.
- **No mandatory state adoption – including Washington.** Washington’s actual sampling rule (WAC 314-55-101) contains a self-contained sampling matrix and does not mandate ASTM D8334. California’s Title 4 testing rules do not incorporate D8334. Colorado permits ASTM methods for pesticide analysis only, not for D8334 sampling. Rhode Island adopted different standards by name, used static incorporation pinned to specific publication years, and preserved override authority – the very safeguards SB 157 omits. The coalition has been unable to identify any U.S. state, until Nevada, that has adopted D8334 by mandatory prospective (“most recent version”) reference.
- **Canada is independent of ASTM.** Health Canada’s mandatory pesticide-testing requirements refer laboratories to validation guidance under Schedule B of the Food and Drugs Act, and Canada’s hemp sampling protocol references the International Rules for Seed Testing – not ASTM D8334.

ASTM D8334 § 1.2 itself anticipates this disjunction, expressly providing that where the practice differs from local regulatory or jurisdictional requirements, "the local regulatory or jurisdictional authority's directives shall take precedence." **SB 157's "must align with the most recent version" formulation inverts that posture – in a manner no federal agency, no other U.S. state, and not Canada has enacted for cannabis testing. Given the committee roles and technical sophistication of those who advanced the "nationally and internationally recognized" framing, the Board may reasonably conclude that the misstatement was not inadvertent; at a minimum, it should weigh that framing against the actual federal, state, and international record.**

B.5 The CCB's own representatives – including Michael Miles, now the Board's Executive Director – contradicted the proponents' account of prior engagement

Mr. Adler told both committees that the CCB had effectively refused to entertain lot-size expansion administratively ("We tried workshops, petitions and going directly to the Board but … that just did not work out") (Senate, Mar. 5, 2025, at 3). In the same Assembly Judiciary hearing, the Board's then-Deputy Director Michael Miles – now its Executive Director – corrected the record: the Board had "had this discussion … multiple times from 2021 through 2024," with the latest "long discussion in front of the Board" in September 2024, after which "[n]o changes were recommended" (Apr. 29, 2025, at 28). Chief of Health and Safety Kara Cronkhite explained that whole flower, being "heterogeneous in nature," is limited to five pounds per lot (id. at 28). Independent laboratory witnesses also corroborated that the Board had taken the issue up repeatedly between 2016 and 2024 and, after considering cost and safety, declined to expand lot sizes (id. at 25–27). Indeed, in the original R152-24I (June 24, 2024) and current R152-24RP1 (May 28,2026) at proposed NCCR 11.050(3), the CCB moved in the opposite direction from the proponents' current position – increasing the required sample for a 5-pound lot to at least 20 grams precisely to improve statistical and scientific reliability. Tellingly, after the laboratories' opposition testimony and the CCB representatives' neutral testimony, **Mr. Adler himself acknowledged on the record that his "testimony is already up in smoke" (Apr. 29, 2025, at 28)**. The Board is now asked to disregard its own prior administrative findings on the strength of representations that its own representative – Executive Director Michael Miles – contradicted on the legislative record.

B.6 The convergence: private interest, MSO support, and ASTM committee control

The decoupling request does not arise in a vacuum. The evidentiary record documents a pathway from private standards development to mandatory state adoption: (a) Mr. Vaillencourt, through **The GMP Collective, markets ASTM standards-development services to cannabis operators, creating a direct financial interest in the content and adoption of ASTM cannabis standards; (b) GTI, through its then-Senior Director of Government Affairs, Policy (Kay Doyle, an attorney, in the role from April 2023 to November 2025), publicly supported moving ASTM standards "into the marketplace" – in a publicly visible LinkedIn exchange (ca. January 2026) congratulating Mr. Vaillencourt on his election as ASTM D37 Chair, to which he replied, "I appreciate you and GTIs support getting standards moved forward into the marketplace," thanking "GTI" by name; (c) Mr. Vaillencourt was elected Chair of ASTM Committee D37 for the 2026–2027 term (ballot**

closed December 20, 2025), giving him control over the committee that develops D8334 and oversees Work Item WK94344; and (d) R152-24 simultaneously proposes to adopt D8334 by reference as mandatory Nevada law while removing the conflict-resolution mechanism (the prior NCCR 11.025(1)(g) provision that "[s]hould any conflicts between references be identified, the Board shall issue guidance") and using version language that could let future ASTM revisions – developed under that chairmanship, with MSO support – become Nevada law unless there is independent CCB review.[16]

This convergence of private financial interest, MSO government-affairs support, ASTM committee control, and proposed mandatory state adoption is the scenario the nondelegation doctrine is designed to prevent. Version-specific adoption of ASTM D8334/D8334M-20, affirmative Board approval of any future revision through full rulemaking, a restored conflict-resolution mechanism, and preservation of the Board's authority to exceed the ASTM minimums are the minimum safeguards necessary to keep Nevada's cannabis-testing regulatory authority in the hands of the Board rather than private parties with documented financial conflicts of interest.

Supporting record. The representations and findings documented in this appendix are drawn from, and should be attached to the administrative record as exhibits: (1) the Minutes of the Senate Committee on Commerce and Labor, Eighty-Third Session, March 5, 2025 (S.B. 157) – cited at 3, 10, and 12 (Minutes ID 324); (2) the Minutes of the Assembly Committee on Judiciary, Eighty-Third Session, April 29, 2025 (Minutes ID 1001, S.B. 157) – cited at 15–16, 21, 25, and 28 (Minutes ID 1001); (3) the April 15, 2026 public-comment letter of Silver State Government Relations, by Will Adler, on behalf of GTI, as filed in the R152-24 record (CCB public comment); (4) the coalition's Comprehensive NCCR Analysis prepared for the March 3–4, 2026 workshops (Feb. 24, 2026), Part VIII; (5) the publicly visible LinkedIn exchange between Kay Doyle (GTI) and Mr. Vaillencourt, and the ASTM Committee D37 2026–2027 chair-election record (ballot closed December 20, 2025) (LinkedIn post; may require sign-in); and (6) the Nevada Cannabis Compliance Board's published board-and-staff roster identifying Michael Miles as Executive Director (CCB roster).

Respectfully submitted,

JENNINGS & FULTON, LTD

Counsel for the Coalition of Nevada Cannabis Independent Testing Laboratories

[16]WK94344, initiated March 29, 2025 (within roughly forty-eight hours of SB 157's Senate passage) by GTI's Quality Director, who also chairs ASTM Subcommittee D37.02, states its purpose as, among other things, to "remove the 15 lb max batch size." So long as SB 157's "most recent version" language remains operative, a successful WK94344 revision would automatically supersede SB 157's own statutory 15-pound cap – the precise outcome version-specific incorporation is designed to prevent.

Sources and Authorities

Functional links to the primary materials cited in this brief. The legislative-minutes links are to the official Nevada Legislature archive; the page references identify where the cited testimony appears.

Legislative history – Nevada Legislature, 83rd Session (2025)

Senate Committee on Commerce and Labor – S.B. 157 hearing, March 5, 2025 (Minutes ID 324); cited at 3, 10, 12. Minutes 324 (PDF)

Senate Committee on Commerce and Labor – work session, March 24, 2025 (Minutes ID 333). Minutes 333 (PDF)

Assembly Committee on Judiciary – S.B. 157 hearing, April 29, 2025 (Minutes ID 1001); cited at 15–16, 21, 25, 28. Minutes 1001 (PDF)

Assembly Committee on Judiciary – work session, May 16, 2025 (Minutes ID 1148). Minutes 1148 (PDF)

ASTM International

ASTM D8334/D8334M-20, Standard Practice for Sampling of Cannabis/Hemp Post-Harvest Batches for Laboratory Analyses. store.astm.org – D8334/D8334M-20

ASTM Committee D37 on Cannabis / Subcommittee D37.03 on Laboratory. astm.org – D37.03 jurisdiction

ASTM Work Item WK94344 – revision of D8334 whose stated purpose includes "remove the 15lb max batch size." store.astm.org – WK94344

The GMP Collective (D. Vaillencourt)

The GMP Collective – consulting firm marketing ASTM standards-development services to cannabis operators. gmpcollective.com

"Don't Reinvent the Wheel: A Tour of ASTM Standards for Cannabis" (urging that "states are increasingly adopting these standards directly into their rules"). Article

"Work Smarter, Not Harder: How ASTM Standards for Cannabinoids Improve Your Operations." Article

Nevada Revised Statutes

Chapter 233B (Administrative Procedure Act): NRS 233B · Chapter 678A: NRS 678A · Chapter 678B (incl. NRS 678B.649): NRS 678B

Case authorities (cited by reporter; available through public legal databases)

Am. Soc'y for Testing & Materials v. Public.Resource.Org, Inc., 82 F.4th 1262 (D.C. Cir. 2023); 896 F.3d 437 (D.C. Cir. 2018).

Veeck v. S. Bldg. Code Congress Int'l, Inc., 293 F.3d 791 (5th Cir. 2002) (en banc).

Georgia v. Public.Resource.Org, Inc., 590 U.S. 255 (2020).

Proponent record and convergence sources

Silver State Government Relations public-comment letter (Will Adler, on behalf of GTI), April 15, 2026, as filed in the R152-24 record. CCB public comment (PDF)

David Vaillencourt, LinkedIn post announcing the ASTM Committee D37 2026–2027 leadership (ballot closed December 20, 2025), including the exchange in which Kay Doyle (regulatory-policy attorney; GTI) congratulated the leadership and Mr. Vaillencourt thanked "you and GTIs support getting standards moved forward into the marketplace." LinkedIn post (may require sign-in).

Nevada Cannabis Compliance Board – board-and-staff roster identifying Michael Miles as Executive Director. CCB roster

Exhibit A – Proposed Redline of Section 62(1) of R152-24 RP1

The introductory language of Section 62(1) should be revised as set out below. Deletions are shown in strikethrough; new language is underlined. The list of publications in subparagraphs (a)–(r) is unchanged.

> 1. ~~The Board hereby adopts by reference the following publications, as those publications existed on June 20, 2024, which must be complied with only as required by specific regulation:~~
>
> 1. The following publications are incorporated by reference solely for the purposes of identification and availability. No provision of any publication listed in this section imposes any requirement upon a licensee or registrant except to the extent that compliance with a specific publication, or a specific provision thereof, is expressly required by another section of this chapter:

Clean version of the revised introductory language:

> *1. The following publications are incorporated by reference solely for the purposes of identification and availability. No provision of any publication listed in this section imposes any requirement upon a licensee or registrant except to the extent that compliance with a specific publication, or a specific provision thereof, is expressly required by another section of this chapter:*

EXECUTIVE SUMMARY

Brief in Opposition to Adoption of R152-24 RP1

Submitted by Jennings & Fulton, LTD, Counsel for the Coalition of Nevada Cannabis Independent Testing Laboratories

Before the Nevada Cannabis Compliance Board · In re LCB File No. R152-24 (RP1, May 28, 2026)

Part I - Summary of the Main Brief

The request and the bottom line

The Board is asked to adopt R152-24 RP1, the May 28, 2026 revised draft of the regulation that was originally intended to implement the NCCR changes written into R152-24I dated June 24, 2024 and that now adopts ASTM D8334/D8334M-20 by reference (Section 62) as the governing cannabis-sampling standard and commands laboratories to "adhere to" it. As written, RP1 cannot be lawfully adopted. The lawful and prudent course is to decline adoption now, return the regulation to staff, and address any lot-size increase separately, through full NRS 233B rulemaking paired with the representative-sampling requirements the science requires.

One clarification frames the rest: RP1 as drafted does not amend the NCCR "lot" definition (NCCR 1.125) and so does not itself enact any lot-size increase - work treated as separate at the March 3-4, 2026 workshops. What it does do is adopt ASTM D8334/D8334M-20 by reference (Section 62) and command laboratories to "adhere to" it (Sections 66, 67, and 72) - but in name only and through a defective incorporation. Adopting a private sampling standard as binding law while omitting the standard's own operative content and contradicting it elsewhere in the chapter is itself a reason to reject RP1 and return it to the LCB for a complete, compliant implementation.

The governing standard

An agency's rulemaking power is not plenary. Under NRS 233B.040(1), the Board may adopt only "reasonable" regulations "necessary to the proper execution" of its functions, and "in every instance" that power is "limited by the terms of the grant of authority." Once the Board adopts a publication by reference under NRS 233B.040(3), that publication becomes part of the regulation and carries the force of law; Sections 66, 67, and 72 then command laboratories to "adhere to" the adopted ASTM D8334/D8334M standard. Having made that standard binding, the Board may not, consistent with NRS 233B.040(1), enact operative provisions - a flat 20-gram sample and per-container sampling - that fall below and contradict it. Implementation is further bound by the Legislature's public-health and free-competition policy (NRS 678A.005(5); 678B.010(1)) and by the directive to keep the industry "economically competitive" and "accessible to persons of low-income seeking to start a business" (NRS 678A.450(1)(d)). A rule that produces invalid science, falls below the representative-sampling floor of the standard it adopts, and shifts savings to the largest operators while imposing existential cost on small Nevada cannabis establishments including testing laboratories is inconsistent with each of these directives.

Five independent grounds defeat adoption

1. **Void incorporation by reference.** Section 62 purports to adopt more than thirty private publications - including ASTM D8334, on which the entire framework depends – without naming any edition, by a floating "as … existed on June 20, 2024" device, and with a single blended price for four separately sold standards. That fails the mandatory conditions of NRS 233B.040(3). Because every operative testing provision cross-references Section 62, a void Section 62 hollows out the regulation.
2. **The regulation adopts D8334 as binding yet commands a sample that violates it.** RP1 adopts ASTM D8334 by reference (Section 62) and commands laboratories to "adhere to" it (Sections 66, 67, and 72), yet sets a flat 20-gram sample (Section 69), bars use of the retest and retention material, and omits D8334's composite, specimen-count, scheme, sampling-report, and cultivation-documentation requirements. A rule that adopts a standard as binding and then commands provisions that fall below and contradict it – commanding two mutually exclusive things at once – is ultra vires under NRS 233B.040(1).
3. **Contradictions among the standards the regulation adopts.** Section 62 adopts more than thirty publications and Sections 66, 67, and 72 make them binding, yet they conflict with one another and with the regulation's own provisions: D8334's 60-gram, ten-specimen composite against Section 69's flat 20 grams; D8334's representative, randomized aliquots against Section 72's command to sample every package or container; and a flower-only standard (which by its terms excludes extracts, seeds, edibles, and topicals) applied by Section 72 to concentrates, edibles, liquids, topicals, and production runs. A regulation cannot command obedience to standards that cannot all be obeyed at once.
4. **Scientific invalidity. RP1 adopts ASTM D8334 in name only – omitting the requirements that make a sample representative while commanding adherence to its 60-gram composite yet setting a flat 20 grams. And at its maximum lot ceiling, a fixed 20-gram sample tests just 0.29% of the lot, measurement uncertainty exceeds 100%, contamination detection becomes negligible, and results are not scientifically valid.** Because the same regulation requires ISO/IEC 17025 accreditation, it forces laboratories to choose between violating the NCCR and forfeiting the accreditation that licensure requires. **A rule commanding accredited laboratories to issue meaningless certificates of analysis is neither "reasonable" nor "necessary." (Detailed in Appendix A.)**
5. **Defective citation of authority and informational record.** RP1 makes more than thirty external publications mandatory through Sections 62, 66, 67, and 72, yet its Legislative Counsel's Digest attributes the testing changes only to routine revision and neither explains the need to adopt those standards as binding law nor cites adequate authority for doing so – contrary to NRS 233B.040(2)(a) and 233B.066(1)(a).

Illustrative conflicts among the adopted standards and the regulation

The Coalition's composite analysis catalogs eighteen distinct conflicts among the publications the regulation makes binding and between those publications and the regulation's own text. Three show why the regulation cannot stand as written:

The regulation both disclaims and mandates the same standards. Section 62(1) provides that the adopted publications "must be complied with only as required by specific regulation," yet Sections 66(1), 67(15), and 72 command laboratories to "adhere to" those same publications – including ASTM D8334 – in full. The limiting clause and the blanket-adherence clauses cannot both be given effect; Section 62 negates itself.

Sample mass – a 60-gram composite against a flat 20-gram minimum (the gravest conflict). ASTM D8334 § 7.8 requires a 60-gram composite – 20 g for testing, 20 g for retesting, and 20 g for retain – built from at least ten increments, while Section 69 (NCCR 11.050) fixes a flat 20-gram minimum with no scaling for lot size. At D8334's 15-pound batch, 20 grams is the entire aggregate: it cannot simultaneously be the test, retest, and retain portions, much less a defensible ten-increment composite. Compliance with both is physically impossible.

An enforceable weight limit the regulation never states. The regulation makes it a violation to test "a lot which weighs more than the applicable weight limit," yet states no number, while Section 72 applies D8334 sampling to lots and production runs that may exceed fifteen pounds. If D8334 is incorporated without limitation, its 15-pound harvest-batch ceiling silently becomes the enforceable limit – and the standard's sampling design is undefined for any aggregated material above it.

The SSGR/GTI "decoupling" request must be rejected

The 2025 enabling legislation set out a single, integrated mandate - 'representative sample' testing, ASTM-aligned collection, and weight floors tied to lot bands - that the Legislature placed in one statutory section. Because a sample's representativeness is defined relative to the size of the lot it represents, lot size and sampling are not separable "sequencing" questions; the Board has no authority to implement the half that benefits the proponent (larger lots) while severing the half that protects the public (representative sampling). The request also contradicts the proponents' own legislative testimony: they told the 2025 Nevada legislative committees that the bill "codifies" and "incorporates" ASTM D8334 to ensure representative samples scale with lot size, and now tell the Board the linkage was never intended. The proponents' technical case is further undermined by the misattribution of a doctoral title to their lead technical witness, Mr. David Vaillencourt, and by the framing of ASTM D8334 as established national consensus, which the federal, state, and international record clearly does not support, and in fact flatly contradicts. Finally, the claimed Administrative Procedure Act "timeline" pressure has no statutory basis – the only hard deadline, NRS 233B.040(4), runs two years from submission to Legislative Counsel - and decoupling would leave the 15-pound cap exposed to ASTM Workshop WK94344, an industry-driven effort initiated on the Saturday immediately after Senate passage and which is currently underway to remove that very cap.

Disproportionate small-business harm

NRS 233B.0608–.0609 require the Board to describe the methods it considered to reduce the regulation's impact on small business and to consider genuine less-burdensome alternatives. The laboratories' February 2026 responses documented existential, disproportionate harm and proposed concrete alternatives: scaled composites, full D8334 adoption, retention safeguards, sampling reports, and free public access to incorporated standards. The cost falls on small Nevada operators while savings and profits accrue to the largest multi-state operators, in direct

tension with NRS 678A.450(1)(d). Left unaddressed, the pattern is self-reinforcing: as small cultivators are driven out, the largest operators gain increasing leverage over which laboratories survive. In addition, this may give rise to a regulatory taking under the 5th amendment.

Additional provisions to review (Part X)

The Coalition acknowledges two improvements already made – the limits of detection added at Section 71(3) and the cultivator requirements added at Section 72(2)(b)(1)–(2). Beyond those, several provision-level matters warrant review. Section 62(4) requires a laboratory to implement a safety program adopting "all applicable guidelines" from a fifty-two-page Laboratory Safety Guidance without defining what is "applicable," and that guidance folds in still more material (two OSHA fact sheets, a designated chemical hygiene officer); it should be made a non-binding reference. Section 66(6) compels AOAC-validated methods even though several Nevada laboratories run Board-approved methods that exceed them, and should permit any scientifically valid, Board-approved method. Section 66(7) re-adopts all of Section 62 by cross-reference and should change "shall" to "may." Section 67(15) should be reviewed for removal. NCCR 11.085(3) (Sec. 74) investigative cost-shifting should be limited to findings-based allocation with a written basis and an appeal right - and, where no wrongdoing is found, the State should bear the cost of the investigation it ordered and reimburse the laboratory that performed the testing (NRS 678B.647, added in 2025, now governs the charging of investigation costs). Finally, post-harvest treatment and remediation status should appear on the certificate of analysis and label rather than only "upon request."

The remedy: vote it down now, not "fix it later"

A void incorporation under NRS 233B.040(3), and a regulation that adopts a standard it simultaneously violates, are validity defects that exist at the moment of adoption; post-adoption guidance cannot cure them. Adopting RP1 now would entrench scientifically invalid testing in the interim, trigger immediate accreditation and compliance exposure for Nevada laboratories, and be far harder to unwind than to fix before adoption.

Relief requested (Part XII)

The Coalition asks the Board to decline adoption of R152-24 RP1, reject decoupling, and – before any future adoption - place on the administrative record corrections that: (1) refresh the small-business impact statement; (2) correct Section 62 to identify each publication by exact edition and approval date, disclose each price individually, and confirm filing and free public inspection; (3) correct two record defects in the testing sections: (a) cite, in the authority block, the statute(s) authorizing adoption of the Section 62 publications as binding law (NRS 233B.040(2)(a)); and (b) amend the informational statement to explain the genuine need – that Sections 62–74 make ASTM D8334 and the other incorporated standards mandatory for Nevada cannabis testing – rather than describing them as routine revision (NRS 233B.066(1)(a)); (4) adopt scaled composite weights of 30, 60, 120, and 180 grams with full homogenization before subdivision and laboratory-retained retest and retention aliquots; (5) adopt the full operative content of ASTM D8334 including the requisite compliance required from cultivation facilities (Sampling Schemes A and B, the ten-specimen minimum, sampling-report contents, equipment, heterogeneity checks, and cultivation/environmental documentation) and conform the "lot" definition to whatever lot sizes the Board lawfully adopts

so the sampling design and lot caps are consistent; (6) retain version-specific incorporation of ASTM D8334/D8334M-20 and require affirmative Board rulemaking before any future revision takes effect; (7) add a conflict-resolution provision under which Nevada law and Board directives control over any incorporated standard and the Board may require measures more protective than the ASTM minimums; (8) review the investigative cost-shifting and remediation-disclosure provisions; (9) confine D8334 to its stated scope – limiting it to harvested inflorescence and supplying validated, product-specific protocols for concentrates and products - conform the per-package and per-container sampling commands in Section 72 to D8334's representative-sampling design, and place D8334's cultivation-facing preconditions on cultivation facilities; and (10) make Section 62(4)'s Laboratory Safety Guidance a non-binding reference, permit Board-approved alternative validated methods under Section 66(6), change Section 66(7)'s "shall" to "may," and remove Section 67(15).

A closing caution

The present push for swift implementation should be viewed with appropriate caution. The proponents may be pressing for immediate effect in recognition that, once the underlying scientific and statistical realities and the material misstatements of fact made to the Legislature and/or the Board are examined carefully, the Board or the Legislature may reverse course and roll back the provisions that endanger public health and the very viability of Nevada's cannabis testing program. The Board should not allow that pressure to foreclose the deliberate, record-based review that the gravity of these defects demands.

Part II - Summary of Appendix A: Scientific and Statistical Deficiencies

Appendix A quantifies the statistical and scientific deficiencies of sampling below the full ASTM D8334/D8334M-20 requirements, drawing on the Coalition's Comprehensive NCCR Analysis prepared for the March 3-4, 2026 workshops and on the operative requirements of ASTM D8334/D8334M-20, the standard the regulation adopts.

The standard the regulation adopts. By adopting ASTM D8334/D8334M-20 (Section 62) and commanding adherence to it (Sections 66, 67, and 72), RP1 makes the standard's sampling requirements binding Nevada law: the sample must be genuinely "representative" of each lot; the composite for a harvest batch up to D8334's 15-pound maximum is 60 grams (20 g test, 20 g retest, 20 g retain); and the standard states its requirements as minimums that local rules may exceed but not reduce (§ 1.2). None of the three is satisfied by a fixed 20-gram draw applied to every lot up to 15 pounds.

D8334 sets a floor, not a ceiling. The standard states its sampling requirements as minimums. Its only stated maximum is the 15-pound (6.8 kg) harvest-batch size (§ 4.2), not the sampling mass. Section 7.8.2 fixes the composite at 60 grams (20 g testing, 20 g retesting, 20 g retain), and § 4.3.5 requires sufficient material for a retain and retests. Because § 1.2 provides that local regulatory directives take precedence, Nevada may require more than the ASTM floor; what it cannot do, consistent with "must align with," is require less. **The standard the regulation adopts therefore establishes a 60-gram baseline that may be exceeded but never reduced.**

Why a fixed sample collapses as lots grow. Sampling precision depends on holding the sampling rate constant, not a fixed absolute mass. The lowest rate that preserves valid precision is approximately 0.88%. A fixed 60-gram composite holds 0.88% only for a 5-pound lot; at 10 pounds the rate falls to 0.44%, and at 15 pounds to 0.29%. RP1's flat 20-gram testing portion yields an effective rate of only 0.29% for a 15-pound lot. To hold 0.88%, the sample must scale – roughly 60, 120, and 180 grams across the lot bands.

Homogenization is decisive. The entire sample (D8334's fixed minimum is 60 g; the 0.88% target for a 15-pound lot is 180 g) representing the required fraction must be homogenized together before any subdivision into testing, retesting, and retention portions. **Subdividing first and homogenizing only one 20-gram portion is what drops the effective rate for a 15-pound lot to 0.29% and drives measurement uncertainty above 100%.**

Quantified consequences for a 15-pound lot. At the sub-scale practice (0.29%), statistical confidence is roughly 51% (versus 95%), the margin of error is about ±17% (versus ±5%), and statistical power is about 0.21 (versus the 0.80 adequacy threshold). At a 3% prevalence, roughly 91% of dangerous Aspergillus contamination goes undetected. Reported potency also becomes unreliable: flower with a true THC content of 20% could be reported anywhere from roughly −0.4% to 40.4%. Measurement uncertainty exceeding 50% - and, for 15-pound lots, exceeding 100% - is incompatible with ISO/IEC 17025:2017 validity, jeopardizing the accreditation Nevada requires laboratories to hold.

Documented out-of-state consequences. Jurisdictions that paired larger lots or weaker sampling with thin oversight have experienced laboratory collapse and potency fraud. In

California, the active testing-laboratory count fell from 37 in January 2024 to 27 by September 2024 - a 27% single-year decline - amid an enforcement wave over inflated THC results; Oregon issued enforcement notices to seven of its eleven licensed laboratories in September 2024; Washington suspended a laboratory after finding more than 1,200 falsified THC results; and independent testing of adult-use flower from California, Oregon, and Colorado found that more than 70% of products fell outside a 20% THC-accuracy threshold, with nearly every mislabeled product over-labeled. A Nevada rule that predictably reproduces those outcomes is neither “reasonable” nor “necessary.”

Cultivator and laboratory obligations alike. D8334 imposes requirements on cultivators as well as laboratories - Sampling Schemes A and B, a ten-specimen minimum, sampling-report contents, equipment, heterogeneity checks, aseptic technique, and cultivation/environmental documentation. **A regulation that omits these cannot produce representative samples no matter how the laboratory performs. And because RP1 binds only the laboratory to D8334 while these preconditions are the cultivator’s to satisfy, a laboratory can be cited for a lot’s noncompliance with conditions it neither created nor can independently verify – the compliance duty and control over the compliance facts are placed on different parties.**

The CCB’s own prior position. In the original R152-24I (June 24, 2024) and in the current R152-24 RP1 (May 28, 2026), at NCCR 11.050(3), the CCB itself deliberately and correctly increased the required sample for a 5-pound lot to at least 20 grams precisely to improve statistical and scientific reliability. The scientific basis for that decision has not changed – only the politics.

Part III – Summary of Appendix B: Regulatory Capture and Contradictory Representations

Appendix B documents how the proponents - the primary advocates for the 2025 legislation - SSGR, Mr. Will Adler, Mr. David Vaillencourt (GMP Collective and ASTM member), and GTI - made one set of representations to the Legislature to secure passage and a materially different set to the Board to alter implementation, and it traces the convergence of private financial interest, multi-state-operator (MSO) support, and ASTM committee control that frames the decoupling request.

The core contradiction. The April 15, 2026 SSGR letter asserts that the lot-size change "was not conditioned on the adoption of new sampling methodologies, nor … dependent on external standard-setting bodies." **The bill did exactly that - it conditioned collection on an external body's standard (ASTM D8334).**

The legislative testimony. Mr. Adler told the Senate Commerce and Labor Committee that proponents were "ratifying" and "trying to codify" ASTM standards into law (Mar. 5, 2025, at 10), and told the Assembly Judiciary Committee they "did … want to codify better practices in laboratory standards and in the sampling" (Apr. 29, 2025, at 21). Ms. Layke Martin described the bill as incorporating "ASTM standards that have been adopted nationally" (Senate, at 12). Mr. Brandon Wiegand testified that the bill "incorporates the internationally recognized ASTM standard D8334 … ensuring representative samples increase with lot size" (Assembly, at 25). By the proponents' own account, the ASTM linkage was the mechanism that made larger lots safe.

The witness's credentials. The technical case was carried by Mr. David Vaillencourt – Vice-Chair (now Chair) of ASTM Committee D37 and CEO of The GMP Collective, which markets ASTM standards-development services. He holds no doctoral credential (Senate, at 1; Assembly, at 2, 16), yet Mr. Adler repeatedly called him "Dr. David" (Assembly, at 15) and the Committee Chair addressed him as "Doctor" (id. at 16), lending the testimony unearned scientific authority.

The "national consensus" framing. No federal agency has incorporated ASTM D8334 or any ASTM D37 cannabis standard into binding regulation; no state other than Nevada mandates D8334 by prospective ("most recent version") reference; and Canada's framework is independent of ASTM. D8334 § 1.2 itself provides that local regulatory directives take precedence – the "must align with the most recent version" formulation the legislation used inverts that posture.

The CCB's prior findings. Deputy Director Michael Miles (now the Board's Executive Director) told the Assembly Committee that the Board had considered lot-size expansion "multiple times from 2021 through 2024," most recently in September 2024, after which "[n]o changes were recommended" (Apr. 29, 2025, at 28). Chief of Health and Safety Kara Cronkhite explained that the five-pound limit reflects the heterogeneity of whole flower (id.). Mr. Adler himself acknowledged on the record that his "testimony is already up in smoke" (id.). The history of the proponents' prior approaches to the CCB is documented in the SSGR meeting-history exhibit Mr. Adler submitted to both committees (Senate Exhibit C; Assembly Exhibit D).

The convergence. The record shows a pathway from private standards development to mandatory state adoption: (a) Mr. Vaillencourt's firm profits from ASTM standards-development services; (b) GTI's then-Senior Director of Government Affairs, Kay Doyle, publicly supported moving ASTM standards "into the marketplace," which Mr. Vaillencourt acknowledged and thanked "GTI" for by name; (c) Mr. Vaillencourt was elected Chair of ASTM Committee D37 for the 2026–2027 term (ballot closed December 20, 2025), giving him control over the committee that develops D8334 and oversees Work Item WK94344, the effort to remove the 15-pound cap; and (d) RP1 would adopt D8334 by reference as mandatory Nevada law while removing the conflict-resolution mechanism and using version language that could let future ASTM revisions become Nevada law without independent CCB review. Version-specific incorporation, affirmative Board approval of any future revision, a restored conflict-resolution mechanism, and preservation of the Board's authority to exceed the ASTM minimums are the minimum safeguards against that outcome.

Sources and Authorities

Functional links to the primary materials cited in this summary. The legislative-minutes links are to the official Nevada Legislature archive; the page references identify where the quoted testimony appears in each set of minutes.

Legislative history – Nevada Legislature, 83rd Session (2025)

Senate Committee on Commerce and Labor – cannabis lot-size and sampling hearing, March 5, 2025 (Minutes ID 324). Cited testimony: Mr. Adler at 10; Ms. Martin at 12. Minutes 324 (PDF)

Senate Committee on Commerce and Labor – work session, March 24, 2025 (Minutes ID 333). Minutes 333 (PDF)

Assembly Committee on Judiciary – cannabis lot-size and sampling hearing, April 29, 2025 (Minutes ID 1001). Cited testimony: Mr. Vaillencourt addressed as "Dr."/"Doctor" at 15–16 and self-described (no doctorate) at 16; Mr. Adler at 21; Mr. Wiegand at 25; Deputy Director Miles, Chief Cronkhite, and Mr. Adler ("up in smoke") at 28. Minutes 1001 (PDF)

Assembly Committee on Judiciary – work session, May 16, 2025 (Minutes ID 1148). Minutes 1148 (PDF)

ASTM International

ASTM D8334/D8334M-20, Standard Practice for Sampling of Cannabis/Hemp Post-Harvest Batches for Laboratory Analyses (the standard the regulation adopts). store.astm.org – D8334/D8334M-20

ASTM Committee D37 on Cannabis / Subcommittee D37.03 on Laboratory (jurisdiction over D8334). astm.org – D37.03 jurisdiction

ASTM Work Item WK94344 – revision of D8334 whose stated purpose includes "remove the 15lb max batch size" (Subcommittee D37.03). store.astm.org – WK94344

The GMP Collective (D. Vaillencourt)

The GMP Collective – consulting firm marketing ASTM standards-development services to cannabis operators. gmpcollective.com

"Don't Reinvent the Wheel: A Tour of ASTM Standards for Cannabis" (urging that "states are increasingly adopting these standards directly into their rules"). Article

"Work Smarter, Not Harder: How ASTM Standards for Cannabinoids Improve Your Operations" (echoing the "test smarter, not harder" legislative framing). Article

Nevada Revised Statutes

Chapter 233B (Administrative Procedure Act): NRS 233B · Chapter 678A: NRS 678A · Chapter 678B: NRS 678B

Case authorities (cited by reporter; available through public legal databases)

Am. Soc'y for Testing & Materials v. Public.Resource.Org, Inc., 82 F.4th 1262 (D.C. Cir. 2023); 896 F.3d 437 (D.C. Cir. 2018).

Veeck v. S. Bldg. Code Congress Int'l, Inc., 293 F.3d 791 (5th Cir. 2002) (en banc).

Georgia v. Public.Resource.Org, Inc., 590 U.S. 255 (2020).

Proponent record and convergence sources

Silver State Government Relations public-comment letter (Will Adler, on behalf of GTI), April 15, 2026, as filed in the R152-24 rulemaking record. CCB public comment (PDF)

Silver State Government Relations / Will Adler, cannabis lot-size regulation meeting-history exhibit, submitted to both 2025 legislative committees (documenting the proponents' prior approaches to the CCB and the cost-saving framing of larger lots). Senate Exhibit C (PDF) · Assembly Exhibit D (PDF)

David Vaillencourt, LinkedIn post announcing the ASTM Committee D37 2026–2027 leadership (chair election; ballot closed December 20, 2025), including the comment exchange in which Kay Doyle (regulatory-policy attorney; GTI) congratulated the new leadership and Mr. Vaillencourt replied, "I appreciate you and GTIs support getting standards moved forward into the marketplace." LinkedIn post (may require sign-in to view).

Composite Table — Contradictory Requirements and Conflicts

R152-24 RP1 incorporation of ASTM D8334/D8334M-20 and related publications (NCCR Chapter 11)

The following conflicts arise among the documents the Board requires laboratories to obey, and between those documents and the regulation (R152-24) itself. Each is a requirement that cannot be satisfied without violating another requirement. This table consolidates both source tables into a single, non-duplicative set; rows 9 (sample mass), 8 (terminology), and the scope, weight-limit, and container rows merge overlapping entries.

#	Issue	Requirement A — adopted standard / source	Requirement B — R152-24 RP1 provision	Conflict / Concern (and relief)
1	**Adoption limiter vs. blanket adherence**	R152-24 §62.1: the adopted publications "must be complied with only as required by specific regulation."	§66.1 commands labs to "adhere to" the listed publications in full; §67(15) and §72 incorporate D8334 wholesale.	The limiting clause is nullified by the blanket-adherence clauses — §62 both disclaims and mandates the same publications. Relief: state that no listed publication imposes any requirement except where another section expressly requires it.
2	**Regulatory law controls over ASTM**	ASTM expressly provides that where its procedures differ from local regulatory or jurisdictional requirements, the local authority's directives take precedence. [ASTM p. 1]	R152 adopts D8334 by reference and later requires labs to adhere to it when collecting samples. [R152 §62, p. 105; §72, pp. 134–135]	Not a substantive conflict, but ASTM itself anticipates that Nevada rules override it. R152 should say so expressly and restore Board authority to approve alternatives.
3	**Version indeterminacy of D8334**	ASTM D8334/D8334M is on a five-year review cycle and is already in revision (Work Item WK75063; review due 2025); the governing edition will change.	§62.1 adopts the standard "as … existed on June 20, 2024"; §62.2 deems any new edition "disapproved" unless the Board affirmatively approves it within 30 days.	The frozen June 20, 2024 text, the standard's later revised edition, and the 30-day-review outcome can each claim to be "the" governing text — the version is indeterminate. Relief: version-specific incorporation (D8334/D8334M-20) plus affirmative Board rulemaking before any new edition takes effect.
4	**Frozen "as existed" living web manuals**	FDA BAM, EAM, PAM, and the USDA MLG are living webpages revised chapter-by-chapter, with no agency-published June 20, 2024 archival snapshot.	§62.1 adopts BAM, EAM, PAM, and the USDA MLG "as those publications existed on June 20, 2024."	A laboratory cannot obtain, freeze, or prove compliance with the exact text "as it existed" on that date. Relief: remove or re-scope these adoptions.
5	**PAM Volume II not available electronically**	FDA Pesticide Analytical Manual Volume II is expressly "not available in electronic format"; methods not compiled in PAM II must be requested from EPA.	§62(o) / §66.6(b)(3) require adherence to the FDA PAM.	The Board adopts and requires compliance with a document it cannot furnish in the form "as it existed on June 20, 2024." Relief: remove or re-scope.

#	Issue	Requirement A — adopted standard / source	Requirement B — R152-24 RP1 provision	Conflict / Concern (and relief)
6	**Scope of materials: inflorescence vs. all product types**	ASTM D8334 applies only to harvested cannabis/hemp inflorescence and expressly excludes processed materials — extracts, seeds, edibles, topicals (§1.1). [ASTM pp. 2–3]	R152 requires D8334-based sampling and QA tests for usable cannabis, concentrated cannabis, cannabis products, edibles, liquids, topicals, extracts, and production runs. [R152 §69, pp. 123–130; §72/NCCR 11.070]	Overbreadth. D8334 is not designed for concentrates, edibles, liquids, topicals, or processed production runs, yet R152's adoption language imposes it on them. Relief: limit D8334 to inflorescence or supply product-specific protocols.
7	**15-pound batch limit / undefined weight limit**	ASTM D8334 §4.2: harvest-batch maximum weight of 6.8 kg (15 lb) "unless local jurisdiction has alternative requirements"; Tables 1–2 and the 60 g composite are engineered around that ceiling and are undefined above it. [ASTM p. 2]	R152 creates a violation for "testing a lot which weighs more than the applicable weight limit" but states no number; §72/NCCR 11.070 applies D8334 sampling to lots and production runs that may exceed 15 lb. [R152 p. 41; §72]	Key concern. If ASTM is incorporated without limitation, its 15-lb cap silently becomes the enforceable "applicable weight limit," and D8334's design is undefined for aggregated material above it. Relief: state the weight limit expressly.
8	**Terminology: harvest batch vs. lot / production run**	ASTM D8334 §3.2.4 "harvest batch" = a quantity of inflorescence uniform in cultivar, harvested within a concurrent time frame, and cultivated using the same pesticides/agrochemicals — a single uniform unit. [ASTM p. 1]	R152 uses "lot" (NCCR 1.125) for usable cannabis and "production run" for concentrates/products; §72 requires "homogenized lots" of flower and trim without D8334's uniformity criteria. [R152 §72, pp. 132–134]	R152 does not map ASTM's "harvest batch" to its "lot"; material presented as a "lot" need not satisfy the "harvest batch" the sampling design presupposes, and for production runs ASTM is inapplicable. Different units of analysis.
9	**Sample mass: 60 g composite vs. 20 g minimum (the gravest conflict)**	ASTM D8334 §7.8 / Fig. 2: a 60 g composite (20 g test + 20 g retest + 20 g retain), a minimum of ten discrete increments, "collect three (3) times the minimum required weight." [ASTM p. 5]	R152 §69 (NCCR 11.050): a sample of usable cannabis need be only 20 g, with no scaling for lot size; a production-run sample is the lesser of 1% of total weight or 25 units, not less than 5 g. [R152 §69, p. 130]	At D8334's 15-lb batch, 20 g is the entire aggregate — it cannot be the 20 g test, 20 g retest, and 20 g retain at once, nor a defensible ten-increment composite. Compliance with both is physically impossible. Relief: scaled composites (e.g., 30/60/120/180 g) with full homogenization before subdivision.
10	**Retesting / retain material**	ASTM provides that the composite sample includes material for retesting and sample retain. [ASTM p. 5]	R152 lets a lab request additional material to complete required QA tests but bars using it for resampling or repeating QA tests, and restricts retesting without Board approval. [R152 §69, p. 124; §73, p. 139]	ASTM assumes retain/retest material is part of the composite; R152 tightly controls retesting and prohibits resampling/repeating without approval. Relief: clarify that ASTM retain/retest concepts do not authorize retesting except as allowed by NCCR.
11	**Containers / packages sampled**	ASTM uses two randomized schemes (tray-based and container-based), drawing representative aliquots from selected trays/containers — not	Where usable cannabis is segregated into packages/containers smaller than the lot, R152 requires the cultivator to present all packages and the lab to sample and test each package; for production runs in	One of the clearest substantive tensions. ASTM uses representative randomized sampling; R152 requires each-package/each-container sampling. R152

#	Issue	Requirement A — adopted standard / source	Requirement B — R152-24 RP1 provision	Conflict / Concern (and relief)
		necessarily every container. [ASTM pp. 5–6]	multiple containers, R152 likewise requires sampling/testing each container. [R152 §72, pp. 133–134]	is stricter and would likely control, but the two are not aligned.
12	**Who collects / sampling collector**	ASTM refers to laboratory personnel or certified/trained sample collectors collecting aliquots. [ASTM p. 1]	R152 requires the cannabis independent testing laboratory performing the test to collect the samples. [R152 §72, pp. 132–134]	Not necessarily a conflict, but R152 is narrower: if ASTM would allow non-lab certified/trained collectors, R152 appears to require the lab itself to collect.
13	**Aseptic procedures** (properly incorporated — no conflict)	ASTM requires/describes aseptic sampling equipment and procedures — disinfected tools, gloves, sterile containers, and cleaning between batches. [ASTM pp. 4–5]	R152 §72 expressly requires the lab, when collecting a sample, to adhere to D8334 "including, without limitation, the aseptic sampling procedures described in that publication." [R152 §72, p. 134]	No material conflict. This is the cleanest example of a specific ASTM requirement R152 clearly intends to apply. (Listed for completeness.)
14	**Hazardous / spoiled material**	ASTM provides that, on visual signs of spoilage or contamination, the harvest batch should be labeled hazardous and discarded. [ASTM p. 4]	R152 provides detailed testing, failure, remediation, retest, disposal, and Board-approval procedures. [R152 §§69, 72, 73, pp. 123–141]	Potential conflict if ASTM is read to require immediate discard on visual signs while R152 provides a regulatory remediation/retest/disposal process. Relief: clarify ASTM's visual-screening language does not override Nevada failure/remediation procedures.
15	**Cultivation-facility duties bound only to the lab**	ASTM D8334 imposes duties on the cultivation facility — single cultivar; documented environmental parameters; documented agrochemical/overspray exposure; roughly-equal containers/trays; access to the entire batch.	R152 §72(2)(a)(2) binds only the laboratory to D8334; §72 imposes only some cultivator duties (present all packages, video, hand-wash sink, segregate/withhold) — not D8334's cultivar-uniformity, environmental-documentation, equal-container, or overspray duties.	The lab is bound to a standard whose preconditions only the cultivator can satisfy, yet only the lab is liable. Relief: place D8334's cultivation-facility duties expressly on cultivators.
16	**OECD GLP vs. ISO/IEC 17025 (incompatible QA frameworks)**	R152-24 §66.4(a): the lab must adopt and follow the OECD Principles of GLP — a study-based, study-director, archival framework for non-clinical safety studies.	R152-24 §65 / §66(i): the lab must be accredited to ISO/IEC 17025 — a per-sample testing-competence framework.	The two QA systems use divergent documentation, personnel, and archiving models; wholesale adoption of both creates incompatible obligations. Relief: do not mandate GLP wholesale alongside ISO/IEC 17025.
17	**ALACC keyed to ISO/IEC 17025:2005 (2015), not :2017**	The AOAC ALACC guideline, as published, interprets ISO/IEC 17025:2005 (2015 ed.).	R152-24 §66(j): the lab must follow the AOAC "Aid to Interpretation of ISO/IEC 17025:2017."	An interpretive aid keyed to the 2017 standard does not exist in that form as a published document; the §66 language even admits "17025:2005 (2015)." Relief: correct the citation/edition.

#	Issue	Requirement A — adopted standard / source	Requirement B — R152-24 RP1 provision	Conflict / Concern (and relief)
18	**OMA methods validated for food, not cannabis**	Most AOAC OMA methods are validated for food/feed/supplement matrices, not cannabis flower/concentrate.	R152-24 §66.6: the lab must use AOAC-OMA-validated methods "when available"; cannabis-specific SMPRs appear in §62(r).	An "available" OMA food method may not meet the cannabis-specific SMPR performance targets in a cannabis matrix. Relief: allow Board-approved, scientifically valid methods fit for cannabis matrices.

Note: § § cite ASTM D8334/D8334M-20 sections and R152-24 RP1 / NCCR Chapter 11 provisions. The aseptic-procedures row (13, shaded green) is included for completeness as a properly-incorporated requirement, not a conflict.