

Growers Technical Subcommittee

July 8, 2015 Meeting Summary and Recommendations

Committee Attendees: Bob Blake, Jenny Burkhead, Jenny Dresler, Gina Erdmann, Chris Malott, Jesse Peters, John Sajo, Wendy Reordan, Tyson Haworth, Jeff Stone

Other Attendees: Chris Lyons (RAC Chairperson)

OLCC Staff Representatives: Danica Hibpshman, Amanda Borup, Steve Marks, Will Higlin, Jesse Sweet

The growers technical subcommittee met on July 8, 2015 to discuss production limits, testing and pesticide usage. The following is a summary of that meeting and the subcommittee's rule recommendations on those topics. For purposes of this and future summaries and recommendations, these phrases are defined as follows:

- **"Believes"** or **"agrees"**: no member of the committee voiced a conflicting opinion or approach.
- **"Generally agrees"**: some members of the committee voiced a differing sentiment than this prevailing opinion or approach.

1. Production Limitations

The growers subcommittee recognizes that the legislature has directed OLCC to adopt rules that establish limits on the size of mature marijuana plant grow canopies in a manner calculated to result in the same production amounts for indoor and outdoor growing methods. As such, the subcommittee generally agrees and recommends that initial production size limits set on outdoor and indoor licensees should be at a ratio of 6:1. That is, any size limitation on canopy space that is set on an outdoor producer should be 6 times the size limits set on an indoor producer. Similarly, the subcommittee generally agrees and recommends that size limits set on a greenhouse producer as compared to an indoor producer should be set at a ratio of 3:1. Several members of the subcommittee believe this ratio is unbalanced in favor of outdoor producers, and that a more accurate reflection of production ability would be met by a ratio of 3:1 or 4:1 (outdoor to indoor), with greenhouse producers falling somewhere in the middle.

The growers subcommittee recommends that an initial size limit for an indoor grow be 0-10,000 square feet of canopy space, and an appropriately larger amount for an outdoor or greenhouse producers using the ratios set forth above. At this time, however, the subcommittee is not able to make recommendations for a tiered structure that increases grow size limits, as described in HB 3400. The subcommittee recommends that a tiered system for increasing production be established but believes that an equitable increase must take into account the intended end product of the producer's harvest, and market conditions for particular products that use substantial amounts of flower/leaf material. Specifically, the subcommittee cites the trending increase in demand for concentrates, extracts, edibles and infused products in the medical market, all of which require extremely high volumes of raw material to produce relatively small amounts of finished product. The subcommittee believes that any tiered increases in production size limits need to take into account this market direction and ensure that growers are able to produce what is needed to satisfy the requirements of processors and consumers. The subcommittee generally believes that more information is needed about the overall market and product demand levels before a specific

recommendation on how to increase production levels can be made. The subcommittee believes that if the rising popularity of concentrates, extracts and edibles continues then there will be a much higher volume of cannabis demanded by the state as a whole. Some members of the subcommittee recommend that the OLCC evaluate the following data points in order to create a tiered structure designed to meet anticipated market demand:

- Review the OHA’s current medical production and per capita demand estimates
- Review OHA data that supports the argument that Oregon produces more medical cannabis than it consumes
- Review OLCC’s per capita data on Colorado’s medical supply and demand and the supply and demand of its adult use system.
- Review OLCC’s per capita data on Washington’s medical supply and demand (if any?) relative to its newly developed adult use supply and demand system.
- Review any additional data that is being used by the OLCC or has been provided by other RAC members to help frame the production limitations discussion.
- Review the expected cannabis tax rate for the state, the counties and cities that are expected to allow regulated cannabis
- Review which counties and cities are expected to ban/continue to ban regulated cannabis from their communities (based on their M91 local voter approval rate)

In summary, the growers subcommittee is unable to recommend specific increased square footage allowances beyond the initial starting figure of 0-10,000 square feet for an indoor grow, and proportional increases for outdoor and greenhouse grows.

The subcommittee recommends that the current standards for defining greenhouses and hoop houses should be applicable in cannabis production (*see e.g.*, ORS 307.397; OAR 150-307.397), and that separately defining those grow models in recreational marijuana regulations could cause confusion and unnecessarily move the industry away from being treated as an agricultural commodity.

2. Testing

a. Sampling Collection

The growers subcommittee was provided with the Labs committee’s perspective that cannabis testing facilities should be responsible for selecting random samples of flower and leaf material from a batch, and not the producer. Some members of the subcommittee do not believe it is necessary to have the labs perform sample collection, but agree that if the Labs committee prefers this method then that is acceptable. Other members of the subcommittee believe it is in the industry’s best interest to have the labs be the party responsible for conducting random sampling at the source. One member of the committee raised a concern that requiring labs to perform sampling could result in unnecessarily increased operating expenses and an increased risk of product loss from cross-contamination. This committee member suggests that concerns regarding producers “cherry picking” samples can be mitigated by enacting rules which require training on proper sample gathering techniques and maintenance of appropriate chains of custody.

b. Sample and Batch Sizes

The growers subcommittee believes that a “batch” size for obtaining a sample to test for pesticide and microbiological contamination should be equivalent to the size of the harvest, as determined by the producer. In other words, the subcommittee recommends that there should be no batch size limit other than the amount of product that can be produced in a single area at a time. For example, the subcommittee

recommends that the batch size for an indoor grow operation should be the harvested amounts of material from each flowering room, while for an outdoor grow the subcommittee recommends that the batch size be the entire harvest. The subcommittee believes that, particularly in testing for microbiological presence and pesticide usage, allowing testing of a whole harvest or grow room as a single batch would save producers money while still generating accurate results.

The one exception is potency testing; the subcommittee agrees that individual strains would need to be batched for cannabinoid panel testing in order to accurately assess the THC/CBD potency of each strain. However, the majority of the subcommittee believes that potency testing should not be required for each harvest, as the potency of cannabis flower does not usually vary, batch to batch, by a meaningful degree. The subcommittee generally agrees that requiring producers to perform an initial genetics screen and potency assessment on any given strain is reasonable, and recommends allowing those results to be reported on all future harvests of the same strains, while perhaps requiring periodic, random compliance testing to ensure that the strain's potency range hasn't significantly changed.

The growers subcommittee believes the Labs committee's recommendation that a sample size be 1-2% of a batch is too large. The majority of the subcommittee believes that 1/8th to 1/4th ounce per batch should be sufficient, with no sample exceeding .5% of the total batch. Some members of the subcommittee voiced the opinion that the Labs committee has significant expertise in this matter, however, and believe that the Labs' preference on an adequate sample size should prevail.

One member of the subcommittee suggests that if sample sizes are going to be 1-2% of a product batch, then the state should "purchase," perhaps in the form of a tax credit, that amount from producers, to help alleviate the economic impact of mandatory testing requirements.

c. Test Results

The growers subcommittee agrees that testing for 1) pesticides, 2) molds, and 3) potency are important for general public health and safety, in that order of importance. Some members of the subcommittee believe that pesticide and mold testing should be performed at the retail sales point, however, not at the producer level. This is due to the fact that contamination levels may not be harmful or detectable on a cured flower, but can reach unacceptable or even deadly levels once the material undergoes an extraction process and makes its way into a concentrate or edible. Additionally, the subcommittee generally agrees that if all pesticide or mold testing is performed at the producer level, potential retail level cross-contamination may be missed, putting consumers at risk. Therefore, the subcommittee generally agrees that requiring pesticide and/or mold testing at the point of purchase would have the biggest impact on the supply chain at the lowest cost, and would result in safer end products for consumers. Some members of the subcommittee suggest that Oregon should follow a model such as the USDA National Organic Program's practice of randomly testing for unacceptable pesticide or microbiological contamination at the retail level.

The growers subcommittee believes that cannabinoid levels (and in particular THC and CBD) should be reported using a range of percentages or categories of potency, rather than reporting potency in single percentages. The subcommittee believes that using a range or categories would be a more accurate way to reflect the fact that potency levels can vary significantly even within a single plant.

As noted above, the subcommittee generally agrees that THC and CBD potency testing of every batch of flower/leaf material is unnecessary, and that strains could be initially tested to determine their

general potency range and then randomly tested afterwards to ensure that proper classification of the material is continuing.

3. Pesticide Usage

Because HB 3400 places the rulemaking responsibilities for pesticide testing on the Oregon Health Authority, the growers subcommittee has limited their discussion to the various uses of pesticides by committee members, and issues with reporting and/or documenting pesticide use. Several subcommittee members recommend that any regulatory body looking to understand pesticide practices in this industry should refer to the Cannabis Safety Institute's white paper entitled "Pesticide Use on Cannabis."¹ Ultimately, the subcommittee generally agrees that pesticide use needs to be better understood through additional research and data gathering in order to properly regulate it in cannabis cultivation practices.

There is no general consensus among committee members on what "best practices" would be for pesticide usage. Some members of the subcommittee believe that not using any pesticides is a better practice, citing a preference for natural/organic production methods, consumer safety issues, and a lack of data concerning overall effects of pesticide usage in cannabis production as primary reasons for this choice. Others on the subcommittee recognize pesticides as an important part of a successful operation, as the risk of a partial or complete loss of large harvests due to pest infestation can be a significant issue to growing cannabis.

The subcommittee agrees that growers should be required to keep track of their pesticide usage, just as growers of many other agricultural products do. The majority of the subcommittee recommends that pesticide usage not be a required disclosure to consumers, however, so long as producers track and document pesticide use for inspection by regulating agencies if needed. The subcommittee has concerns that the currently, any FIFRA²-regulated pesticide could be considered off-label and thus a violation of state and/or federal law. The subcommittee agrees that requiring disclosure could put producers in a difficult position and lead to the Oregon Department of Agriculture (ODA) having to enforce prohibitions against off-label pesticide use. The subcommittee discussed the EPA's letter to Colorado regarding pesticide usage, and the possibility of obtaining a Special Local Need license to allow certain pesticides to be used by Oregon cannabis producers.

A few subcommittee members recommend requiring a warning on all cannabis products, stating that the product may have been produced with the use of pesticides. The majority of the subcommittee opposes this approach, however. The subcommittee generally agrees that voluntary, third-party certification of a product as being "pesticide free" could be a potential method of labeling that would provide consumers with information, while not forcing producers to disclose usage. Some members of the subcommittee suggest allowing products to be labeled as OMRI³ compliant, which would allow non-organic producers to avoid a required label that might unnecessarily concern consumers, while allowing producers who are compliant with strict organic techniques to have a labelling statement that is appealing to consumers seeking those types of products.

4. License Fees

¹ <http://cannabissafetyinstitute.org/wp-content/uploads/2015/06/CSI-Pesticides-White-Paper.pdf>

² FIFRA: Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

³ OMRI: The Organic Materials Review Institute.

The growers subcommittee recommends that the OLCC set license fees based on the size of the grow operation, with higher fees being applied to larger operations. This is consistent with HB 3400's direction that OLCC shall adopt fees in the form of a schedule that imposes a greater fee for premises with more square footage or on which more mature marijuana plants are grown.