



Washington State Liquor and Cannabis Board Meeting

Wednesday, April 14, 2021, 10:00am

This Meeting was Convened Via Conference Call

Meeting Minutes

1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, April 14, 2021. Member Ollie Garrett was also present, Member Russ Hauge was excused

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the March 31, 2021, Board meeting minutes.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

3. CANNABIS RELATED RULEMAKING TIMELINES

Presenter – Kathy Hoffman, Policy and Rules Manager

Ms. Hoffman: Thank you Chair Postman. Good morning to you and Board member Garrett. I have a brief update on cannabis rule projects for you today.

I'll start with the cannabis quality control rules. Our responsive document regarding themes emerging from the supplemental CR 102 hearing last fall is now ready to go and we'll be releasing it tomorrow or Friday. It will be shared by GovDelivery messaging and posted to our rules web page next to the recordings of the "deliberative dialogue" sessions we held earlier this year.

With respect to the quality control rule development, we continue to explore where we can realign revisions within our statutory authority and with the traceability program redesign. We intend to firm up a timeline once we're fully staffed.

The next rule project concerns Tier I expansion. We did release the Tier I survey report on Friday, April 2, and I anticipate bringing a proposal to you by the end of the month for that project.

Moving on to criminal history of background check redesign, our agency policy workgroup will further discuss the draft conceptual rules on this coming Friday. We're on track for a "listen and learn" session the first week of May. We also remain on track to be able to bring a proposal in mid to late June for this project. That places finalization in mid-August, which aligns with our original plan.

I also have two things to share that are on the horizon. These are things that I shared in caucus yesterday - on April 28, I will bring you a package to consider reviewing the LCB vitamin E acetate emergency rules. This is the prohibition itself in the tier rules associated with it concerning processors and retailers. This final renewal is timed so that coincides with the finalization of the permanent cross reference in our rules to the State Board of Health's vitamin E acetate prohibition. We've not received any comment on the CR 101 that we filed a couple of weeks ago and I'll continue to keep you updated on that.

We're also preparing for a potential passage of House Bill 1210. That would replace the term "marijuana" with "cannabis" throughout our rules and the bill would allow us to accomplish this through an expedited process, or a CR 105.

That's all I have for today. May I answer any questions?

Chair Postman: None for me. Member Garrett, any questions for Kathy?

Member Garrett: No questions for me.

Chair Postman: Great, thank you. I do appreciate you getting ahead of bill 1210. If that bill passes, it'll be great if we can move as quickly as possible to implement so we appreciate that a lot.

Ms. Hoffman: Thank you, Chair Postman.

Chair Postman: And now we will hear an update on the alcohol related rulemaking from Audrey Vasek, the Policy and Rules Coordinator. Audrey?

4. ALCOHOL RELATED RULEMAKING AND TIMELINES

Presenter – Audrey Vasek, Policy and Rules Coordinator

TIMELINES

Ms. Vasek: Good morning, Chair Postman and Board member Garrett. Thanks for the opportunity to give a brief update on the alcohol rulemaking timelines.

I'll start with the supplemental CR 102 for the rule project to implement 2020 legislation – Engrossed Second Substitute Senate Bill 5549. This is the bill that modified the privileges and requirements for distillery and craft distillery licenses and established a new offsite tasting room license available beginning January 1 of this year. Public hearing on this supplemental CR 102 is set for the next Board meeting on April 28. The public comment period began on March 17 and will remain open until end of business day on April 28. We've not received any public comments on the supplemental proposal so far. After the public hearing, we'll consider any feedback received and determine if any substantive changes need to be made. No substantive changes have been made to the proposed rules. We're on track to tentatively adopt the rules as soon as May 12, which would put the effective date in June.

On the horizon, we will soon have a new rulemaking project for implementation of 2021 legislation - Engrossed Second Substitute House Bill 1480, which is our agency request bill relating to the COVID-19 alcohol allowances. The bill was passed by the legislature on March 29 and is currently awaiting signature by the Governor. As passed by legislature, this bill allows specifically listed privileges or allowances for certain liquor licensees to continue until June 30, 2023. The bill is scheduled for action by Governor Inslee this afternoon and with the emergency clause in the bill these changes would take effect immediately upon being signed by the Governor. I plan to assemble an internal project team meeting with staff from licensing, enforcement and education, finance, IT, public health to begin considering how to implement the bill as soon as possible and anticipate the CR 101 preproposal statement of inquiry could be ready sometime in May. That includes my timeline updates on the alcohol rulemaking and I'm happy to answer any questions.

Chair Postman: None from me. Member Garrett?

Member Garrett: No questions.

Chair Postman: Okay. Thank you, Audrey, you can move on to your next item.

ACTION ITEM (A)

ACTION ITEM 4A - Board Approval of CR 102 for Distillery Reporting and Payment Rules

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4A).

Ms. Vasek: I'm requesting approval to file a CR 102 for the rule project related to distillery reporting and payment rules. For background, this is the rule project that considers revising the distillery reporting and payment requirements in the distillery chapter 314-28 WAC to be consistent with the Court of Appeals decision in *Blue Spirits Distilling*, which held that LCB rules requiring distillers to pay spirits retailer licensing fees when acted as spirits retailers were invalid.

A set of conceptual draft rules were shared through GovDelivery for public feedback from March 1 through the 31st. This feedback is included as "Attachment B" to the CR 102 memo. Most of the feedback we received was general, there weren't any specific suggestions for changes to the conceptual draft rule language. Based on this feedback, the project team decided not to make any changes to the conceptual draft rules. The proposed rules included in the CR 102 package are identical to the conceptual draft rules that were shared earlier in March and these proposed rules remove all reporting and payment requirements for distilleries and craft distilleries by repealing WAC 314-28-070 and 080 and amending existing references to reporting and payment requirements in several other rule sections in that chapter.

These revisions are anticipated to reduce the reporting burden and compliance costs for distillery and craft distillery licensees. The estimated costs of compliance and relevant minor cost threshold estimates are described in more detail in the CR 102 form.

Timeline

April 14, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
May 5, 2021	Notice published in the Washington State Register.
May 26, 2021	Public hearing held and formal comment period ends.
No earlier than June 9, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list.
July 10, 2021	Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).

Ms. Vasek then requested approval from the Board to file proposed rules.

MOTION: Member Garrett moved to approve the filing of CR 102 for Distillery Reporting and Payment Rules

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

5. GENERAL RULEMAKING

ACTION ITEM (A)

ACTION ITEM 5A - Board Approval of CR 101 for Summary Suspension and Stay Provisions for Enforcement of Governor's Proclamations

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5A).

Ms. Vasek: Thank you, Chair Postman. Today I'm requesting approval to file a CR 101 to open a new rulemaking project that would consider creating permanent rules establishing summary suspension and petition for state provisions for enforcement of Governor's proclamations. The new rule project would consider creating permanent rules to replace the emergency rules, WAC 314-12-250 and 275, filed most recently on March 17. As part of the rule project, we would consider potentially amending or repealing existing summary license suspension and petition for state provisions in title 314 WAC, consolidating those provisions into new rule sections applicable to all licensees.

For background, the Board originally adopted emergency rules WAC 314-12-250 and 275 on April 6, 2020, after the Governor issued a series of proclamations affecting establishments licensed by the LCB. Reading proclamation 20-05, which confirmed the person-to-person spread of COVID-19 in Washington State and proclaimed the state of emergency for all counties in the state. Proclamation 20-13, which imposed statewide limits on food and beverage services in areas of congregation to limit opportunities for disease exposure and transmission. Proclamation 20-25, which imposed certain limits on conducting or participating in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and non-essential businesses in the state. Between March 2020 and January 2021, the Governor issued a series of amendments to these original proclamations in response to the changing conditions of the COVID-19 pandemic, including 12 amendments to proclamation 20-25 and many updates to the “Healthy Washington Roadmap to Recovery Plan”. The proclamations describe how the conditions of the COVID-19 pandemic in the state of emergency changed over time, and an outline of these major updates between April 2020 and the present is included in the CR 101 memo.

In response to these changing conditions, the Board extended the emergency rules for a first time on July 22, a second time on November 18, and a third time on March 17. At this point, it's not possible to know precisely when the state of emergency as a result of COVID-19 will end. Rulemaking that provides the agency with the ability to use summary license suspension and petition for state provisions to enforce Governor's proclamations will support efforts to preserve public health and safety, both through the uncertain duration of the current state of emergency and through possible future states of emergency, whether or not directly related to COVID-19.

If the CR 101 package is approved today, I'll file the CR 101 preproposal with the Code Reviser's office and the initial comment period will open. I'll also work with communications to send notice to all GovDelivery subscribers and update the LCB website. That concludes my presentation. I'm happy to answer any questions.

Chair Postman: Thank you. You were able to answer my questions yesterday. I appreciate it. I'll just say I think this is important and responsive to some things we've heard. We all hope we never face anything like this again and that this ends soon. But if we did, I think this would allow for quick action, consistency, and frankly, more clarity between us and licensees and the public as a whole. So I think it's exactly the right thing to do and should make this better for the future if, god forbid, we face it again. Member Garrett, anything?

Member Garrett: No questions.

MOTION: Member Garrett moved to approve the filing of CR 101 for Summary Suspension and Stay Provisions for Enforcement of Governor's Proclamations

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Thank you, Audrey and Kathy. Anything else in rulemaking?

Audrey Vasek: Nothing further from me. Thank you, Chair Postman.

6. GENERAL PUBLIC COMMENT

Chair Postman: We'll now move to general public comment. And we have a lot of people signed up today, so we need to be mindful of the time. Everybody will be given four minutes to speak, staff will notify you when you have 30 seconds remaining. Please don't be insulted by that brief interruption, but it's important to let everybody know and then we'll have to stop after the end of that 30 seconds. You can always submit statements in writing to follow up if you would like. We will do our best to keep things moving and I will ask you after I call your name to state your name and the affiliation for the record. First up is Shawn DeNae.

Shawn DeNae – WA Bud Co

Hello, good morning and welcome Chair Postman. My name is Shawn DeNae Wagenseller. I'm the CEO of a Tier II producer/processor in North Snohomish County - Washington Bud Company. We were licensed in 2016 and served the medical marijuana community prior to that.

The reason for me logging on today is a couple. One is, I'm really concerned about the recent announcement of four different LCB members leaving. I'm just concerned that this is going to set us back again. We've been talking about rules and what's important and what's not necessarily important. Since the very beginning, I've been going down to workgroups starting in 2015 and we're still talking about the same things: waste rules, lack of canopy enforcement, revising the Tiers and having truth in advertising on our labels. There are certainly rules that are crucial to keeping us a regulated market, but there are a lot of rules that just simply get in the way of business and we really need to move more quickly about that.

One of the most recent topics, and I know you've heard about this, is Delta-8 coming into the 502 market. I had an opportunity to listen to a panel discussion that featured Dr. Nephi Stella a couple of weeks ago, specifically on the Delta-8 coming from hemp issue. Dr. Stella has had 20 years researching cannabinoids from the federal gardens that have been growing for decades down in Kentucky. So he's got decades of research on cannabinoids. What I picked up from the discussion is that he concludes that Delta-8, even though you can find it in the naturally grown cannabis, it's not in any sort of viable volume to make it profitable to extract in its natural state. And so what's happened since the farm bill passed in 2018, all of these hemp farms have not been growing hemp for fiber, fuel, and industry but for cannabinoid extraction. And kilos and kilos of CBD oil now doesn't have a market. So, the chemists have just gotten ahead of the rules and starting to convert CBD oil into both Delta-9 and Delta-8 THC. I've also heard of Delta-10s and 11s. So, I really applaud the LCB putting out a policy statement that any Delta-8s that are appearing in 502 are to be included in the 10 percent THC max.

Dustin Dickson: Shawn, you have 30 seconds.

Ms. DeNae: I'm concerned that there's not enforcement. So if we focus on these cannabinoids that are grown by unregulated hemp processors, I really suggest that you use terms like "naturally derived concentrations". That's just fine if it's coming from the plant in a naturally derived way. But chemical processing and synthesis should not be allowed. That's like say --

Mr. Dickson: Shawn, that is your time.

Ms. DeNae: -- if stores may legally want to be able to share, like gas stations, that's like jumping off a bridge. Does that make it safe? No. Okay, thank you so much.

Chair Postman: Thank you. We appreciate your comments. The next person who signed up is Dave Varshock.

Dave Varshock – BroCo Investments LLC

Good morning and thanks for the time for allowing testimony today. My name is Dave Varshock. I'm the general manager for two Tier IIIs and three Tier IIs in the Okanagan Valley.

I'm pretty disappointed and concerned about the importation and sale of synthesized cannabinoids into our marketplace. It seems not only with the assistance, but with the blessings of the LCB and that's kind of concerning to me. Large processors are being allowed to sell synthetics without transparency to consumers without adequate consumer safeguards in place. I think you really need to put an immediate stop to the importation, the manufacturing, and the sale of synthetic hemp derivatives into the I-502 marketplace.

Pricewise, naturally extracted Delta-9s just can't compete. It puts us in a distinct disadvantage. At best, a not even playing field. Again, I really encourage you to put an immediate stop to this. The damage that unfair competition is creating is already being felt in the marketplace.

Next, I'm concerned about business viability ahead of federal legalization, and it's coming. We need to create a better business ecosystem that gives us, again, a more level playing field to not only survive, but flourish now and going forward, and we need this immediately. Federal legalization is coming.

I'm also asking the WSLCB to establish a pilot program to allow retail title certificate holders to host a farmer's market style event this summer. I'm pretty concerned about limited access to the market that we have. We need to be able to serve our communities directly. I'm a big proponent of the craft cannabis legislation, direct sales legislation, draft cannabis, and direct sales. It absolutely has to be a part of the future of cannabis in Washington State. The book has already been written on this by the wine industry. All I'm asking for is a new chapter that includes cannabis in the same rules, or at least a modified version thereof.

I really don't think that the LCB and the legislators understand how challenging the business environment has been for us as small independent farmers, due to the unfair structure of the market. I'm asking that you use your influence with the regulators to fix our existing market and empower the small independent farmers through this craft cannabis legislation to the end that I believe that the voters wanted to see in Washington State.

Thank you again for taking the time to hear us and thank you in the future for allowing us to continue to provide some feedback.

Chair Postman: Thank you, we appreciate that. Monica Martinez is up next.

Monica Martinez – The Calyx Co.

Thank you Chair Postman and Washington State Liquor Control Board for hearing me today. My name is Monica Martinez and I am the managing partner for the Calyx company, a Tier II producer/processor located in Prosser.

We have been licensed since the summer of 2014. We started our farm with what little money my father in law could scrounge up from his savings. His name is Sergio Martinez and is an immigrant from Mexico who has worked his whole life in the fields. Our cannabis business was a hope to get him retired, however, he is still working in the fields six days a week.

Our journey in the cannabis industry has not been easy. Once we entered the industry, it was a downhill slide for four straight years. The flower prices dropped year after year. We had to lay off all of our employees and for the last two years, it has been just my husband and I doing all of the work with the exception of one part-time trimming person. Prices continued to drop until they evened out in 2019 with a slight increase at the end of that year and remained through 2020. We had a glimmer of hope. Then this year hit and I have been forced to adjust my prices back to the lowest we were at in 2018. We are still struggling to move our flower today.

In an industry where there are so many regulations and restrictions without success is devastation. We have no access to banking and have put everything we have into this business. There is no choice but to struggle to make it work. This year in particular has been so disappointing to find out the hemp industry has created direct competition with those in I-502 as they are creating synthetic Delta-9 and Delta-8 and selling in our space. This is currently devastating our industry.

Another concern is canopy. There's been over-canopy in our industry this year and it is very concerning.

Furthermore, as large producer/processors continue to consolidate, it is imperative that small farmers have access to customers through craft cannabis to have a chance to survive in this extremely challenging industry.

My ask today is to please take swift action on synthetic hemp derivatives, over-canopy and please be a supporter of craft cannabis so that small farms have a chance in this industry that they have put everything into. Thank you for your time.

Chair Postman: Thank you and thank you for being mindful of the clock. We appreciate it. Next up is Jason Poll.

Jason Poll – Citizen

My name is Jason Poll. I own a Tier III in Grant County and I manage three other Tier IIs, also in Grant County. We've been operating since 2015. I really just want to thank you for taking the time, I'd only be reiterating what everyone's already said. It's been really well said and these conditions are different than other businesses you're dealing with. I think if we could get treated more like the other businesses, such as wineries and craft and all that, it would be really successful for us and help moving forward. And the conditions and the regulations need a little bit of modification. Nobody knew what would happen and I think that's a natural process. Basically that is all I have to say.

Chair Postman: Okay, great. Thank you for sharing that. And we move now to Brandon Fenton.

Mr. Dickson: Good morning, Chair. Brandon Fenton did register to speak but is not online with us today.

Chair Postman: Okay, thank you, Dustin. We'll move next to Jessica Straight.

Jessica Straight – Eagle Trees

Hi. Thanks so much for allowing me to speak to you today about the cannabis industry through the lens of a small farmer.

Together with my brother Kenny, we own and operate Eagle Trees Farm in Whatcom County on the beautiful Mt. Baker Highway. We are a Tier II sun-grown farm, which means we don't use any supplemental light nor do we use pesticides, fungicides, or any kind of chemicals. So, we use regenerative farming practices and create fertility on our farm by utilizing closed loop systems. Basically, we're like the model farm that you would want the cannabis industry to be. We're independent, family owned, family operated. We create a culture with our employees. We've had the same employees since the very beginning. We treat them like family. We respect them. They respect us.

The current market in Washington State is really difficult starting with the implementation of allowing CBD to come in through other means. It was really crippling to us. In the first year, we grew half of our canopy with CBD. And we were able to do quite well with that until the CBD was allowed to come in outside of 502. The same thing is now happening with these Delta-8 and Delta-9s. We're only allowed to sell our cannabis to these licensed shops and those shops are limited. So, there's a bottleneck going on there, but yet these shops are allowed to sell outside hemp derived CBD, now outside derived Delta-8 and Delta-9. This is very unfair. If they're able to do this, then we should be also able to sell our cannabis to our consumers. We've created a culture. We've created a brand. We've created customers that like us.

We aren't really able to charge the price that's the "real" price, the price of producing our cannabis plus maybe 10 percent profit, something like that. I mean, profit is completely not even something we think about. I just try to make payroll every two weeks.

If Washington State wants to continue with a cannabis industry that enables small independent farmers to thrive, the craft cannabis bill really needs to be taken up. Otherwise, it's only going to be large corporate cannabis business that don't care about the environment, they don't care about their workers, they don't care about anything but profit. And that's the reality.

The other thing that for our small farm that especially is important to us is the Tier system. So we're a Tier II but we only are able to do one harvest because we're outside in Northwest Washington. We have a rolling harvest but we're only able to have one harvest. We compete with other Tier IIs and Tier IIIs for that matter that can have six harvests inside. They use a lot of electricity. It's an unnatural situation, which is fine. They can do that. But it's not a level playing field for us. We can really only have one harvest. So that is a problem for us. I think as part of the craft cannabis bill, I believe that speaks to that --

Mr. Dickson: Jessica, you have 30 seconds.

Ms. Straight: It allows sun-grown farms to bump up to the Tier III status. We're just trying to make a living with our small farm and our six employees. And it's very, very difficult with the current situation. So, I ask that you please take up the craft cannabis bill and allow us to make it through this federal legalization period as well. Thank you so much for hearing me out. I appreciate your time.

Chair Postman: Great. Thank you for sharing that. Next up is Micah Sherman.

Micah Sherman – Raven Grass

For the record, my name is Micah Sherman and I'm one of the three owners of Raven. We're a Tier II farm here in the Olympia area.

I'm also signing on today to reiterate what everybody else has already said in regards to synthetic cannabinoids being sold in the 502 industry. It's absolutely a critical issue for the Board to take action on as quickly as possible. I've heard it said recently that it's felt that the Board doesn't have authority over this issue because of only having regulatory authority over Delta-9. There's absolutely synthetic Delta-9 being sold in the cannabis industry and 502 stores right now. It's in my understanding that the situation is not allowed, yet it's happening today, currently, right now. So we definitely need some action taken on that because it's having profound effects on our ability to continue to even just get by like we have done over the last few years. So please, I'm encouraging you to take some action on that.

In addition, I'm also the person who wrote that craft cannabis bill that's been referenced and have been working for the last five years to move that bill forward. I would reiterate what other folks have said that this is a sensible bill that works alongside and models itself after the success of the craft brewing industry, an industry that we all know has had incredible success for small brewers and has allowed that industry to come into existence when it didn't before.

What we're seeing right now and what we've been seeing over the last five years is that we had a business ecosystem in place at the start of 502. And every single year, the farmers that have been powering this industry, that have been providing the material that retailers sell at a nice profit, that the state brings in hundreds of millions of dollars in tax revenue every year from -- that's our work, that's our labor, it's being sold and we're not able to keep any of the profits of that. We're not able to reinvest that in our businesses. We're not able to pay back our investors. We're not able to continue to think about what we're going to do next with these really dynamic businesses we produce. And we need the support of the Liquor Control Board and the state of Washington, working together with us to make sure that when, in the next five years, we're talking about a national marketplace, that those farmers that are left and hopefully other farmers that can come back into the industry can move Washington cannabis into a national legal marketplace that is farmer focus and that's focused on quality production methods.

That's what the craft cannabis bill is about. It's about making that connection between the consumers, farmers, and allowing for a formal relationship between farmers in the state so we can create compelling legislation and compelling policy to move our industry forward. We are ready to go out into the world and find large scale investors to support craft cannabis. And we cannot do that unless we get some action from the state.

Mr. Dickson: Micah, you have 30 seconds.

Mr. Sherman: Thanks, Dustin. I'm asking the Board, as we move into this next legislative session in the fall, as we move through the summer, and as we're working with the Social Equity Task Force to make sure that our craft cannabis bill and their interests are aligned. And, we want to make sure that when the work product comes out of that process that the Board is paying attention to it and is doing everything they can to support it moving forward because it's going to be the thing that we need to solve these problems. Thank you.

Chair Postman: Thank you, we appreciate that. Next up is Rian Takahashi.

Rian Takahashi – United Western Growers

Hello, my name is Rian. I'm a Tier III producer/processor out here in Bremerton and I have my outdoor farm over at Moses Lake. Thank you for allowing me to speak. I just wanted to, like people before me, reiterate what everybody's concerns are.

Last year at this time, I was buying and wholesaling hundreds of thousands of pounds of trim to a lot of the distillate producers and now this year, I've only sold maybe about 100 pounds. I mostly just do it to help me cover my overhead and help out my friends who are fellow farmers too. But this year, since the Delta-9 and Delta-8 conversions, a couple different companies are going down to Oregon, buying kilos and kilos of CBD isolate and bringing it back up here to Washington and then using some kind of acidic wash to convert that into Delta-9. Most of my wholesale buyers and friends that I would help get cannabis to say "it's not even worth buying or making the distillate in house anymore. It's just cheaper to go out and buy it from these guys that are doing this illegal" -- I don't know if it's illegal -- but synthetic conversions.

It's going to have a huge trickledown effect this coming up summer if it's not stopped in the very, very near future. It's going to probably shut down, I would say, a good 30% of farms. And what Monica was saying before, we saw a rise in 2019 and then in 2020, our prices were really, really nice and we held our own and we finally made somewhat of a profit and I was able to pay back some of my investors some money.

But this year, by the looks of it, we were averaging in the 30 cents range for trim. This year, it looks like we're having a hard time moving product at eight cents or ten cents. And so I just really, really want to ask you guys to look into it. Crystal Oliver from the Sun Growers Association. I've been given her menus because they're not even trying to hide on their menus what their product is. The Delta-8 has CBD has Delta-9.

We know that it's a synthetically derived or made from distillate. So what I'm basically asking is to look into this, put a stop to this before it's too late, before we lose another 30% of the farms like we did the first two or three years of I-502 opening up because we have to have a way to compete. All of us that are following the rules are going to be punished in the long run. And so that's basically it. Thank you.

Chair Postman: Great, thank you, Rian. Colin Lukey.

Mr. Dickson: Collin registered to speak but is not online with us today.

Chair Postman: Okay, thank you, Dustin. We'll move to Jeff Merryman

Mr. Dickson: Chair, it is the same situation with Jeff Merryman, he registered to speak but it's not online.

Chair Postman: Okay and then Crystal Oliver.

Crystal Oliver – WSIA

Good morning, Chair Postman and Board. My name is Crystal Oliver. I currently serve as the executive director of the Washington Sun Growers Industry Association. We represent the hardest working folks in the industry, our farmers. Many of our members are the original holders of their licenses and they've managed to navigate this extremely volatile marketplace, while complying with state law and regulation.

As you are aware, this last year has been challenging for everyone with COVID-19, closures, protocols, and increased expenses. These challenges have been further exacerbated by the importation and manufacturing of synthetic Delta-8 and synthetic Delta-9 THC and the sale of those in I-502 without any disclosure to our consumers. We're looking at what I believe is a small farm extinction event that is a direct result of the failures to take action to prohibit these synthetics from being sold in our system.

Many sun growers historically focus on bulk wholesale flower for extraction purposes as either a large portion of their business, or in some cases, their entire business model was focused on that niche. We're very concerned about the damage that unfair competition with synthetic hemp derivatives is having on the wholesale market and we need to see a swift end to the importation, manufacturing, and sale of synthetic cannabinoids in the I-502 system.

Additionally, if we're going to have our small independent farmers survive federal legalization, we do need some form of craft cannabis and direct sales bills to pass. I understand it's a legislative issue. However, as the regulating body, you can support legislation to make that a reality and we're hopeful that you'll work with us to help these farmers that are navigating an extremely challenging situation where they've been brought into this closed system where they are only allowed to sell their marijuana to processors and retailers while the processors and retailers are allowed to buy product now from out of state and bring that in. The farmers have really been put into a bad position. I would describe it as being painted into a corner without very many options available to them. It is becoming a very dire situation for the farmers.

I'm hopeful the LCB will understand how pressing this issue is for these small business owners and will take swift action and work with us to help these farmers. Thank you.

Chair Postman: Thank you, Crystal. Sabina Boehm.

Mr. Dickson: Sabina is online, but unable to engage audio. Maybe we can try and come back to her?

Chair Postman: Thank you, Dustin. We'll move to Jeremy Moberg.

Jeremy Moberg – Cannasol

Thank you first off for taking this public testimony. My name is Jeremy Moberg. I am the owner and operator of Cannasol Farms. We are a sun grower in Okanogan and I operate three Tier IIIs.

I think that there's been a consistent message to the LCB that the farmers are in absolute dire straits. And it's amazing to me how quickly it happened. And, it was absolutely unnecessary. It's really caused by the failure of the LCB to get ahead of what I admit is a technical issue and I feel like the technical aspects of this have mired the ability of the LCB to take the action that it clearly can take and needs to take.

There's been a lot of conversation about whether there's the authority for Delta-8 regulation. There absolutely is. It is considered a synthetic and currently under rule, synthetics are not allowed. This is not a naturally occurring substance that you would find anywhere near the concentrations that we're seeing come from hemp derived. More disturbingly is the fact that Delta-9 is coming in. This is an absolute violation of law. These processors that are creating Delta-9 and Delta-8 and Delta-10 and who knows what other isomers, they have been able to do that at a very, very cheap price. And it's illegal. And this is really an enforcement action that needs to be taken upon the LCB today.

We're not talking about just Delta-8 where there can be an argument about whether it's synthetic or not. And I think everybody agrees that it is synthetic. The LCB has the authority to regulate synthetics and should make it a law. We're also talking about the importation of a federally illegal Delta-9. And these processors that are bringing it in, there are signatures to that Delta-9. There's a combination of Delta-8 that can't get it all the way to Delta-9. It is easy to be able to tell who these processors are and the LCB needs to take enforcement action immediately.

This is a federally controlled substance. This is a risk to our ability to have our state economy even continue. For years we heard the LCB give so much deference to the federal laws. And here we just see the LCB not enforcing the synthetic Delta-9 importation from hemp products. It is killing farmers.

To other people's point, we are sitting on biomass that is worth nothing now because of this importation of CBDs.

The other thing that is really killing farmers is, again, an LCB enforcement issue of just not enforcing canopy and just allowing the absolute -- so there are some players out there that are massively over canopy. We had one instance, I've referenced it to the LCB board before, that they had 120,000 square feet. LCB shows up and they were told it was hemp and they walked away. We later saw the same company offering 40,000 pounds of dried THC material. That is a competitive disadvantage -- (brief disconnection) -- LCB, these are enforcement issues --

Mr. Dickson: Jeremy, you have 30 seconds.

Mr. Moberg: Thank you. I really implore the LCB to not sit around any longer and talk about this issue but to take action particularly on the Delta-9. It would be very easy for the Board to make a statement saying, "This is illegal and if you're doing it, enforcement is going to enforce the rules." Thank you for your time.

Chair Postman: Thank you, Jeremy. Let me try again for Sabina Boehm, are you with us? Doesn't sound like it right now. Next on the list is Jim MacRae.

Jim MacRae – Straightline Analytics

Good morning, members of the Board and staff and welcome Chairman Postman. My name is Dr. James MacRae. I'm a longtime resident of Washington and associate researcher with CASP, the Center for the Study of Cannabis and Social Policy. And I'm a quant guy that is interested in the journey we are on as we move towards the legalization of cannabis. I am the principal of Straightline analytics.

I want to take a moment to remember that six years ago today, our Senate voted 41 to 8 to pass SSB 5052, the Patient Protection Act, which set the stage for ending the legal existence of a relatively unregulated medical cannabis market, that had existed in Washington state for years, meeting the needs of patients who incorporate cannabis into their medicinal and or nutritional regimes. That was followed 10 days later by the Governor partially signing the bill into law.

Another significant event that occurred during that period was that on Monday, April 20, 2015, the WSLCB responded to a public records request from Dr. Dominic Corva of CASP by releasing a database containing a largely complete view of the data captured by the bio track THC seed to sale traceability system. I hope that the irony of releasing such a treasure trove of information about a cannabis industry on the first regulated 420 in history is not lost to history.

Let's move forward to one month ago, the day before Chair Postman assumed his new role. After six years of regulatory creation, destruction, and oversight, the regulated medicinal market exists today as barely a shadow of its previous self. Using DOH (Department of Health) data on cumulative patient registry counts, it would appear that no more than 6,200 patients were active in the patient registry as of January 19 of this year. That is less than 1/10 of 1% of the state population. And it is about 2% of the number estimated to exist in the state by the agency's primary cannabis consultant in 2013. It represents less than one half of 1% of the approximately 1.5 million consumers that source at least part of their cannabis from the regulated system in Washington today. Most importantly, those 6,200 registered patients represent a decline of almost 75% from the peak that occurred in the summer of 2017. This state's regulated medicinal cannabis market is not protecting patients. It is quite literally in this case, harming them and forcing them to find alternate sources of supply.

Similarly, while at least 1,800 and quite possibly up to 2,500 green cross dispensaries once served the less regulated medicinal cannabis patients of this state. There were as of this January, only 154 able to serve medical cannabis patients as patients in the state of Washington. Entire counties do not have medical access points. There are currently 11 such counties by my count. Delivery is not allowed statewide, including in each of these counties. Residentially based medical cooperative grows are immune from neither local objections to their existence --

Mr. Dickson: Jim, you have 30 seconds.

Mr. MacRae: -- appropriate sharing of their private personal information by regulators. Thank you Dustin. Fewer than five wholesalers - I believe the number is currently three - produced product that wears the DOH label. It's just not working.

I would like to be very clear on this point: product quality and safety is a failing of this market. Your Enforcement Division has regularly and repeatedly allowed product to flow to its ultimate point of taxation and your recent mandatory recall, your first recall, was a very nice thing to see.

Mr. Dickson: That is your time.

Mr. MacRae: Thank you.

Chair Postman: Thank you, we appreciate that. The last person signed up is Casey Davison.

Mr. Dickson: Casey registered to speak but is not online with us. Sabina Boehm has also logged off from the meeting.

Chair Postman: Okay, well, then that gets us to the end of the list of people who had signed up. So thank you all very much. I don't have time to respond to everything. I took a lot of notes and I know staff did as well.

I do want to just address Delta-8 in brief and certainly there's more conversation to have. I don't think we have much of a disagreement about the need to regulate Delta-8. Just speaking for myself as the new person, I believe we have the authority. What I don't believe we have is the facts we need to do emergency rulemaking. I fear that if we did that, it would be instantly challenged and we could push ourselves back in the timeline. We are moving, what I believe, is fairly rapidly at this point on Delta-8. We will do rulemaking and then we will look to see what we need in a statutory change for the next legislative session. I understand the dire situation that some of you are in and we will move on Delta-8 as quickly as

we can in a secure way. I just want to make sure that what we do holds up and that we're able to show the industry and the courts that what we did was firmly rooted in our existing authority. And then I think we will need additional authority and I'm confident we will get that. But we need to take this step by step. And there was a reference to the fast movement, that it sort of popped up on the radar. And that's true. I've heard that from some in your industry as well as regulators. And we did see this with CBD. So, I think there were a couple of things that were said.

What we need to do is to find a system that won't require us all to have this conversation about the next thing. Somebody mentioned, who knows whatever that "next creation" will be. We need to be able to do that. That's absolutely right. So, we can move quickly, I believe, on Delta-8, but we need a regulatory scheme that allows us to be forward thinking, dynamic, and frankly, as innovative as the chemists are. And that's difficult. There's a lot of people working hard to find ways to get things into the market around regulation. We need to be just as creative and I believe we will be.

A couple of people talked about the craft cannabis bill. Micah, you in particular. It was your bill. I would just invite you to come and talk to me about it at some point after this legislative session but before the next and walk me through the bill a little bit. I will educate myself on that fully before the next legislative session.

Jeremy, I think you said, who else knows what other isomers are coming. And that's what we're facing, so, what do we do about that? How do we get ready for the next one? Some of you may disagree about the ability to do emergency rulemaking. We feel pretty confident about where we are on that at this point. We're certainly not sitting around. The policy team is working hard, not just on that policy statement but on what actual rulemaking would look like. And we hope and expect you all will be involved in those conversations and share these thoughts in that rulemaking process, both in the short term as we pass rule on Delta-8, as well as on the longer term between now and the fall when we need to know what we're going to the legislature with.

So with that, again, I'll just thank you all for sharing your views on this. It's great for me as the new person to hear from you as an industry.

I will say there was a comment about a lot of turnover at the Board and the fear that that would slow things down. Do not worry about that. On the Board itself, there was a one-person change. The chair did retire after a full six years and I've taken Jane's place. That certainly isn't going to slow anything down. And there is turnover in the agency as well, as there often is in state government. I've not heard anything at all that would lead me to think that slows any of the issues down that we're talking about. We are on the path and we'll continue to be.

I will pause and see if Board member Garrett has any comments or final thoughts for today?

Member Garrett: No, I don't. You just stated them all well. Thank you.

Chair Postman: Thank you. With that, we will adjourn today's Board meeting and we will reconvene in our next Board meeting two weeks from now.

Thank you all very much for joining us and have a great day.

ADJOURN

Chair Postman adjourned the meeting at 10:55am.

Minutes approved this 28th day of April, 2021.



David Postman
Board Chair



Ollie Garrett
Board Member

Not Present

Russ Hauge
Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

LCB Mission - Promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws.

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