



Washington State Liquor and Cannabis Board Meeting

Wednesday, April 28, 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 28, 2021. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the April 14, 2021, Board meeting minutes.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

3. GENERAL RULEMAKING

ACTION ITEMS (A-C)

ACTION ITEM 3A – Board Rescission of Emergency Rules Regarding WAC 314-55-1065 – Prohibition – Vitamin E Acetate

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 3A).

Ms. Hoffman: Good morning Chair Postman and good morning Board members Garrett and Hauge. I'd like to start with action item 3A which is for rescission of emergency rules regarding 314-55-1065, the prohibition of vitamin E acetate.

As you may recall, the Board issued its own emergency prohibition of vitamin E acetate on May 27 of 2020 to align with the Washington State Board of Health, or SBOH, with the intent at some point to rescind the Board's prohibition since the SBOH prohibition would become permanent. The LCB prohibition was authorized by the then recently enacted legislation (House Bill 2826) regarding marijuana or cannabis vapor products. The LCB prohibition was a necessary public safety tool that provided continuity in both licensee compliance and assuring consumer safety and the agency's ability to apply

statute and regulation. This was the rule that we tied our cannabis processor and retailer requirements too.

In November of last year, the SBOH adopted a permanent prohibition of vitamin E acetate. And in a moment I'll request that our emergency rule providing that cannabis processors and retailers cannot produce or sell products containing vitamin E acetate will be updated to refer to the SBOH permanent proposition rather than a temporary LCB prohibition of vitamin E acetate. So, I ask for your approval to rescind emergency rule 314-55-1065 concerning the prohibition of vitamin E acetate.

Chair Postman: If it is okay, I think we can do the two rescissions with one vote. Why don't you go ahead and describe action item B as well.

ACTION ITEM 3B – Board Rescission of Emergency Rules Regarding WAC 314-55-1055 – Vitamin E Acetate Disclosure Form

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 3B).

Ms. Hoffman: Thank you. Moving on to action item B, the rescission of emergency rule 314-55-1055, the vitamin E acetate disclosure form. This particular rule section concerning ingredient disclosure was permanently adopted on February 17 of this year and became effective on March 20 of this year. Since this emergency rule is no longer necessary, I would also ask for your approval to resend this particular emergency rule.

Chair Postman: Thank you, Kathy. Is there a motion to rescind both 314-55-1065 and 314-55-1055 having to do with vitamin E acetate disclosure and prohibition?

MOTION: Member Hauge moved to rescind 314-55-1065 and 314-55-1055

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

ACTION ITEM 3C – Board Adoption of Emergency Rules Regarding WAC 314-55-077 and 079 – Establishing Board Authority to Enforce State Board of Health's (SBOH) Vitamin E Acetate Prohibition

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 3B).

Ms. Hoffman: Moving on now to action item C. This is for the adoption of emergency rules regarding WAC 314-55-077 and 079. These emergency rules allow the Board to take disciplinary action without interruption against any licensed marijuana processor or retailer that fails to comply with the provisions of WAC 246-80-021, the State Board of Health prohibition of vitamin E acetate.

These rules replace and supersede emergency rules that were filed in January of this year that referenced the LCB prohibition that we have now just rescinded. These emergency rules will remain in

place until the Board adopts them permanently consistent with the statement of inquiry, or CR 101, that we filed in March of this year that proposes to do the same.

I would ask for your approval to adopt emergency rules 314-55-077 and 79 that establishes the Board's authority to enforce the SBOH vitamin E acetate prohibition.

Chair Postman: Thank you. Is there a motion to approve the emergency rules regarding WAC 314-55-077 and 079?

MOTION: Member Garrett moved to approve the filing of emergency rules 314-55-077 and 314-55-079.

SECOND: Member Hauge seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: And that is approved as well. I don't want to oversimplify, Kathy, so let me know if I go too far. I just want to make it clear that these are the action items that we've been talking about for a couple of weeks now, which is to put these prohibitions in the right place with the right authorities and leading to the permanent ban, but do not signal certainly the rescission. No one should see that as any kind of lessening of our enforcement of these issues. Do I have that right?

Ms. Hoffman: That's correct, Chair Postman.

Chair Postman: Great. Okay. Thank you very much. We'll continue now, Kathy, on cannabis related rulemaking and timelines with one more action item there.

4. CANNABIS RELATED RULEMAKING AND TIMELINES

TIMELINES

Ms. Hoffman: Thank you very much Chair Postman.

First are the cannabis quality control rules. Our responsive document regarding themes emerging from the supplemental CR 102 hearing that was held late last fall was released on April 16 via GovDelivery messaging and posted to our rules web page next to all of the recordings from the "deliberative dialogue" sessions that we held. It is a very large document, well over 250 pages. The responsive document was separated into three sections so that we could post them all together. Also consistent with my last update and with respect to rule development, we continue to explore where we can align revisions within our statutory authority and the traceability program redesign and we intend to firm up a timeline once we're fully staffed. In the meantime, our convenience contract seeking an economist to assist with our Regulatory Fairness Act analysis is going through final review with the Office of Regulatory Innovation and Assistance, or ORIA.

Moving on to the background check redesign in the cannabis space, we shared messaging regarding our "listen and learn" forums scheduled to review draft conceptual rules last week. That session will occur on

the afternoon of May 13. We do remain on track to bring a proposal in mid to late June, which places finalization in early to mid-August which aligns with our current rule development plan.

And then finally, with respect to the permanent rules referencing the SBOH vitamin E acetate prohibition, the CR 101 has been filed and we have not received any comments. The formal comment period for that particular part of the process concludes May 21. We are on track to bring a CR 102 package to you on May 26.

That concludes my updates for today. Can I answer any questions? It sounds like there aren't so I will move on.

ACTION ITEM (A)

ACTION ITEM 4A – Board Approval of CR 102 for Cannabis Tier I Expansion

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 4A).

Ms. Hoffman: I would like to request your approval to file a CR 102 proposal that would expand Tier I canopy “up to 2,000 square feet” to “up to 4,000 square feet” of cannabis production space. And at the same time, adjust Tier II growing space from “2,000 square feet to up to 10,000 square feet” to “4,000 square feet to up to 10,000 square feet.”

To give a little background to people who might be listening in who may not be familiar with this project, we began this in December of 2019 when we filed a CR 101. That was based on a number of reasons pertaining to medical cannabis patients looking for increased availability of product and then also some feedback we'd heard from Tier I licensees regarding the ability to support business viability with a little more canopy space. This project was delayed a little bit by the state's response to the COVID-19 pandemic, but we were eventually able hold two “listen and learn” sessions in June of last year. That was followed up with a Tier I survey to make sure that we heard specifically from our Tier I licensees. The results did supplement the material and the data that was collected during the initial “listen and learn” sessions in June. So, we took all that information, brought it to our internal work group, completed an analysis of the possibility of expansion, and that analysis is presented in the CR 102 memo that I briefed you on yesterday in caucus. I won't go into all the details of that analysis here but really want to emphasize that Tier I production canopy represents almost 2% of total licensed canopy. It's for the reasons in the memo that are offered supporting this proposal we anticipate that providing Tier I license additional canopy will have very little impact on the current market. At the same time, allowing this expansion will create an opportunity and pathway for Tier I licensees to become more competitive in what is an already very competitive market.

Timeline

| | |
|----------------|--|
| April 28, 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 rules distribution list. Formal comment period begins. |
| May 19, 2021 | Notice published in the Washington State Register. |

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|--------------------------------|---|
| June 9, 2021 | Public hearing held and formal comment period ends. |
| Not earlier than June 23, 2021 | Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals offering written and 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 to all WSLCB GovDelivery subscribers. |
| July 24, 2021 | Rules are effective 31 days after filing (unless otherwise specified). |

I would ask for your approval to file the CR 102 regarding Tier I cannabis production expansion today. Thank you.

Chair Postman: Thank you. Any questions or comments from member Hauge or Garrett?

Member Garrett: No questions.

Member Hauge: I watched the progress of this as has Ollie and am really happy that it's come to fruition, and I will move approval.

MOTION: Member Hauge moved to approve the filing of CR 102 for Cannabis Tier I Expansion.

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Great. That motion is approved. Thank you, Kathy,

Ms. Hoffman: Thank you Chair Postman and Board.

Chair Postman: I agree with what Member Hauge was just saying. It's great to see the project moving forward and the amount of stakeholder work has been extraordinary. I know there's a lot more work to be done but I encourage people to watch carefully and ask questions as it moves through the process. Thank you.

We will now move to alcohol related rulemaking and timelines and hear from Audrey Vasek, the Policy and Rules Coordinator.

5. ALCOHOL RELATED RULEMAKING AND TIMELINES

TIMELINES

Ms. Vasek: Good morning. Thank you, Chair Postman and Board members Garrett and Hauge. I have a few brief updates on the alcohol rulemaking timelines before I get into the public hearing presentation.

First is the distillery reporting and payment rules project. As a reminder for folks who might be listening, the Board approved filing the CR 102 package at the last Board meeting on April 14, and the public hearing is set for May 26. This is the rule project that considers revising the distillery reporting and payment requirements to be consistent with the Court of Appeals decision in *Blue Spirits Distilling*. Public comment period is now open and we've received one comment so far. More information about how to provide comment in this rulemaking project was sent to subscribers through GovDelivery and is available on the LCB webpage.

Next is the rule project to create summary suspension and stay provisions to enforce Governor's Proclamations. The CR 101 package for this rule project was also filed after the last Board meeting on April 14. Similarly, more information about how to provide comment was sent to subscribers through GovDelivery and is available on the LCB web page. The project team will be meeting next week to begin developing the conceptual draft rules.

On the horizon, I also anticipate bringing a CR 101 preproposal statement of inquiry to begin a new rulemaking project for implementation of 2021 legislation, Engrossed Second Substitute House Bill 1480. This bill was our agency request bill related to COVID-19 alcohol allowances and it took effect on April 14, immediately upon signature by the Governor. The bill allows specifically listed privileges for certain liquor licensees to continue until June 30, 2023. The internal workgroup will meet to kick off rule development for this project early next week and I anticipate the CR 101 package will be ready for the May 12 Board meeting.

That concludes the alcohol rules and progress timeline updates. And I'm happy to answer any questions.

Chair Postman: Thank you, Audrey. In regards to the summary suspension package, what's the timeline? When would that be complete?

Ms. Vasek: Thanks for the question, Chair Postman. That will depend on how the conceptual draft rule development progresses but we plan to have a "listen and learn" session hopefully in June or May. And then depending on the feedback we get, we could see a CR 102 package not long after that.

Chair Postman: Okay, great. Thank you. Any other questions for Audrey on alcohol rulemaking?

Member Garrett: I have no questions.

Member Hauge: I have no questions either. Thank you.

Chair Postman: Okay. Great. Audrey, do you want to set us up for the public hearing then?

PUBLIC HEARING (A)

PUBLIC HEARING 5A – Supplemental CR 102 for 2020 Legislation Implementation – E2SSB 5549 (Distilleries)

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

Ms. Vasek: Yes, thank you Chair Postman. I'll provide a brief background on this rulemaking project.

Engrossed Second Substitute Senate Bill 5549 modified the privileges and requirements for distillery and craft distillery licensees and established a new offsite tasting room license available beginning January 1, 2021. The CR 101 for this rule project was filed in August of 2020 and we held a virtual "listen and learn" session in November 2020 to gather public feedback and suggestions for revisions to conceptual draft rules. Following the "listen and learn" session, the original CR 102 and proposed rules for this project were filed in December of 2020 and the first public hearing was held on February 3, 2021. At the first hearing, one person provided oral testimony and two written comments were received. These are documented in the supplemental CR 102 package.

After that first hearing, we decided to make substantive changes to the original rule proposal in order to incorporate feedback from the public comments as well as to make the proposed rules compatible with changes to distillery monthly reporting and payment rules that will be necessary as a result of the *Blue Spirits Distilling* Court of Appeals decision. The supplemental CR 102 was filed on March 17 and the changes made are described in the supplemental CR 102 memo. The public comment period began on March 17 and will remain open until close of business today. We have not received any public comments on the supplemental rule proposal so far.

In terms of next steps, after the hearing today, the internal workgroup will meet to consider any feedback received. If no substantive changes need to be made the rules could tentatively be adopted as soon as May 12, which would put the effective date in June.

That concludes my presentation and if there are any questions, I'm happy to answer them.

Chair Postman: Great. None for me. I want to check on the public hearing. When we started, no one had signed up. Let me check with Dustin to see if that's still the case.

Dustin Dickson: That's correct, Chair.

Chair Postman: Thank you, and I hear no questions from the Board. Since there was no one here to testify and you only had one before, we will have this adopted in mid-May?

Ms. Vasek: That would be the earliest possible opportunity, yes. I could prepare the CR 103 for that meeting if there's no substantive changes that we need to make.

Chair Postman: Great. I have no other questions. Board, and other questions for Audrey on this issue?

Member Garrett: No questions.

Member Hauge: No questions from me.

Chair Postman: Thank you, Audrey. Anything else on alcohol?

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

Chair Postman: Great. Thank you for all of that. We appreciate it.

6. GENERAL PUBLIC COMMENT

Chair Postman: We will now move to general public comments, where citizens have the chance to address the Board. We have three people signed up. I'd just like to remind everyone to state your name and affiliation for the record when you begin. Everyone has four minutes to speak and Dustin will give you a warning at 30 seconds. He's not trying to interrupt you but we need to give you that signal and ask everybody to abide by the time limit so everyone gets a chance to talk.

The first person I have signed up here is Lukas Hunter. Lukas?

Mr. Dickson: I have Lukas registered but he may be having some audio issues.

Chair Postman: Okay, we can come back to him. Let's move to the next person who signed up. Thomas Novobielski.

Mr. Dickson: Chair, Thomas registered to speak but is not online with us today.

Chair Postman: How about Jim MacRae?

Jim MacRae – Straightline Analytics

Good morning, Chair Postman, members of the Board and staff. I want to commend you on moving forward, progressing the process for the expansion of the Tier Is. That's probably going to be a good move certainly for them. And if it is effective, ultimately, in what appears to be the policy goal of increasing accessibility of product appropriate for consumers who wish to use their cannabis in a medicinal and or nutritional regimes, I think that's just wonderful. I would encourage, as the rule progresses, to have some explicit sensitivity, if it's possible at all, to incent and/or require that as a function of the increase in canopy allocation.

The other thing I would like to make a comment on relates more to the CR 101's history of canopy, I would like to draw your attention to work that was done prior to the inception of the market. And it was under the BoTech categorization scheme. It was in the documents 5A. And those were the ones that looked at yield estimates by canopy. I would encourage the Board to take a look at those now almost ancient documents as they wrestle with the ongoing issue, which I do not believe has been resolved yet after all these years of how much canopy is necessary to service the market. By the estimates that were done initially in those spreadsheets by BoTech, the Board was generous in allocating two million square feet initially for canopy. When the expansion went up to 8.5 million because of "market demand" that market demand was never to the best of my knowledge quantified or demonstrated in any tangible way other than presumably the expressed desires of some stakeholders. If I'm incorrect on that, I would love to hear. By most estimates, reasonable estimates, the current 18 million or 12 million, if you take the canopy utilization numbers into effect, or whatever number you're settling on, I assume it's somewhere along the order of 10 million square feet, is still by most reasonable estimates at least three times the amount of canopy that's necessary to service all consumption in the state of Washington, not just regulated consumption. So, in that context, take a look at the existing licensing if you can, the existing applicant pool, and address if you will, why after seven years, there are still 44 licenses pending and not issued on the production side, including 23 Tier IIIs. Why? When I had a Tier I application six years ago, I was forced by the agency to shutter that administratively, because the local zoning changed and the location that I had declared was no longer fit. Why seven years from now have these 44 been allowed to continue in limbo when you're already four or five times over --

Mr. Dickson: Mr. MacRae, you have 30 seconds.

Mr. MacRae: I appreciate your time and I do wish you all the best going forward.

Chair Postman: Great. Thank you for that. I did have something I wanted to add to that, but why don't we just check to see if either of our members of the public have joined us, either Lukas Hunter or Thomas Novobielski.

Mr. Dickson: Chair, Thomas has not signed on but Lukas does have audio available now.

Chair Postman: Okay, Lukas, go ahead.

Lukas Hunter – Harmony Farms

Good morning, Board members. My name is Lukas Hunter and I'm here representing Harmony Farms.

My reason for speaking today is my great concern with the lack of implementation of regulation on the conversion of CBD isolate to Delta-8 and Delta-9. We have started to reach a point of price stability within the production of distillate and a cannabis concentrate using a vast number of cannabis products. We began to reach a price floor where producers are able to make a margin on distil material and give a value to lower quality cultivation products, such as trim.

Currently, the going rate for bulk distil material is around 20 cents a gram and that translates to \$5 a gram for wholesale distillate. This price structure changes drastically when converting CBD isolate into Delta-8 and Delta-9 distillate. The cost of CBD isolate currently is around \$500 a kilo and the cost of chemicals for the conversion are insignificant. To compare this to the input materials from our industry, we're looking at a comparative price of five cents a gram and that material would have to be far higher quality than the earlier discussed 20 cents a gram material. With this, the cost of distillate per gram could easily drop to as low as 60 cents a gram from its prior \$5 a gram.

Aside from this price disruption there is concern with the public health as synthetic cannabinoid production leaves anywhere from four to 12% unidentical non-cannabinoid compounds in the end product. Because synthetic cannabinoid production is essentially molecular conversion rather than extraction of cannabinoids from plant tissue, these unknown impurities could pose a risk to consumers. All it takes is one company in the state of Washington to start large scale production of synthesized distillate to irreversibly disrupt our fragile market and eliminate countless producers who have built their businesses on the commerce of cheap distillate material and countless producers who held integrity not to engage in manufacturing synthetic cannabinoids.

I urge the Liquor and Cannabis Board to address this before market disruption can take place. Specifically, I'd like to shine a light on the need to use strong Lewis acids for the conversion of CBD into Delta-8 and Delta-9. These Lewis acids are not permitted under WAC 314-55-104. And in fact, we are very limited to the solvents we can use for extraction. And just for a few examples, boron tetrafluoride ether-8, petroleum ether, zinc chloride, magnesium sulfate, sodium sulfate, amongst other alternative compounds are far from included in what's in our allowed list of limited solvents.

If we want to continue supporting the remaining cannabis producers and processors, we need to implement something quickly or else we're going to see a transition to out of state hemp farms and the consolidation of Washington processors within our industry.

I'll follow this up with a much greater breakdown for you, I tried to keep this brief. But I really do appreciate your time today. Thank you.

Chair Postman: Great, thank you, Lukas. That is all for public comment today. I have a couple of comments, and I'll allow other board members to weigh in as well as they'd like.

First, to address what Lucas was just talking about on Delta-8 and others, and I would speak on behalf of the agency. I think the agency is moving quickly. I think you'll see some rulemaking starting very soon. We went into some detail on this at our last meeting and I've heard a lot from outdoor growers and have gotten some follow-up there. I've talked about this a little bit before but just to be clear, we think we need to do rulemaking right away, and we are. We're not going to be doing emergency rulemaking but we'll do rulemaking and then I think it's likely that we would be going to the legislature in 2022 for some additional authority that we believe we need for regulating this. Our goal would be to try to find a way to approach this that is not so specific just to Delta-8 or whatever the latest thing is because then there'll be another new one right after it. So, we're trying to really look at that in the forward looking way, if at all possible to give us that authority that we need. But, I think we well understand the urgency and have the rules people working hard on that already. Let me pause and see if other Board members want to weigh in on this question of the Delta-8 regulation. Member Hauge is largely our lead on this issue.

Member Hauge: Thank you. Lukas, I really appreciate your comments and the detail. I would like to follow up with you. Look for a call from me later on this week or next week. And as Chair Postman says, what we're trying to do is figure out a way that we can get our hands around this and not have it slip away at some later time when the next evolution in chemistry comes along. This is a very, very high priority for the agency. There's no question about that.

Chair Postman: Thank you. Kathy, do you want to say anything about timing on this? What is the latest thinking on when we might see something in rulemaking?

Ms. Hoffman: Thank you, Chair Postman, I appreciate the opportunity to respond. I anticipate that we'll be bringing a CR 101 to the Board on May 12. We are, as Board member Hauge just offered, we are well aware of the circumstances and we're working hard to be able to be as responsive as we can. I hope that helps.

Chair Postman: It does. Thank you, we appreciate that. And then, Kathy, while I have you again, I'd like to go back to some of the comments from Jim MacRae -- I had a follow up. He talked about incentivizing or requiring production of DOH compliant product in terms, as tied to the Tier I expansion. From reading your CR 102 memo, incentivizing DOH compliant product was brought up in the CR 101 process, and I've not heard anything about "requiring" but is there anything you could share about how that might be addressed, or have we heard more on that question of incentivizing? Will that be part of our exploration?

Ms. Hoffman: I think it was initially when the CR 101 was filed in December of 2019. And it was in conjunction, I think, with the work that we were doing around the quality control rules for cannabis. We were trying to find ways, if there was any sort of adjustment we could make to incentivize products that were produced from Tier I production licensees, any way we could make some sort of adjustment on the price of testing costs and those kinds of things. I don't believe those conversations got very far in light of

the other conversations around the quality control rules at the time. But, I wouldn't say necessarily that that's off the table but it just hasn't really been at the forefront of the conversation. I hope that that helps to answer the question. I don't know necessarily how we can reduce the cost of testing for Tier I licensees if we're hoping to incentivize medically compliant product because it contemplates both pesticide and heavy metal testing, which, as we know, if added to the current list of I-502 tests the costs would be very high. So, that conversation just hasn't really progressed at all.

Chair Postman: And, as you point out also in the memo, that there was proposed legislation last year on that and it did not advance.

Ms. Hoffman: It did not advance, correct. If we do move into some sort of "incentivization", it would probably be a conversation that occurs after the expansion actually happens. I think it might be part of a separate discussion.

David Postman: Right. Thank you. That helps me certainly. I appreciate it. I will just check our agenda here and see if I've missed anything. Member Garrett or member Hauge, anything to add before we adjourn?

Member Garrett: No.

Member Hauge: No.

Chair Postman: Okay, great. Thank you both. Thanks to staff today for the presentations and answering our questions. And, thanks to the members of the public who were able to come in and offer their comments. And with that, we will adjourn today's Board meeting. Thank you, everybody.

ADJOURN

Chair Postman adjourned the meeting at 10:36am.

Minutes approved this 12th day of May, 2021



David Postman
Board Chair



Ollie Garrett
Board Member



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.

*Complete meeting packets are available online: http://lcb.wa.gov/boardmeetings/board_meetings
For questions about agendas or meeting materials you may email dustin.dickson@lcb.wa.gov or call 360.664.1717*