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CANNABIS NEWS

NATIONAL CONFERENCE ON WEIGHTS AND MEASURES INCLUDED CANNABIS DISCUSSIONS—REPRESENTATIVES OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ATTEND

In January 2022, the National Conference on Weights and Measures [NCWM or Conference] took place with two presentations related to the need for uniform weights and potency measurements for cannabis and hemp.

Background

The National Conference on Weights and Measures is a professional association of state and local weights and measures officials, federal agencies, manufacturers, retailers and consumers. NCWM has developed national weights and measures standards since 1905. Those standards are published in National Institute of Standard and Technology (NIST) Handbooks 44, 130 and 133 and are adopted by the states, territories, District of Columbia and Navajo Nation, bringing about national uniformity in commerce. NCWM also administers the National Type Evaluation Program (NTEP) for weighing and measuring devices and the Professional Certification Program for weights and measure officials. (See: <https://www.nasda.org/organizations/national-conference-on-weights-and-measures-ncwm>)

The National Conference on Weights and Measures—Cannabis Is on the Agenda

On January 9, 2022, the National Conference on Weights and Measures began to discuss relevant topics including some discussion on standardizing cannabis weights and measures, nationwide. (See: <https://www.ncwm.com/events-detail/2022-interim-FL-2>)

The attendees included, among many others, representatives from cannabis and hemp associations, and representatives of many state and local departments of agriculture and food. Conference attendees also included several representatives of the National Institute of Standards and Technology. The NIST is now part of the U.S. Department of Commerce [<https://www.nist.gov/about-nist>]*—*and while the conference’s focus was not *specifically* on cannabis and

hemp, it did include these items on the agenda. This certainly makes the conversation more interesting as the federal government debates removal of cannabis from the Schedule I classification of dangerous drugs.

Committee Presentations on Cannabis and Hemp

The Cannabis Task Force addressed cannabis and hemp products as did the Specifications and Tolerances Committee.

As reported by *Marijuana Moment*, Charlie Rutherford, co-chair of the NCWM Cannabis Task Force Committee stated:

This was a chance to have the first harmonizing national standard. . . I. . . applauded the work that they’ve done in getting these important items to the point that we are potentially months away from something that can make the compliance ability of operators, especially multi-state operators, much easier. . . (<https://www.marijuanamoment.net/federal-and-state-officials-collaborate-on-marijuana-standardization-proposals-at-national-conference/>)

The Laws and Regulations Committee at the Conference also addressed the need for uniform standards for cannabis and hemp products. As reported on by *Marijuana Moment*, the Laws and Regulations Committee discussed proposals to establish a definition for cannabis and cannabis-containing products, develop a policy for the water activity range for marijuana and standardize packaging and labeling requirements:

Those first two items did move forward and achieve voting status, meaning that NCWM members will have the opportunity to adopt them into the NIST handbook when they convene again in July.

(See: (<https://www.marijuanamoment.net/federal-and-state-officials-collaborate-on-marijuana-standardization-proposals-at-national-conference/>))

Conclusion and Implications

While this wasn't necessarily the first time that national standards for cannabis and hemp have been the subject of the NCWM, it is interesting that the discussions continue under the Biden administration on establishing standards—national standards—that

could facilitate interstate commerce. Arguably, here would be no point in discussing national cannabis standards without an eye towards interstate commerce. So, perhaps this is a glimpse into the future of decriminalization of cannabis at the federal level. Add to that last year's statement by the National Institute of Technology that it will provide cannabis samples to aid states in establishing standards within their jurisdiction and the situation certainly remains very, very interesting.

(Robert Schuster)

LEGISLATIVE DEVELOPMENTS

WASHINGTON STATE LEGISLATURE SEEKS TO ENHANCE LIQUOR AND CANNABIS BOARD'S REGULATORY AUTHORITY OVER 'INTOXICATING' HEMP BY-PRODUCTS

The Washington Liquor and Cannabis Board (Board) has urged the Washington State Legislature to change laws effectively giving the Board enhanced regulatory powers which include prohibiting the sale of intoxicating materials derived from hemp.

Background

In 2003 Seattle passed an initiative making adult possession of cannabis the lowest priority of law enforcement in the city. Tacoma passed a similar initiative in 2011. On December 6, 2012, Washington became the first U.S. state to legalize recreational cannabis use. Colorado followed very shortly thereafter. Medicinal cannabis legalization in Washington occurred in 1998. In accordance with the 2014 U.S. Farm Bill, the Washington Legislature passed ESSB 6206, in 2016, creating the Industrial Hemp Research Pilot which ushered in hemp production in the state. ([https://en.wikipedia.org/wiki/Cannabis_in_Washington_\(state\)](https://en.wikipedia.org/wiki/Cannabis_in_Washington_(state)))

Washington's cannabis industry is regulated by the Liquor and Cannabis Board which oversees the licensure of cannabis sales. During the first 11 months of legalized licensed retail sales, the total of those sales was approximately \$260 million. As of 2016, sales totaled approximately 1.1 billion. (Ibid)

Regulating Hemp

The Board appears to have been very concerned with hemp-derived products that are sufficiently intoxicating that they should also be regulated by the Board. Hemp may be cannabis' innocuous cousin, but apparently, science has come far along in extracting every last bit of THC from the plant to elevate into cannabis' intoxicant range. Regulation would come, if enacted, in the form of a ban on the sale of such products. Some cannabis businesses in Washington feel that without such regulation they cannot fairly compete with the hemp derived intoxicants, thus risking the legalized cannabis sales industry by far less

expensive and unregulated hemp derived intoxicants. (See: "Battle royale", Jan 16, 2022, *Seattle Times*, <https://www.seattletimes.com/business/battle-royale-cannabis-regulation-bills-pit-regulatory-agency-against-some-marijuana-businesses/>)

Senate Bill 5547

Senate Bill 5547 [and its companion bill in the House, HB 1668] proposes to "expan[d] the regulatory authority of cannabinoids that may be impairing and providing for enhanced product safety and consumer information. . ." SB 5547 is sponsored by Senators Keiser, Schoesler, Conway, Mullet, Robinson and Wilson. (<https://app.leg.wa.gov/bills/summary/BillNumber=5547&Year=2021&Initiative=False>) The bill was formally introduced, at the request of the Board, on January 20, 2022, and as of this writing, the bill remains in the Senate Committee on Labor, Commerce & Tribal Affairs.

Why This, Why Now?

Under Section 1 of the bill, it states its purpose and justification as follows:

Due to the evolving nature of new cannabinoids being identified in the plant Cannabis that may be impairing, the legislature finds there is a need to provide consumers legal access to products that have been tested and which meet the same standards for quality and safety as delta-9 tetrahydrocannabinol. . . and there is a need to require labeling, service size, potency, and ingredient disclosure standards. . . and a need to distinguish cannabinoids derived from natural plants that are prepared for human consumption and the more unpredictable artificial cannabinoids created solely through chemical reactions. . . and the need to maintain clarity between plants defined as marijuana and plants defined as hemp. (<https://lawfilesexternal.wa.gov/bien->

[nium/2021-22/Pdf/Bills/Senate%20Bills/5547.pdf?q=20220116120005\)](https://www.seattletimes.com/business/battle-royale-cannabis-regulation-bills-pit-regulatory-agency-against-some-marijuana-businesses/)

Justin Nordhorn, Director of Policy and External Affairs for the Board has been quoted in the *Seattle Times* as stating that the bill is a safety necessity to address the risk of hemp derived THC:

We realized that [THC derived from hemp] is less potent. . .however, it's not like it's not potent at all. . . .These products need to be regulated. (See: <https://www.seattletimes.com/business/battle-royale-cannabis-regulation-bills-pit-regulatory-agency-against-some-marijuana-businesses/>)

Does the Bill Go Too Far?

While Senate Bill 5547 has support from both Democrats and Republicans in the state, in both houses of the Legislature not everyone is happy with the bill's text. Members of various cannabis associa-

tions, including the Washington Cannabusinesses Association feels the bill does go too far, allowing for endless, piecemeal potential legislation that attempts to keep up with the science of being able to better extract potency from hemp and cannabis. (Ibid)

Conclusion and Implications

Senate Bill 5547 is still in committee and was only recently introduced but strong reactions and polarization has already taken place. As science finds more ways to coax out more cannabinoids from hemp [and other parts of the cannabis plant] more products can be developed to provide the intoxication associated with marijuana. Regulators will want to regulate those products and until they do, bans may be a first step. For more information on the history and text of Washington State Senate Bill 5547, see: (<https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5547.pdf?q=20220116120005>) (Robert Schuster)

REGULATORY DEVELOPMENTS

NEW CANNABIS RULES IN OREGON ALLOW CUSTOMERS TO BUY MORE AND FROM FARTHER AWAY

Oregon has approved multiple changes to its regulated cannabis industry for 2022, including doubling how much cannabis customers may purchase and allowing home delivery across city and county lines.

Background

Oregon legalized recreational cannabis use beginning October 1, 2015, and the market has thrived over the intervening six years. In 2021, the Oregon Legislature passed two bills altering the regulations and providing more flexibility to the industry. House Bill 3000 established a framework for limiting the unregulated sale of hemp products containing THC [<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3000/Enrolled>], while [Senate Bill 408](#) provided the Oregon Liquor and Cannabis Commission with an outline for restructuring penalties for rule violations by licensees [<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB408/Enrolled>].

Oregon's Liquor and Cannabis Commission Approves New Rules

In a December 28, 2021 meeting, Oregon's Liquor and Cannabis Commission (Commission) approved new rules that officials indicate will assist in streamlining oversight of the industry, decrease violations, expand choices for consumers and help prevent children from accessing hemp products containing THC.

These changes are in response to the rapid growth of the commercial cannabis industry, and aim to put Oregon more in alignment with other states where cannabis is recreationally legal. The goal is to position Oregon in the *export market* in advance of expected federal legalization in the coming years.

The Specifics

While some of the new rules took effect January 1, 2022, others will kick in later this year. The changes are wide-ranging and expected to impact the industry and its customer base throughout Oregon.

Beginning January 1, consumers can buy two ounces of usable cannabis—up from one ounce under prior regulations. Edible concentration limits will increase from 50 mg THC to 100 mg per package beginning April 1. Single-serving portions (which cannot exceed 10 mg THC) will need to be scored in order to make portion sizes clear.

Home delivery will now be permitted across both city and county lines, so long as local authorities approve of it. Previously, delivery was limited only to the city or county where a cannabis retailer was located, severely limiting the operational radius of Oregon dispensaries.

To ensure hemp products containing large amounts of THC do not comele with general market products, the Commission will limit the general market sale of hemp edible products to 2 mg of THC in a single serving, and up to 20mg of THC per container of hemp product, effective as of July 1, 2022.

The Commission further requires that non-intoxicating artificially derived cannabinoids go through the ordinary regulatory review process required for ingredients in dietary supplements or food products. In order for the Commission to approve products containing something like cannabidiol (CBD), the CBD would need to meet the standard for a New Dietary Ingredient notification, Generally Recognized as Safe (GRAS). Licensees will have 18 months to bring their CBD products into compliance under the new regulations.

The Commission is reducing the time and cost for licensees to report cannabis plant tagging and harvests into the state's Cannabis Tracking System and improving licensees' ability to self-distribute their products.

Finally, the Commission will begin accepting label applications for cannabis edibles that exceed 50 mg THC in the package. Edibles that exceed 50 mg THC will not be eligible for sale until April 1, 2022 regardless of whether a label has been approved.

Conclusion and Implications

The new regulations largely serve to bring the Oregon commercial cannabis industry in line with industries in other states, increasing Oregon's competitiveness in a still theoretical national recreational cannabis marketplace. However, even in the short term, these regulations will provide more flexibility to

the Oregon commercial cannabis industry, and more options to cannabis consumers throughout the state. For detailed actions and updates from the Oregon Liquor and Cannabis Commission, see: <https://www.oregon.gov/olcc/marijuana/Pages/Recreational-Marijuana-Licensing.aspx>
(Jordan Feguson)

VERMONT CANNABIS CONTROL BOARD REJECTS RECOMMENDATION BY STATE PHYSICIANS TO BAN CANNABIS PRODUCTS CONTAINING HIGH THC POTENCY

The Vermont Medical Society recently issued recommendations to the Vermont Cannabis Control Board seeking banning products containing greater than 15 percent THC content from the state's adult-use marketplace. The Vermont Medical Society represents 2,400 physicians and physician assistants. The Vermont Cannabis Control Board rejected the recommendations.

Background

On January 22, 2018, Governor Phil Scott signed House Bill 511—a bill legalizing possession and limited cultivation of cannabis by adults 21 and older. It took effect on July 1, 2018. On October 7, 2020 Governor Scott announced that he would allow Senate Bill 54 which would regulate and tax cannabis sales. (See: <https://governor.vermont.gov/sites/scott/files/documents/S.54%20Letter%20to%20the%20Senate%2010-7-20.pdf>)

In In 2021, the Vermont Legislature took additional steps to ensure that Vermont's cannabis industry would be fair and equitable. The House and Senate passed Senate Bill 25, which strengthened social equity provisions, in part by requiring regulators to reduce or eliminate licensing fees for applicants who have been negatively impacted by the enforcement of cannabis laws. The bill also creates a Cannabis Business Development Fund that will assist social equity applicants. Gov. Scott signed S. 25 into law on June 7.

The Cannabis Control Board (CCB or Board) was created in 2020 by Act 164. It was subsequently amended in 2021 by Act 62.

The Vermont Medical Society's Recommendations

The members of the Vermont Medical Society (VMS) point to research associating marijuana with more than 15 percent THC with increased emergency department visits for respiratory distress and "serious medical outcomes," according to the resolution. They also point to research indicating that adolescents are as prone to becoming addicted to THC as they are to opioids. (See: <https://vtdigger.org/2021/11/30/vermont-medical-society-urges-banning-sale-of-cannabis-with-more-than-15-thc/>)

The VMS board adopted a resolution asking the Vermont Legislature and the state Cannabis Control Board to *ban* cannabis containing more than 15 percent THC. (See: https://vtmd.org/client_media/files/2021_VMS_Cannabis_Resolution_As_Passed_by_Board.pdf)

Summary of the Resolution's Goals

The VMS Resolution, in summary fashion, sought the following:

- Opposition to advertising and marketing of cannabis in order to disincentivize sales via "high use and addiction" given that 80 percent of the products will be consumed by 20 percent or less of users;
- Require the Board and the Legislature to require all cannabis grown or sold be less than 15 percent THC content;

- Require the Board and Legislature to require labeling of cannabis products with evidence-based warnings as to psychosis, impaired driving, addiction, risk of suicide, and other harms [and apply these warning not just to labeling but to all forms of marketing and advertising];
- Assist the Legislature in clarifying that the Consumer Protection Act applies to false or deceptive marketing practices for cannabis.

The Board Responds

The Cannabis Control Board's response was swift and direct—consideration of medical safety issues was valid but concern over encouraging a black market for cannabis, where no safety regulation could occur, won out:

This is not the recommendation of the Board. The current statutory cap on THC concentration in cannabis flower is 30%. This policy decision was debated by the Vermont legislature and determined to be the appropriate potency limit. Board has no authority to raise this cap and has no intention of lowering it.

The stated purpose of creating Vermont's adult-use cannabis marketplace is

“to move as much of the illegal cannabis market as possible into the regulated market for the purposes of consumer protection and public safety.”

While the Board considered the public health concerns raised by the Vermont Medical Society:

the CCB must contend with the fact that high THC cannabis makes up majority of products sold in the medical cannabis and illicit marketplaces. Lowering the THC cap to 15% would merely perpetuate the unregulated market and force consumers to purchase untested, potentially contaminated products. A legalized cannabis marketplace presents an opportunity to begin addressing the harms perpetrated under the decades long war on drugs, as well as create dedicated revenue sources for education, prevention, and afterschool programs. As we have seen with other controlled substances, these investments will likely have a greater impact on reducing the ease of access among our youth and helping our adults make informed decisions about cannabis, than continued prohibition. (See: <https://ccb.vermont.gov/response-15-thc-cap-recommendation>)

Conclusion and Implications

Despite the often-bumpy road to legalization that many states must endure, the regulation of cannabis is often the more challenging journey. In Vermont the Medical Society felt very strongly to express its concerns over the myriad of negative impacts of recreational cannabis use—while the governing agency felt equally strong about unwittingly encouraging a black market for cannabis. Like with alcohol, cannabis legalization may be the will of the people but regulating it is no easy task.

(Robert Schuster)

JUDICIAL DEVELOPMENTS

CANNABIS GIANT CURALEAF SETTLES LITIGATION SURROUNDING TAINTED CBD DROPS

Massachusetts-based Curaleaf Holdings, Inc. (Curaleaf) has settled ten separate lawsuits arising from alleged tainted CBD drops sold in Oregon last year. The tainted drops, marketed under the label “Select CBD Drops ‘Broad Spectrum’ Unflavored 1000 MG CBD” were marketed as a wellness product containing 1,000mg of CBD and no THC. In reality, a batch of the drops contained high dosages of THC, leading to consumer complaints to state regulators and hospitalizations.

Background

Curaleaf manufactures and markets a broad range of cannabis-derived products around the country. Curaleaf markets itself as a wellness focused cannabis brand with operations in 23 states, across over 100 dispensaries and dozens of cultivation and manufacturing facilities. In 2019, Curaleaf acquired the Portland Oregon based Cura Cannabis. Cura Cannabis marketed some of its cannabis products under the “Select” brand name.

Cura Cannabis has a history of quality control issues predating the Curaleaf takeover. In 2020, the Oregon Liquor and Cannabis Commission (OLCC) fined the company \$100,000 and issued a 34-day suspension of its license for mislabeling its products and behaving dishonestly when failing to disclose the presence of additives in vaping products marketed as being 100 percent derived from cannabis. After some negotiations, the OLCC substituted an additional \$10,000 fine for the license suspension, allowing Cura to continue to operate.

Tainted CBD Drops

The mislabeled CBD drops that led to the just-settled litigation, a batch of approximately 700 bottles of CBD drops manufactured on May 14, 2021 was affected. Of that batch, over 500 were sold through Oregon-licensed businesses starting on June 19, 2021 and remaining inventory was ordered to be pulled from store shelves by the OLCC on September 21,

2021. The OLCC’s recall was precipitated by eight consumer complaints and subsequent testing of random samples OLCC retrieved from retail channels.

Following the discovery of THC in the Broad Spectrum CBD drops, OLCC further investigated Select brand products. On September 24, 2021, the OLCC expanded its recall of Curaleaf’s Select brand products by ordering a batch of its “Select Tincture 30mL THC Drops – 1000mg Unflavored” to be pulled from retail shelves. OLCC testing showed that product contained considerably less THC than the advertised 1,000mg per serving, namely no detectable level of THC.

Curaleaf attributed the mistakes to unintentional human error along its production lines. The OLCC investigation into the broad spectrum CBD drops showed that of the people who ingested the THC tainted drops, at least five were admitted to the emergency room from the unwitting dose of the psychoactive cannabis ingredient.

Conclusion and Implications

The Dead Kennedys’ [Google them] caution to “Trust Your Mechanic” and the same advice holds true for cannabis products. It should go without saying but purchasing cannabis products from reputable vendors through licensed channels comes with a greater degree protection consumer protections than purchasing on the grey and black markets. While this case leaves questions about how human error could creep in and why this product was not tested before it reached retail channels unanswered, this case shows Oregon’s regulatory scheme works. Once the OLCC was made aware of an issue with the product, it investigated and acted. Consumers should feel some comfort from the fact that the OLCC was able to track down the batch of tainted product and prevent additional units to be sold.

Given the history with the Select brand, this issue may well represent a hit to Curaleaf’s reputation. Therefore, this case should act as a warning to cannabis manufacturers to carefully vet their prod-

ucts before distributing them for sale. Some jurisdictions require per-batch testing while others may not. Regardless of the requirements, this case shows that

human error can lead to mistakes and testing is a good idea.
(Andreas L. Booher)

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