



## Board Caucus Meeting

Tuesday, March 16, 2021, 10:00am  
This meeting was held via conference call

### Meeting Minutes

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#### CAUCUS ATTENDEES

Chair David Postman  
Member Ollie Garrett  
Member Russ Hauge  
Dustin Dickson, Executive Assistant

#### GUESTS

Rick Garza, Executive Director  
Chris Thompson, Director of Legislative Relations  
Megan Duffy, Deputy Director  
Mary Mueller, Chief Information Officer  
Justin Nordhorn, Policy and External Affairs Director  
Chandra Brady, Director of Enforcement and Education  
Kendra Hodgson, Cannabis Examiner Manager  
Kathy Hoffman, Policy and Rules Manager  
Audrey Vasek, Policy and Rules Coordinator

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#### INTRODUCTION AND WELCOME OF NEW BOARD CHAIR – DAVID POSTMAN

Russ brought the meeting to order and invited Rick to introduce the Board's new Chair, David Postman.

Rick Garza: Good morning Board members Hauge, Garrett, and staff that's present. It's my pleasure to introduce the LCB's new Board Chair, David Postman. David officially began his six-year term as Chair yesterday. So welcome, David.

Just for some background and context, David most recently served as Governor Inslee's Chief of Staff. He stepped away from that role in November of 2020 to coincide with the conclusion of Governor Inslee's second term, a post he held since January of 2015. Prior to that role, as you're probably aware, he was Governor Inslee's original Communications Director when he began his first term. David is a respected presence in state government and in the regional news business. He has a 26-year career as an award winning journalist in Oregon, Alaska, and Washington, including 14 years working as a political reporter with the Seattle Times. He initially left journalism in 2008 to become Senior Director of Communications and Media with Microsoft co-founder Paul Allen's company, Vulcan.

I can also share with you from firsthand experience that we're getting a true talent and respected professional in David. I've known him professionally for many years. As the Governor's Chief of Staff, he led the Governor's Executive Cabinet, as you all know. He's been instrumental in all the difficult policy decisions the Governor has made over his first two terms and then of course, over the dilemma of the pandemic of the last year. Many times David has led conversations we had with the Governor's staff on LCB business. For instance, he was a key part of LCB's effort to help get Washington's regulated cannabis system off the ground. He helped demonstrate to the US Department of Justice that

Washington State could safely implement a safe and orderly system, ultimately resulting, we all know it as, the Department of Justice Cole Memo that was issued in August of 2013.

You will find him to be bright, open-minded, engaged, an intuitive thinker and a great listener. These traits will be valuable on the Board in the agency's work ahead. So again, welcome, David. Great to have you on our team.

Chair Postman: Thank you, Rick, very much and a quick thank you to Board members Hauge and Garrett for holding things together. We were able to speak briefly before I started this position and I look forward to getting to meet them in these open meetings that we'll be having.

I do want to take one quick second to thank Jane Rushford who just retired as Chair after six years. I knew before, but even more so now, how much she has meant to be agency by integrating the Board and the agency, and then helping integrate the agency into state government and the Inslee administration. She did remarkable work and I know that so many people on the staff hold her in very high regard. I know I have big shoes to fill and I keep saying that "I have big shoes to fill in" and everyone says, "Yep, you do." So, message received and I'm going to do everything I can to live up to that.

Why don't we go ahead and get started. Is there a motion for approval of the March 9 Board caucus minutes?

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## **APPROVAL OF MINUTES**

**MOTION:** Member Garrett moved to approve the March 9 Board caucus meeting minutes.

**SECOND:** Member Hauge seconded.

**ACTION:** Chair Postman approved the motion.

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## **GENERAL AGENCY UPDATES**

Mr. Garza: Thank you, Board Chair Postman. I'll start with things that have been happening inside the organization the last couple of weeks. Claris, Megan, and myself have been meeting with all of the divisions to walk through the employee engagement survey. As you all know, we do an employee survey every year and we use that information to share with the agency some of the successes, obviously, that we've had in the last year, but also some of the challenges that we have. And the responses that we get from our employees, I can say that we had a good turnout this year with respect to the survey. And also high marks in many of the divisions with respect to how people feel that they're doing in the job. The only division that we haven't been able to meet with is enforcement because, as you know, they're out in the regions but we're scheduling those meetings soon with Chandra as she steps out and works with those regions. I look forward to having further discussions with respect to the employee survey results.

Also, I may have shared that we also continue working on the DEI program that we've brought to the agency. We did a survey with all our employees and just got those results back. We'll be sharing that information with the agency as we step up our program. As soon as we have a budget from the House and Senate we'll begin the process of hiring an individual that will lead our DEI program. It's not just about training, it's about every integral part of the work that we do as an agency, including hiring.

Policy wise, it feels like we have this discussion every three or six months when something comes before us that we didn't anticipate. Today we call that Delta-8. Delta-8 is a cannabinoid that's been introduced in our state and many other states. I'm not going to go into detail because I know the great work that Kathy, Justin, and our staff is doing on developing an interpretive statement and a draft policy proposal. And so you're aware, last week the state of Oregon (the OLCC who regulates alcohol and cannabis like the LCB here in Washington State), and Steve Marks, their Director, invited our staff to be present in a meeting that they put together with their Department of Agriculture, Department of Health and the Board of Pharmacy to try to figure out what to do with this new cannabinoid that's been introduced into the marketplace, our marketplace that we regulate, and also outside of the cannabis marketplace. We're kind of late in the legislative process to introduce a bill, but Oregon has a different timeline so they're looking at introducing a bill in the next week or two to figure out how to get ahold of this Delta-8 product that they're finding in the marketplace. It was very helpful for staff to sit in on that meeting and hear from them specifically regarding some of the things that they're looking at as a way of bringing this cannabinoid into regulation.

When we put our system together, just like Oregon, the only cannabinoid that has THC that's identified is Delta-9. And what we're learning is, and I don't understand the chemistry of it, I'm not a chemist, but it's not a naturally derived product. It's being chemically altered, the CBD that's coming out of the hemp plant and Delta-8 is the byproduct. There's concern about that because we don't know if there's THC in that product. Typically, there will be small amounts of it when it's naturally derived from the cannabis plant, but there's a lot we don't know about this product. So, not only were we able to learn something from the discussions with the state of Oregon, but CANN-RA, the Cannabis Regulators Association, and the next day through Jillian Shower, who has recently we've contracted with to help us do some research around this issue and others brought the states together to hear from the different states to find out what are they doing in response to this issue around Delta-8. Much of our staff was part of that discussion and we're gleaned what we can from it. I think the number one thing I would leave you with is that our staff is working with council in the Attorney General's office to determine what authority we have by rule to bring this particular cannabinoid under regulation as we do Delta-9. I know Kathy and Justin have been working on that and they'll be bringing something forward for all of us to consider very soon. I think I'll stop there and if there's any questions from the Board or Chair.

Chair Postman: Thanks, Rick. I just had one on Delta-8. Given that it is something that's going to impact both states with legalized markets and those without, has there been any rumblings of federal action on this?

Mr. Garza: That's a really good point. In the discussion that we had with the other legal states at CANN-RA last week, one of the things that we ended with was a need to put together a meeting with the FDA. If it's a consumable product, typically the FDA would regulate that product.

One of the interesting things that we learned that I'll share with you, is that in some of the states the Board of Pharmacy has the ability to determine that this new cannabinoid can be restricted and scheduled and as a result cannot be legal in those states. That's a pretty drastic step, but I'll share with you that some states were employing that.

There's a lot of different cannabinoids that can be created. And typically, I wouldn't call it synthetic, but some people call it a synthetic process. It's been chemically altered is what I would say. It's not a naturally occurring cannabinoid. I think you're absolutely right, David, that we're looking out to the FDA

and other federal agencies that have some authority so that the feds can take a look at this also. Thank you.

Chair Postman: Thank you. Member Garrett, do you have any questions?

Member Garrett: No questions. Good update, Rick.

Chair Postman: Member Hauge?

Member Hauge: No questions at this time. I had some involvement with the work that Kathy and Justin are doing and I look forward to staying a part of that and being the Board liaison on this issue. This whole issue of synthetics is going to be with us for a while and we've got some ways forward but it's going to be at the top of our list for a while, I'm afraid.

Chair Postman: Thank you, Russ. Thank you, Rick. Appreciate that update.

We'll move to our next item which is review of a Tribal Marijuana Compact. Chris Thompson, Director of Legislative Affairs (sic)[Relations], I'll turn it over to you.

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## **REVIEW OF TRIBAL MARIJUANA COMPACT – NOOKSACK INDIAN TRIBE**

Chris Thompson: Good morning, Chairman, welcome. It's great to be with you this morning. Board members Hauge and Garrett, good morning as well. I'm here in my capacity as Tribal Liaison rather than as a Legislative Relations Director this morning to give you a brief overview on what we will present to you tomorrow at the Board meeting for formal action. The Nooksack Indian Tribe has completed the development with the state of a proposed cannabis Compact that will be presented to you for action tomorrow.

Particularly for the benefit of Mr. Chairman, I wanted to quickly go through what the process looks like. Board member Hauge is steeped in all of this and Board member Garrett has seen this activity as well, but there are a number of steps in the process. We start with what we call a "template". This is a document that includes a variety of provisions for cannabis Compacts that have previously, by our agency, been thoroughly vetted and approved in some previous iteration of these projects. It's a convenient starting point, if Tribes are willing to start there, for facilitating the process and working out variations.

So, we have that template and periodically we update it. And then I will, with the help of our Assistant Attorneys General, sit down with one or a series of meetings with Tribal representatives. In that process, we'll figure out where the Tribe has priorities or interests in provisions that may differ or go beyond the initial template. We then bring those issues to our internal Tribal Compact team which includes membership from basically all the divisions of the agency as well as from the Board and Board member Hauge as a regular participant in those discussions. If the tribe would like to have a medical program or seek a medical endorsement for their retail operations, that will require developing a Memorandum of Agreement with the State Department of Health, which would then be incorporated into the Compact as an attachment or an exhibit. Once we have a tentative agreement between the Tribe and the LCB, there's a review conducted by Department of Revenue as well as a final review by the Attorney General's office. Also included is a review the Tribal Code.

I didn't yet mention that as part of the compacting process that the Tribe in question needs to have an adopted code or ordinance governing cannabis operations within their tribal operations. Our Assistant Attorneys General as well as other staff within LCB will review that tribal code. Once we arrive at that point and everything looks good to us a draft proposed agreement for the Compact is sent to the Governor's office for review. If it passes at that level we proceed to final approval. That starts with the Tribal leader signing three original copies and sending them to us. The LCB then takes action in a public meeting. The Board members along with the agency director sign the agreement, then it goes back to the Governor for final signature and date. At this point the Compact is officially approved.

What you'll have before you tomorrow is a proposed Compact with the Nooksack Indian Tribe. I'd like to highlight a few things about this Compact. Like most of the Compacts (and the template), the Nooksack proposed Compact authorizes retail production and processing activities. It does not include at this point, research or testing lab activities. Although there had been some interest, there is at this point no medical program the Tribe is pursuing, no medical endorsement, so that is not included here.

They have identified an initial retail location where they'd like to operate their retail store. Just by way of information, this Compact and Compacts generally, prior to commencement of retail operations, a 30-days' notice to the state is required. In addition to that, a courtesy notice of 30 days to the applicable county or city is also envisioned in the compact. Production and processing operations require a 90-day notice to the state prior to the commencement of those operations. Again, the local government here gets a courtesy notice 30 days prior to the start of such operations for production or processing activities.

When it comes to production, the notice the Tribe provides to the state also is to include the amount of cannabis the Tribe intends to grow. This is for information purposes, not a limitation or a requirement for an amount produced or not to exceed amount. It's not a "cap", is what this notice amounts to.

The Nooksack proposed Compact also includes the standard provisions that all Compacts have regarding taxes. And again, just for information, what that requires is the Tribal tax, the state tax does not apply. But, a Tribal tax must apply and that Tribal tax must at least equal 100% of the state tax. When we say state tax, that term is defined in the Compacts as the "state excise tax, plus state and local sales and use taxes". This also includes the standard provisions regarding safety and enforcement.

So, in general, what this envisions is authorizing both the Tribal police and the LCB to conduct premise checks and compliance checks. The compliance check is aimed at youth access and/or minor purchasing. The LCB checks require reasonable notice to the Tribal police, and the compacts envision cooperatively or jointly conducting those. The Tribe has 48 hours to arrange and conduct a check or respond to an LCB notice of a request for a premise check or a compliance check. The LCB may conduct those checks without the Tribal police if the Tribal police are unable or unwilling to arrange and conduct the requested check within 48 hours.

This Compact with the Nooksack also would include the standard provisions we typically see in dispute resolution. This is generally a notice, a meet-and-confer stage, mediation (if it goes that far), and then provision for either party to terminate the Compact within 30 days' notice, if 180 days at least have gone by since the dispute resolution process was invoked initially. That concludes my overview on the Compact with the Nooksack.

I'd like to also point out a couple of very minor differences between this Compact and the one most recently approved by the state with the Chehalis Tribe. These are among the most significant differences among a number of minor differences. In the Nooksack Compact, the cannabis business that isn't Tribal,

if it seeks to locate in Indian country, that business must first obtain permission from the Tribe, specifically express written permission, or the LCB cannot grant permission. In the Chehalis Compact, it envisions permission being obtained from the Tribe by the LCB rather than the Tribe business.

There's also a difference in the Nooksack Compact, there's a 20-day period where if there is not a response to the request for express Tribal permission, then non-consent is assumed. This is different than the 30-day period with the Chehalis Compact. So you see, these are pretty modest differences. The Compact that we have before you tomorrow for the Nooksack Indian Tribe is very typical.

One final note I'll mention, there were two requests the LCB made of the Tribe with respect to revisions in the Tribal code. I referred to that our AAGs for consideration. LCB staff also looked at the Tribal codes, but we rely heavily on our AAGs for that review. In that review, a couple of issues were identified where we have indicated a request to the Tribe to make a minor change or update to their code.

In the case of the Nooksack, they've established the Tribal tax at 46.9%. Now, that must be equivalent to 100% of the state tax, as defined in the Compact. But, the state tax could change over time and so our request would be to tie the Tribal tax to the state tax so that in the event of a future change -- let's say there's a local sales tax option that is approved then there would only be a minor change in what the total state tax would be, so there wouldn't be a discrepancy created between the state tax and the Tribal tax under that scenario. The other is that there is no provision in the Tribal code against delivery of cannabis product outside of Indian country. This also is a theoretical future concern. It's not a present concern because the Compact does provide that transportation outside Indian country is governed by state law and in regulation, but we'd prefer to see a Tribal provision in the Tribal code that would recognize that scenario where there is provision for delivery within Indian country under the terms of the Tribal code, but not outside of Indian country.

That, Mr. Chairman, concludes my overview and briefing on the Chehalis Compact and the process. I'm happy to answer questions you or the Board may have.

Chair Postman: Thanks, Chris. I have one question. I just want to make sure -- did you say that it's in the Nooksack Compact that if a non-Tribal business wants to open a store on Tribal land, they have to get permission from the Nooksack before LCB can act?

Mr. Thompson: That's correct.

Chair Postman: Okay. Is that in any other Compact in the state today?

Mr. Thompson: Yes, it's in all the Compacts basically. I pointed it out in this instance because who is identified as the party needing to obtain permission from the Tribe is different between the Nooksack and the Chehalis. The Chehalis Compact says the LCB must obtain permission from the Tribe -- we're not personally issuing any licenses, so this isn't a really big deal. However, obviously a licensee that we've already awarded a license to could seek to change its location. That scenario could make this a real issue and a substantive difference.

Chair Postman: In the other Compacts, are they the Nooksack model or the Chehalis model or a mix?

Mr. Thompson: I don't know, comprehensively. My sense is that that by provision, both of them appear and stand alone as a unique provision. I can go back and look, though, to answer your question, do I'll do that, Mr. Chairman.

Chair Postman: I think your answer is good for now. If it's a mix, that's all I was wondering about that. Thank you, Chris. I appreciate that.

Member Hauge: David, if I may, this goes back to -- you probably recall there was at the outset of the regulated market a complaint by, I think it was the Tulalip -- I can't remember what Tribe it was -- Bbt it was one in the Puget Sound area. We had issued a license to a non-Tribal member and the legislature responded. So, what we're trying to do with this provision of the Compact is reflect state law and have consideration for the needs or the requests of the Tribe that we're actually working with.

Chair Postman: That's great, thank you. Other questions, Member Hauge, for Chris? Or comments?

Member Hauge: No, thanks. As Chris said, I'm pretty deeply involved with this when we make the initial contact with a Tribe who is interested in compacting. Generally, it's me and another staff member that will go out and visit the Tribe. Rick has gone out a couple of times to explain to them the benefit of partnering with us and what the lay of the land is. Those have been successful meetings with some notable exceptions.

Chair Postman: Good. Board member Garrett, any questions or comments?

Member Garrett: No comments at this time. Thank you.

Chair Postman: Thank you, Chris.

We will move on to our next item which is an update on the traceability system from Megan Duffy and Mary Mueller.

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## **TRACEABILITY SYSTEM UPDATE**

Megan and Mary provided an update on the current state of the traceability system (HANDOUT 1).

Chair Postman offered his appreciation for the root analysis. He asked how the agency would make sure it didn't arrive at place with something that outpaces confidence in software. Megan agreed with the assessment, underscoring that concept was at the forefront of conversations about the future of traceability. Mary concurred and elaborated on the evaluation and decision making processes that were in place.

Member Garrett thanked the team for the work they had done with traceability, adding that she was hearing positive feedback from the cannabis community.

Member Hauge agreed that the work being done was important, noting that it was good to see the cannabis industry being viewed as a viable business rather than something that was two steps away from being illegal.

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## **RULEMAKING UPDATE AND BOARD MEETING PREP**

Kathy Hoffman: Thank you Chair Postman and good morning to you and Board members Garrett and Hauge. Today I will provide general rules program update, followed by a more focused update on

cannabis rules in progress. I will be providing cannabis rule updates for the next several weeks while we recruit for a new cannabis policy and rules coordinator.

With respect to the rules program, we began the process of strategic planning for our rules. We've been talking about doing this for the last year and now we're finally there. We're building flexibility into that plan to adjust for legislative representation and other rulemaking projects. We're also planning a longer term, very technical project focused on general housekeeping for alcohol rules. This means thinking about possible title reorganization in a way that makes finding content less challenging, removes duplication and modernizes language without substantive change. We've also significantly overhauled our outward facing web page. We've included descriptions of how LCB conducts rulemaking, the different phases of rulemaking, how to participate in our work, and a collection of frequently asked questions. We've updated and streamlined our rules and process and recently adopted rule changes. Now cannabis and alcohol rules each have their own pages and we have a separate page that describes how to petition the agency for a rule change, including a downloadable version of the rules petition and other important information regarding that petition process. This augments recent webpage updates that we made right after the first of the year regarding our policy and interpretive statement programs. I'd like to recognize Audrey for her really great work in making this a reality for our agency. Thank you, Audrey for that.

Moving on to cannabis rules in progress. We currently have three active projects and the first concern is cannabis quality control rules. Chair Postman, you may be familiar with this project. To give a little background, following the public hearing held on November 18 of last year, which was a supplemental CR 102 hearing, we began an internal review of all the comments received. There were close to 120 written comments. We reviewed all of them like we typically do and some themes began to emerge from that review. We've taken those themes and prepared a responsive document that speaks to some of the suggestions offered that would require, for example, statutory changes such as creating and developing a sampling program, or a third party sampling program through another agency or through the LCB. That type of process would require funding, staffing, and equipment and potentially a legislative change. The document also incorporates some of the content that emerged in the three "deliberative dialogue" sessions that we hosted in January and February of this year. I'll be finalizing that document in the next few weeks and I'll share it once that process is complete. Next steps for this project are to take another look at the current rule draft internally and see where we can align revisions within our statutory authority and the traceability program redesign, that Mary and Megan just shared. We contacted the Governor's Office of Regulatory Innovation and Assistance to begin the process of contracting with an economist to create a new "small business economic impact statement" that would be reflective of a new proposal. The tentative timeline for this work is currently under construction, and maybe slightly delayed as we work towards full staffing. And then also, that timeline will contemplate the additional rule changes that will be needed consistent with traceability redesigns. That may include WAC 314-55-083 in addition to what we've got open right now.

The next rule project concerns Tier I expansion. We're preparing to release the survey results in report form in the coming weeks and continue internal discussions focused on developing a proposal that considers all elements of our authorizing environment. We look forward to bringing a proposal to you a little later this spring for that project.

Next in line is the redesign of cannabis license background checks. The Board approved a CR 101 for that project a month ago today, actually. Since then, we've held our project team kickoff meeting, completed rule development planning and scheduled several internal drafting sessions. Following the sessions, our project team will meet again to discuss the suggested conceptual revisions to existing rule, and schedule one, if not two, "listen and learn" sessions. At this point, we're tentatively projecting that



those will be held on April 19 and May 10. Under this tentative timeline, we'll be able to bring a proposal to you in mid to late June with finalization planned for early to mid-August.

On the horizon for cannabis rules, we'll bring a CR 101 to you by the end of this month that would add a permanent cross reference in our cannabis processor and retail rules to the State Board of Health's permanent prohibition of vitamin E acetate. Our current emergency rules allow the Board to take disciplinary action against any licensed processor or retailer who sells vapor products containing vitamin E acetate in THC vapor products. As you know, the Board approved emergency prohibition of vitamin E acetate in May of 2020. We extended that rule while the State Board of Health pursued permanent prohibition of vitamin E acetate. Now that that's occurred, we can change the references in our rules by pointing back to the permanent prohibition by the State Board of Health. This is a very technical rule project and we don't anticipate scheduling any "listen and learn" sessions since our emergency rules have been continuously in place since May of last year.

Are there any questions before I hand it over to Audrey?

Chair Postman: Not for me, Kathy. Do the other Board members have questions?

Member Garrett: I have no questions. Thank you, Kathy.

Member Hauge: No questions.

Ms. Hoffman: Thank you. I'll hand it over to Audrey. Thanks, Audrey.

Audrey Vasek: Thank you, Kathy and good morning Chair Postman and Board members Garrett and Hauge. I have a couple of brief updates for you today.

I'd like to start first with an update on the rule project related to distillery reporting and payment rules and then also go into some background on the two rule packages that I will be presenting at tomorrow's Board meeting. So, starting with the distillery reporting and payment rule project, the CR 101 for this rule project was approved at the February 17 Board meeting and filed with the code reviser. The CR 101 considers revising the distillery reporting and payment requirements in WAC 314-28-070, 314-28-080, and other rules if necessary to be consistent with the Court of Appeals decision in *Blue Spirits Distilling v. LCB*, which held up LCB rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers for invalid. A GovDelivery message with more information about the rulemaking project and how to provide comment and feedback was sent to subscribers after the February 17 Board meeting. This information is currently available on the LCB external rulemaking web page.

After discussions with the project team, including the licensing, finance and the enforcement and education division staff, we developed a set of conceptual draft rules and shared those through GovDelivery for public feedback on March 1, announcing the open comment period from March 1 to March 31. We have received a couple of comments so far and once the comment period ends, the project team will reconvene to review the feedback and develop the CR 102 rule proposal. We tentatively hope to present this to the Board in April. Are there any questions about this rule project?

Chair Postman: Not for me.

Member Garrett: No questions.

Member Hauge: No questions. Thank you.

Ms. Vasek: Thank you. Next I will discuss the emergency rule package that I'll be presenting at tomorrow's Board meeting. I'll be requesting approval to file a CR 103Ee package to extend the emergency rules establishing summary license suspension and petition for stay provisions for enforcement of the Governor's Proclamations issued as a result of COVID-19.

For background, between March 2020 and January 2021, Governor Inslee issued a series of Proclamations in response to the evolving COVID-19 situation, including Proclamations 20-25.01 through 20-25.12, amending the original Proclamations and incorporating issued mandatory Proclamations including Proclamation 20-13. Proclamation 20-05, originally issued on February 29, 2020, confirmed the person to person spread of COVID-19 in the state and proclaimed a state of emergency for all counties in the state of Washington. Proclamation 20-13 originally issued on March 16, 2020, imposed statewide limits on food and beverage service in areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-25 entitled "Stay Home Stay Healthy", originally issued on March 23, 2020, imposed limits among other things on conducting or participating in essential activities, employment and essential activities temporarily prohibited certain public and private gatherings and establish a list of essential and non-essential businesses in the state. Non-essential businesses were prohibited from operation except for performing basic minimum operations, and essential businesses were encouraged to remain open and maintain operations. Establishments licensed by the Board are subject to the Governor's Proclamations. Although some establishments licensed by the Board are considered essential, others are not or subject to specific limitations. The Board has statutory authority to enforce the Governor's Proclamations and consistent with that authority, these emergency rules serve a two-pronged purpose. These rules allow the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any Governor's Proclamation issued as a result of the COVID-19 outbreak and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare. And second, these rules provide a framework and process for an affected licensee to petition the Board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW. These rules were originally adopted on April 6, 2020 and extended on July 22 and again on November 18, 2020. The current rules will expire on March 18, 120 days after filing. If the CR 103E package is approved tomorrow, I will file it with the code reviser's office and the rules will take effect immediately. This will extend the rules for another 120 days until July 15, 2020 (sic)[2021]. I'm happy to answer any questions about the emergency rule package.

Member Garrett: I have no questions. Thank you.

Member Hauge: I have no questions.

Chair Postman: And I'm good too. Thank you, Audrey.

Ms. Vasek: I have one final update. It's related to providing background on the supplemental CR 102 for the rule project to implement 2020 legislation, Engrossed Second Substitute Senate Bill 5549, related to distilleries.

For background, this bill modified the privileges and requirements for distillery and craft distillery licenses and established a new offsite tasting room license available to these licensees beginning January 1, 2021. The bill also authorized jointly operated offsite tasting rooms and conjoined consumption areas under certain circumstances. The CR 101 for this rule project was filed on August 5, 2020, and a series of

collaborative internal project team meetings were held with staff from the Licensing, Enforcement and Education, and Finance divisions to develop conceptual draft rules.

In regards to stakeholder engagement, we held a virtual “listen and learn” session on November 17 of last year to gather public feedback and suggestions for revisions to these conceptual draft rules. A table containing a summary of the public feedback received is included as “Attachment A” of the supplemental CR 102 memo. The original CR 102 and proposed rules for this project were filed on December 23, 2020. The proposed rules included in that CR 102 package took into consideration the feedback received during the listen and learn session. And the description of these changes and feedback were included in the original CR 102 memo under the section titled stakeholder engagement. The public hearing on the original CR 102 was held on February 3, 2021. One person provided oral testimony and two written comments were received. A table containing these comments is included as “Attachment C” to the CR 102 memo.

After the public 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 anticipated changes to the distillery monthly reporting and payment rules that will be necessary as a result of the Court of Appeals decision in Blue Spirits. These changes are described in the supplemental CR 102 memo under the background section and include replacing the monthly reporting requirement on revenue from tasting room sales of adulterated spirits for on premises consumption, with an annual reporting requirement. This change will reduce the reporting burden on licensees.

Another change is revising the penalty schedule to include penalties for failure to file the annual report, since the monthly report is no longer being required. These proposed penalties are consistent with the existing penalties for failure to file tax or shipment reports.

The final change from the original CR 102 to the supplemental CR 102 is clarifying that the distinctive glassware markings required by statute for licensees sharing a jointly operated conjoined consumption area may be either permanent or temporary.

If the supplemental CR 102 is approved tomorrow, I will file the rules with the code reviser’s office and a public hearing will be set for April 28.

That concludes my updates, I’m happy to answer any questions.

Chair Postman: I just have one, for a point of clarification. What would be the most substantive change before this final modified version of the CR 102? You were just talking about glassware. I’m trying to figure out what it was. You said substantive change based on those comments.

Ms. Vasek: The substantive change was related to glassware. In the jointly operated conjoined consumption areas, there’s a requirement in the statute that the licensees that share those space each have to have distinctive glassware. We had received a comment indicating that there was confusion as to whether that marking had to be permanent or temporary, and that having a permanent marking may be cost prohibitive for them due to the many types of glassware that they have. We decided to clarify in the supplemental CR 102 that it can be permanent or temporary. That is one of the three substantive changes in there. The other two were related to the reporting requirements which reduce the reporting burden from monthly to annual.

Chair Postman: And, just because I'm curious, what is the reason for requiring the specific identification on the glassware in those multi-use areas?

Ms. Vasek: That is from the statutory language, and although I can't speak to the intent of the statute, it does appear to be related to liability and enforcement being able to determine if there was an issue with over-service or a different kind of issue. The markings would help identify which business the drink originated from.

Mr. Thompson: I could speak to that, Mr. Chairman, if you'd like. The statutory provision was requested by LCB in the context of a space shared by multiple licensees so that if there's a problem and/or a violation, potentially, we would have a chance at knowing which licensee to hold accountable. It's come up in a few different pieces of legislation where this might be an issue. For example, we have a system at Post Alley where multiple wineries share a given space. This provided the model for being able to hold the right entity accountable in the event of a violation and that designated unique glassware or container was the mechanism.

Chair Postman: Thank you. Makes sense to me. Any other questions from Board members?

Member Garrett: No questions.

Member Hauge: No questions.

Chair Postman: Great. Thank you, Audrey. And thank you, Kathy, for that as well. Anything else from either of you?

Ms. Vasek: Nothing for me.

Ms. Hoffman: Thank you all.

Chair Postman: Thank you. And we will now move to our final item on the agenda, Board member and executive assistant reports. We'll start with Board members.

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## **BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS**

Member Hauge: No, nothing that we haven't covered already. I'm looking forward to tomorrow's meeting.

Chair Postman: Great. Anything from Board member Garrett?

Member Garrett: No, nothing other than thanks to you and congratulations on your first Board caucus. This is the longest Board caucus I think we've had since working remotely.

Chair Postman: Okay, great. We will continue to refine all this. Dustin, anything from you?

Dustin Dickson: Good morning, Chair. Nothing further for me for the good of the order. Thank you.

Chair Postman: Well, since I've set a record for the longest caucus in remote history, that now will conclude today's caucus meeting. Thank you all, we appreciate all the information. Thanks for the education you gave me and I'm sure there's more to come. So, thank you all and have a great day.

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Meeting adjourned at 10:44am.

Minutes approved this 14<sup>th</sup> day of April, 2021.



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David Postman  
Board Chair



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Ollie Garrett  
Board Member

*Not Present*

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Russ Hauge  
Board Member

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