



Board Caucus Meeting

Tuesday, September 28, 2021, 10:00am
This meeting was held via web conference

Meeting Minutes

CAUCUS ATTENDEES

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

GUESTS

Justin Nordhorn, Policy and External Affairs Director
Kathy Hoffman, Policy and Rules Manager
Audrey Vasek, Policy and Rules Coordinator
Jeff Kildahl, Policy and Rules Coordinator
Robert DeSpain, Policy and Rules Coordinator
Rick Garza, Executive Director

APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the August 31, 2021, Board caucus minutes

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

MOTION: Member Garrett moved to approve the September 14, 2021, Board caucus minutes

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

PROPOSED FEDERAL LEGISLATION ON CANNABIS – BILL REVIEW

Chair Postman: We're now going to hear from Justin Nordhorn, our Policy and External Affairs Director. He's going to brief us on the proposed federal legislation on cannabis. This was something that member Hauge raised a couple weeks ago, about a real need to dig into that and start looking at how the agency is going to respond. We can talk later about what we think the odds are of anything happening really quickly, but the first step of that is that Justin has taken a deep dive into the draft bill and worked with people throughout the agency to hear concerns. We've also been talking with some of our friends around the country. So with that, I will turn it over to you, Justin, to take us through this.

Mr. Nordhorn: Good morning, Chair Postman and members of the Board. We're going to just kind of walk through this at a fairly high level. There's obviously a lot going on with the federal discussion draft. And we've had a number of conversations, like you said, internally, and what we tried to do is break apart the 160-plus page bill into different sections, for example, around public safety, taxation, those types of things

and provide input and how would this impact the state of Washington as it stands right now. We don't expect the federal language to stay stagnant through the process. So I'm sure there's going to be a lot of iterations as it develops over time.

We've also had some good conversations nationally with other states and also through our national organization. It's really a culmination of all of those types of identifiers together. And so as we walk through this, it's really critical for the federal standards to set that foundation and platform. That's one of our messages that we want to make sure that there is out there, because if we don't have that consistency on the legal products, especially when it opens up to interstate commerce, we can have a number of issues going on. For example, if we don't have standardized lab testing across the United States, what does that look like? You could end up having people wanting to get their lab testing done in other states and then bring product back in. How our state's going to manage and mitigate risks associated with that?

And then, of course, online sales conflicts are going to be prevalent if packaging and labeling is drastically different in a number of areas across the state. And so when the federal structure sets up with the FDA and then the other agencies such as the Trade and Tax Bureau, that we end up having some good foundational pieces for the states to be able to rely on that national consistency.

There's a lot built into the discussion draft around states' rights and making sure that the states have the opportunity to regulate and govern the products that are being grown in their state and sold in their state. And so we tried to look at that in that particular lens as well.

So, general positives, of course, looking at national legalization would open up banking opportunities for all, which really can change the dynamics across the United States. Although taxation was raised in the bill, not a lot around the banking issue, but it will definitely be a positive to open that aspect up. We also see some positives, potentially, even though there's some tax implications in the bill that I thought should be important to call out is the opportunity for licensees to operate under normal business circumstances as other businesses. For example, being able to take the tax credits on net income versus their gross income on being able to utilize the 280E tax exemptions and those types of things. So there's some positives in those particular areas.

And, like alcohol, there's provisions in the draft that really create thresholds for smaller businesses. So for Washington in particular, I think this would be a positive for Washington licensees because we already have a predominantly small business environment. I don't think any of our licensees really would fall into the big business category, so there could be some benefits there for Washington businesses as well.

A couple of the key overall points of analysis that we wanted to look at, again, what we're trying to look at is, well, first, let me let me also call out that part of this work that we're doing around the analysis is what type of response should we have to our congressional membership and those types of things. And so we're looking at those opportunities and part of that that step is seeing what's of interest to call out. And so we kind of throw a whole bunch of things in here. I don't know if we want to be as broad, or we want to focus on a couple areas. But putting that context there as, why are we looking at this when it's not actually a bill before Congress yet. So we definitely want to be able to provide some feedback and create awareness of how this will impact our state as well as the national endeavors on interstate commerce.

As we look at the federal regulations, we really want them to create some sort of a floor on regulation standards that everybody can adhere to and not necessarily a ceiling. Don't put the caps on different things because states already have a number of programs that could then be negatively impacted

through that. And we'll call out a couple of those points. So that's really one of the themes that we want to be looking at. And we also want to be able to be responsive to urgent regulatory needs, both public health and safety, as well as markets in the state. And so if we have too strict regulation we're going to be tied to the federal response, which typically, I think everybody would agree takes a little longer than the state responses are when we're looking at rule making and deeming and those types of things. So it's just the processes that we've seen over the years, and I'm not trying to say right, wrong, or indifferent, but we do see some lag time in those. I think that needs to be considered as we're going through this. So we've got a very dynamic marketplace Products are evolving rapidly and so we need to be able to keep pace with those emerging products and we certainly want that ability as we move forward.

The minimum standards that are needed for lab testing are important, especially around ingredients and additives, packaging and labeling, and the like. So those regulations are going to be important for us to be able to monitor and look at. And in the absence of that all the different states are going to develop their own standards which could create some variances in testing methodologies and threshold for cannabis testing and those types of things and so our state is going to be able to contend with that. So when the states are creating their own approach for review and evaluation of the safety of new product and additives and we're developing our approaches to the packaging and labeling, we're going to have different information spreading across the United States around potential harms and those types of issues and maybe in the products. And then you end up having debate between states on, "well, this state does it this way", so which way is the right way scientifically? And so really, the federal government should have that floor set forward so everybody can rely on that. The challenging issues around this could really include regulating the structure and function claims. We're already seeing that.

We're already doing some work in our state around how does that look on the packaging regulations. It's traditionally been an FDA type of an oversight. So that can certainly be a challenge, especially if they're going to treat cannabis like dietary supplements. And then also language that would be indicating whether the claims are truthful or misleading. And so those are pretty challenging aspects to be able to look at. So the federal minimum standards and clarity would really be needed to support state regulation around these particular areas. I think we also want to look at the issues around clarifying between hemp regulation and cannabis regulation. And that's really, in our opinion, urgently needed. And we have state laws around the two.

We have federal laws for the farm bill. And we really need to have that clarity, especially as we're seeing emerging products. We need to be able to establish regulation of impairing cannabinoids other than the Delta-9 THC. And so how do you regulate that, and is that going to be called out? We have a number of related items that are being derived out of hemp and they're online and they're in the marketplace with little to no regulation at this point in time. In some states, hemp products can legally contain more THC than products on the state regulated marketplace. And also, they're not subject to the same testing and safety protocol standards. So that's really a concern when we're looking at some of the consumer safety issues for products being sold within the state. The federal structure for regulation, these really clearly include product types, such as Delta-8 and Delta-10 in addition to the Delta-9 because in absence of that right now we're kind of focused so heavily on the Delta-9 issues that this is really creating that uncertainty around these particular products. So the discussion draft kind of seems to point out that the approach is general to cannabis products and that any THC measurable as they're calling it within the draft, any "THC measurable" cannabis product is observed in the taxation sections, but it's also called out in some of the tax drawback areas. And that calls out some specifics around Delta-9 tetrahydrocannabinol concentration. So when we're looking at calling it out in one part of the federal draft is Delta-9, kind of similar to what we have in our state right now, we have some that relates to Delta-9, others that just say THC. That disconnect is going to be challenging, I think, we would ask them to try to bring those in line,

how you're going to treat THC in a general capacity versus calling out just one cannabinoid structure in that area. So that'll really address new products and how they're going to approach the taxation around those particular issues.

The next area that I would cover from this general overview is the possible medical cannabis impacts for our state in particular. The previous areas that I talked about: I, II, and III; really do have to do with a national perspective, as well as impacts on states. The next sections here, I'm going to talk about kind of drill down more of our state impacts that we would anticipate in this area. And as we're looking at the medical cannabis impacts for our state, it indicates right now in the draft that the Secretary meeting at the federal level are going to consider whether unique standards for cannabis specified for medical use under state laws are necessary or appropriate. And so, we have some questions around what would that mean for our particular program as the Department of Health (DOH) is looking at those oversight issues. And, are we going to have somebody come in and say "no, that's not appropriate" once we already have an established marketplace and structure for these types of products? So we believe that that would create some uncertainty for the states as well as patients if the federal government has discretion from state to state to choose whether or not we're going to address medical programs and allowances. So, if it's a pick and choose type of thing, it's not going to be very consistent, we think.

It also ties in further with the section that addresses misbranded cannabis products. As language in this particular area calls out if it's intended for consumption or application to an individual under 21 years of age. In general, we probably wouldn't have a lot of concerns around that. But we do have provisions that call out under age medical cannabis use. So, if you're under the age of 21, there are provisions in our state that afford those patients the opportunity to get cannabis for other medical purposes. We're concerned that if we have such tight controls in the federal bill, does that eliminate those opportunities on the state level for patients. We do see that as an impact in that particular area.

The other area that we look at defines "producer" for the purposes of cannabis enterprises and provides an exception for personal or family use. And what that challenge in that particular area is, is the exception focuses on the individual, as well as in a soul capacity, if you will. This is going to conflict with our medical marijuana provisions in 69.51a [RCW], which really allows for the medical cooperatives. And so, we have cooperatives that we've permitted and if it basically says that these growing opportunities are for individuals only; what does that do around the medical patient cooperative approach that we have in our state? Does that eliminate that? And, so, I think that there needs to be some consideration as we're looking at patient capacity to grow for themselves. Do they need somebody else to be growing and helping out with them? Limiting it to the individual could really change the landscape in Washington state if it's not considered federally.

Another area that we see having some potential impacts in our state with the way that the draft discussion has been laid out is around social equity. The definitions may create some significant differences from state to state, which could create some challenges. So, while we believe that the automatic expungement ideas under the social equity components of the draft discussion is a really positive idea, they do have some expungement exceptions called out and that could have some variable implications and impacts due to the original approaches are around what the federal government considers aggravating role adjustments. And, so, when we're looking at those types of things, that can create an underlying concern of continued inequity as we're approaching this. So, if they get to adopt those aggravating role adjustments and they're being applied in different states, and we already see sometimes in the federal districts different approaches to different things -- how does that impact our social equity program that's being stood up? And if we take recommendations out of the Social Equity Task Force and apply them,

are they then basically altered in the future based on the federal language that's drafted? And that's what the primary concern is in this area.

So for our state, the social equity program implications, it may have different definitions on what an applicant would look like. So that could really set us back if it's different than ours. And I'm not saying it would be different, but as it develops, it could be different and that could be an impact. And a possible point of contention would be the definition of the social equity applicant versus recommendations from our task force. So, if the federal definition is different from the state definitions, essentially the criminal penalties identified in the discretion draft may continue to perpetuate barriers for social equity applicants, again, as the enforcement approaches across the United States could be different, as well as the prioritization in the federal enforcement approach. So you could still be seeing some different applications across the board. And that comes into the "disqualifying offense" area in the federal permitting. What the concern is, is, if we have an applicant that we've issued a license to that is required to get a federal permit under the discussion draft and now they don't qualify because they have what would be considered a disqualifying offense that we didn't consider disqualifying, are they then no longer eligible in the state to operate. And that really is a point of concern when we're looking at getting the social equity off to a positive start and then having to step back because of the federal language that may or may not be developed. So, just calling out some of those issues that we found kind of concerning as a potential impact and could cause some setbacks for us.

The other smaller areas that the bill doesn't really call out but did catch our attention have to do with employment and contracting. They do call out that, although cannabis will be de-scheduled, that continued drug testing allowances can still be in affect at the federal level, not necessarily the state level would adopt those. But then if we have contracted federal workers or if we're under state to federal contracting -- I'm not explaining this as well as I could -- We have some employees that are state employees working in the federal program as our employees. And then we also have contracts in the state with federal government to do different work. And so there's two different components. We have our employees and we also have the contracting. And if the federal government comes out and takes the approach on the federal drug testing around cannabis use, how is that going to impact our opportunity to execute the contracts, maintain compliance with the contracts, and also maintain employment if we have different employment standards for state workers versus federal workers? And so I think that that was something that we want to keep our eye on as it unfolds. I don't think that's a big highlight of the discussion draft, but it certainly caught our eye.

Some of the other concerns are using terms like "inadvertent" as it relates to delivery of hemp. That is a challenge because that really creates a different standard of knowledge base when you're going through on the delivery area issues. It also calls out a ten-pound limit. And we're wondering on a possession limits on ten pounds, is this flower only? Is this all concentrates and edibles? And it's really generic in terms of limitations, which obviously far exceed our current limitations in our state. But we'd like to see some clarity around that.

Under the research, training, and prevention areas, there seems to be data points that will be difficult to capture and review. They talk about having comparable reporting and those types of things. But when we're looking at issues such as high school dropout rates correlating with cannabis use, sick leave usage, and those types of things, this could be a challenge, especially as employers may be at risk for seeking excessive medical information. And, so, how are those data points going to be captured? Is that going to be incumbent upon the state to collect and provide federally or are the feds going to do that on their own? So we thought that was worth calling out.

This should include impacts around the poly-drug use on impaired driving, not just cannabis impaired driving, and that would be a real positive to make sure that we correlate those types of things. So, the gathering data would definitely be beneficial for assessments on the long term impacts of legalization. We definitely want some uniformity in those particular areas as we've seen within our state.

On the packaging and labeling front, it appears to be a little bit more restrictive, impacting Washington to ensure the federal approval. It would have to add additional steps to our processes. It's going to slow our approval times down. And we've seen the approval sometimes within the federal government take a little bit longer. It could really stifle some of the business interaction and correlation on the marketplace. De-scheduling from Schedule I could certainly change the post prohibition approach. So what I mean by this, is, as we went from post prohibition and alcohol and cannabis both, it is still generally illegal, except for if you have licenses, except for when these different provisions that are called out in law. So that's what I mean by the "post-prohibition" approach. If you de-schedule and just say, "okay, it's no longer a Schedule I drug", does that change a lot of the laws across, one, our state as well as the United States, on calling out the exceptions? Do we change from the exception based approach to a prohibition based approach that you can't do these things, instead of, you can't do everything except for these things? So I think it could throw a different structure and dynamic in the states that have those types of regulatory structures.

And then the last thing that I wanted to call out is when we're looking at the legal implications across the United States with alcohol, one of the things that that we believe Congress should specify whether or not states may maintain the residency requirements for cannabis licensing. And that would certainly help avoid any unnecessary litigation that evolves. Because we see the litigation on the liquor side around residency requirements. If they could be clear federally, what that means, then states could adopt that a little bit more appropriately and avoid that type of litigation.

So, those are the highlights. And as we're looking at this, the next step on this is that we're going to continue to work in our small groups within the agency to try to figure out what we want to highlight for a potential response. We definitely have to start working and coordinating with the Governor's Office to make sure that they're comfortable with the information that we would propose to share. We may even want to work with our liaisons in Washington, DC, to make sure that we have those types of things. I think that we have a number of steps to do before we're ready to send anything, but we'd certainly want to make sure that all of this is vetted with you three prior to moving forward.

This is a preliminary step, just trying to get through the discussion draft, pretty much debrief on this, and figure out where we want to go, what we want to present to our congressional delegation, essentially. So with that, I'll stop there and offer an opportunity for questions here.

Chair Postman: Thank you, super-impressive work you all have been doing on it. Member Hauge, questions?

Member Hauge: Yes, Justin, is there anything in the draft that specifically addresses the issues related to the Commerce Clause and interstate restrictions or the potential for restriction on interstate commerce? That's something that I'm asking probably as a result of a bad experience in law school that I've been thinking about a lot. Because, it is the linchpin for basically harmonizing, in the good sense, restrictions across the country for different substances and different practices. Is that called out in this draft?

Mr. Nordhorn: I don't think they heavily go into the commerce clause dynamics. They do have areas that weave into that discussion. So, as they're calling out the interstate commerce issues, I don't think that they've necessarily set out a lot of clear language that is going to create the foundational piece for a lot of

those commerce clause challenges that we've seen in the past. However, they are specifying how states are going to have the rights to govern and regulate cannabis. If you are a state that chooses not to do that, you still have legal opportunity to transport through those states. And so, in regards to the interstate commerce opportunities, there is some language creating opportunities that states can't necessarily go and take action if you're transporting it through that state. That still, to me, created a little bit of confusion on how that would be applied if it's just the interstate freeway systems and those types of things, or what happens if it deviates into other areas of a state and then they get contacted by that state. I'm not sure how that's going to play out. But as far as the commerce clause in general, there are some provisions around trying to protect the commerce from happening. I don't think that they really laid out a lot of pieces that would prevent some of the previous litigation that we've seen at this point.

Chair Postman: Member Garrett, questions?

Member Garrett: No. As I was writing down my notes of questions, the more Justin spoke, the more he covered some of it. And then, even the piece about how are we participating and being able to share and are they reaching out to the legalized states as they put this together -- but this is just the first draft, right?

Mr. Nordhorn: Yes.

Member Garrett: Okay, so this has a long way to go. So, some of the questions I was going to bring up because it said on the social equity, page 44, because I think it will be really great if the Task Force keep an eye on this to see how we are working alongside this as we're putting our recommendations together. But, being a first draft, it's probably got to be kind of difficult trying to see what their definition of social equity is compared to what we're coming up with because anything can change at this point.

Mr. Nordhorn: Yes, and what I'd offer also, because I don't have all the details around this, but I know we've had some conversations with some of the federal agencies -- nothing's established yet with federal agencies on who's going to be tasked with which responsibility. But as we've had some more informal discussions and call out these issues, they seemed to say "yes, that needs to be raised because that's not what the intent is here". We want to make sure that when we see these things that we can raise them appropriately so they can consider it as the drafts develop over time. I think nationally, the consensus is there's going to be a number of iterations of drafts that are going to come out before the end. So, as a first draft, I give it some food for thought. Let's put some ideas on the table to say, we request that the federal government consider these provisions so that it doesn't negatively impact states and programs that are already in place.

Member Garrett: On the committee or group in DC that's working on this draft, do we have representation from Washington State that's a part of that?

Mr. Nordhorn: Not necessarily on the draft. I'm sure the congressional members are a part of that. So I don't want to misspeak in that. But as far as having a specific delegate from our agency or something like that, no.

Member Garrett: No, I'm just saying one of the congressional members -- I'm not saying our LCB agents.

Chair Postman: Senator Murray is Chair of Health, Education, Labor and Pension, I think it's called, where the bill is going to be worked at least at some level. And her staff has reached out to us and we to them. We've already had a couple of conversations and we'll continue to. So, Senator Murray seems to

definitely be able to play a role. And I expect on the Senate side, where this is starting, Senator Cantwell is participating as well from her committee. So, yes, and they know of our interest.

Member Garrett: Okay, and are they aware of the Social Equity Task Force?

Chair Postman: Well, I don't know exactly to the extent of that, but that's part of what we all need to do now. And I think this goes back to what member Hauge was talking about. How do we respond in position ourselves facing the prospect of national legalization, decriminalization, whatever that ends up being? So, these are things I think that we need to talk about is how we're going to approach those. And it's a conversation for the Board as well on our own, but I think we want to engage with staff. As Mr. Nordhorn's work continues with these small groups in the agencies, maybe the three of us need to split up as well and be a part of those. And, because you're on that Social Equity Task Force, you shouldn't be in that. And Member Hauge, it's all under the legal rubric. So you can take your pick. But just so we're being sure that no two of us show up at the same meeting, I just think it would be good for the three of us to be able to pick pieces of this to really get up to speed on. And I'll say, I don't think it's going to happen anytime soon. I just don't. As soon as this came out, within 24 hours, the sponsors themselves were downplaying the prospect of any action. It just is not imminent in my layman's view. But it behooves us to look at it because it will happen at some point.

And to the comment about looking for the feds to create a floor, which is how a lot of federal regulation works in the states, can be more stringent. The problem as we go through this, though, is that dynamic changes depending on what issue we're talking about. Like with criminal background checks, they may set at what they consider a floor for which violations and we would go in a way that they might see as less stringent, not more stringent. So what we need is flexibility. We need states' rights on this. The states are the pioneers on this and I am hopeful and somewhat optimistic that they will listen to the states because we've been out there doing this where the federal government has experience in nothing related to this other than shutting it down.

Any more thoughts from the board? Hearing none, , thank you for the review, Justin. We will follow up and figure out how to triage ourselves and become more part of those conversations at the staff level. And then also we the Board wants to start looking at what do we want to do in anticipation of this, not necessarily any specific provision of a bill, because to member Garrett's point, who knows what that will look like when it happens. But if we expect there will be legalization or decriminalization or normalization at some point in our tenure here, it would behoove us to start looking at what are those things. So I think we will find a way to keep engaging with you and you group on that.

Mr. Nordhorn: Thank you.

Chair Postman: Great, thank you, we appreciate it a lot.

Thank you.

We're going to move into Board meeting prep for tomorrow's meeting and rules update so I will turn it over to Kathy Hoffman, the Policy and Rules Manager.

BOARD MEETING PREP AND RULES UPDATE

Kathy Hoffman: Good morning and thanks, Chair Postman. Good morning Board members Garrett and Hauge. I'll give a quick update on what I'll be presenting at the Board meeting tomorrow and then a quick update on the THC compound evaluation work that we're doing, then I'll hand it over to Jeff and then to Audrey to follow up.

So, in keeping with our Board Interim Policy (BIP) cleanup project, as it were, I'll be bringing five BIPs to you tomorrow for rescission. I hope you've had an opportunity to look at those. I'm not going to spend a lot of time going through them today, but suffice it to say, four of them are ready for rescission because they've been implemented in rule already. I won't go through each one of those individually today. For example, we are going to be recommending that we rescind the policy that was issued in the year 2000. According to some of our staff, it hasn't been used in 18 years. So we think that it might be appropriate to rescind that policy at this time as well. And in fact, it isn't even called a BIP, it's called a Liquor Control Policy, because of when it was drafted. So, sort of a historical piece of LCB work there that we're recommending for rescission tomorrow. Any questions on that before I move forward?

Chair Postman: None for me and I don't see any other so thanks.

Ms. Hoffman: Thank you. And then just a quick update on the THC compound evaluation work. Our CR 102 package is in the process of internal review completion and then I will share that package with the Board later this week as well as our executive leadership, and then we'll be ready to present that to you on October 13. At this point, we're not sure if we're going to have a Board meeting on the 24th of November the day before Thanksgiving so, that would push our CR 102 hearing out to December 8. However, that does make it possible still for us to have rules adopted either right after the first of the year or shortly thereafter. So, we're not diverging too far from our timeline on that particular project. Any questions on that?

Chair Postman: No, but we'll have to figure out schedule of the Board meeting. I'll be traveling that day, I believe, but may be able to participate remotely.

Ms. Hoffman: Yes, we need to work the details before the meeting on the 13 of next month. With that, I will hand it over to Jeff. Thank you.

Jeff Kildahl: Good morning, Chair Postman and Board members Garrett and Hauge. Here's a brief update on cannabis rules in progress today, September 28, 2021.

Regarding the cannabis quality control rule project, we continue to work with the economists from Industrial Economics, Incorporated, or IEC. We have now completed six scheduled weekly meetings with IEC. As part of that work, we sent an invitation via GovDelivery on August 30 seeking interview participants to help us understand cannabis producer and processor perspectives. We received approximately 35 applicants in total and we stopped accepting new interview applications on September 10. As of yesterday, IEC had held 18 interviews with producers and processors, and is working to schedule another seven interviews. And also last week, we held an online multiple choice survey to help us understand producer and processor perspectives beyond the "deliberative dialogues" we held earlier this year. The survey was open for one week and had 116 responses in total.

For the cannabis quality control rules, we now anticipate hosting a "listen and learn" session on or about October 21, putting our CR 102 proposal at approximately December 8, 2021.

This concludes my update for today. May I answer any questions?

Chair Postman: I don't see questions from the Board today. Thanks, Mr. Kildahl.

Next we'll hear from Audrey Vasek.

Audrey Vasek: Good morning, Chair Postman, Board members Garrett and Hauge. I have a couple updates on the alcohol rulemaking timelines today.

First, for the rule project to implement 2021 legislation House Bill 1480 related to extending COVID-19 allowances, I'll be presenting the CR 102 package and proposed rules for your consideration at tomorrow's Board meeting.

For background, to prepare the CR 102 package and proposed rules, the internal LCB rule drafting group considered all the public comments we received via email and during the two "listen and learn" sessions held on August 5 and September 2. Each of those were attended by over 50 people. The public comments from those sessions and other public comments we received via email are included in tables attached to the CR 102 memo. The memo also describes how that stakeholder feedback was incorporated into the proposed rules. The policy and rules team, Robert, and myself also interviewed 12 volunteer licensees between September 15 and the 21, so over a week, to gather data on estimated costs of compliance in order to meet Regulatory Fairness Act requirements. This cost of compliance information is captured in the CR 102 form.

As a summary of the proposed rules, the proposed rules create new temporary endorsements for the to go sales of cocktails and wine by the glass, manufacturer sealed alcohol products, and growlers. The proposed rules also create a temporary new rule section that provides licensees with more options for outdoor alcohol service areas and permanently amend existing foodservice menu requirements to provide more flexibility for licensees.

Tentative Timeline:

September 29, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
October 20, 2021	Notice published in the Washington State Register under WSR 21-20.
November 10, 2021	Public hearing held and formal comment period ends.
No earlier than November 24, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing or 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. WSLCB webpage updated and notice circulated by GovDelivery distribution list.
December 25, 2021	Rules are effective 31 days after filing, unless otherwise specified. See RCW 34.05.380(2).

I'm happy to answer any questions on this before I go into my next brief update, if there are any.

Chair Postman: I see none, thank you Audrey.

Ms. Vasek: For the rulemaking project related to axe throwing at liquor license premises, I'll be presenting the CR 101 package, also known as the preproposal statement of inquiry, to begin rulemaking on this topic at tomorrow's Board meeting. If the CR 101 package is approved by the Board tomorrow, the public comment period will remain open until November 19.

In terms of a tentative timeline for the project, before a CR 102 or rule proposal is prepared, we'll engage in collaborative rulemaking to gather feedback and ideas from stakeholders and any interested members of the public. This will likely include one or more "listen and learn" sessions. The feedback we gather during that process will help guide the internal rule drafting group as we develop rule language.

At the earliest, I anticipate a CR 102, or, rule proposal, could be ready for the Board to consider in January of 2022, which would place finalization of the rules in April 2022 at the earliest. I'll get into more background on that project at the Board meeting tomorrow. With that, I'm happy to answer any questions.

Chair Postman: I just had one on this, which we'd talked about before, but I don't remember the answer I'm afraid. We have essentially a pilot program going on right now for one licensee to be able to do this. And there will be a report after that. When is that due? When does that pilot program, in essence, end, and when might we have an assessment of how that worked?

Ms. Vasek: So, it was a one-year pilot through that settlement agreement, which was approved in April. My understanding is that the one-year pilot period would end April 2022. At that time, they'll have to submit the data required in the settlement.

Member Garrett: And David, I asked Audrey some similar questions of, so far, what has happened and has there been any feedback? She answered the questions if you wanted to cover that, Audrey, the two questions I had. Enforcement has been out for a site visit already. I was looking for the email, but you might have it handy.

Ms. Vasek: Yes, Member Garrett, I can speak to those. I reached out to the Licensing Division and the Enforcement and Education Division to follow up on your questions. Enforcement and Education indicated they'd sent out for the initial new licensee briefing in May of 2021, someone to go check in with them and had nothing really new to update there, other than they just had to check in with that licensee. So, there's no data, really, at this point other than that, that licensing has gathered. But they would expect to have that data at the one-year mark for the pilot. And if there were no incidents at that point, they could consider extending or if the rules are in place, then just go with that. So hopefully that answers it. Does that answer your questions, Chair Postman and Member Garrett?

Chair Postman: It helps yes. And on that settlement, if at the end of the year, just for the sake of this conversation, if there is no record of problems there, does that settlement agreement then allow for open ended continuation of that program? And again, would it just be at that one facility? Absent rulemaking?

Member Garrett: All of that information was in that email you sent me, Audrey, that I was seeing if you can speak on. Because you answered those questions for me. I had the same questions as David.

Chair Postman: Okay. You can send it to me any time. That would be great. And I'll look at it before our meeting tomorrow.

Ms. Vasek: I'll make sure to forward that to you. And if there's any follow up, I can reach out again and get you those answers.

Chair Postman: Okay. That's great. Okay, any other questions on this? Seeing non, thank you. I believe that is the end of our rules updates. Next on our agenda is agency-wide updates from Director Rick Garza.

AGENCY UPDATE – RICK GARZA

Rick Garza: Good morning, Board members and staff. I wanted to just go back to Justin's presentation today and thank him, and thank the staff. So you're aware, there were three or four different sessions that were held to look at the draft proposal that Booker, Wyden, and Schumer have introduced. And so, our staff really did walk through that pretty deliberately. We'll do that again to kind of finalize that document just so the actions. Because, Ollie, you had asked specifically about how is that interaction occurring with our congressional delegation. We reached out to them, I want to say about a month and a half ago, all of the congressional delegation because of a meeting that we had held with CANNRA (Cannabis Regulators Association) to introduce our congressional delegations from throughout all the states to be part of a discussion that we had. And we'll vet that response with you again once we've had an opportunity to go through it. We'll also sit down with Sheri Sawyer in the Governor's Office to make sure they're comfortable with the response. We'll send that response to our congressional delegation. And as David had shared, we had a meeting with Senator Murray's staff. But once that's done, then we'll provide that response to a congressional delegation. And then, I'll work with Chris Thompson, our Legislative Director, to get a meeting together with the congressional delegation - and typically, that's always going to be staff - to kind of walk through that response that we created. And then that kind of gets us done with the work that we need to do with our own congressional delegation. And like you all said, this is years away. But certainly we need to be involved, step by step, just as CANNRA is.

Just so you're aware, in December it's likely that members of the CANNRA Executive Committee will be setting up a meeting with Schumer, Wyden, and Booker to have a meet and greet with us. New Jersey, New York, Oregon -- the states that these senators are from are members of CANNRA. And the idea is to begin to establish that relationship. Our directors in those states have already had discussions with their US senators that are on that proposal, but a wider discussion to begin probably in December.

David had mentioned that CANNRA has been in several meetings with the federal agencies – FDA, TTB, just recently met again with TTB. And TTB, the Tobacco Tax Bureau, is the agency that likely would permit or license cannabis licensees throughout the country, just like they do for alcohol. So that's kind of a similar agency that would do that work.

And the issue came up that Justin spoke about, the concern that if TTB is issuing a permit or license and they're doing a criminal history background check, that that might interfere with our social equity program. So, when I was on the phone last week with TTB and members of the executive committee with TTB, I shared that and they had not thought that through is what I got from the discussion. But we're very concerned that they not do anything that would interfere with the ability of the states to allow for social equity applicants. And the fact that we're going to be looking at criminal history differently in the future with our social equity app was that we did in the past when we started the program. So, TTB was notified

and they immediately said, “we’ve got to take a look at that”. And so part of this work that we’re doing, not just in the state, with our agency and our congressional delegation, I just share with you that there’s a lot of commonality.

CANNRA released a letter to those three US senators on Thursday and I hope that we sent you a copy of that. But the first two pages are just a cover letter identifying five areas, many of the same ones that Justin identified. And then you’ve got five pages of details within those five topics of specifically what our comments are to that proposal. It’s more about the nuts and bolts. It’s not about whether we support legalization or not. It’s really about the nuts and bolts. Justin spoke to them about things like packaging and labeling. How are we going to share that responsibility with the federal government? Right now they do packaging and labeling for alcohol, TTB, for manufacturers. And so there is some history there. But it’s not the same. It’s not the same at all in the complexity that we have, for instance, in packaging and labeling because of the different ways you can ingest and consume cannabis. And so that’s just an example that I that I wanted to share with you. But I just wanted to thank Justin and the staff for their work on that and just wanted to share a little bit about how I see that moving forward.

FYI, last week, Congressman Perlmutter from Colorado, who worked with our own Congressman Denny Heck on the Safe Banking Act for the last, I want to say five years -- it’s passed the House five times, but has never gotten a hearing in the Senate. But there was an amendment, the Safe Banking Act, that was placed on the Defense Authorization Act, which is a spending bill. And the amendment was approved on a voice vote. So that’s something moving forward that’s positive.

When you talk to the US senators that have introduced the bill that we just spoke of, they don’t want to take that isolated look at just, say, banking. They want to see comprehensive reform before they allow something that seems obvious to be approved. But it just gives you an idea that federally, what they’re looking at is they want all the pieces together, including social equity, the reinvestment fund, and just creating interstate commerce, as Russ was talking about. I think Justin spoke to it. But, to your point, Russ, they want to be able to have safe haven when they transfer product. So, they’re looking at possibly a national traceability system similar to what we have in the state where you would be able to manifest and track cannabis that’s moving through the state. But as Justin said, I think there’s a provision that creates kind of a safe haven for those states that have not legalized cannabis to be able to transport cannabis through that state. And so I won’t get into anymore because I have so much more to cover with you. But again, I think we’re moving in the right direction in how we’re going to respond to that. And we’ll have time to go through that with you.

Yesterday, our staff, Justin, Kathy, Chris, Bruce, and then Julie from communications did a webinar for an hour and a half on the cannabinoid bill that we have. And I thought it went really well if you were able to listen in on it. It is recorded, so you can go back and listen to it. But I think some of the comments and the questions we got in the latter half showed that people certainly have questions around it. But I think they appreciated the work that the staff did to really bear down specifically to the specifics of what the intended purpose of that bill is. I think Justin had said this morning, we’ll put a meeting together with a small group that worked on that and figure out where we want to go with some of the input that we got and then obviously come back to the Board to make sure you’re comfortable with where we end up with that bill.

Thirdly, the enforcement had their In-Training [In-Service] conference last week in Chelan, had a great turnout. It was a really good meeting, Tony and I and folks from Licensing and from HR were there. It went very well. David, as stated earlier, you did a video that was appreciated by our Enforcement Division. Gordon Graham, if you’re aware of him, does consulting on risk management, and he was the

first day and it was very good. And I've heard Mr. Graham before. The principles are all the same but the stories are a little bit different. But it was, I thought, a really good way to open their conference.

Secondly, thank you, Ollie for helping us in the interview process for a Diversity, Equity and Inclusion (DEI) manager. We have selected a person and you're aware of that. And this day or tomorrow, we'll announce who that person is. And I just want to thank Ollie and the staff that helped us through that long interview process. We've also began the interview process for Sara's position, the Public Health and Education Liaison, will be doing a second round in the next week. And so we're close to making a decision there. Just wanted to share that with you.

Last Friday, I was on a panel with Representative Kloba, who's Chair of the House Commerce and Gaming Committee, Sheri Sawyer, the Governor's Senior Policy Advisor, and then Michael Corella, who I think is a lobbyist for NCI, which is the National Cannabis Industry association. It's been around for about 11 years. It's a trade organization that represents multi state licensees across the country. And the topic and the issue was preparing for federalization. And so we all talked a little bit about what are some of the changes that need to occur in the state to prepare for that. And then more importantly, Michael and others talked about the strategy or the lobbying that will occur on that bill and the work that they've been doing. And it was about an hour and 15 minutes but it was a good panel to be on. A lot of good questions.

I know that David and other staff were at the Cannabis Alliance annual meeting I think the day before. And so we were well represented as far as the LCB in that meeting.

I'm doing a cannabis podcast with Bruce Turcott, our Assistant Attorney General (AAG) tomorrow. There's a group of state AGs called the Cannabis Alliance and they're the AAGs that work in all the legal states that formed about the same time that CANNRA did. And they have podcasts and webinars that they do for the lawyers around the country. And, Bruce and I've been asked to do a podcast with them tomorrow.

As you know -- we've been in the process -- the Governor mandated that by October 18, all of our state employees must be fully vaccinated. Obviously, there's a religious or medical exemption that we're working through with some of our employees who have asked for that. If they do meet the exemption, then we have to find out whether we can provide them with that accommodation, which is difficult for some of the positions that we have. As you know, in our agency, but just so you're aware, out of our 341 headcount that we have in our agency, 253 have been verified as fully vaccinated. That 17.43% (sic). And hopefully in the next couple of weeks, we'll see that significantly increase. But just wanted to let you know that, like all the state governments, we're working through that issue with our own employees. And so with that, Mr. Chairman and Board, if you have any questions for me, I'm available.

Chair Postman: Any questions for the Director? I see none.

Rick, just two quick things for me. One, can you have somebody forward me the resume of the DEI manager selection? I'd be interested to see that.

And, attaching that banking bill was an interesting strategy. But I'll bet the store that that does not survive the process since the sponsors, as you mentioned, of the legalization bill, think it would be a bad thing to liberalize the banking laws before decriminalization. And so the House just keeps trying but I can't see that that's going to survive the process.

Mr. Garza: Well, just to prove how small a world it is, Mr. Chairman, guess who chairs the Armed Services Committee, who allowed the amendment? Even though some people like you say that it was outside the scope of the defense bill.

Chair Postman: Well, that's good. He's taking care of his constituents, too. I mean, we're all for it. We've got to be realistic. And that is one of the easy things that would happen I think with a national bill. You couldn't do that national bill without liberalizing the bank laws. So thanks for that.

Okay, I think that's it. Thank you. I appreciate that. And that brings us to our last item, which is Executive Assistant and Board member reports. Dustin, anything to share today?

BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS

Dustin Dickson: Nothing for the good of the order, no. Thank you.

Chair Postman: Great. Thank you. Member Hauge, anything to share?

Member Hauge: Well, I feel like I should give you a report on what I did over my vacation. I did not travel to visit family. I went from detection to diagnosis to excision of a cancerous tumor in the last three weeks. Prognosis is just fine. Follow up is still being determined but I'm not in any danger. It's a bladder cancer, which is treatable and has been treated. But I wish I would have been able to go see my kids instead of doing this.

Anyway, with your permission, I will skip the litigation review this afternoon, but I will be on board for the Board meeting tomorrow. We'll be getting back into the swing of things here starting from this point on. I really appreciate the support I've gotten. Dustin has been outstanding in keeping in touch with me. I appreciate the report here the work that Justin Nordhorn has done. What we're doing is outstanding and I appreciate the support you all have given me. Thank you.

Chair Postman: Absolutely Thank you. And I'm confident it doesn't violate the open public meeting act that we've all been sending you our good thoughts. So, we'll just go ahead and put that on the record. Thank you, and let us know if there's anything more we can do. Member Garrett, anything to share today?

Member Garrett: No, nothing to share.

Chair Postman: With that, we will adjourn the Board Caucus meeting for September 28th. We'll see you tomorrow for the Board meeting. Have a great afternoon.

Meeting adjourned at 11:04 am.

Minutes approved this 19th day of October, 2021.



David Postman
Board Chair



Ollie Garrett
Board Member



Russ Hauge
Board Member

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