



Board Caucus Meeting

Tuesday, January 4, 2022, 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

Rick Garza, Executive Director
Kathy Hoffman, Policy and Rules Manager
Jeff Kildahl, Policy and Rules Coordinator

APPROVAL OF MEETING MINUTES

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

SECOND: Member Hauge seconded.

ACTION: Chair Postman approved the motion.

BOARD MEETING PREP AND RULES UPDATE

Kathy Hoffman: Great, thanks, Chair Postman. Good morning, board members Garrett and Hauge. I'll start with alcohol. For our axe throwing rules project, conceptual draft rules have been completed. There's a few finishing touches that need to happen to those, but we do have a "listen and learn" session scheduled for January 27. We're looking forward to that. Messaging should go out next week through general GovDelivery, like we typically do. With respect to the CR 101, we received three comments. That comment period closed on November 19 but we continue to accept comments. And there haven't been any more than those three, that really were just largely in support of allowing axe-throwing in Washington and then giving reasons why, so on and so forth. Any questions on that before moving to the next? Okay.

With respect to general rulemaking, Robert and Jeff are working on the electronic service rules. There have been a couple of internal meetings to scope that project, to make sure we're touching on all the right rules and then forming the CR 101 for that project is going to be very narrowly scoped. But the impact of adding an electronic function may cross more than one rule set, so we want to make sure that we're getting —I should say rule sections -- we want to make sure that we're hitting everything that we need to in that work. The CR 101 should come to you on February 2, so relatively shortly. And then, based on that timeline, we're planning on bringing a 102 by March 15. Because it is a really technical rule project, we really don't see that there's going to be a whole lot of controversy around it, and its value added. So a lot of efficiencies, I think, can come from that rule project. Any questions on that one? That's pretty straightforward. Go ahead, Chair Postman.

Chair Postman: One quick one. So, are there any external government partners? Do we need to deal with the Office of Administrative Hearings (OAH) or anybody like that to make sure...

Ms. Hoffman: I'm not sure yet. And I know, Jeff, can you pop on for a minute? Is that something you have talked about in the project team for this yet? Have you gotten to that point yet?

Jeff Kildahl: No, we haven't really thought about the interplay with OAH if that would affect their processes, but that's something that we're certainly aware of.

Chair Postman: ... and I don't know if it does, but since they're our partner -- Tinaya Smith and Marie Atse probably can help us to on that front. Great, thank you.

Mr. Kildahl: Thank you.

Ms. Hoffman: All right, ready to move on to cannabis?

Chair Postman: Definitely.

Ms. Hoffman: As you know, quality control rule CR 102 was successfully filed after the last Board meeting. Hearing is still set for February 2. Jeff, correct me on this, I believe we've only received one comment.

Mr. Kildahl: We've received I think seven so far. A number of them have come directly to me instead of to the rules inbox. But I believe we're at seven comments that really are directed at the rulemaking.

Ms. Hoffman: And do you have a sense of those comments?

Mr. Kildahl: A couple of comments were about testing for other substances like radioactive isotopes in eastern Washington. There was one comment about testing for benzene, which we already do. That's part of the current rule and that will continue in the proposed rule. There was a comment concerning possible delays to getting product tested in the labs because there are fewer labs that perform pesticide testing rather than just the panel by 502 testing. That comment came from a producer. That's kind of the general gist of the comments we're getting.

Ms. Hoffman: Thanks for that, Jeff, and I'm still on track to bring final rules to you on March 2.

Chair Postman: Great, good. Again, as we said, to respond to what Mr. Kildahl just said, I hope the labs are watching and they all know it's coming, right? So, it's probably a good business to get into because it's going to be a requirement. I understand that today there's not that capacity that the producers would like, but I sure hope that that by the time this becomes final that it's a better market out there.

Ms. Hoffman: And Jeff remind me, remind all of us, I guess, I think there are five labs that can do the I-502 suite of pesticides, at this point right?

Mr. Kildahl: Yes, it's currently five.

Ms. Hoffman: Okay, so about 50% or roughly 50% or less.

Mr. Kildahl: I believe there are 11 labs and five can do the pesticide testing currently.

Ms. Hoffman: Okay, Thank you. All right, so if there are no other questions on that, I'll move on to THC compounds.

I will bring the CR 103 to you tomorrow for adoption and send the package out. I think it was in the middle of December that I had that package ready to go. And you might have noticed there were only two comments received, one asking us to change the word "may" to "must"; and the Board's ability to determine whether or not they were going to prohibit the entry of the product into the market. So we didn't make any rule changes based on that suggestion. The Board needs flexibility to be able to make those kinds of decisions and decide on what agencies they will work with in making those decisions. That's similar to what we did with implementing House Bill 2870 and the THC vapor product rules. Anyway, a second comment was from a hemp producer indicated that they were selling THC or that they were selling the D8 or maybe THC-O perhaps from their hemp retail establishment and were opposed to any sort of restriction on THC compounds, regardless of origin.

Chair Postman: Selling into the I-502 system?

Ms. Hoffman: No. They're selling it from a hemp store.

Chair Postman: Okay.

Ms. Hoffman: That letter is embedded in the concise explanatory statement, if you want to take a look at it. When Dustin publishes this package, it will be there as well for the public to see. So, some opposition from hemp retailers on any sort of restriction on THC compounds at all. Rules didn't change as a result of that comment, but I just wanted to bring it to your attention and make you aware that the letter is embedded in the concise explanatory statement. If adopted tomorrow, rules would go into effect on February 5. Any questions on that?

Chair Postman: None from me.

Member Hauge: Kathy, Jeff, are you at all struck by the lack of comments that we've gotten on this rule package?

Ms. Hoffman: That's a really good question. In some ways, yes. I also think that perhaps there's a lot of focus on a request legislation. I also think it sort of speaks to the amount of work that we've put into working on this issue while we were developing these rules. So, some of the questions I think that people might have had, what our intentions were, a - with this rule development project and developing request legislation, and everything else has gone into it -- it's been pretty clear what these rules were designed to do. And it also makes it abundantly clear what the agencies have patience for, with respect to restricting the entry of these products into our system.

Member Hauge: Yeah. It's concerning to me -- and I'm leaving soon -- but it's concerning to me that we're having, in this rule package, a great step forward to deal with an existential threat to what we'd set up, and we're not getting a whole lot of comments. And we also have lobbyists saying explicitly that they are going to forego engaging in the rulemaking process because they think they can get what they want better in the legislature, which is basically cutting us out of the process. I guess I'm just very concerned about that. The rulemaking package is first rate and I can't imagine a more thorough, preparatory process

to get to where we are now, which is the right place to be. But I have concerns going forward that this good hard work may be undercut by actions of the legislature.

Chair Postman: If I may, I share the concerns. We've been talking with legislators, the chairs of both the House and the Senate committees, had good meetings with the ranking Republican in the Senate side as well. I have no idea where we are in the end, but I think that so far, we're getting good support from leaders in the legislature in the cannabis area. They understand the existential threat that this is, as you put it. But, yeah, I think that it's going to be really incumbent on the agency staff as well to watch just as carefully as they can during the session. Because you know that it'll happen late in the session and it'll be sold as a small change or this or that, and so much work has gone into figuring out, how do you define this versus that, and what is the path for non-impairing products. And it should be dealt with in a dispassionate way as we have, with the technical expertise. So I would just say, yeah, I think your concern is a good one and I think we're going into this session with our eyes wide open about what is at stake and really trying to make sure that legislators have all their questions answered. Chris Thompson's been doing a great job communicating this. We've had a series of meetings as well as one at least written update he sent, I think to at least all committee members. Maybe even further than that. So, I don't have any magic answer other than, yeah, I think that concern is there and it's incumbent on us to be on our toes for that.

Member Garrett: Also, I hope that the cannabis industry is paying attention and know that their voice is going to be important during session, and to show up, speak up. That's going to be very important that the industry speak up on this. As an agency we can't do it alone.

Chair Postman: That's right. And I think that what we've come up with here is responsive to what we heard from large segments of the industry. I think what we're finding, and Ms. Hoffman could probably add a little more to this, but there is a split in the industry. And we're in somewhat of a middle ground. There are people concerned about these compounds who wish we would go a lot further in prohibiting outright. There's a small segment that want it more wide open to be able to create product in laboratories. So, I don't know that we're going to hear from a bunch of licensees who embrace this legislation fully, which – it'll be interesting. I think what we've done is we've taken an independent path here that I think creates the system going forward that does what we've heard from a majority of the industry that they want. But we haven't seen that sort of support yet for the legislation, so there's still time.

Member Garrett: And like I said, I think that's going to be important and that they fully understand what we've put together is getting the industry everything they want, that this is better than what else is out there trying to come against this.

Chair Postman: Well, that's a great point too, because we're not in a vacuum. There will be another bill that does not go in the same direction we are, that would allow the hemp derived THC, that we haven't seen yet, but I've been told to expect a bill on that side.

Sorry, Kathy we're you trying to say something?

Ms. Hoffman: Thanks, Chair Postman. I was going to say really, I think that Washington State's taken a -- I don't want to say neutral -- but sort of a middle ground, a balanced approach to this -- there are a number of other states that have outright banned delta-8, so they've taken a pretty extreme position. And so I think where we've landed with this is kind of in this middle position.

At the same time, I wanted to really highlight the public health and safety concerns here. And I just sent an email today to someone -- with all of the uptick that we're seeing in adverse event reporting about delta-8 overconsumption or accidental exposure on the pediatric side. And that's as recent as November. I'm still waiting for updated information. But this to me -- and I think to many others -- we've learned a lot from the E-VALI outbreak. And our agency is responding in a responsible way to delta-8 in the same way. I think this rule set gets us there, and hopefully the legislation will help us as well.

Chair Postman: And, some of us saw this email from the Hawaii agency yesterday. They're doing research on adverse impacts and have asked all states for what they're seeing because they're facing some of these same issues at that side.

Ms. Hoffman: All right. Anything else on that? Seeing none, I'll move on.

The last rule project for the cannabis side is social equity in cannabis. And I actually am starting to draft some rules. There's the, working on the social equity program itself, rules. We'll know more about that as licensing and I continue to work towards a draft conceptual product there. But I can tell you that I've taken the licensing rules and reorganized them pretty significantly, I will say. It reminds me a little bit about the work we did with implementing House Bill 5318. I reorganized it and it flows a little better now, I think. And we also removed some of the language that seemed to create barriers. Some of that was legalese, some of it was just words that I think we typically use and rule drafting are used to at least. And so we've done some significant work there.

We're also thinking about stakeholder engagement options. I do want to have a "listen and learn" session so that we can stay on track with this by the end of February. It's a very aggressive timeline now. But we want to be able to be as responsive as we can, as quickly as we can, and as inclusively as we can. So look for information on that in the coming weeks. All that is to say we're making great progress and I do anticipate that we'll be able to adhere to that aggressive timeline for this first effort at least.

So, those are updates for today. Any other questions, concerns?

Chair Postman: Not for me, no.

Ms. Hoffman: Thanks very much.

Chair Postman: Thanks. We'll see you tomorrow. I'll turn it over to our director Rick Garza.

AGENCY UPDATES

Rick Garza: Good morning board members, Chair Postman, Garrett and Hauge.

Actually I didn't have a lot to share but something that Russ Hauge had shared about the discussion that we were just having. We have wrapped up our contact with legislators as David said. We did that a couple of months ago, given the concerns that we were hearing about legislation that was out there, not only to reorganize the Board, but contrary to the work that we're doing on our cannabinoid legislation. So I just want to assure you, as David has, that we've been in numerous discussions with legislators the last couple months, especially in the last month, to make sure they understand our bills, and understand some of the concerns we have about some of the bills that may be coming our way. And pretty much covers the gambit in the way that both Ollie and Russ have described it, and David and Kathy and others.

So I just want to be sure that you're aware of that that's happening and in discussions with other industry members on the cannabis side. So just wanted to add to the discussion that you had that David had shared about needing to make sure that we're in really close contact and we're looking forward to the discussion on our bills, which even the first one may be heard next week or certainly the second week. So I think we're making great progress in discussions with legislators to understand where we are, especially on that cannabinoid bill. Any questions with respect to that?

Chair Postman: None that I see.

Mr. Garza: The only thing I would also add internally is that, as you may be aware, and we talked about maybe the last time is that the Governor's Office had asked regarding the "road to recovery", and that agencies begin to open up their buildings. We were looking at doing that on January 3, and then, during the Christmas holidays, the Governor's Office made it clear, given the variant, that we would stall and wait to do anything until February. I suspect given what's going on with the new variant that it would not be until probably through winter before we would consider reopening the building to the public. I just wanted you to be aware of that. There should have been emails that you received from Tony, our deputy that shared that.

Frankly, I don't have much more, Board members. So I'll take any questions that you might have.

Chair Postman: I know I asked you this yesterday but we haven't seen a hearing scheduled yet or we don't know for sure on the THC bill, right, other than just we expect it early in the session.

Mr. Garza: Yeah, I think that's right, David.

Chair Postman: Okay.

Mr. Garza: I know the schedule comes out -- it has to be confirmed today to be out on Thursday for next week. So I don't know that we'll make it for next week but it's possible that they will be. But as you know, in the meetings that we've been in with legislators, we're getting really good support for it. So that's great.

Chair Postman: When that does get scheduled, if you could just have someone let all three of us know.

Mr. Garza: Yeah, I'll have Chris do that.

Chair Postman: All right. Any other questions or comments for him? Seeing non, thanks, Rick.

Mr. Garza: Thank you.

BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS

Chair Postman: And that takes us to Board and executive assistant reports. Dustin, I'll check with you first. Anything to report in the new year?

Dustin Dickson: Nothing additional for the good of the order. I think we're set and ready to go. Board meeting tomorrow, busy week again next week with Caucus and EMT. It's a busy month with lots of public meetings but nothing additional outside of that.

Chair Postman: Okay, great. Thanks. Anything from members to close this out? Member Hauge.

Member Hauge: First, may I be excused from Lit Review this afternoon? I've got a doctor's appointment I've got to get to and it would be difficult if I had to --

Chair Postman: Absolutely.

Member Hauge: Thank you. Appreciate that.

Chair Postman: We reserve the right to hold any difficult cases for when you come back like you did last time, but yeah, no problem at all.

Member Hauge: I'd be happy to help wherever I can. I really appreciate the consideration.

Next, under the heading of informed healthcare gossip, as you know, my wife works at a big hospital in Tacoma. And their caseload of COVID hospitalizations has doubled in the last few weeks and there is no sign of it slacking off right now. And the secondary effect is that so many health care workers now are testing positive that has put the hospitals at a real disadvantage. And of course, the most seriously affected are the unvaccinated. But still, there's enough of them with this new variant that it is overwhelming. And my wife would not, I think, appreciate this, but she's really concerned. This is a big deal right now.

Chair Postman: Yeah, thanks for sharing that. I was just saying this morning, unlike any other point in this pandemic, I hear from somebody every day who's got it. It used to be you would know somebody who knew somebody. And it is, they say, not as deadly as the Delta variant, but it clearly is dangerous and is making people sick. And I know Thurston County is having some of those same hospital capacity -- yeah.

Member Hauge: My sister and her family got together Christmas Eve and it turned out to be a spreader event. And the kids got sick. They recovered but she being of an age similar to mine has not, even though she is vaccinated. So it's a big deal.

Chair Postman: It is. And vaccine and boosters is the first thing and then being mindful of those gatherings, which over the holidays I know was hard for everybody to resist. I did some too, but small. But yeah, with no end in sight, I'm afraid. All right. Member Garrett, anything else we need to discuss? No, okay. We will see you both tomorrow for the Board meeting then.

And with that, we will adjourn the Board Caucus meeting for January 4, 2022. Have a great day, everybody.

Meeting adjourned at 10:31am.

Minutes approved this 11th day of January, 2022.



David Postman
Board Chair



Ollie Garrett
Board Member



Russ Hauge
Board Member

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