



Board Caucus Meeting

Tuesday, August 30, 2022, 10:00am

This meeting was held in a hybrid environment

Meeting Minutes

CAUCUS ATTENDEES

Chair David Postman
Member Ollie Garrett
Member Jim Vollendroff (excused)
Dustin Dickson, Executive Assistant

GUESTS

Chris Thompson, Director of Legislative Relations
Kathy Hoffman, PhD, Policy and Rules Manager
Audrey Vasek, Policy and Rules Coordinator
Jeff Kildahl, Policy and Rules Coordinator
Robert DeSpain, Policy and Rules Coordinator
Rick Garza, Agency Director

At 10:00 am, Dustin Dickson announced that the meeting lobbies were open and the recording had begun. He added that the cameras in the room were not working, and that Chair Postman would not be visible to those observing online.

At 10:00 am, Chair Postman convened the meeting and informed that Member Vollendroff was excused on leave.

CANNABIS COMPACT REVIEW

Chris Thompson: Good morning, Mr. Chairman, Board Member Garrett, and others. Pleased to be with you this morning. I hope I'm coming through okay.

Dustin Dickson: Yes.

Mr. Thompson: I had planned to cover a little bit of the process for Tribal compacting upfront, primarily for the benefit of Board Member Vollendroff. Since he isn't here today, I'll kind of cut to the chase.

In terms of the process, starting with a federally recognized Tribe requesting to enter into discussions to develop a cannabis compact, we start with our template. Then we proceed from there negotiating with the Tribe involving our assistant attorneys general, our Tribal compacts team, as well as myself as the Tribal liaison, convening and coordinating that process and occasionally where necessary, conferring and consulting with Department of Revenue and the Governor's office. So, in terms of process, that's how this works. We have currently 20 completed Tribal cannabis compacts.

The Hoh Indian Tribe proposed compact will be before you tomorrow at the public hearing. That proposed compact is quite similar to what we find in our template. The template and those provisions and language have been previously vetted and approved on our side so it accelerates the discussions. The Hoh

proposed compact would authorize that Tribe to engage in activities, including retail production and processing of cannabis, cannabis research and a testing lab. Not that the Tribe will necessarily engage in all those activities, but the compact would authorize them. As I said, in most regards, this proposed compact is quite similar to what's in the template so I'll emphasize where there are differences.

One important difference is this includes new language on a whole new section – the dispute resolution process – is replaced with new language developed by Leo Roinila, our Assistant Attorney General with Indian Law and Tribal Affairs background. One of the key differences is that although most compacts do not include provision for binding arbitration, this, our now preferred approach does, although it provides that arbitrators cannot determine questions of law. So that is an important carve out, but we think the binding arbitration strengthens the partnership and the process.

In addition to that there is another I would say significant difference from the template, which was developed before the state moved toward terminology of cannabis rather than marijuana and the Tribe was willing to make that shift in this document. So, it is throughout referring to cannabis rather than marijuana.

It includes the Most Favored Nation Provision, which most compacts do, but it's not in the template, so that is why I mentioned it.

And there are a few areas where some updating is necessary because our template is a little behind where we currently are. The template still refers to the traceability system, for instance. So, we update that language here for the CCRS as well as the new time cycle for reporting a weekly rather than daily.

Testing lab accreditation has undergone some changes. That language is corrected to reflect the coming system that will involve multiple state agencies in the process of accrediting testing labs and overseeing them.

The compact also prohibits drive thru service at retail. That is an important issue for the U.S. Attorney's Office and something they watched closely, so we ensured that provision was included.

Then one other one other area where there is a departure here that is important and a little bit complicated and a little grammatical, so please bear with me. This compact includes "the comma". Some of you may know what I mean by that, but I'll explain, bear with me. When Tribal compacting was authorized by the legislature back in 2015, through House Bill 2000, the bill as passed by the legislature and signed by the Governor, did not include a particular comma in a particular place regarding tax exemptions. When that bill was codified by the code reviser, they inserted this comma and put it in brackets and the LCB has, for at least several years, not recognized that comma as part of law because it originated with the code reviser. The import of that is that without the comma, and I'm simplifying a little bit, there is, wherever attorneys are involved, multiple interpretations are possible, right?

The most straightforward reading of the statute and our agency's position has been without the comma, there are two categories of sales that may be exempted, if the Tribe chooses, from the Tribal cannabis tax. With the comma included – if you read it with the comma included – there are three categories of exemption. That is a short description of the problem.

In the most recent legislative session, the legislature passed Second Substitute House Bill 1210. That bill changed the terminology in state statute from marijuana to cannabis. It also removed the brackets and placed the comma in statute, clearly and legitimately, in our view. The agency shifted its interpretation of law. We are now recognizing three categories of exemption, as has been argued, was all in there all the time by some of our Tribal partners. We now take that position so the types of exemptions that are

allowed under statute, are first sales to Tribal members, Tribal enterprises, the Tribe itself, or Tribal member businesses. Second, transactions that would otherwise be exempt from state cannabis taxation under state or federal law. The example here would be medical patients, for instance, an exemption is provided in state law for that. Then third, and this is the new one, category of recognized authority to exempt from tax, cannabis grown produced or processed within Indian country. We appreciate the legislature clarifying the ambiguity in state law and importantly provides for, I would argue, a fuller recognition of Tribal sovereignty. It also removes from the discussions and the negotiations in the future with Tribes, one of the more contentious issues that has bogged down progress in a number of contexts where we're trying to negotiate a compact with the Tribe. It will smooth the pathway out in the future around this issue and possibly also help us improve somewhat our relations with our Tribal partners. Otherwise, the Hoh Indian Tribe proposed cannabis compact is consistent with compacts that you have seen before, and approved, and it aligns closely with our template. In a few important areas we think it takes us to the next level where we're hoping to move toward with other Tribes as well, such as the dispute resolution provisions. I will stop there and if there are any questions, I will see if I can answer them.

Chair Postman: Thanks, Chris. First, thank you, you and Leo have done a really good job bringing a couple of these to agreement and I really appreciate the work. The comma is easy to laugh at a little bit, but it really has been important to a lot of people. I agree, it is good that we have that clarity. It was sort of, some days, almost a Talmudic or Jesuit debate about what it could mean in the brackets or not. I just am glad it is clear.

Two questions, I think, one on the dispute resolution process, can you just explain for those who are listening, when you say "cannot decide question of law", what is something that then could go to binding arbitration and be decided there?

Mr. Thompson: Basically anything that would be a question of fact, and whether the compact is being correctly implemented and overseen. If there are disputes about what actually happened in a given situation or through a given process, that could go to arbitration, but questions of law, you know, "what does a particular phrase in a statute mean", for instance, that could not go to an arbitrator for decision.

Chair Postman: So in this case, if we want to use the example of the comma, an arbitrator would not have been able to decide what was meant by a comma in a bracket that was put in by a code reviser, but could decide whether or not, you know, the proper amount of money was collected once that had been settled through another purpose. The factual basis of the tax collection or recording could be whether or not that comma required it could not be decided by an arbitrator.

Mr. Thompson: Exactly. Well put.

Chair Postman: Then I had another question. I think this is the first compact we will get signed, we believe, that has the clear interpretation of the comma, right? Will it be this one, with the Hoh?

Mr. Thompson: Yes.

Chair Postman: Okay, and then others to follow, we expect?

Mr. Thompson: Yes, there is another compact that has been negotiated. Those negotiations have concluded, and we are awaiting signed original copies from the Tribe to bring that before you for action as soon as we get those documents from the Tribe. There is one other in the queue, you know, ready to roll, I think.

Chair Postman: Once we decide this one tomorrow, it goes to the Governor for his signature, and that's the final?

Mr. Thompson: That's correct. Once the Board and the agency director sign off, then we will deliver it to the Governor, and when Governor Inslee puts his John Hancock on there, and dates it, then it is in effect.

Chair Postman: Right. Okay. Any other questions for Chris? No, okay, great. Thanks, we'll see you tomorrow at the Board meeting, Chris.

Mr. Thompson: All right. Thank you.

Chair Postman: Good work, thanks.

Now we are going to go to additional prep for the meeting tomorrow along with the rules update, and I will turn it over to Dr. Kathy Hoffman. Good morning.

BOARD MEETING PREP AND RULES UPDATE

Dr. Kathy Hoffman: Good morning Chair Postman and Board Member Garrett. We have a lot of material to cover this morning, because we have quite an agenda for the Board meeting tomorrow.

In terms of rules coordinators presenting this morning on what they will be sharing, we will just follow the agenda that we are relying on for tomorrow's Board meeting. But before we get started, I just wanted to say again, and this is something that we discussed in the last caucus that we were in together. We do have a number of rules petitions that are going to be up for consideration tomorrow. If our recommendations are accepted, that does mean that we have several projects that might begin the rulemaking process. But I want to say that that rulemaking process may not result in rule revisions, and it also may not happen immediately. We do have several other works in progress right now, and so we will triage these moving forward, but just wanted to offer that caveat and ask if there's any questions even though I know we discussed this previously.

Chair Postman: I'm good with that. Hopefully we all understand that it is an opportunity when we accept it. If we were to accept one, you have that discussion and allows you and your team to engage with stakeholders and others; have those conversations and then we reach a threshold decision about whether we want to move forward, right?

Dr. Hoffman: Correct

Chair Postman: I think generally we did in the past, and so people may expect that, but given the large number we of petitions submitted, and I also think just a realization on the part of many of us, there is value in having that discussion, even if we do not move to formal rulemaking. Am I getting that right?

Dr. Hoffman: That's absolutely correct.

Chair Postman: Yeah, great. Okay.

Dr. Hoffman: All right. So, with that, and I'm just going to, as I said, we are going to follow the agenda that will be presented tomorrow. We will go ahead and start with Audrey. That is agenda item A, and I'll hand it over to you. Thanks, Audrey.

Audrey Vasek: Thanks Kathy and good morning, Chair Postman, Board Member Garrett. I will give an abbreviated version of this presentation today since I know we have already met to brief this previously.

Tomorrow I will be presenting the staff recommendation on the rule petition the Board received on July 8, from Brooke Davies on behalf of Washington Cannabusiness Association. This is the petition that requests the Board conduct rulemaking and stakeholder engagement to update WAC 314-55-083 and 087 to allow cannabis licensees to use cloud storage options for certain record keeping requirements. The issue presented by this petition is whether the Board should initiate the rulemaking process to consider allowing the option of cloud storage in lieu of, or instead of, physical on premises storage for the record keeping required in those WACs.

For background, under RCW 69.50.342 the Board has statutory authority to create rules regarding record keeping and security requirements for cannabis licensees. Under the current rules, licensees are required to keep and maintain most types of records on their licensed premises for five years. There are different record keeping requirements for visitor logs which have to be kept on premises for three years, and surveillance system recordings which have to be kept on premises for 45 days.

While storing those types of records in electronic or digital format in the cloud is not prohibited by rule, licensees are required to keep and maintain physical hard copies at their licensed premises so they can be made available for inspection. In discussing this request with staff from the enforcement and education division, finance division and IT division, we found there were several key issues to consider when evaluating the risks and benefits of allowing cloud storage in lieu of physical on premises storage, such as how will access to the records be ensured? How will they be preserved? How will they be secured, and how will they be authenticated.

To give you an example with respect to that first issue of ensuring access, in theory, cloud storage could make it easier for licensees and staff to find and access records and increase efficiency and transparency as Brooke Davies states in the petition, however, would also present certain other issues with ensuring access because records that are currently allowed to be kept on site would only be accessible through a computer or other device with an internet connection. So, if cloud storage is allowed as an option, it would be important to explore development of potential safeguards to mitigate the risk that staff would not be able to access records.

Similarly, with preservation, records kept in the cloud are not vulnerable to the same risks as records kept on site. They will not degrade due to onsite storage conditions, for example, but there are risks with cloud storage since it does rely on physical computer servers that are located elsewhere and basically outsourcing the storage. In some types of records might be handwritten, which is often the case in talking with staff for cannabis licensee records such as pesticide application, those are often just written by hand. Agency staff find it might be beneficial to explore preservation requirements such as either backups for these online or cloud-based storage or maybe even requiring preservation of certain original handwritten items.

There are different security risks for cloud based storage and we may also need to explore developing potential minimum cloud storage security requirements. With authentication, electronic records, digital records, there is a concern that they are more easily altered than paper records. For that reason, as well as if cloud storage is considered as an option, it would be important to explore developing ways to verify authenticity of a record.

So, even considering all those risks and benefits, the staff recommendation is to accept Brooke Davies' rule petition request initiating the rulemaking process as requested in the petition which would allow the

agency to begin collaboratively working with stakeholders and any interested members of the public to explore allowing cloud storage as record keeping, perhaps not just for cannabis licensees, but also other industries: alcohol, vapor, tobacco.

That concludes my presentation, and I am happy to answer any questions.

Chair Postman: I do not have any on this one. Member Garrett, you have got a question?

Member Garrett: I don't have any questions, but I am glad this is going to be open for discussion.

Chair Postman: Is there more on your agenda Ms. Vasek?

Ms. Vasek: I think I will save that for later if we are going with the agenda. I do have some briefing on the public hearing for the 5940 implementation. I will save that and turn it over to Jeff for his petition. Thank you.

Jeff Kildahl: Thank you Audrey and good morning Chair Postman and Board Member Garrett. The first rule petition response I will present this morning is a rule petition we received on July 11, 2022, to remove the 5000 parts per million residual ethanol limit for cannabis concentrates that is in WAC 314-55-102.

We received this petition on July 11, 2022, from Colum Tinley of Discovery Garden, a tier-two cannabis producer/processor licensee. Mr. Tinley submitted the rulemaking petition to request that the agency initiate rulemaking to amend the rules in 314-55-102 to remove the limit for the amount of ethanol solvent that may remain in cannabis concentrates after processing. This numerical limit was recently set in rule at 5000 parts per million. The petitioner asks for the rule change and asserts that there was no limit on residual ethanol before the rule amendments took effect. The petitioner provides a number of assertions about technical problems related to producing cannabis concentrates, with residual ethanol levels below 5000 parts per million, and other drawbacks and products with lower residual ethanol levels. Although the limit of 5000 parts per million for residual ethanol took effect on April 2, 2022, another rule section WAC 314-55-104, limited the amount of residual ethanol allowed in cannabis concentrates since rule amendments were made to that section in 2015. WAC 314-55-104 requires all residual ethanol to be removed from cannabis concentrates. The amendment to place the limit that was made in Section 314-55-102 was completed for consistency with this standard, and it was done to establish a limit of 5000 parts per million that is consistent with the residual solvent levels for other class-three solvents. This change did not amount to a substantive change to the limit requiring the removal of all ethanol. I will be presenting the petition response tomorrow with a staff recommendation to deny this petition.

That completes my presentation for this one. May I answer any questions?

Chair Postman: None for me, not seeing any others, thank you.

Mr. Kildahl: Thank you, Chair Postman.

The next rule petition to review is in response to a request to update and streamline the sample requirements in WAC 314-55-096. We received this petition on July 8, 2022, from Vicki Christophersen of the Washington Cannabusiness Association, and this petition requests rulemaking to update sample rules in WAC 314-55-096, a rule section concerning cannabis product samples. This section was last updated with substantive changes in 2018. This WAC establishes rules for labeling and transporting samples of usable cannabis, cannabis infused products, and cannabis concentrates, and it prohibits licensees from providing free samples of cannabis products to retail customers. The rule also designates how cannabis licensees may provide limited free samples of cannabis products to other licensees for negotiating sales,

for educational purposes, for internal quality control sampling, and also allows for sample jars with screen lids that can be provided to retail licensees for retail sales samples. In the petition, Miss Christophersen states that the current rule is cumbersome and costly to licensees without benefiting public safety, and believes that updating these rules would allow greater efficiency and cost savings for licensees while increasing transparency and improving safety.

The petitioner suggests three possible subjects for rulemaking: amending rules to allow producer processors to add on additional product units to any retail order as educational samples; amending rules to place the existing monthly educational sample limits on producer processors instead of retail licensees; and the third, removing internal quality control sampling restrictions. From the staff perspective of public health and safety, staff identified some general impacts and possible risks that could result from these suggestions, including increased sample sizes and larger numbers of educational samples being accepted by retailers. Staff also identified some possible risk of changing the requirements for internal quality control samples. The agency is interested in understanding these perspectives and engaging in a cooperative effort to explore mutual interests, including greater efficiency and cost savings for licensees.

We will be making the recommendation tomorrow to accept this petition for rulemaking. That concludes my presentation. May I answer any questions?

Member Garrett: This is Ollie, are we going to see what other states are doing in this area?

Mr. Kildahl: I really have not done research into what other states are doing on this issue. That is certainly something I can look into today.

Chair Postman: Would that be part of the normal process, if we approve the petition? That would be part of what you do?

Mr. Kildahl: Yes, we certainly can look to CANNRA and other organizations and look to the rules of other states to see what the sample rules say and how they handle these samples within the industry.

Chair Postman: Great. If this one is approved by the Board, we should also look at changing the name, something about "educational samples" does not sit right with me. I understand that's the way it is for now. Okay, good.

Mr. Kildahl: They were intended for retail sales staff only. So perhaps they could be renamed, something to that effect.

Chair Postman: Or "marketing samples" or something. I do not want anyone to mistake this is as school program. The number one question I got when I announced that I was taking this job was do I get free samples. [laughter] We will just say for the record, the Board does not nor should it nor anybody at the agency. But yes, that has been the number one question.

Mr. Kildahl: Okay, thank you Chair postman. Next, I believe Robert is on the agenda.

Chair Postman: Correct.

Robert DeSpain: Thank you, Jeff. Good morning, Chair Postman and Board Member Garrett. Tomorrow I will present the staff recommendation on a rule petition the Board received from Crystal Oliver on July 6, 2022.

This petition requests that the Board amend WAC 314-55-015 to allow for an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors,

provided the person under 16 years of age is a child or grandchild of the named licensee, is not engaging in any work or active employment on the premises and does not possess any product associated with the production, processing, or sales of cannabis.

The issue presented by this petition is whether the Board should initiate rulemaking to consider an exemption to the prohibition of minors under 16 years of age on the premises of licensed cannabis producers and processors. Currently under rule, cannabis licensed producers and processor premises are restricted to persons at least 21 years of age or older. WAC 314-55-015(2) states all applicants, licensees and employees working in each licensed establishment must be at least 21 years of age. No one under 21 years of age is allowed to enter or remain on a cannabis licensed premises. The Board has a statutory authority to amend this WAC regarding the prohibition of persons under 21 years of age being allowed to enter or remain on a cannabis licensed premises.

The staff reviewed several risks and benefits, and I will go through them in more detail tomorrow. Considering these issues related to this prohibition, agency staff finds that opening up the subject for further public discussion would be beneficial. Initiating the rulemaking process as requested in the petition would allow the agency to begin collaboratively engaging stakeholders in any interested members of the public to explore the possibility of creating an exemption to this prohibition of minors under 16 years of age on these licensed cannabis premises. For these reasons, the Director's office staff recommends that the Board accept Crystal Oliver's rule petition request and initiate rulemaking proceedings to consider an exemption to the prohibition of minors under 16 years of age on cannabis licensed premises for producers and processors.

If you have any questions, I am happy to take them. Otherwise, I'll conclude this rule petition brief and move to the next one.

Chair Postman: Why don't you do the next one since it's related.

Mr. DeSpain: Chair Postman as you just indicated, this one's related. Tomorrow I will also present this staff recommendation on another rule petition the Board received from Crystal Oliver on July 6, 2022.

This petition requests that the Board amend WAC 314-55-015 to allow for an exemption to the prohibition of employees or contractors under 21 years of age on the premises of licensed cannabis producers and processors, provided that the person is at least 16 years of age, is an employee of a contractor engaged in construction, electrical, plumbing, HVAC or other, and is not engaging in work directly related to the production processing or sales of cannabis.

The issue presented by this petition is whether the Board should initiate rulemaking to consider an exemption to the prohibition of employees of independent contractors on the premises of licensed cannabis producers and processors, as required by WAC 314-55-015, provided the person is at least 16 years of age, is an employee of an independent contractor engaged in specific work and is not engaging in any work directly related to the production, processing, or sales of cannabis. Again, currently, under rule, cannabis licensed producers and processor premises are restricted to persons at least 21 years of age or older. This is the same WAC subsection 314-55-015(2) states that all applicants, licensees and employees working in each licensed establishment must be at least 21 years of age. No one under 21 years of age is allowed to enter or remain on a cannabis licensed premises. The Board has the statutory authority to amend this WAC section regarding the prohibition of persons under 21 years of age being allowed to enter or remain on these licensed premises.

Again, I will brief some of the issues that our agency staff discussed tomorrow during the presentation. Considering all of these issues related to the prohibition of minors under 21 years of age, agency staff

find that this subject should be open to further public discussion, and that that would be beneficial. Initiating the rulemaking process as requested in this petition would allow the agency to begin collaboratively engaging with stakeholders and any other interested members of the public to further explore the possibility of creating an exemption to this prohibition. For these reasons, the Directors office staff recommends that the Board accept Crystal Oliver's rule petition request and initiate rulemaking proceedings to consider an exemption to the prohibition of employees of independent contractors on the premises of licensed cannabis producers and processors.

I will pause for a moment. If you have any questions.

Chair Postman: I do not, not on these two. And, I do not see any others.

Mr. DeSpain: Okay.

Chair Postman: Go ahead and move to the next, you have another one for us, right?

Mr. DeSpain: I do, yes, Chair Postman, thank you.

Tomorrow, I will request your approval to file a CR 101 preproposal statement of inquiry regarding reevaluating current rules related to advertising and cannabis, as provided in WAC 314-55-155. Since the last substantive amendments to this section in 2018, cannabis advertising has rapidly expanded in scope and content across multiple advertising platforms. As a result, the LCB would like to consider creating new, amending, or repealing existing rule sections as necessary to update advertising requirements for licensed cannabis businesses. Revisions may also include some clarifying and technical updates to existing rule.

If approved, tomorrow, CR 101 will be filed with the Office of the Code Revisor. The LCB public web page will be updated, notice will be circulated to GovDelivery subscribers, and the informal comment period will begin. Notice will be published in The Washington State Register under WSR 22-18 on September 21, 2022. The informal public comment period will end on October 21, 2022. Based on our timeline, we anticipate bringing a CR 102, the proposed rulemaking to the Board for consideration on December 7, 2022. Our tentative target date for bringing new set of final rules to the Board is February 15, 2023.

I will pause and see if there any questions the Board might have.

Chair Postman: When we opened this one, and you know this is the agency's decision to this as opposed to everything we have heard so far, which was petitioned from stakeholders. On advertising, you were talking about amending, repealing. This process could include both essentially sort of tightening down on some things to be more restrictive and loosening others or just taking certain ones even off the books that we have sort of grown out of, if you will. We could go tighter or looser.

Mr. DeSpain: You are correct. Not with the same sub rule, of course, but yes, within this set of rules. The idea is to review it and reevaluate all of the rules contained in this rule set. We can go looser, we can go tighter, it just depends on what makes sense. First, internally, we are already having discussions. We are going to be having discussions with multiple divisions within our agency. We are also going to hopefully be having some stakeholder meetings as well later in the process. All of this is before the anticipated CR 102 date. So yes, we will have time and we also have the ability to, as I said, we can create new, repeal, or amend these sections as necessary. I think just getting the conversation started though, is important.

Chair Postman: Okay, agreed, thank you. All right.

Mr. DeSpain: Any other questions?

Chair Postman: No, I think we're good. Thank you, Mr. DeSpain, we appreciate it.

Mr. DeSpain: Thank you. For the next item on the agenda, I think we'll go back to my colleague Jeff.

Mr. Kildahl: Thank you, Robert, and thank you Chair Postman. Tomorrow morning I will also be presenting a CR 101 package, I will be requesting your approval to file the CR 101 preproposal statement of inquiry to allow for consideration of possible rulemaking to amend WAC 314-55-075 and WAC 314-55-010 regarding cannabis plant canopy.

This rulemaking may be needed to update and modernize rule language regarding plant canopy as it is defined in WAC 314-55-010(31). If we move ahead with this, we anticipate significant stakeholder engagement in the rule development process. And, we have extended the timeline for this project to compensate for the larger level of engagement.

If the CR 101 package is approved for filing tomorrow, we could tentatively bring a CR 102 to you for consideration on January 18, 2023, which would set a public hearing date of March 1, 2023, at the Board meeting. Under that timeline, the earliest we could bring a CR 103 to you would be March 15, 2023.

I will be presenting this package tomorrow and I would be happy to answer any questions about this CR 101.

Chair Postman: I am glad to hear we are going to go into it with that understanding for an extended period. I think this is going to be one of the more important ones that is on the list of everything we have heard. And I really do hope we have a lot of input, both internal and external. I will reserve my comments other than that, thanks. Any questions, Member Garrett?

Member Garrett: No, thank you.

Chair Postman: Okay, great. Thank you, Mr. Kildahl. Now I see Ms. Vasek is back to prep for the public hearing. Hello again.

Ms. Vasek: Thank you Chair Postman, Board Member Garrett. Tomorrow I will be providing a bit of background before the public hearing on the alcohol legislation, Senate Bill 5940 contract packaging services endorsement from breweries, wineries, and distilleries. I will provide a little bit of brief background today and save a longer discussion for tomorrow.

The CR 102 Rule proposal was filed on July 20, to implement Senate Bill 5940. This is the bill that created a new endorsement allowing breweries wineries and distilleries to contract with each other, provide certain packaging services such as canning, bottling, bagging, mixing, and repacking. To develop the rule proposal we held internal project team meetings, shared conceptual draft rules publicly, and considered feedback before filing the CR 102. In summary, this rule proposal creates three new sections and one new, excuse me creates three new rule section, amends one existing rule section. The new rule sections go into the distilleries, wineries and breweries chapters, and describe the endorsement, how to submit an application. The proposed amendments to the existing WAC 314-11-065 align existing rules with the bill by allowing licensees with this type of endorsement to keep other types of liquor on their premises as needed for contract packaging services. For example, a brewery could keep wine on premises if you are contracting for packaging between the two.

We have not received any public comments on our 102 proposals so far. public comment period opened on July 20 after the Board approved filing the 102 and will end the end of day tomorrow, August 31. If no comments are received tomorrow, and no substantive changes need to be made, then the earliest the

Board could consider adopting the final rules will be September 14. That would place the effective date on October 15.

Are there any questions?

Chair Postman: Not on this one, thank you. We will see you tomorrow. I do have a question for Dr. Hoffman if she is still with us. We have talked about this a little bit in the past, but that was a lot of stuff we just went through...

Dr. Hoffman: A lot of stuff we just went through, yes... [laughter]

Chair Postman: ...and it all is on you and your staff's plates. We have the two that we are initiating, and I see that you managed, they are kind of alternating that, you know, we have got the advertising December, 102 canopy January, 103 February for advertisers, back and forth. That does not build into that the petitions that we have got.

One, how are you going to do it all, and two, are you going to put together a calendar with, once we take action tomorrow and see what is approved, for example, here is when we will schedule different petitions for consideration because you can't do it all at once, right?

Dr. Hoffman: That is correct. And I really thank you for that question. We have developed a prioritization matrix – Justin and I have developed a prioritization metric. So we'll apply whatever is approved tomorrow in the way of row petitions, through our prioritization process, and then triage them in that way, looking at works in progress right now.

So, we've got social equity, the projects that Audrey is finishing, and then sort of strategically plan how we're going to address these in the future. The other thing that we need to keep in mind with this is that rule petitions will continue to come to us. So, we have to be thoughtful about how we assign these projects moving forward, so that there's enough capacity of staff to be able to respond to these petitions in the way that they did future petitions and then also be able to effectively and meaningfully lead this rulework moving forward. I hope that answers the question.

Chair Postman: It does. In the rulemaking that we initiate, if those ones are approved tomorrow, that does start clocks ticking, right, on those? The petitions are not the same case, right?

Dr. Hoffman: Exactly. And, again, when we file CR 101 that really just begins the inquiry process, so we don't have, for instance, compared to a CR 102, that, once filed, has a lifespan of six months unless action is taken. CR 101s more or less have an infinite lifespan. I think that's a fair way to say it, unless they are withdrawn, so we do have a little bit of flexibility there. But yes, the rulemaking that, if approved tomorrow will take precedence over the rule petitions, but we will find a way to work them into our portfolio of projects.

Chair Postman: Right, okay. Well, I certainly appreciate the team recommending approval for what is going to end up being a ton of work. Not shying away from it. So that's good.

Dr. Hoffman: I think there are some very interesting topics that were proposed. And in the rulemaking, or I'm sorry, in the rule petitions, and certainly some topics that are controversial to many, so...

Chair Postman: Yes

Dr. Hoffman: ...a lot of work ahead.

Chair Postman: Okay, great. Thank you.

Our next item is an agency update from Director Rick Garza.

AGENCY UPDATES

Rick Garza: Good morning, Chair Postman, Board Member Garrett. Just a couple of things I wanted to share with you.

First as you know, you approved three agency request proposals. And just to give you where we are on that timeline, the deadline for feedback from our stakeholders was the end of last week. We're beginning the process tomorrow of reviewing the feedback that we got on those three proposals. I know that Chris would like to have a final package ready by September 12, which is a little shy of one day of two weeks from today. And so, I want to make sure that you know that, once we've had a chance to look at that feedback, we'll be meeting with the Board members to walk through staff recommendations regarding that feedback and getting your approval. We'll probably need to do that next week, in order to give us time to have the final package put together on the 12th. I think it's due to the Gov's office by the end of that week. So just wanted you to be aware of that timeline in that work.

I don't think I need to go through each of the proposals. But remember, number one, we're seeking subpoena powers with respect to cannabis, just like we have for tobacco, vape, and alcohol. The second proposal is a revised version of the THC bill that we ran this last legislative session. And just very briefly, the aim of that proposal is to deal with the unregulated THC that we have out in the unregulated marketplace. An example of that is Delta-8 gummies. And again, giving proper clarity with respect to our state that if you sell anything that has amounts of THC, or is impairing that it must be sold through a licensed cannabis retailer. There's more to that. And I know you've got one-page summaries, but I wanted to share that. And then third, and not last is the proposal that we have with respect to social equity. And very briefly, the ability there for us to increase the number of retail allotments based on population increases and provide those to our social equity programs so that our applicants would have an opportunity to open more retail stores than we're currently looking at in the program that we have today.

And, as you know, since we're talking about social equity, that I believe that we're scheduled for the rules that are currently before the Board, to have a hearing on that, in the next couple of weeks, I want to say September 14, I could be wrong with that date. But that continues to move us forward with the program that we have today. Thank you, Kathy, you're shaking your head so I've got that date, right. And certainly, you know, sharing the challenges that we'll have and likely as we put the program into place very soon, we hope and so just wanted to share that with you.

Also, we'll have an EMT (Executive Management Team) in a couple of weeks from today or tomorrow with the Board and it'll give an opportunity for us to share more details of the work the divisions are doing and the agency is doing both operationally inside the organization, and of course, with the stakeholder work that we're doing. I'll also have Jim Weatherly, our DEI manager come in and give you an update. There's been a lot of work by staff and the PEAR team and the PEAR means the Pro-Equity Anti-Racism team that's made up of many of the employees of our agency in each of the divisions. We've been working on the work of the Office of Equity of the Governor's office right now, which is based around DEI principles, is they're putting together a five year strategic plan. And as part of that work, each agency has to create a baseline assessment. And Jim and many of the members of our team have been working at least one day a week on this for two months. And they're getting close to bringing that information to the

Office of Equity. I want to thank our staff for all the work, and Jim, that they've done around that, but just wanted you to be aware of that. Jim will have an opportunity to brief you on that work in a couple of weeks at EMT.

Also, Chris Thompson, our Legislative Director announced recently that he'll be retiring in the fall, which you should have seen yesterday a posted job announcement for that position and just wanted to be sure that the Board members are aware that we did that. Just so you're aware also and I'll provide more information in a couple of weeks, we had the Tribal liaison work being part of the work of the legislative director. And that came because we lost an individual who was doing that work along with rules work, and I had to put it somewhere and at that time, we put it in the legislative work and I want to separate those. So, I'd like to have the Tribal liaison position, sit by itself and working with staff just so you know, to determine the scope of work, how much work needs to be done, but I will share with you as I shared with staff this morning that much of the work of the Tribal liaison the last few years has been cannabis compacting and I think we're up to about 21 states, sorry 21 Tribes, that have compacted for mostly cannabis retailing. So we're getting to the close of that even though there are amendments that occur in time, there's probably only two more left. And so that gives us an opportunity to look at that Tribal liaison work that we do as an agency, which has been very limited at this time, the last few years getting those cannabis retail compacts signed. And I think it should be a lot more broad with our Tribes than it currently is. So I'll come back to you soon working on a position description with that, and just wanted you to be aware of that.

The only thing I else I would share because it was an external meeting, and so the Board is aware, Chandra Brady, our Director of Enforcement and Education, and I met with Tacoma City Councilman Keith Blocker, who has been meeting periodically with some of our retailers who were concerned about the robberies as you're well aware of the last six months in the year. And so we had an opportunity, Chandra and I, to brief him on all the work that the agency's done, and enforcement who is working with our retailers, just so you're aware, and Chandra will give you more information when we meet at EMT. Phase One was to assist those licensees that were most where we saw a lot or a larger percentage of robberies, and she broke it up into three phases to assist the entire state. We've decided to move forward with phase two and three, which allows us to go and assist those retailers that we hadn't gotten to before we finished phase one, and she'll give you more information with respect to the contacts that we've made.

That's what I've got today, and I'm here to answer any questions you may have. And then just reminding you that we'll have a very thorough and comprehensive discussion with you in a couple of weeks at EMT.

Chair Postman: Thanks for that. We'll make time, closer to when Chris leaves, to thank him more formally. But he's done really, really good work for us. And as I was talking to him earlier about work on the Tribal compacts to do both that and the Leg work has really been something so that is much appreciated by the Board.

Rick, I'm sure you heard our conversation leading up to this with that long list of rules, petitions and rulemaking. And just let, you know, anything that you think we need to try to make sure that work gets done without our staff being crushed under the weight of at all, be sure to let the Board know if there's anything we can do to help. I think we just want to make sure that everybody has what they need in terms of, resources, people power, etc., so we can keep churning through that, though, obviously, it's not all urgent, but we want to just make sure that if this new level of engagement on the rule petition continues, we're going to really have to be mindful of making sure we can support our employees.

Mr. Garza: Yes, I appreciate your comments Chairman Postman with respect to that. I Meet with Justin and Kathy regularly. And I think it's just, to your point, making sure that everyone understands the

expectations, and what we can, and what we complete, given the fact that I think in one month, we received five petitions for rulemaking, which I think is a record. I can tell you several years ago, it was not too often that we ever got petitions for rulemaking. And that has changed dramatically in the last year, as you can see, but even more so in the last few months. And that's probably partly because of the great work that our team and Kathy has done, and our stakeholders feeling comfortable bringing these petitions forward in the collaborative nature that we have in our rulemaking policy setting. So, while it creates a lot more work for us, it's a testament to the work that the staff is doing, that our stakeholders are comfortable bringing these petitions forward. But I think it's a great point you make that we've got to make sure we have the resources there and the staff there to help them complete that work and create, and let our stakeholders know what we can and can't do. I appreciate the comments.

Chair Postman: Great.

Member Garrett: And just follow up on what you're saying, Rick, I think it also has to do with the industry and how the industry is now – we've gone from jumping into something that was new to all of us to now being, operating for quite a while, to say let's now go back and take a look at things that we put into place not knowing what we didn't know that we didn't know, to then say “are all of these things now necessary or not necessary” and perfecting some of the things for the industry.

Mr. Garza: I think you're absolutely right and so that work will continue. It's not going to end, to your point, which is why we've got to make sure we've got the staffing that we need to do that work. And that's something that I'll be working with you and Justin and Kathy to make sure that that's there because you're right, it's a lot of work and appreciate the work of you, David, and Jim, in helping us with the policy and rule setting that we're doing. We appreciate the work that you're doing, Ollie with respect to social equity in the program that we're going to bring forward.

And so with that, I'll close. Thank you.

Chair Postman: Great, thank you. Okay, the last item on our agenda is Board Member and Executive Assistant reports. Dustin, anything to share today?

BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS

Mr. Dickson: Nothing today, Chair, thank you.

Chair Postman: Member Garrett?

Member Garrett: I have nothing additional.

Chair Postman: Okay, great. Nor do I.

Jim will be back tomorrow for the Board meeting, same time, same place. It likely will be a long one, a little longer even than today's discussion. So, we will see you and hopefully you'll be able to see us in this room tomorrow.

With that we'll adjourn the Board caucus for Tuesday, August 30, 2022. Thanks, everybody.

Meeting adjourned at 11:01 am.

Minutes approved this 24th day of May, 2023.



David Postman
Board Chair



Ollie Garrett
Board Member

Not Present

Jim Vollendroff
Board Member

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