COLORADO
Department of Revenue
Specialized Business Group—
Liquor & Tobacco

Physical Address:
1707 Cole Blvd., Ste. 300
Lakewood, CO 80401

Mailing Address:
Colorado Liquor Enforcement Division
P.O. Box 17087
Denver, CO 80217-0087

Liquor Advisory Group Marketplace Structure Subgroup

Meeting Minutes

May 18, 2023

Seat	Representative	Attendance
Colorado State Patrol	Joseph Dirnberger *Colorado State Patrol*	Present
Hard Cider Industry	Eric Foster *Colorado Cider Guild*	Present
Brewery (Large)	Bob Hunt *Molson Coors*	Present
Local Brewery (Small)	Karen Hertz *Holidaily Brewing Company*	Present by Proxy Chas Runco
Off-Premises Retailer (Large)	Kris Staaf *Albertsons Safeway*	Present
Off-Premises Retailer (Medium)	Jim Shpall *Applejack Wine & Spirits*	Present
Off-Premises Retailer (Small)	F. Seyoum Tesfaye *Franktown Liquors*	Absent
Local Spirituous Manufacturer	Stephen Gould *Colorado Distillers Guild*	Present
National Spirituous Manufacturer	Joseph Durso *Pernod Ricard USA*	Present
National Vinous Manufacturer	Anne Huffsmith *Nakedwines.com, Inc.*	Present by Proxy Alyssa Chavers
Wholesaler (Vinous/Spirituous)	Fuad Jezzini *Maverick Wine Company of Colorado*	Present

I. Welcome and Introductions

II. Subgroup Process and Expectations Overview

A. Review timeline of topics (see page 3 of May agenda).

1. Representatives from the Tax Division will be present at the June subgroup meeting to provide additional information on the subject of tax equity and collection.

2. *No additional input or amendments put forth on upcoming discussion topics*. Comments and additional considerations may be emailed to the division at dor_led_rulemaking@state.co.us.

B. Volunteer to provide subgroup updates at the June LAG meeting.

1. Bob Hunt will present the subgroup's discussion at the June LAG meeting.

III. Topic Discussion: Modifications to the 3-tier System

A. Discussion 1: Changes to off-premises tastings.

1. Proposal submitted by Jim Shpall on April 7, 2023.

a) Currently, tastings are allowed in the state of Colorado with no associated charge. These events are open to the public for anyone who is over the age of 21 years and not visibly intoxicated.

b) This proposal was drafted with the feeling that there are severe restrictions placed on when these tastings can occur and what items can be tasted. Five key elements were incorporated into the proposal for consideration:

(1) Allow any and all interested parties (i.e., manufacturers, wholesalers, and/or retailers) to pay for the product being tasted and any related costs associated with the tasting.

(2) All containers opened for a tasting must be removed or otherwise separated from items on the sales floor. However, if a container is opened for the tasting and the product remains in the container, employees may taste the product(s) for educational purposes.

(3) Allow up to 20 products to be available for tasting.

(4) Proper identification must be provided by the customer to ensure that all individuals tasting the product are 21 years of age or older. No one who is visibly intoxicated may participate in the tasting.

(5) Expand the daily time frame in which tastings can be conducted. The proposal suggests that the time frame and specific hours be left to the retailer's discretion. For example, if a customer walks into an off-premises retailer and wants to taste a product at 9:00 a.m., they should be allowed to do so before purchasing the product.

2. Overview of Discussion

a) The subgroup members expressed overall support for the proposal. There was robust discussion around the guidelines and guardrails that should be put in place with this proposal. Highlights of the discussion are as follows:

(1) The proposal feels permissive in that it opens the door for retailers to participate in tasting events at their decision, without being mandated one way or the other.

(2) Representatives from the breweries wanted to confirm that this proposal would incorporate specific volume limits (e.g., only XX ounces of beer or XX ounces of spirits) to prevent

overrepresentation from one manufacturer's products over another. The breweries expressed their desire to keep an even playing field and not have large manufacturers, who can supply more product, favored over small manufacturers.

   (a) Some members of the subgroup felt that volume limits defeated the purpose of the proposal and that retailers should be able to open as many bottles as necessary to serve consumers.
   (b) Small manufacturers agreed with the breweries that it's difficult to compete with larger manufacturers in the current market and emphasized that small manufacturers don't need more regulation and there is a need to facilitate better access to consumers to taste their products.
   (c) The division stated that while it appreciates the subgroup members not wanting overregulation, regulation exists to ensure public safety.

(3) The division asked for clarification as to how much expansion the proposal called for; for example, is the proposal seeking to expand the current 156 days a year limit to 365 days a year?
   (a) The proposal argues that the existing day limit is an artificial limitation and consumers will not know which days a retailer can or cannot offer them the option to taste products before purchasing. However, the proposal can be amended to incorporate limits around the amount of alcohol that can be tasted (e.g., no more than 8 items totaling no more than 1.5 ounces).
   (b) The retailers expressed that, with the passage of recent legislation, they are now in competition with grocery stores and this proposal aims to level the playing field.
   (c) The small manufacturers added that this proposal's purpose is to open consumer access to a variety of brands, with the idea of promoting local products that consumers may not be familiar with. Overregulating would undermine the proposal's intent.
   (d) The division's concern is the amount of alcohol that can be consumed during the tasting (e.g., a total of 1.5 ounces from 5 different products) when people are operating vehicles. The division feels this could result in a public safety risk, particularly with irresponsible vendors, the result of which would have an overall negative impact on industry members. The purpose of a retailer liquor store is for consumers to purchase alcohol in sealed containers to be then taken off the premises; the

store's purpose is not to allow consumers to drink multiple types of alcohol at any hour of the day, 365 days a year.

(e) Representatives from small manufacturers pointed out that 1.5 ounces is less than or the equivalent to a small cocktail. The controls that are currently in place (e.g., responsible vendor training) do work reasonably well and adding controls on tastings in a retail liquor store feels unnecessary. Additionally, the discussed limitations and controls don't currently exist in manufacturer tasting rooms; concern was expressed about losing existing privileges with the implementation of new controls.

(i) The division feels that this is comparing "apples to oranges" because tasting rooms with on-premise privileges are different from a retail liquor store. The division is concerned that this proposal is trying to turn off-premise liquor stores into on-premise establishments. The division is interested in finding a solution to this concern, but is worried about a retail liquor store having twenty products on-hand with a system set up to dispense beer, wine, and spirits for 5 samples to total 1.5 ounces. This is a lot for an individual customer to consume and therefore is a public safety concern. Public safety is one of the tenants of the Liquor Advisory Group and the division asks the subgroup members to be aware of this. There are ways to make this work but there are elements in the proposal (e.g., the allowed amounts of product tasting) that take things too far and the division is concerned about the potential for such allowances to backfire and result in harm to the public.

(ii) The division also commented that guardrails exist because it is an off-premises retailer; also, the on-premises establishments can longer sell fifteen bottles to-go anymore. Now that the executive order has been pulled, there are limits to the amount of sales that can be made by an on-premises establishment.

(4) Regarding point #1 of the proposal, the division feels that a retail establishment/liquor store/liquor-licensed drugstore shouldn't require the supplier to bear the expenses. Acknowledging that small manufacturers don't have the ability to provide as much

product as larger manufacturers, the division is interested in how the subgroup members would level the playing field, through this proposal, to allow small manufacturers to get their product to market.

(5) Under point #5 of the proposal, addressing the expansion of hours during which tastings can be conducted, the current statute allows tastings from 11:00 a.m. to 9:00 p.m. The proposal suggested that the hours should be left to the retailer's decision, but can be amended to specify designated hours.

(6) The division also expressed concern about local licensing authority input on this proposal. Locals approve tasting privileges and set the guidelines around these privileges, so the division would like to receive feedback from local licensing authorities on the proposal.

b) Following the discussion, the subgroup members revisited the proposal and suggested some amendments to the language. There was additional discussion around the proposed amendments:

(1) One suggestion was to include a broad statement that acknowledged appropriate guardrails need to be put in place and some tweaks need to be made to the proposal language to emphasize public safety.

(2) Another suggestion was to allow for rulemaking to incorporate reasonable restrictions.

(a) The division's concern with rulemaking authority is because this is a local licensing authority permit. As the local licensing authorities govern this matter, the division feels it needs to be in law, not rule. Putting it in rule could result in pushback from locals that could then create more stringent ordinances and resolutions. The division would feel more comfortable hearing from local licensing authorities on how they feel about the proposal and the discussion had during this meeting.

(3) The facilitator proposed the following amended language for point #5 of the proposal: "Expand the daily time frame and number of days per year tastings can be conducted while considering public safety concerns and placing limits on the quantity per serving and number of products a consumer can taste at any time."

(a) With the division's concerns about tastings falling under local licensing authority, it was suggested that the line, "subject to local licensing authority" be included. The division doesn't support this addition, given that there are 350 local licensing authorities in the state that this could result in a patchwork situation where different practices have to be followed in different areas.

(b) The division expressed a willingness to expand the current 156 days a year limit in statute, but opening it to allow for 365 days a year risks turning an off-premises retailer into an on-premises establishment.

(4) The division felt that the proposal, as currently written, lacks the detail which is present in the existing statute. The division would like to see more detail incorporated into the proposal language.

(a) The facilitator suggested that Mr. Shpall revise the proposal based on today's discussion, specifically with regards to public safety. There was a suggestion to look at other state models to assist with developing this proposal further.

3. Motion

a) Jim Shpall made a motion to move this proposal, with the commitment that point #5 will be amended and revised as discussed, to the Liquor Advisory Group on June 1, 2023 for a vote. Motion seconded by Joe Durso.

(1) The division stated that there are still concerns with the proposal as it stands. The division hopes that there will be guardrails incorporated into the final draft of the proposal.

b) The motion passes on a vote of 8-0.

4. Public Comment

a) *No public comment was offered during the allotted time*. Public comments can also be submitted on this proposal to the division by emailing dor_led_rulemaking@state.co.us.

B. Discussion 2: Eliminate franchise laws/territory rights for brewers.

1. Proposal submitted by Karen Hertz on April 27, 2023.

a) The proposal suggests removing section 44-3-408, C.R.S., which addresses termination of wholesalers.

2. Overview of Discussion

a) The Colorado Brewers Guild and the Colorado Beer Distributors Association have been asked to collaborate with each other and their respective members to review the current law and discuss any potential changes. The general feeling is that this is a difficult subject for the LAG to discuss because of the multiple factors and details involved. It was suggested that these two groups could come together and create new refinement that they can agree on for any changes.

b) Yetta Vorobik moved for the subgroup to table this discussion out for two to three months to allow the groups to have their collaboration.

(1) There was overall support for this. Contract discussions can get "into the weeds" and if this collaboration can produce a more

formalized proposal for the LAG to consider would be very helpful.

3. Group Decision
    a) The subgroup members agreed to postpone further conversation on this topic until August to give the trade associations time to collaborate and get feedback/support from their members.

C. Discussion 3: Expand salesroom permits for manufacturing locations.
    1. Background
        a) During the previous subgroup meeting, a proposal was raised that all three manufacturers types should have the ability for a salesroom permit at the manufacturing location plus an additional 5 permits that are permanent or temporary, with the caveat that all permit holders must follow the notification period requirement.
    2. Overview of Discussion
        a) There was robust discussion around this proposal. Highlights of the discussion are as follows:
            (1) The division was asked if a new license type (i.e., limited brewery) would need to be created with this proposal or if the existing license would transition into allowing multiple salesrooms. The division feels it is possible that the new privileges could transition into the existing type, but there are items in the manufacturing statute (that the limited winery doesn’t have) which would need to be considered. Extensive discussion and research around this would be necessary.
                (a) Input from the Brewers Guild is that they would like to see breweries function as a limited brewery with the temporary salesrooms so they can attend farmers’ markets.
                (b) The division feels more conversation needs to be had if the proposal is going to incorporate limitations, as this may stray from the manufacturers’ original intent.
            (2) There was discussion around whether or not production cap limits should be incorporated into this proposal. The division added that on-premises establishments currently have production cap limits; most manufacturers do not want limits on how much they can manufacture, given varying demands for different products. The reason for the limits placed on the on-premises locations is because they are not truly manufacturers. This is a privilege built into their retail license type. Additionally, the division feels that the subgroup members will need to amend the proposal to extend the salesroom privileges to beer manufacturers.
                (a) The small manufacturers feel that production limits are counterproductive and this was not the original intent of

the proposal. This proposal is focused on creating consumer awareness and getting the average consumer to be aware of and to access local products. They did not express an objection to larger manufacturers being allowed to set up the same number of salesrooms under this proposal.

(b) The breweries agreed that they are not looking for production caps. They wish to increase the number of temporary salesrooms available to them, as they are currently only allowed one salesroom. They also emphasized that they did not request a limited brewery license.

b) Following the discussion, the subgroup's decision was to keep the proposal as it is without incorporating production limits.

3. Motion

a) Stephen Gould made a motion to move this proposal to the Liquor Advisory Group on June 1, 2023 for a vote. Motion seconded by Yetta Vorobik.

b) The motion passes on a vote of 7-0, with one member taking no position.

4. Public Comment

a) Nick Hoover, Colorado Restaurant Association

(1) Mr. Hoover stated that the proposal, as it currently stands, is very broad; currently, beer salesrooms have a wholesale license, so if this proposal is put into place with five licenses allowed per manufacturer, would it remove the wholesale tasting room license and then give a manufacturer five licenses, or does this change from a wholesaler being able to have a salesroom for beer to a manufacturer having the salesroom for beer and then giving an additional five sales rooms?

(a) The subgroup clarified that this proposal intends to allow beer manufacturers, all wine manufacturers, and distilleries the salesroom privileges that limited wineries currently have. This would not alter quantities or anything else.

(2) Also, because the five salesrooms currently exist for limited wineries, and it sounds like the subgroup is trying to instill parity amongst the different license types, will there be production caps? Limited wineries currently have production caps which is why they are allowed five tasting rooms.

(3) Mr. Hoover feels that the discussion needs to be more fleshed out; giving every manufacturer five tasting rooms is different. Additionally, many of the beer tasting rooms look very similar to an on-premises drinking establishment (i.e., a restaurant) but are not licensed like restaurants, with no local licensing or distance

requirements from schools. An example scenario was brought up in the last LAG meeting: a Hotel & Restaurant liquor license was denied for being 497 feet away from a school, yet in walking from the proposed license location to the school, one would walk past a salesroom and the locals had no say in the salesroom being there.

(4) The Restaurant Association is very concerned with the broadness of this proposal and would like to see it fleshed out more.

b) Shawnee Adelson, Colorado Brewers Guild

(1) Ms. Adelson supported parts of the subgroup's discussion, stating that breweries are the only ones who cannot have another license; although the guild is asking for parity with the extra five salesrooms, distilleries already get extra licenses, so it does limit for breweries to be able to compete in the marketplace and get access to the market when they aren't able to do tastings, for example, at a farmers' market.

(2) Ms. Adelson feels that the conversation had today is the beginning of this discussion. The next topic is to start talking about temporary tasting rooms, but the way it is written into statute, they are associated with each other.

c) *No additional public comment was offered during the allotted time*. Public comments can also be submitted on this proposal to the division by emailing dor_led_rulemaking@state.co.us.

D. Discussion 4: Make non-contiguous laws for beer and spirit manufacturers the same as for wine and cider manufacturers.

1. Background

a) The original proposal by Karen Hertz suggested that breweries be allowed to have a manufacturing location within 10 miles under the same license, if approved by the TTB. This is a privilege currently allowed for wine manufacturers.

2. Overview of Discussion

a) Small manufacturers expressed support for other manufacturers being added to the existing privilege for wine manufacturers. The Alcohol and Tobacco Tax Trade Bureau (TTB) has existing regulations that govern non-contiguous locations, they would like to see similar regulations in Colorado.

b) The division explained that the division does not set statute. As a regulator, the division has to follow the statutes of Colorado. The LAG has an opportunity to change the existing statute, which the division will then enforce. The division can only change rules or interpretations in rule; the division cannot make law.

3. Public Comment

a) *No public comment offered during the allotted time*. Public comments can also be submitted on this proposal to the division by emailing dor_led_rulemaking@state.co.us.

4. Motion
   a) Yetta Vorobik made a motion to move this proposal to the Liquor Advisory Group on June 1, 2023 for a vote. Motion seconded by Stephen Gould.
   b) The motion passes on a vote of 7-0, with one member taking no position.

E. Discussion 5: Allow manufacturers to sell other Colorado manufactured beverages, including collaborations among manufacturers, in tasting rooms (only for on-premise consumption at a brick and mortar location).

1. Proposal submitted by Stephen Gould on April 27, 2023.
   a) There are two parts to this proposal:
      (1) Any salesroom operated by a licensed Colorado alcohol manufacturer should be given the privilege to sell up to 30% of revenue for any other Colorado manufactured alcohol beverage. The products shall be for on-premise consumption *only*.
         (a) New Mexico was referenced as an example of a state that has similar provisions in their law.
      (2) Any salesroom operated by a licensed Colorado alcohol manufacturer should be given the privilege to sell any collaborative product that involves their company for both on- *and* off-premise consumption.
         (a) A "collaborative product" shall be defined as any product made by one Colorado licensed alcohol manufacturer using a product or processed material for another Colorado licensed manufacturer.
   b) The intent of the proposal is to foster co-marketing and collaboration between Colorado alcohol manufacturers and to build the public's perception of the alcohol beverage industry in Colorado as a whole.

2. Overview of Discussion
   a) The division raised a couple primary concerns with part one of the proposal:
      (1) The New Mexico law allows only three off-premises locations to operate in this fashion; is this something that is being incorporated into the proposal? Specifically, if the proposal passes to allow for manufacturers to operate five salesrooms, would the number of salesrooms operating under part one of the proposal be restricted to three?
         (a) The manufacturers are willing to reduce the percentage of products sold to balance out the number of salesrooms that can operate under this privilege.
         (b) The division doesn't feel that manufacturers can be as restrictive as they might like (i.e., only to

Colorado-manufactured products). Is this a concern factored in under the proposal?

(c) Overall, the division expressed that manufacturers need to be cognizant of how this proposal could impact them and the industry as a whole.

(2) There was a clarification question as to whether this proposal allows for the sale of individual products that contributed to the collaboration or only the product(s) that came out of the collaboration.

(a) The proposal allows for manufacturers to sell a small percentage of any Colorado produced products for on-premises consumption.

b) There was a suggestion that rulemaking authority could be given to the division to address any "loose threads" or issues with the proposal.

c) As the two parts of the proposal are closely related but also different, the subgroup agreed to vote on the proposals separately.

3. Public Comment

a) Nick Hoover, Colorado Restaurants Association

(1) Mr. Hoover echoed a statement that he has made previously, that these tasting rooms were originally meant for the public to taste products that were manufactured by the licensed manufacturer in-house; these products are then sold to the public so that the public is aware of the manufacturer. The broad ability to sell any other Colorado product could, as the division is indicating, potentially be challenged and would require all other products to be included.

(2) These are starting to look more and more like bars and on-premises drinking establishments. As such, they should be regulated in the same fashion as on-premises drinking establishments, meaning the licensee needs local licensing authority in order to get them [the tasting rooms]. This should absolutely be addressed in the conversation because they're [the tasting rooms] moving away from their intended purpose and moving towards the third tier. All on-premises drinking establishments require local licensing authority, which tasting rooms currently do not have.

b) *No additional public comment offered during the allotted time*. Public comments can also be submitted on this proposal to the division by emailing dor_led_rulemaking@state.co.us.

4. Motion: Part 1

a) Stephen Gould made a motion to move part one of this proposal to the Liquor Advisory Group on June 1, 2023 for a vote. Motion seconded by Eric Foster.

b) Following the motion, there was additional discussion among the subgroup members:
    (1) A concern was raised about the broadness of the products that can be sold under part one of the proposal. It feels like a line is starting to be crossed by allowing general products from anywhere in Colorado.
    (2) This piece of the proposal opens up the likelihood that the tasting room will, as previously stated, begin to function as a bar. On-premises drinking establishments will likely take issue with the variety of products made available under this proposal.

c) The motion fails on a vote of 4-2, with two members taking no position.

5. Motion: Part 2
    a) Stephen Gould made a motion to move part two of this proposal to the Liquor Advisory Group on June 1, 2023 for a vote. Motion seconded by Joe Durso.
    b) Following the motion, there was additional discussion among the subgroup members:
        (1) The intention behind this piece of the proposal stems from the existing collaboration among manufacturers; the manufacturers would like to take advantage of all the co-marketing and co-branding opportunities that currently exist.
        (2) A question was raised about collaboration with out-of-state manufacturers.
            (a) This proposal is meant to benefit Colorado manufacturers and producers, and products made outside of the state and/or collaborations made between Colorado and out-of-state manufacturers are not considered under this proposal. The proposal could be amended to include out-of-state collaborations, but it was envisioned to benefit Colorado manufacturers only.
        (3) The wholesaler representatives felt that this proposal should address both in-state and out-of-state collaborative products. If a manufacturer makes a product that was collaboratively produced with another Colorado manufacturer, they should have the right to taste and sell that item in the tasting room. However, there was concern about the proposal resulting in a slippery slope of allowing all collaborative products to be sold, which would then turn the distillery into a bar and open the opportunity to include out-of-state manufacturers. The wholesalers felt this would be hard to stop once it started.
        (4) The subgroup members supported the sale of collaborative products made in Colorado only. To allow for collaboration with

out-of-state manufacturers is a new level of detail that the subgroup felt would require further discussion.

(a) The subgroup members also felt that the end result (a/k/a final product) of the collaboration is the only product that should be allowed for sale, and it can be sold in the respective locations of the Colorado-based parties that collaborated on the product.

(b) The individual products that were used in making the collaborative product should not be permitted for sale in different tasting rooms.

c) The division suggested that Mr. Gould rewrite the proposal, as discussed, before the subgroup takes a vote. It was agreed that this second piece of the proposal would be revised and resubmitted for the subgroup to consider prior to the June subgroup meeting.

6. Public Comment

a) *No public comment offered regarding this proposal*. Additional comment and input may be provided to the division by emailing dor_led_rulemaking@state.co.us.

IV. Action Items

A. Jim Shapll will revise the off-premises tasting proposal and submit it to the division in advance of the June 1, 2023 Liquor Advisory Group meeting. Any information related to this proposal (e.g., information from other states, specific language, etc.) should be submitted to the division via dor_led_rulemaking@state.co.us and will then be transmitted to the LAG members for review and consideration.

B. Stephen Gould will amend the second piece of his collaborative product proposal and submit it to the division in advance of the June 15, 2023 subgroup meeting. Any additional input on this proposal can be submitted to dor_led_rulemaking@state.co.us.

The next Marketplace Structure Subgroup meeting will be on June 15, 2023 from 8:30 a.m. to 10:30 a.m.