



Washington State Liquor Control Board

Washington State Liquor Control Board Meeting

Wednesday, June 4, 2014, 10:00 a.m.
LCB Headquarters Building
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

1. CALL TO ORDER

Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:00 a.m. on Wednesday, June 4, 2014. Member Chris Marr was also present and Member Ruthann Kurose participated by phone.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Kurose moved to approve the May 28, 2014, meeting minutes.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

3. ACTION ITEMS (A-D)

ACTION ITEM 3A - Board Approval to File Supplemental (CR 102) for Fair Trade Practices

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-3). She provided a brief background noting that this rulemaking is the result of a petition filed by Mr. Michael Cho, Washington Liquor Store Association, requesting that the Board open rulemaking to clarify RCW 66.28.170. The Board currently has Advisory No. 2012-02 on the LCB website that clarifies this statute but wishes to place its current view of pricing issues in a new section in Chapter 314-23 WAC. The Board held a work session on Fair Trade Practices on September 11, 2013, to hear comment from stakeholders on these issues. A public hearing on the proposed rules was held on April 23, 2014. Twenty written comments were also received. On May 14, 2014, the Board gave their approval for the Rules Coordinator to draft revised proposed rules for fair trade practices to bring back to the Board at a later date.

Proposed Changes

New Section: WAC 314-23-060 - What are "volume discounts"? Defines "volume discounts".

New Section: WAC 314-23-065 - What are "unfair trade practices"? Defines "unfair trade practices".

New Section: WAC 314-23-070 - What is "local market"? Defines "local market". For purposes of volume discounts, sales to on-premises retailers and off-premises retailers constitute separate markets.

New Section: WAC 314-23-075 - What are "family plans" and are they allowed? Explains "family plans" and that they are not allowed under federal or state law.

New Section: WAC 314-23-080 - Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? Explains what is allowed under "volume discounts". Distributors may provide different volume pricing to on-premises retailers and off-premises retailers. This practice is referred to as "channeling" and is a recognized practice under TTB in Industry Circular Number 76-15.

New Section: WAC 314-23-085 - What type of discounts are not allowed? Explains the following practices are not allowed under "volume discounts":

- Discounts for purchases over time. Combining volumes of spirits and wine purchased beyond the day of purchase period to qualify for a volume discount is considered an extension of credit under 27 CFR 6.65 because state law does not allow the extension of credit.
- Discounts on a combined order that is delivered to multiple licensed sites (central warehousing rules were written to allow separate licensed entities to lease warehouse space and request a discount on goods delivered to a single warehouse location).

Timeline

June 4, 2014	Board is asked to approve filing the revised proposed rules (Supplemental CR 102 filing)
June 18, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
July 9, 2014	Public hearing held
July 9, 2014	End of written comment period
July 16, 2015	Board is asked to adopt rules
July 16, 2014	Agency sends notice to those who commented
July 16, 2014	Agency files adopted rules with the Code Reviser (CR 103)
Aug. 16, 2014	Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file the supplemental (CR 102).

MOTION: Member Marr moved to approve filing of the Supplemental (CR 102) for Fair Trade Practices.

SECOND: Member Kurose seconded for purposes of discussion.

DISCUSSION: Member Marr noted that he supported the Board's decision last fall to file a CR 101 and begin rulemaking around trade practices, which was intended to allow time for a legislative remedy last session. At that time he agreed with a number of staff

recommendations but could not support an interpretation of channeling as a prohibited trade practice. He did note that the lengthy rulemaking allowed time for thoughtful dialogue and communication from stakeholders. He was pleased to see that the language in the CR 102 reflected significant changes around the practice of channeling. Member Marr sympathizes with the struggles of the former state and contract stores but he cannot set aside objectivity. He said the current channeling approach best supports the interpretation of the law.

Member Marr added that one advantage the the previous system offered transparency (what people paid for product) and he suggested there would be value in reinstating that for the consumer. He would like to see *rule* move forward with transparency factored in.

Member Kurose respectfully disagreed with her fellow Board members noting that from her perspective, channeling is not supported by a compelling legal argument. She stated that this is a gray area and because of that she wants to be supportive of the former state-owned liquor stores who are struggling to compete in an uneven market place. The Board has been very open with this process and involving stakeholders to allow the parties to seek legislation to clarify the answer through law however the stakeholders did not achieve a solution through that process. She did agree on the other points however she respectfully parts from her fellow Board members on channeling and will vote against advancing the proposed CR 102.

VOTE: Chair Foster approved.
Member Chris Marr approved.
Member Ruthann Kurose opposed.

ACTION: Motion passed 2 to 1.

ACTION ITEM 3B - Board Approval to File (CR 101) for Revisions to Marijuana Rules

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-2). She provided a brief background noting that these revisions are needed to provide additional clarity to the marijuana rules to marijuana license applicants and potential marijuana licensees. This rulemaking will also include the emergency rule the Board adopted on May 28, 2014, for the Good Laboratory Practices Checklist, Board Interim Policy -03-2014 Food Processing Facility Inspection, and implementation of the changes to the marijuana retailer and processor licenses in ESHB 2304 from the 2014 legislative session.

Timeline

June 4, 2014	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
June 18, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
July 18, 2014	End of written comment period
July 23, 2014	Board is asked to approve filing the proposed rules (CR 102 filing)
Aug. 6, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
Aug. 27, 2014	Public hearing held
Aug. 27, 2014	End of written comment period
Sept. 3, 2014	Board is asked to adopt rules
Sept. 3, 2014	Agency sends notice to those who commented

Sept. 3, 2014 Agency files adopted rules with the Code Reviser (CR 103)
Oct. 4, 2014 Rules are effective (31 days after filing)

Ms. McCall requested approval from the Board to file proposed rules.

Member Marr brought up cash payments for excise taxes and asked how they would be paid?

Deputy Director, Randy Simmons, came forward and stated that we will be retrofitting the headquarters building to incorporate a cash counting room with security measures. This should be ready in September. They will schedule appointments for people to pay their taxes.

MOTION: Member Kurose moved to approve filing of (CR 101) for Revisions to Marijuana Rules.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3C - Board Adoption of (CR 103) for Penalty Assessments on Late Payments

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-7). She provided a brief background noting that postmarks are often absent on mail. Bar codes have replaced postmarks in most cases. Current rules on how penalties will be assessed on late payments revolve on the postmark on the envelope. Language is needed in our rules to explain to licensees how penalties will be assessed on late payments when there is no postmark on the envelope. No public comment was received at the public hearing held on May 28, 2014. No written comments were received.

Proposed Changes

Amended Section: WAC 314-02-109 - What are the quarterly reporting and payment requirements for a spirits retailer license? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-19-020 - What if a licensee doesn't report or pay the taxes due, or reports or pays late? (for wine and beer) Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-23-022 - What if a distributor doesn't report or pay the taxes due, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-23-042 - What if a certificate of approval doesn't report or pay the taxes due, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Amended Section: WAC 314-28-080 - What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? Added the following language; "Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed."

Timeline

The effective date of the rules will be 31 days after filing.

Ms. McCall requested approval from the Board to adopt the rules.

MOTION: Member Kurose moved to adopt (CR 103) for Penalty Assessments on Late Payments.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3D - Board Adoption of (CR 103) to Revise Brief Adjudicative Proceedings (BAP) Rules

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 1-3). She provided a brief background noting that the Administrative Procedures Act (RCW 34.05.482) gives agencies the ability to utilize an abbreviated administrative hearing process, the Brief Adjudicative Proceeding (BAP), where the issues or interests involved do not warrant use of full adjudicative procedure. The Board adopted rules for Brief Adjudicative Proceedings in November 2012. Revisions to the rules are needed to include marijuana application denials and suspensions in the BAP. No public comment was received at the public hearing held on May 28, 2014. No written comments were received.

Proposed Changes

Amended Section: WAC 314-42-110 - Brief adjudicative proceedings. Added new sections for marijuana license denials and suspensions to the list of issues where a brief adjudicative proceeding may be conducted.

Amended Section: WAC 314-42-115 - Preliminary record in brief adjudicative proceedings. Added sections for what the preliminary record shall consist of for marijuana license denials and suspensions.

Timeline

The effective date of the rules will be 31 days after filing.

Ms. McCall requested approval from the Board to adopt the rules.

MOTION: Member Kurose moved to adopt (CR 103) to Revise (BAP) Rules.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

4. WEEKLY MARIJUANA LICENSING UPDATE

Becky Smith, Marijuana Licensing & Regulations Manager, provided the following weekly marijuana licensing highlights:

Issued licenses (as of 4:00 pm June 3, 2014)

50 licenses have been issued (Increase of 7 from last week):

- 40 Producer/Processor
- 9 Producer
- 1 Processor

0 licenses are pending final processing by CS

12 licenses are pending payment:

- 7 Producer/Processor
- 4 Producer
- 1 Processor

Plant Canopy:

- Licensed - 371,984 square feet
- Including licenses pending payment or final processing - 442,180 square feet

Final Inspections

98 applications have been referred to Enforcement for final inspections:

- 63 are complete
- 3 needs follow up inspection
- 11 are scheduled for inspection
- 16 are waiting for applicant to finish build
- 5 are awaiting scheduling

10 more applications will be referred to enforcement for final inspection this week

Producer, Processor, Producer/Processor

2277 applications have been assigned

- 13 new ones assigned since last week

19 Licensing Investigators

- 13 Investigators working just non-retail files
- 1 Investigator working primarily retail files
- 5 Investigators are working both retail and non-retail files

Average case load of 126 per Licensing Investigator (open/active applications)

609 applications have not yet been assigned to an Investigator

Retail Applications

268 Retail applications have been assigned to 6 investigators

- 92 applications have been assigned since last week
- 66 applications have yet to be assigned (in areas with moratoria or bans)

2 applications are ready for final inspections

Ms. Smith added that we will not be working applications in areas with moratoria or bans at this time.

Member Marr asked Mr. Simmons to come forward to clarify the status of the lottery process. He noted that the Board members are receiving a great number of inquiries about the licensing appeals process and he wanted to know when people can expect to receive word on their status.

Deputy Director, Randy Simmons, noted that denial letters are the first part of the process and are being prepared now. The letters note that the applicant has the right to an administrative process. In addition, as successful lottery winners are denied the LCB will move to the next person on the lottery list.

Member Marr asked that the Board be kept involved in the timeline of the lottery process. He said the goal is that this process continues moving forward.

5. STAFF UPDATE - Tobacco Compliance Contract

Deputy Director, Randy Simmons, introduced the LCB Food & Drug Administration (FDA) Tobacco Compliance Program. He stated that this state program is a model for the federal program and we are asked to speak at national conferences as one of the most efficient programs in the nation and he wanted to commend the managers and program staff for their efforts and the results they are achieving. He added that the Washington State LCB is a strategic partner with the federal government and we have worked hard on that partnership. Mr. Simmons then introduced Lynn Fetch, FDA Program Coordinator & Bridget Sanford, FDA Field Supervisor.

Lynn Fetch provided an overview of the FDA Tobacco Compliance Program beginning with the program background. She stated that the unit conducts tobacco inspections at retail locations on behalf of the FDA to determine compliance with federal regulations in the Tabaco Control Act. The presentation focused on the following topics:

- Tobacco Control Act
- WSLCB's contract history
- Types of inspections
- Compliance & enforcement
- Regulated products
- Statistics
- FDA unit org structure
- Roles and responsibilities
- Eyes and ears
- Process improvements

Program information and real time data can be viewed at www.fda.gov.

The Tobacco Control Act focusses on prevention and regulation to protect public health and has the authority as well as a broad set of sanctions for violations of the law and directs FDA to contract with states to assist FDA with retailer inspections.

Washington State was one of the first states to be awarded a contract in 2010 under a pilot program.

There are (2) types of inspections conducted:

1. Undercover Buys (UBs) which are unannounced compliance checks where underage youth investigative aides are used to determine retailers' compliance with age restrictions and photos ID verification.
2. Advertising & labeling Inspections (A&L) which focus on retailers' compliance with the applicable restrictions in the tobacco regulations, other than those for age and photo identification, e.g. flavored cigarettes, single cigarettes, impersonal models of sale (self-service/vending machines).

Compliance and enforcement issues warning letters for first time violations and civil penalties for violations found on subsequent inspections. Penalty schedule as follows:

<u>Number of Violations</u>	<u>Civil Money Penalty</u>
2 within a 12 month period	\$0.00 with warning letter
2 within a 12 month period	\$250
3 within a 24 month period	\$500
4 within a 24 month period	\$2,000
5 within a 36 month period	\$5,000
6 within a 48 month period	\$10,000

Current regulated tobacco products include:

- Cigarettes
- Cigarette tobacco
- Roll-your-own-tobacco
- Smokeless tobacco

In addition, products the FDA would like to regulate:

- Hookah
- Electronic cigarettes
- Cigars
- Pipe tobacco
- Other novel tobacco products and future tobacco products

Washington state FDA stats include:

- 16,000 inspections
- 1,200 notices have been issued by the FDA
- 1,000 warning letters
- 90 civil money penalties
- 12.8% violation rate

Ms. Fetch then introduced Bridget Sanford, FDA Field Supervisor, and invited her to the podium to provide an overview of the program details, structure and roles.

Ms. Sanford began her overview with geographic overview of the Washington State inspector areas. She stated that they employ (8) inspectors who each oversee 700 to 900 establishments throughout the year.

She then provided a brief overview of the program coordinator, field supervisor and inspector roles. She also addressed current process improvements including efficiency planning (a requirement) to reduce redundancies, excess paperwork and duplication. They use "Lean" methods on their evidence processing system to reduce processing time and increase organizational accessibility.

She also discussed the *Eyes and Ears* program which includes promoting public safety by enforcing federal tobacco laws and regulations in our state and assist with protecting Americans from tobacco-related death and disease by regulating the manufacture, distribution and marketing of tobacco products.

Again, program information and real time data can be viewed at www.fda.gov.

The Board thanked Ms. Fetch and Ms. Sanford for their informative presentation and their hard work on this program.

Letty Mendez, Program Manager, stepped forward to acknowledge her hard working staff and express her gratitude for the agency and the value placed on developing a positive leadership force.

6. NEW BUSINESS/OLD BUSINESS

No new or old business reported.

Chair Foster invited citizens to address the Board regarding any issue(s) related to LCB business. No comments were offered.

ADJOURN

Chair Foster adjourned the meeting at 11:20.

Minutes approved this 11TH day of JUNE, 2014



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



Chris Marr
Board Member

Complete meeting packets will be available online following each meeting: <http://www.liq.wa.gov/board/board-information>