



Washington State Liquor Control Board

Washington State Liquor Control Board Meeting

Wednesday, October 15, 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, October 15, 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 October 1, 2014, meeting minutes.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

3. ACTION ITEMS (A-D)

ACTION ITEM 3A - Board Decision on Petition for Rulemaking for Spirits Sampling WAC 314-02-106

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-2). She provided a brief background noting that this is the result of Cindy Zehnder, on behalf of Total Wines & More and Diageo, submitting a petition for rulemaking to delete the sentence "Spirits samples must be unaltered" from WAC 314-02-106. Total Wine & More would like to better educate their customers about the unique qualities of their products and provide them with ideas for how those products can be served. RCW 66.24.670 allows spirits sampling but has very little language in the form of what is and isn't allowed.

Background

WAC 314-02-106 was drafted to mirror the requirements for spirits sampling at a craft distillery, which allowed samples to be altered with water and/or ice only. Distilleries and craft distilleries are totally different businesses than a spirits retail licensee and the rules for sampling do not need to be the same.

Staff Recommendation

Director's Office staff recommended the Board approve the petition for rulemaking for the following reasons:

- All other requirements for spirits sampling by spirits retail licensees will remain the same.
- There is no public safety issue with allowing samples to be altered with mixers.
- RCW 66.24.670 is silent on the use of mixers in spirits sampling.

Ms. McCall then requested approval from the Board to approve the petition.

Chair Foster wanted assurance that this would not be limited to Diageo products. Ms. McCall said it would not.

Member Kurose wanted to reaffirm that this would not increase the amount of spirits for sampling and not a public safety risk. Ms. McCall said it would not.

Member Marr expressed concern about the potential for this to advance an uneven playing field in the industry and he hopes other industry stakeholders will be supportive of future rule changes and potential changes in statute.

MOTION: Member Kurose moved to approve the Petition for Rulemaking for Spirits Sampling WAC 314-02-106.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3B - Board Decision on Interim Policy BIP-10-2014 Spirits Sampling Requirements for Spirits Retail Licensed Premises

Karen McCall, Agency Rules Coordinator, began the briefing with a briefing paper (HANDOUTS 3B 1). She provided a brief background noting that the Board will be entering into rulemaking to revise WAC 314-02-106 which lists the requirements for spirits sampling by spirits retail licensees. An interim policy is needed until a revision in the rules is adopted to allow spirits retail licensees to alter spirits samples with mixers in addition to ice and/or water.

Policy Statement

Until superseded by rule, in order to be issued a spirits sampling endorsement, the licensee must meet the following criteria:

- Be a participant in the Responsible Vendor Program.
- The licensee has not had more than one public safety administrative violation within the last two years. The two year window is counted from two years prior to the date of the application for the spirits sampling endorsement. (See WAC 314-29-020 for a list of public safety violations).
- Signs advertising spirits samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way.

Spirits samplings are to be conducted in the following manner:

- Spirits samplings service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area.
- The licensee must provide a sketch of the sampling area. Fixed or moveable barriers are required around the sampling area to ensure that persons under 21 years of age and apparently intoxicated persons cannot possess or consume alcohol.
- Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises.
- Spirit samples may be altered with mixers, ice, and/or water
- The licensee must have food available for the sampling participants
- Customers must remain in the service area while consuming samples
- Spirits sampling activities are subject to RCW 66.28.305 and RCW 66.28.040
- Employees serving beer and wine during tasting events must hold a class 12 server permit

Licensees are also required to provide a sketch of the area where spirits samplings will be conducted. The sketch is to be included with the application for the spirits sampling endorsement.

Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each beer and wine tasting must be included.

Ms. McCall then requested approval from the Board to approve the interim policy.

MOTION: Member Kurose moved to approve Interim Policy BIP-10-2014 Spirits Sampling Requirements for Spirits Retail Licensed Premises.

SECOND: Member Marr seconded but noted that this will not preclude the Board from reopening rules in general in the future.

ACTION: Motion passed unanimously.

ACTION ITEM 3C - Board Decision on Petition for Rulemaking for Alcohol Impact Area (AIA) Guidelines WAC 314-12-215

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3C 1-2). She provided a brief overview noting that The Washington Beer & Wine Distributors Association (WBWDA) submitted a petition for rulemaking to revise WAC 314-12-215 Alcohol Impact Areas - Definition - Guidelines. WBWDA is asking the Board to re-evaluate the following areas in the current rule:

- Clarify information that must be provided by a local government seeking authority to impose an AIA

- Determine which products should be included in the scope of AIA regulation
- Evaluate the effectiveness of a specific AIA in promoting public safety over time

WBWDA believes all stakeholders could benefit if the Board considers these areas and clarifies the language of the rule.

Background

In 1999, the WSLCB originally wrote the rules for alcohol impact areas. This rule was revised in 2010, which included the following:

WAC 314-12-215 - Alcohol Impact Areas - Definition - Guidelines

- Plain-talked the AIA rules
- Described banned products as liquor anticipating local authorities desire to have spirits banned
- Clarified the Board's requirements for requesting recognition of an AIA
- Clarified board's recommendation that streets used as a boundary include both sides for greater effectiveness.
- Provided expanded guidelines in local authority's submission for mandatory recognition requirements.
- Simplified the process of changing banned products
- Established a multi-pronged approach to determine the continued need for AIA
- Established a standardized reporting requirement for all local authorities

Staff Recommendation

Director's Office staff recommends the Board approve the petition for rulemaking for the following reasons:

- It has been nearly five years since this rule was revised - there may be issues that stakeholders have become aware of that need to be addressed.
- This will give all stakeholders an opportunity to weigh in on any revisions

Member Kurose wanted to ensure that local governments would be notified of the rulemaking process and that we conduct outreach to the wide range of stakeholders including law enforcement and prevention.

Chair Foster supported updating the rules and noted that she expects this process to bring out many stakeholders for the hearings.

Member Marr noted that the Olympia AIA process illustrated that the process needed improvement and should be revisited. He stated that stakeholders and local governments need to be involved early on. He also noted that he had heard suggestions that there may be legislation introduced that would restrict or eliminate AIAs and he asked that the rulemaking calendar reflect that possibility.

Ms. McCall indicated that she could create a tentative calendar.

Ms. McCall then requested approval from the Board to approve the petition.

MOTION: Member Kurose moved to approve the Petition for Rulemaking for Alcohol Impact Area Guidelines WAC 314-12-215.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3D - Board Approval to File CR 102 for Revisions to Recreational Marijuana Rules

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3D 1-5). 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 includes the following:

- 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
- The emergency rules adopted by the Board on June 25, 2014, requiring all marijuana-infused products, labeling, and packaging be approved by the Board, and the prohibition on products that are especially appealing to children.
- Implementation of the changes to the marijuana retailer and processor licenses in ESHB 2304 from the 2014 legislative session.
- Revisions to rules to further clarify requirements of recreational marijuana licensees

Proposed Changes

Amended Section: WAC 314-55-010 - Definitions, Added definitions for “employee”, “intermediate product”, “paraphernalia”, and “selling price”.

Amended Section: WAC 314-55-015 - General information about marijuana licenses. Added the words “marijuana infused edible processing” to subsection (10) regarding sanitary facilities.

Amended Section: WAC 314-55-020 - Marijuana license qualifications and application process. Added language to the operating plan information for processors to include all marijuana infused edible processing facility equipment and added transportation of product for retailers.

Amended Section: WAC 314-55-077 - What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? Included language allowing processor to processor sales from ESHB 2304 as well as the allowance for processors to produce marijuana concentrates to sell to other processors or retailers. Added language to clarify what functions a marijuana processor is allowed to perform. Added language from the emergency rule adopted by the board on June 25, 2014, to clarify the types of marijuana-infused products the board will allow marijuana processor to produce and marijuana retailers to sell to consumers, and includes a requirement for the board to approve all marijuana-infused products, packaging, and labeling. Specifies examples of marijuana-infused edibles that the board will not approve. Included other food items that may not be infused with marijuana. Added language regarding the required annual processing facility inspection.

Amended Section: WAC 314-55-079 - What is a marijuana retailer and what are the requirements and fees related to a marijuana retailer license? Removed language prohibiting the sale of marijuana extracts and adding language allowing the sale of marijuana concentrates.

Amended Section: WAC 314-55-083 - What are the security requirements for a marijuana licensee? Added language that requires all nonemployee visitors to a marijuana producer or processor facility must be issued an identification badge issued by the licensee. Clarified language for the surveillance system requirements. Clarified “controlled access areas”. Added language regarding transport requirements for marijuana concentrates. Added language requiring a transport manifest for samples.

Amended Section: WAC 314-55-085 - What are the transportation requirements for a marijuana licensee? Added language for transportation of live plants. Defined “secured area” in a vehicle. Included language regarding inspection of a vehicle assigned for the purpose of transporting marijuana, useable marijuana, marijuana concentrates, or marijuana infused products.

Amended Section: WAC 314-55-086 - What are the mandatory signs a marijuana licensee must post on a licensed premises? Added a requirement that “firearms prohibited” signs must be posted at the entrance of each marijuana licensed premises.

Amended Section: WAC 314-55-089 - What are the tax and reporting requirements for marijuana licensees? Added language to implement ESHB 2304. (Processors must pay tax on marijuana concentrates sold to retailers and retailers must pay tax on marijuana concentrates sold to consumers)

Amended Section: WAC 314-55-095 - Marijuana servings and transaction limitations. Added marijuana servings and transaction limits for marijuana concentrates.

Amended Section: WAC 314-55-097 - Marijuana waste disposal—liquids and solids. Corrected an incorrect WAC reference.

Timeline

October 15, 2014	Board is asked to approve filing the proposed rules (CR 102 filing)
November 5, 2014	Code Reviser publishes notice - LCB sends notice to rules distribution list
December 3, 2014	Public hearing held
December 3, 2014	End of written comment period
December 10, 2014	Board is asked to adopt rules
December 10, 2014	Agency sends notice to those who commented
December 10, 2014	Agency files adopted rules with the Code Reviser (CR 103)
January 10, 2014	Rules are effective (31 days after filing)

Ms. McCall then requested approval from the Board to file the revised rules.

MOTION: Member Kurose moved to approve filing the CR 102 for Revisions to Recreational Marijuana Rules.

SECOND: Member Marr seconded.

ACTION: Motion passed unanimously.

4. MARIJUANA LICENSING UPDATE

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

Producer/Processor Applications

- 279 Producer/Processor licenses have been issued
 - 201 Producer/Processor
 - 60 Producer
 - 18 Processor
- 22 licenses are pending payment
- 6 moved to enforcement for inspection
- 33 are waiting for applicant to build

3,013,199 M square feet approved for plant canopy

Change in Applications

- 8 accepted and assigned this week for a total of 22 in process

Retail Applications

- 68 Retail licenses have been issued
- 6 are pending payment
- 19 moved to enforcement for inspection

5. NEW BUSINESS/OLD BUSINESS

No new or old business was reported.

Chair Foster then invited citizens to address the Board regarding any issue(s) related to LCB business.

Ingrid Dearmore - Washington State Patrol (WSP)

Ms. Dearmore came forward and first provided hardcopy slides of a presentation for the Board (CITIZEN HANDOUT 1). She offered her assistance noting she would be happy to be a point of contact for the Board and the agency regarding any future discussion surrounding the issue she was presenting. She then expressed concern on behalf of WSP laboratories noting that on June 12, 2014, ESHB 2304 took effect. The bill addresses marijuana concentrates extracted from cannabis plants and THC concentrations and she offered observations on the impacts of this bill.

Ms. Dearmore presented several problems with the RCW including WAC Language of 10 mg THC/serving conflicts with RCW %THC thresholds. An example she offered was for the approved LCB "legal" brand sodas which have 10 mg THC per 11.5 oz serving - that's 29 ppm THC or 0.0029% THC. Marijuana is much more complicated.

She offered a possible solution to the WAC issue:

- Define industrial hemp with a max 0.3% THC concentration
- Eliminate the 0.3% THC concentration clause in the definition of marijuana; exclude hemp
- Retain the current definition of THC concentration

- Address minors: "No one under the age of 21 can possess marijuana, marijuana-infused products, or marijuana concentrates regardless of THC concentration."
 - Accounts for approx. 80% of our cases

Member Marr suggested Ms. Dearmore contact James Paribello, LCB Legislative Liaison, to include him in this discussion.

The Board thanked Ms. Dearmore for her thoughtful presentation and suggested she provide the same information to the respective legislators.

Cindy Zehnder - Total Wine & More

Ms. Zehnder expressed her appreciation for the Board swift response to Diageo request.

Charlie Brown - Total Wine & More

Mr. Brown expressed his appreciation as well for the Board swift response to their request. He also wanted to ensure the Board that this is not for Diageo only and he fully expects to be working with the stakeholders in the craft distillery industry as he wants them to have the advantage of this change as well.

Jim Hendrick - Washington Distiller's Guild

Mr. Hendrick noted that they would like to be included in the process for the new rule to allow spirits retail licensees to alter spirits samples with mixers in addition to ice and/or water. They look forward to working with Ms. McCall on the statute change.

Lynn Domingo - Citizen

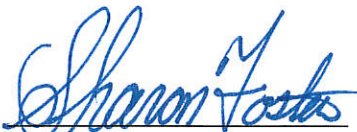
Ms. Domingo appreciates the new rule making that is being proposed. She is eager to see the sales of recreational marijuana expedited. She also asked that as applicants are disqualified from the waiting list, would she be able to see others move up on the list. Member Marr noted that licensing does try to let interested parties know as soon as possible if there is a disqualified applicant.

Ms. Domingo also asked if there the issue of diversion she had brought forward during a recent Board meeting had been considered. Chair Foster reminded Ms. Domingo that this is not an LCB matter and she should address her legislators.

ADJOURN

Chair Foster adjourned the meeting at 11:10.

Minutes approved this 22nd day of OCTOBER, 2014



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



Chris Marr
Board Member

Minutes Prepared by: Maureen Malahovsky, Confidential Secretary to the Board

Complete meeting packets are available online: <http://www.liq.wa.gov/board/board-information>