



Washington State Liquor Cannabis Board Meeting

Wednesday, October 18, 2017, 10:00 a.m.
LCB Headquarters - Boardroom
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

1. CALL TO ORDER

Chair Jane Rushford called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, October 18, 2017. Member Ollie Garrett and Member Russ Hauge were also present. Chair Rushford first acknowledged her fellow Board members and thanked the staff for their efforts in preparing for the Board meeting.

2. APPROVAL OF MEETING MINUTES

Approval of the October 4, 2017 meeting minutes were postponed.

3. ACTION ITEMS (A-D)

ACTION ITEM 3A - Board Approval of CR 101 to Initiate Rulemaking on Self-Dispensing Beer and Wine Machines

Karen McCall, Sr. Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-2). She stated that the petition for this rulemaking was presented to the Board one month prior and this was the next step in that process.

Timeline

October 18, 2017	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
November 1, 2017	Code Reviser publishes notice, LCB sends notice to rules distribution list
December 1, 2017	End of written comment period
December 13, 2017	Board is asked to approve filing the proposed rules (CR 102 filing)

January 3, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
January 24, 2018	Public Hearing held
January 24, 2018	End of written comment period
February 7, 2018	Board is asked to adopt rules
February 7, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
February 7, 2018	Agency files adopted rules with the Code Reviser (CR 103)
March 10, 2018	Rules are effective (31 days after filing)

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

MOTION: Member Hauge moved to approve the filing of proposed rules CR 101 to Initiate Rulemaking on Self-Dispensing Beer and Wine Machines

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3B - Board Approval of CR 102 for Non-Retail Rules Review

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3B 1-5). She stated that as part of the Liquor Control Board's on-going rules review process, WAC Chapters 314-20 Brewers, 314-24 Wineries, 314-28 Distillers, are being reviewed for relevance, clarity, and accuracy. New rules are also needed to implement SHB 1038, SSB 5589, and ESB 5834 passed in the 2017 legislative session. Ms. McCall shared her gratitude to the rulemaking team for the efforts put in to this rulemaking review.

Proposed Changes

Amended Section. WAC 314-20-001 Definitions. Clarified this section by referring to RCW 66.04.010 for definitions.

Amended Section. WAC 314-20-015 Licensed brewers – Retail sales of beer on brewery premises – Beer served without charge on premises – Spirit, beer, and wine restaurant operation. Added language to include the conditions where licensed beer manufacturers and their employees may sample beer of their own manufacture.

Amended Section. WAC 314-20-017 Brewery and microbrewery retail liquor licenses – Selling kegs and containers. Removed definitions and clarified the sale of kegs and containers of beer (growlers) were for off-premises consumption.

Amended Section. WAC 314-20-018 Farmer's market beer and wine sampling. Clarified that sealed bottles of wine and/or beer can be sold at retail at a farmer's market.

Amended Section. WAC 314-20-020 Beer labels – Certificate of label approval required – Labels to be submitted. Clarified that a copy of the federal certificate of label approval must be submitted to the board for any beer intended for sale in the state of Washington.

Amended Section. WAC 314-20-030 Packages – Classification. Minor language cleanup.

Amended Section. WAC 314-20-055 Microbrewery warehouse license. Clarified what can be stored at a microbrewery warehouse and included language that microbreweries may not share warehouse space.

Amended Section. WAC 314-20-090 Cash sales. Minor language cleanup.

New Section. WAC 314-20-092 Microbrewery alternating proprietorships. Included language on what is required of a microbrewery alternating proprietorship.

Amended Section. WAC 314-20-100 Beer suppliers and distributors. Added language that third-party delivery is prohibited.

Amended Section. WAC 314-20-110 Beer importers – Principal office. Removed the words "or by telegraph" from the rule.

Repealed Section. WAC 314-20-120 Beer importers – Warehouses.

Repealed Section. WAC 314-20-170 Holders of certificate of approval.

New Section. WAC 314-20-260 Consumer orders, internet sales, and delivery for domestic brewery and microbrewery licensees. Added the requirements for internet sales and delivery to customers.

Amended Section. WAC 314-24-001 Definitions. Clarified this section by referring to RCW 66.04.010 for definitions.

Amended Section. WAC 314-24-003 Standards of identity for wine. Removed federal language and referred to the standards set forth by TTB.

Amended Section. WAC 314-24-006 Substandard wines prohibited. Referred to standards set forth by TTB.

New Section. WAC 314-24-008 Application procedure for domestic wineries. Included the application procedure in rule.

Amended Section. WAC 314-24-040 Wine labels – Federal certificate of label approval required – Labels to be submitted. Referred to TTB.

Amended Section. WAC 314-24-060 Quality standards. Removed federal language and referred to minimum requirements set by the TTB.

Amended Section. WAC 314-24-070 Domestic wineries – Purchase and use of bulk wines, brandy, or wine spirits – Import permit required – Records – Wine returned to Washington. Added the words “of this section” for clarity.

Amended Section. WAC 314-24-080 Containers – Sizes and types permitted. Removed federal language and referred to TTB.

Amended Section. WAC 314-24-090 Wine labels. Clarified all labels must be approved by TTB and the COLA must be submitted to the board. For labels not requiring federal COLA, a form prescribed by the board shall be completed and submitted to the board for approval.

Amended Section. WAC 314-24-100 Domestic wineries – Responsibility for fruits used – Records. Clarified records must be kept for a minimum of three years.

Amended Section. WAC 314-24-105 Application procedure - Wine distributor's or importer's license. Clarified a copy of an approved wholesaler permit issued by TTB must be included with the application.

Amended Section. WAC 314-24-115 Wine importers – Requirements. Clarified each wine importer must notify the board of the principal office not less than 30 days prior to any change in the location of the office. Included language that the board must approve the location of any warehouse where wine is stored.

Amended Section. WAC 314-24-117 Wine certificate of approval. Removed the fees. They can be found in RCW.

Amended Section. WAC 314-24-120 Importation of foreign wine – United States wineries – Reports – Records. Clarified language allowing Wine COAs to ship wine to licensed wine importers and/or distributors.

Amended Section. WAC 314-24-160 Domestic wineries – Retail sales of wine on winery premises – Wine served without charge on premises – Spirit, beer and wine restaurant operation. Added reference to WAC 314-24-006 for conditions to sell wine for off-premises consumption in sanitary containers. Clarified that wineries holding a retail license must follow the appropriate rules for the retail license. Clarified when licensees and their employees may sample wine of their own production.

Amended Section. WAC 314-24-161 Changed the number of additional locations allowed from two to four. Included language that licensees applying for an additional location where other wineries are location must provide a letter from each winery sharing the additional location that acknowledges and accepts the conditions of the subsection. Removed the prohibition on free samples at the additional location.

New Section. WAC 314-24-162 Domestic winery alternating proprietorships. Added the requirements for an alternating proprietorship. The board has allowed alternating proprietorships but did not have the requirements in rule.

Amended Section. WAC 314-24-190 Wine suppliers and distributors. Clarified guidelines on distributor changes.

Amended Section. WAC 314-24-220 Licensing and operation of a bonded wine warehouse. Clarified records must be kept on hand at the bonded wine warehouse for a period of three years. Corrected the name of the board.

New Section. WAC 314-24-260 Consumer orders, internet sales, and delivery for domestic winery licensees. Clarified the requirements for internet sales and delivery of wine to customers.

New Section. WAC 314-24-265 Defining wine of a winery's own production. Clarified in rule Board Interim Policy 08-2011.

Amended Section. WAC 314-28-030 What does a distillery license allow? Added language that samples may be altered with nonalcoholic mixers, and mixers with alcohol of the distiller's own production. Clarified the maximum amount of alcohol per person per day is two ounces. (SSB 5839)

Amended Section. WAC 314-28-050 What does a craft distillery allow? Added language that samples may be altered with nonalcoholic mixers, and mixers with alcohol of the distiller's own production. Clarified the maximum amount of alcohol per person per day is two ounces. (SSB 5589)

Amended Section. WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? Removed dates from the rule.

Amended Section. WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay or reports or pays late? Removed the reference to WAC 314-28-070.

Amended Section. WAC 314-28-090 Distilleries or craft distilleries – Selling out of state. What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington? Changed 60,000 proof gallons to 150,000 proof gallons.

Amended Section. WAC 314-28-100 Consumer orders, internet sales and delivery for distillery and craft distillery licensees. Added language allowing the use of internet or mobile applications for retail customers to purchase alcohol under certain conditions.

New Section. WAC 314-28-210 Return of spirits by retailer – Replacement – Conditions. Added a section that allows a retailer to return spirits product to a distributor under certain conditions.

New Section. WAC 314-28-220 Bonded and non-bonded spirits warehouse. Created a new section to implement ESB 5834

Timeline

October 18, 2017	Board is asked to approve filing the proposed rules (CR 102 filing)
November 1, 2017	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 29, 2017	Public Hearing held
November 29 2017	End of written comment period
December 13, 2017	Board is asked to adopt rules
December 13, 2017	Agency sends notice to those who commented both at the public hearing and in writing.
December 13, 2017	Agency files adopted rules with the Code Reviser (CR 103)
January 13, 2018	Rules are effective (31 days after filing)

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

MOTION: Member Garrett moved to approve the filing of proposed rules CR 102 for Non-Retail Rules Review

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3C - Board Approval of CR 102 for 2017 Alcohol Legislation Implementation

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3C 1-4). She stated that rules are needed to implement the legislation passed during the 2017 legislative session.

Proposed Changes

Amended Section WAC 314-02-060 What is a caterer's endorsement? Added a tavern license to this rule. (SHB 1902)

Amended Section. WAC 314-02-061 What is required for offsite storage of liquor under a caterer's endorsement? Added a tavern licensee to this rule. (SHB 1902)

New Section. WAC 314-02-092 What is a combination spirits, beer, and wine license? Created a new section to implement 2SHB 1351.

Amended Section. WAC 314-02-103 What is a wine retailer reseller endorsement? Added the holder of a combination spirits, beer, and wine license to this rule to implement 2SHB 1351.

Amended Section. WAC 314-38-020 Permits – Fees established. Added language for a wine auction permit. (HB 1718)

New Section. WAC 314-38-110 Nonprofit wine auction permit. Created a new section for the wine auction permit to implement HB 1718.

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December 13, 2017	Board is asked to adopt rules
December 13, 2017	Agency sends notice to those who commented both at the public hearing and in writing.
December 13, 2017	Agency files adopted rules with the Code Reviser (CR 103)
January 13, 2018	Rules are effective (31 days after filing)

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

MOTION: Member Hauge moved to approve the filing of proposed rules CR 102 for 2017 Alcohol Legislation Implementation

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3D - Board Approval of CR 102 for Private Label Spirits

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 3D 1-3). She stated that there were several bills in legislation relating to private label spirits that did not pass. What the LCB did in place was create an interim policy to allow private label spirits without an exception to legislation that spirits and private labels could be created for a retail licensee under certain conditions. The first being that it could not be exclusive, the product would have to be reasonably available to all

retailers. Also, a copy of contract between the manufacturer and the retail licensee would have to be submitted to the LCB for review.

Timeline

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November 29, 2017	Public Hearing held
November 29, 2017	End of written comment period
December 13, 2017	Board is asked to adopt rules
December 13, 2017	Agency sends notice to those who commented both at the public hearing and in writing.
December 13, 2017	Agency files adopted rules with the Code Reviser (CR 103)
January 13, 2018	Rules are effective (31 days after filing)

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

MOTION: Member Garrett moved to approve the filing of proposed rules CR 102 for Private Label Spirits

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

4. GENERAL PUBLIC COMMENT

Chair Rushford then invited citizens to address the Board regarding any issues related to LCB business.

Holli Johnson – Washington Food Industry

Ms. Johnson thanked the Board and staff for the rules that were presented today, particularly the rules on 1351.

I'm here to talk about the private label spirits rulemaking. I was here when the CR 101 and filed comments. We have concerns about the language around exclusivity between producer and retailer as well as reasonably available. We feel this needs to be elaborated and defined more clearly so that

industry and particularly our members have some understanding of what that means so they can do the private label spirits within the letter of the law.

We also have concerns about the copy of the contract between producer and retailer. Are they going to be available in public records? And, what information in the contract will be held by the LCB and what is available for retailers across the board? Thank you.

Annie McGrath – Washington Brewers Guild

Ms. McGrath thanked Karen and the enforcement team for their work on the non-retail rules.

Karen and the team have been very inclusive in the process, providing clarity on the issue. We've added approximately 200 breweries since the rules were last reviewed, so it's nice to be able to provide clarity for the new questions being asked.

We will probably have comments on the alternating proprietorships, a model that several of our breweries have found success with. We want to make sure that the rules reflect what is happening with the current business models.

Also, we've been working with enforcement to add clarity on the 25% of another breweries production rule. Does that include cans and bottles or is it draft only?

Thank you for your attention on this, we look forward to continuing to work with your team.

Holly Chisa – NW Grocery Association

Ms. Chisa thanked the Board and staff for their work on the private label rules. Our industry greatly appreciates your open ears and willingness to work together.

One issue within the rule that we have concern with is the contract provision. Contracts are an agreement between a retailer and supplier and we are concerned that they may become public record. We are happy to provide that information to the Board, we are concerned with what happens to the information after that and if it becomes public record. We are happy to share the information with the appropriate entities, we don't want the information out in the universe. Anything you can do to help us resolve this issue we would greatly appreciate. Thank you.

Josh McDonald – Washington Wine Institute

Mr. McDonald thanked Karen and staff for being so inclusive.

Being included in the process is an important factor that we need to continue to do as we work on many important issues. This is a great example of how to begin and go through a very important conversation.

I want to thank the staff for looking at ways to align the TTB rules with what we do in Washington State. As you know we need to get our federal license before we can get our state license, to align those to make the process as simple as possible. That way the work we do to get our federal license could just be brought over to Washington State because what we're allowed to do federally is the same as in Washington. This alignment consistent and fair and makes things easier for our wineries.

There is still work we have to do in several other WACs, for example custom crush and alternating proprietor definitions. Those are really important, and those business laws are in place now. We need to

work closely with Karen and her team to get those definitions correct and recognize the current business model. The structure of alternating proprietors is also important, that has never been put in WAC before.

Also, we have shared AVA space with Oregon. We need to work together to write rules that allow us to sell our wines that may have been produced in Oregon just like Oregon does with their wines that may have been produced here. Some wineries have physical location in both places.

Lastly, there is a piece about bulk wine storage. We want to make sure that the way we are doing it now is encapsulated in the rulemaking for both bulk wine storage and transportation. Thank you

Scott Hazlegrove – Washington Beer and Wine Distributors Association

Mr. Hazlegrove thanked the Chair and the Board.

I'm here to talk about two issues. First of all, private labels. As you are aware, we have opposed private label authorization. It excludes many small producers from the market, and we are concerned about the loss of shelf space. We appreciate the efforts you have made to address this issue and believe that this rule is a good start. We appreciate the piece on exclusivity and believe that all products should be available equally to all retailers. But there is a second provision that talks about cross ownership between the tiers. For example, a retailer may own the brand or supplier. That cross ownership comes with several limitations in the statute as well that require separate legal entity. We think that's an important concept to maintain as it goes into rule. Secondly, we believe that you should look at this as a model not only for spirits but also for beer and wine. This provides clear rules for the road as to how to bring these products to market. There is potential for confusion with describing this as private label. "Private label" is used in the language in statute for product that is sold exclusively to a retail outlet. By calling it private label in the rule you create that confusion. In rule it says that private label can't be exclusive, in statute it says that it is. To help avoid that issue we may consider renaming what they are in rule, maybe limited label or special label to help separate them.

The second issue I wanted to address is the large packet of rules for non-retail. We have not had a chance to review them but will do so and provide comments.

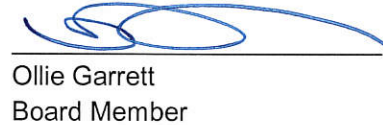
Chair Rushford reminded of the opportunity to provide written comment. She also indicated that there would not be any Board activity the Wednesday before Thanksgiving or December 27.

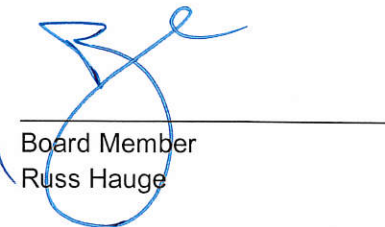
ADJOURN

Chair Rushford adjourned the meeting at 10:35 a.m.

Minutes approved this 15 day of NOVEMBER, 2017.


Jane Rushford
Board Chair


Ollie Garrett
Board Member


Board Member
Russ Hauge

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

LCB Mission - Promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

Complete meeting packets are available online: http://lcb.wa.gov/boardmeetings/board_meetings
For questions about agendas or meeting materials you may email dustin.dickson@lcb.wa.gov or call 360.664.1717