



Washington State Liquor Cannabis Board Meeting

Wednesday, May 2, 2018, 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, May 2, 2018. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the April 18, 2018, meeting minutes.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

3. EMPLOYEE ANNOUNCEMENTS

State Service Recognitions – Justin Nordhorn, Chief of Enforcement

Justin recognized Officer Tony Masias for 20 years of service and Captain Lisa Reinke for 30 years of service.

4. ACTION ITEMS (A-D)

ACTION ITEM 4A - Board Adoption of CR 103 for Cannabis Packaging and Labeling Rules

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-4).

Ms. Eide: Our cannabis packaging and labeling rules project has been going on for quite some time now. Last year we formed a packaging and labeling workgroup composed of members of our industry, as well as Department of Health, Poison Center, and Agency staff to take a global look at our packaging and labeling rules. This was brought on by many requests and comments received from the industry and also from other stakeholders.

This rulemaking was intended to try and streamline and clarify packaging and labeling rules requirements. Industry members and others have stated that labeling requirements are too onerous, while others have

stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, the WSLCB recognized that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure, packaging, labeling, and warning statement rules are effective.

Proposed Changes

Amendatory Section. WAC 314-55-105, Packaging and labeling requirements.

Adjustments to packaging requirements include:

- Allowing certain infused solid edible products such as lozenges and capsules and other similar products on a case by case basis to be packaged loosely (not individually wrapped) in a resealable child resistant exterior package.
- Requiring that infused liquid edible products in packages with more than one serving be resealable, though do not have to be child resistant due to challenges with packaging carbonated liquids.
- Only infused liquid edibles in packages containing a single serving may be packaged with a non-resealable closure, such as a crown-style cap. This means that a liquid consumable product with multiple servings it needs to have a resealable cap, but it does not need to be child resistant. We understand that many of these products are carbonated and there isn't technology available for child resistant resealable caps.

Streamlining and paring down of warning statements to ensure critical information is communicated effectively while reducing pressure on label "real estate."

Removal of harvest date, manufactured date, and best by date from required information on labels. This information may still be placed on the label as an option, but is proposed to be removed as a requirement.

Removal of the retailer business/trade name and UBI on label requirements in anticipation of the passage of legislation that will remove it from required information on labels in statute. Producers and processors business/trade names and UBI numbers must still be listed on the label.

Changing the UBI requirement to the nine-digit number rather than the sixteen-digit UBI number.

Removal of all accompanying material requirements except for pesticides information to reduce label crowding issues seen by licensees putting it on the label. Accompanying materials may be given to consumers via electronic format, including using a URL or QR code on the label. We did receive some comments of concern about this, I want to emphasis that licensees may still choose to provide accompanying materials in the same way they do now. Many do it on the back of a receipt or a separate handout. The WSLCB is working with DOH to explore potential signage requirements for other warning statements not on the label at retail locations separately, similar to requirements for liquor licensees.

Enhanced definition providing additional clarity for what is considered "especially appealing to children." Creation of a new definition for the term "cartoon." This is because we needed the additional detail to provide guidance to licensees and also for us to ensure consistency in product review and approval.

General improvements to organization of the rule to enhance clarity.

Amendatory Section. WAC 314-55-106, Marijuana warning symbol requirement.

Universal means all cannabis products it would have to appear on. The “Not for Kids” symbol is still required on infused edibles, the universal symbol is required on all products to indicate that the product is or contains cannabis and to indicate that it can only be consumed by persons 21 years of age or older. Of course there are exceptions for patients so this is meant for blanket items. Minimum size requirements similar to the size requirements for the “Not for Kids” warning symbol are included.

Timeline

The proposed effective date for the rules is January 1, 2019, in which all of the new rule requirements will have to be adhered to. The next item that I am bringing will detail the ability for licensees to be able to phase in implementing the new rule requirements over a period of time. This allows licensees to choose either the current rule requirements or the new rule requirements.

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

MOTION: Member Hauge moved to approve the adoption of CR 103 for Cannabis Packaging and Labeling Rules

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

Ms. Eide: Now that the Board has approved filing the CR 103 for Packaging and Labeling, those rules will be filed today with the final effective date being January 1, 2019. Both the new rule and the current rule will appear together on the legislature’s website. The expiration date for the current rules and the new effective date for the new rules appear simultaneously on the website.

ACTION ITEM 4B - Board Adoption of Cannabis Packaging and Labeling Rules Implementation Board Interim Policy (BIP-05-2018)

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 4B 1).

Ms. Eide: This Interim Policy details the requirements and allowances the WSLCB will use to allow licensees to “phase-in” the new packaging and labeling rule requirements to allow flexibility in implementation and reduce impacts and costs on the industry prior to the January 1, 2019, effective date where all new requirements must be followed. Changes to cannabis packaging and labeling rules were brought to the Board for adoption on May 2, 2018.

We chose this date because we know that licensees tend to purchase large amounts of product packaging and labeling in advance. We wanted to allow the extended effective date for them to be able to cycle through existing product.

The WSLCB is using this approach as we understand that packaging and labeling requirements changes pose impacts to the industry logistically, as well as the understanding that many processors purchase large quantities of packaging and labeling materials at a time to reduce costs (approximately 6 months on average). This approach will allow licensees to “phase-in” packaging and labeling that adheres to the new requirements as they cycle through existing inventory. Additionally, other optional allowances are

provided to assist in reducing costs related to processes required for labeling retailer business/trade name and UBI on packages and impacts on label "real estate."

Timeline

Effective January 1, 2019, licensees **MUST** use new packaging and labeling rule requirements as adopted by the Board on May 2, 2018.

Effective June 7, 2018, licensees may use the following options to "phase-in" the new packaging and labeling requirements.

Licensees may choose to use current rule requirements or new rule requirements, but must use all the requirements under each scheme (cannot combine elements of both requirements), with the following exceptions:

- Licensees may choose not to include the following optional information under either the current rule requirements or the new rule requirements:
 - o Retailer business/trade name and UBI
 - o Harvest date (where required in current rules)
 - o "Best by" date
 - o Manufactured date
- The above items were selected as optional requirements under the new rule requirements because this information can be gathered from data in the traceability system. Additionally, inclusion of unique identifiers in the traceability system and on labels will allow the WSLCB and licensees to trace products back to their source in cases where a recall may be necessary without the above information included on the label.
- Licensees may still choose to include the above information on labels under either the current rule requirements or the new rule requirements.

Licensees may not submit marijuana-infused edible (liquids and solids) products, packaging, and labeling for review and approval by the WSLCB using the new packaging and labeling requirements until June 7, 2018.

The June 7, 2018, date was selected to allow time for licensees to become familiar with the new requirements, as well as allow time for the changes to statute allowing the retailer business/trade name and UBI to be removed from labels to become effective on June 6, 2018 (see HB 2474). It is also consistent with the standard effective date for rules being effective at least 31 days after adoption unless a later date is otherwise provided by the Board.

This also allows additional time for the LCB to upload our materials to the website that provide guidance and education to licensees. We are also planning on holding a meeting with members of our packaging and labeling workgroup to further discuss these rule requirements and talk through any questions they may have. We may hold an educational webinar as well.

Ms. Eide then requested approval from the Board to adopt the interim policy.

MOTION: Member Hauge moved to approve the adoption of Cannabis Packaging and Labeling Rules Implementation Board Interim Policy (BIP-05-2018)

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4C - Board Approval of CR 102 for Curbside Service

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4C 1-4). She informed that she was presenting on behalf of Karen McCall.

Ms. Benham: This rulemaking is to revise WAC 314-11-015 and to add a new section as WAC 314-03-400 which will allow curbside service and provide guidelines for liquor licensed grocery stores to provide curbside service to customers utilizing online ordering and pickup programs.

An issue paper on this rule was presented and is included in your meeting materials.

Timeline

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|---------------|---|
| May 2, 2018 | Board is asked to approve filing the proposed rules (CR 102 filing) |
| May 16, 2018 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| June 13, 2018 | Public Hearing held |
| June 13, 2018 | End of written comment period |
| June 27, 2018 | Board is asked to adopt rules |
| June 27, 2018 | Agency sends notice to those who commented both at the public hearing and in writing. |
| June 27, 2018 | Agency files adopted rules with the Code Reviser (CR 103) |
| July 28, 2018 | Rules are effective (31 days after filing) |

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

MOTION: Member Hauge moved to approve the filing of CR 102 for Curbside Service

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4D - Board Adoption of CR 103 for Self-Dispensing Beer and Wine Machines

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4D 1-4).

Ms. Benham: The board was briefed on the rulemaking background and public comment for this rulemaking. I want to go over just a few of the comments that we received on this and then explain where are going from here.

Three comments were received at the March 7, 2018 public hearing. Two written comments were received at that time. Based on those comments we changed the rule language to remove the requirement that the beer taps be at the table. We then filed a supplemental CR 102 which set a new hearing date for April 18, 2018. One comment was received at the April 18, 2018 public hearing. Six written comments were received. To summarize the comments, they were mostly regarding increasing volume amounts, structuring the rule language to allow sampling, and revising the language to allow RFID wrist bracelets or similar devices instead of just service cards. We were able to add "up to 12 ounces or five ounces" to the language to address the sampling. This is reflected in the final rule.

There were also comments received concerning whether or not trained servers would be operating the machines and monitoring for over-service. The rules language does require a Class 12 or 13 MAST server's permit to operate the machines and for staff to check ID and to have the ability to remotely deactivate the machines.

Because of the additional comments received and the timelines for business waiting for these rules in order to open we are requesting the Board adopt these rules today. After the rules are finalized we will be considering reopening them to do some fine tuning to address the additional comments. The concise explanatory statement summarizing was just recently added to the rules meeting materials and available online.

If the rules area adopted the CR 103 will be filed today and become effective June 2, 2018

Ms. Benham then requested the Board to adopt the proposed rules.

MOTION: Member Hauge moved to approve the adoption of CR 103 for Self-Dispensing Beer and Wine Machines

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

5. GENERAL PUBLIC COMMENT

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

Diana Carlen – Total Wine and More

We support allowing retailers to provide curbside service. We are here today wondering why this policy would only apply to grocery stores. We've seen other states adopt this service throughout the country and have never seen it limited to just grocery stores being able to do that. We'd like to see it applied to all retailers, we fail to see a distinction as to why it should apply to just grocery stores. We think the same public safety concerns would be addressed either way and would like to see this open up to all retailers. We will be submitting written testimony on this to further elaborate, but our experience in other states is that this has been open to all retailers and thus would provide a level playing field for all. In general the policy itself we think is good in terms of more commerce is happening online and our customers want the convenience of being able to do that. We still think this can be done to preserve public safety and address any concerns you may have. Thank you very much.

Steve Gano - WalMart

Mr. Gano stated that he was testifying on behalf of WalMart stores who originally petitioned the rulemaking to be adopted.

Mr. Gano: Deborah Herron was not able to attend today and I'm here in her place. I want to make sure you understand that we take our responsibility for safety seriously as far as making sure that we aren't serving folks that aren't eligible to buy. When we talked to Karen originally about this proposed rule we made that very clear that we intend to continue that policy.

I want to hug the checkout person when I go buy alcohol at WalMart, they still check my ID every time. It's a mandatory thing that anytime you buy alcohol we have to check everyone's ID. So, we take that responsibility very seriously and should you adopt this rule, and we hope you do, I just wanted to let you know that we have a commitment to do the same at the curbside.

Retail is a super competitive business, and as we get into online ordering it is one more service in the basket of services that we provide, both grocery and other services that our customers have come to expect. We appreciate your consideration of this rule and hope that you adopt it. Thank you.

Dan Purkey – Artizen Cannabis

Thank you honorable Board members for the opportunity to present an issue that concerns virtually all users of cannabis. My name is Dan Purkey, I am the general manager for Artizen Cannabis, one of the top producers in the state.

The Board is already aware of the controversy regarding determining the correct THC percentage and various bad actor labs that contribute to the problem of accuracy of THC percentage. My reason for being here today is to further inform the LCB of additional issues around THC accuracy. I'm also here to ask the Board to issue an urgent consumer alert regarding the problem.

Essentially, and only somewhat exaggerated to make a point, THC percentage is a myth perpetrated as a legacy of the cannabis black market. You see, finding the correct THC percentage is more than just the bad actor labs who operate on a pay-to-play basis. The process to analyze THC percentage is subject to

many variables, even with the best-of-intention labs. The problem is that the LCB doesn't have a uniformly required way of testing for THC percentage. Therefore, each lab has its own unique way to test. By definition this process will result in varying THC percentages. In addition, where the test sample is analyzed by the labs come from on the plant have a big impact on THC results. A bud from the top cola of a given plant is likely to have much more THC than a bud taken from the same plant, but perhaps lower on the plant and more inside where the light is restricted during the growth process. Given that a lot is five pounds, a four gram sample from that lot which contains many different plants, really can't be representative of anything.

Also, in addition, the psychoactive effects of a given strain or just one package, are heavily influenced by terpenes which are naturally occurring chemicals in many plants responsible for the unique smells of plants but can have various effects on the body as well. Some of these are health or medical related, which continues to be a focus of cannabis research, but there are also psychoactive effects such as anti-anxiety, attention, mental focus, sex drive, energy, and concentration. Unfortunately for the LCB, cannabis is one of the most complex plants relative to its chemical composition and contains over 200 different types of terpenes, all with different effects including a thing called the entourage effect in which various terpenes interact with and against each other to produce different effects.

Last, each person's own unique chemical makeup and physiology make a blanket statement on THC percentage useless. One person may get high on a 13% THC content while the other may not get very high on a 25% THC content. Consumers are generally unaware of this and to continue to publish THC percentages on packages sends false messages to consumers. Accordingly, Artizen is recommending that the LCB issue a consumer alert to be posted prominently in all retail stores that says something along these lines: Consumers should not make buying decisions primarily on the THC percentage. Different labs have different results because of different analysis techniques. In addition, samples sent to the labs from producers may vary in THC percentage depending on where the plant and sample come from. Until the LCB makes these techniques uniform, both for analysis and sampling, consumers should not make direct comparisons among products regarding THC percentages. In addition, terpenes and each person's unique body physiology impact the psychoactive effects of cannabis. There are many characteristics on which to make a buying decision, but the labeled THC percentage is not one of them.

We also ask that the LCB require the retail budtenders to not sell their products based on THC percentages, but that the budtenders can educate the customers on the fallacy of THC percentages being a determining factor in any buying decisions. I'd be happy to work with the LCB to come up with the right wording for a consumer alert. Thank you for your time to hear this critical issue, I'll take any questions that you may have.

Chair Rushford: Please feel free to submit anything else in writing to us, thank you.

Don Skakie - Citizen

There are a couple things I would like to address today, the first is labeling. In Joanna's presentation this morning she mentioned industry stakeholders being the licensees and health organizations and agencies. The stakeholders that seem to still get left out by the LCB's considerations are the greatest group of stakeholders and that would be the cannabis consumers themselves, whether they are recreational consumers or medical patients. The labeling is lacking the information that a lot of people do need. As it was eloquently stated, THC is simply not the only consideration that consumers should have. I understand that the new rules to provide that the information is available elsewhere. I am also a medical patient that gets prescription medication. Every time that I get even a small dosage, even a vitamin, I get

a packet in my bag that tells me all the information that would be available somewhere. Fortunately the pharmaceutical industry has found it suitable to include that information with every purchase. I think that is something that would better serve the public, to have that information at all times.

The other thing that I am very concerned about, recently Analytical 360 was suspended from testing. This company has a history of not only being an industry leader, they have worked with the LCB in the past and been recognized for that. I understand that from the 20 violations included in the consideration for their suspension there were only three main concerns that should have led to anything or any actionable cause and they should have been allowed to have been corrected. There is a perception in the consumer community that this might be retaliatory and that is based on the fact that when the rules changed back in September that they continued to test beyond the standards required by the LCB. This is a reason why Analytical 360 tested product is preferred by patients in particular because they have gone the extra mile to test for molds and mildews and all the things that are above the cutoff for LCB. This is concern not only to the patients but to consumers at large.

I would ask the LCB to carefully look at reinstating them as soon as possible. I believe them to be a legitimate company that wants to do the right thing. They should be given the chance to do the right thing, and the LCB should be working with them to restore them not to eliminate testing. This will only create more backlog in the system and more problems for the industry.

Steve Sarich – Cannabis Action Coalition

Today I'd like to talk about the LCB's study on medical home delivery. This is a ruse. You've failed to identify patients as stakeholders in this. We all know that the retail stores want home delivery. We all know that the legislature hasn't been very good about that and so we think you are using the patients to get to where you couldn't go with recreational. At the same time ignoring us, you've also failed to show us where we can get this medication that is supposedly out there. You've refused to do that. Now, in this plan of yours, it excludes the 90% of patients that choose not to register. You are only dealing with 10% of patients. Only 15,000 people out of 150,000 are going to be able to take advantage of this system, and you won't include us in the study.

I just want to let you know that we will be absolutely opposing any attempt at legislation or rulemaking for doing home delivery until you include patients in this. Thank you.

Carolyn Loque – Washington Food Industry Association

I am here supporting the curbside service rule. Our stores also are very excited about having this opportunity because online ordering is something they are getting into more and more from the independent perspective in order to compete with the larger stores.

We do have a question in the actual rule language. One of a stores that is in a fairly narrow neighborhood area, and their area where people come to pick up their online orders looks like a drive through because you kind of drive through it. We were wondering if maybe the "drive through service is prohibited" language in the rule should say "drive through window service is prohibited" indicating that somebody is coming out of the store. There is no window there, but they were concerned about that language.

Also, Holly Chisa with the Northwest Grocery Association supports this rule too, but she couldn't be here today so she asked that I put her on the record. Thank you.

Preston Peck – Washington Sungrowers Industry Association


I wanted to take a moment to thank the Board and Ms. Eide for moving forward with the removal of harvest date requirement. This will be a huge burden off of our growers and really will start to level the playing field and dismiss the misconception that fresher cannabis is better as all of our growers strive to create a superior product, something that is cured and takes time and makes for a much more enjoyable consumption experience. Thank you so much for moving forward on that, I think that we are moving forward to a more sustainable industry.

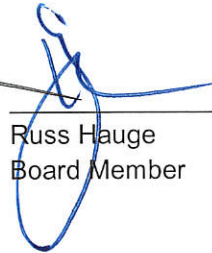
ADJOURN

Chair Rushford adjourned the meeting at 10:40 a.m.

Minutes approved this 13 day of JUNE, 2018


Jane Rushford
Board Chair


Ollie Garrett
Board Member


Russ Hauge
Board Member

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