



## Washington State Liquor Cannabis Board Meeting

Wednesday, August 22, 2018, 10:00 a.m.  
LCB Headquarters - Boardroom  
3000 Pacific Avenue SE, Olympia WA 98501

### Meeting Minutes

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#### 1. CALL TO ORDER

Acting Chair Ollie Garrett called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, August 22, 2018. Member Russ Hauge was present, Chair Rushford was excused.

#### 2. APPROVAL OF MEETING MINUTES

The motions to approve the July 25 and August 8, 2018 Board meeting minutes were postponed.

#### 3. ACTION ITEMS (A-C)

##### **ACTION ITEM 3A - Board Approval of Supplemental CR 102 for Curbside Service**

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-4).

Ms. Benham: The revision were made based on written comments and testimony received at the June 13, 2018, public hearing. The revisions to the originally proposed rules include:

- Orders must include \$25 of items coded as grocery items
- Orders must be delivered by an employee of the licensee to a vehicle parked in a designated pick-up area, owned or controlled by the licensee as a part of the licensed premises
- Orders may only be delivered and the sale completed if the name of the purchaser registered on the online account matches the name on the driver's license or ID of the individual accepting delivery

The revisions also include the addition of language that:

- Includes age and training requirements for employees delivering grocery orders to vehicles
- Employees must be at least 18 years old and be trained on verifying ID, recognizing signs of intoxication and preventing youth access
- Aside from a clear parent-guardian and child relationship, all occupants of the vehicle must be at least 21 years of age and provide proof of ID
- If ID cannot be verified or if the driver appears intoxicated, all alcohol will be removed from the order and the customer will not be charged for the removed products

Other changes to these rules include technical and clarifying changes, and clarification that drive-in/drive-through pick-up or pass-through pick-up window service is prohibited.

Timeline

August 22, 2018	Board is asked to approve filing the revised proposed rules (Supplemental CR 102 filing)
September 5, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
October 3, 2018	Public Hearing held
October 3, 2018	End of written comment period
October 17, 2018	Board is asked to adopt rules
October 17, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
October 17, 2018	Agency files adopted rules with the Code Reviser (CR 103)
November 17, 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 Supplemental CR 102 for Curbside Service

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

**ACTION ITEM 3B - Board Approval of Supplemental CR 102 for 2017 Cannabis Legislation Rules**

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3B 1-5).

Ms. Eide: You will recall there was a public hearing on the original rules in May and we have been hard at work compiling the comments received and taking another look at the drafts and making adjustments. There are some additional changes in this rule package. What I'll do today is talk through the items that have changed since the filing of the CR 102. These changes are based upon comments received and testimony at the public hearing. We also received a rules petition asking for further clarification on true part of interest. There are also additional changes that were identified by LCB staff.

In the issue paper today, for your reference, there is some underlined text that identifies each change that we made from the CR 102 to the draft that is being presented today.

First, in the definitions section 314-55-010, we added a definition of lozenge. This is to further express the intent of the changes that were made in the packaging and labeling rules stating that items such as lozenges, hard candies, mints or capsules can be packaged loosely in a consistently child resistant resealable container.

There were also changes in 314-55-015 which are technical changes in general. We added the term licensees to the list of people that must be 21 or over to work in a licensed establishment. Obviously that is already a requirement under the law. Also, minors restricted signage language was added consistent with the requirements in 314-55-086 as an internal cross reference.

In 314-55-018 we removed the initial proposed language on volume discounts based on comments received and upon Board request.

In 314-55-020 we added adjustments to the title of the section to make it clearer and further express what is contained within the rule. We are also adding clarifying changes there to express the LCB's authority to place licensing change applications on hold, or withdraw licensing change applications, and provided examples of what those are. This change is made to provide notice to licensees of current practices that the LCB has and to promote transparency. There are additional requirements that the LCB is working on as far as a process and procedure internally that will be used to implement that.

314-55-035 – There are quite a bit of changes made here, most are technical in nature. The initial changes we made in this section were to clarify true party of interest and financiers and differentiate the two terms. We provided further guidance and direction to licensees so they understand the sorts of business activities that would require additional approval by the LCB. Also added arrangements for consultant and contractual agreements to be disclosed to the LCB. We do have some technical changes to further clarify what a true party of interest is. This is modeled a lot after what Oregon has in their rules because it's examples of management and control of a licensed business that would generally constitute a true party of interest. We had some concerns expressed in the comments that a manager on duty at a retail store would be constituting a true party of interest based upon the terms that were used previously. While we do still want to maintain the requirements that management control can constitute a true party of interest, we wanted to put additional guidance on what that means. It boils down to the type of management in control that can bind the licensee to a contractual agreement or otherwise, other than an employee acting directly under the direction of the owner of the license itself that can enter into a contract or similar obligation on behalf of the business. Those are instances where management control would constitute a true party of interest outside of just a pure percentage of profits received. Additional items were included for licensing agreements and consulting contracts to provide direction on how those agreements may be disclosed to the LCB within rule.

In the marijuana producer license section there were some small technical changes made. We also removed the July 1, 2018, effective date because have passed that date now, as well as addition of the \$81 producer license fee consistent with statutory changes from the 2018 legislative session.

In the processor section, again the removal of the July 1, 2018, effective date. Addition of the \$81 fee consistent with statute changes, and also the addition of language consistent with some of the packaging and labeling rule changes that will become effective January 1, 2019.

Processing service arrangements – This is something that has been a hot topic and we have made changes to those provisions within that section. We wanted to make some additional clarifying changes here because there were concerns raised since title is never transferred under these processing service arrangements (which is where Processor A transfers product to Processor B so that Processor B can extract that product for them and send back to Processor A who would just pay for the service for the extraction and not have to purchase and sell back the material). Additional technical changes were made to ensure there was proper clarity around payment for services because the title of the product doesn't actually change hands. There were also changes to make sure that compensation cannot be in the form

of cannabis or products, it must be in cash as defined under this chapter, which is of course not just cash but can also be electronic funds transfer, checks or debit cards. Another item that was removed based on comments received was that processing service arrangements cannot exceed 50% of a processor's business. That has been removed because it was inconsistent with the privileges under the license.

Under the retailer section, technical changes for the \$81 fee were added and the July 1, 2018 effective date was removed.

Under medical marijuana endorsement, 314-55-080, there was a technical change to language that said a designated provider can enter with an underage individual. This is the only instance in which someone under the age of 18 can enter a store, but it didn't say what they could do after that. It said only a designated provider may purchase products for a qualifying patient under the age of 18 who holds a valid recognition card.

314-55-087 is record keeping requirements for licensees where we made a technical change to the title.

In 314-55-095 we added references to the personal possession limits and transaction limits detailed in RCW 69.50.360 and 69.50.4013 for sake of clarity, and also changed the word sale to read as transaction.

314-55-096 – this is for sample requirements, not for quality assurance samples, but for vendor education and internal quality control samples. We changed some language based upon comments received. Initially the proposed language restricted vendor samples to only those individuals who are either the licensee or the employee with purchasing authority. That would be a lot of cannabis for one person to consume if they are a small operation, so there were adjustments made to the language to provide flexibility within the business itself. We made additional changes to education sample, or budtender sample, to clarify that particular section as far as how many can be received per month. We added some sampling allowances for topicals because the rule was silent on topicals previously. There was some language in the original CR 102, we did some additional refinement for this supplemental.

314-55-104 – this is marijuana processor license extraction requirements. We made some small technical changes and also restored some language that was proposed to be removed for the certifications from engineers.

314-55-120 – ownership changes. We changed the term "qualifying persons" to "true party of interest or owner" throughout the chart in that section because it proved confusing.

There were a great deal of changes made to the receivership section, 314-55-137, a proposed new section. A lot of technical and organizational changes throughout, and removal of redundancy and clarification about maintaining residency requirements throughout the term of the receivership. Failure to abide by the requirements set forth in 69.50 RCW and 314-55 WAC may result in enforcement action against the licensee, and may result in the receiver being disqualified to act as a receiver by the LCB. This would be evaluated on a case by case basis depending on what the violation would be and whether that would undermine the ability of the person to properly act as a receiver since it is a fiduciary duty to the licensee. We also included some changes for filing yearly updates of information required by the LCB to try and streamline the process for those receivers that want to be on a pre-approved list, as well as removing some requirements that did not make sense for a receiver to comply with. Similar changes were made to requirements for a receiver who was applying for a one-time receivership.

314-55-102 – we removed this section on quality assurance testing, because the Board recently filed a CR 101 for a separate rulemaking for quality assurance testing requirements adjustments and also product adjustments. The changes we were considering were technical and can still be done in the separate rulemaking.

We added WAC 314-55-310, the transportation license, to make the adjustment for the fee change for all licensees.

We added a clarification in rule 314-55-155, which is advertising. We have some restrictions against giveaways, but we have had a practice in policy for quite some time to allow retailer licensees to provide samples of un-infused edible products or un-infused topical products to customers on the retail license premises so they can try them before they buy them without any THC or cannabis being present in the product.

Tentative Timeline

July 12, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
April 4, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
May 30, 2018	Public Hearing
May 30, 2018	End of written comment period
August 22, 2018	Board is asked to approve filing a supplemental CR-102 with changes to initial proposed rules
October 3, 2018	Public Hearing
October 3, 2018	End of written comment period
October 17, 2018	Board is asked to adopt rules
October 17, 2018	Agency files adopted rules with the Code Reviser (CR 103)
November 18, 2018	Rules are effective (31 days after filing)*

\*Unless otherwise provided by the Board.

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

MOTION: Member Hauge moved to approve the filing of Supplemental CR 102 for 2017 Cannabis Legislation Rules

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

**ACTION ITEM 3C - Board Approval of CR 102 for 2018 Cannabis Legislation Rules**

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3C 1-3).

Ms. Eide: This is to implement engrossed second substitute House bill 2334 which passed during the 2018 legislative session. It requires that the LCB develop testing requirements for cannabinoid additives generated outside the regulated marijuana industry if a marijuana licensee wishes to use those additives

in creating marijuana derived products. Only those cannabinoid additives that pass the testing requirements that are developed in this rulemaking will be able to be used by licensees in the production of cannabis products.

This rule proposal is exactly that, to propose the testing requirements for those CBD products. The LCB drew upon testing requirements for these products that are already established in the Department of Health's rules for compliant products, under chapter 246-70 WAC, in formulating this proposal. Inclusion of pesticide and heavy metal screening is based upon Department of Health rule requirements and because of high levels of pesticides and heavy metals that have been detected in tests of CBD products because these products are largely unregulated at this time.

These proposed testing requirements are also consistent with the testing requirements applying to marijuana and marijuana products, so we took the two and brought them together.

This is a brand new WAC section. We figured it would be easier to have a one-stop shop so it includes all of the provisions relative to the CBD product additives from start to finish: how it shall be received, security requirements, traceability requirements and testing requirements. "Producers and processors may use a CBD product obtained from a source not licensed under this chapter as an additive for the purpose of enhancing the CBD concentration of any product authorized for production, processing and sale (That language is directly borrowed out of the statutory language that was passed by the legislature), provided that the CBD product has a level of .3% THC or less and has been tested for contaminants and toxin by a testing laboratory accredited under this chapter and in accordance with testing standards established in this section."

It does establish security and traceability requirements for the CBD products, meaning how they shall be received how they should be placed within traceability and go forth through the traceability system. This was important given that these products look an awful lot like other cannabis products and could be easily mixed up. They also need to be in traceability in order for them to be transmitted to a certified lab for testing.

It establishes sample deduction and quality assurance testing requirements similar to the Department of Health's. This is done largely because of the largely unregulated state of these products.

The following fields of testing are required for successful passage in order for the product to be used:

- Potency to confirm the product is less than .3% THC and contains CBD
- Pesticide screening consistent with pesticide action levels provided in WAC 314-55-108
- Heavy metal screening due to concerns about heavy metals being present in these products
- Residual solvent screening, given that finished CBD oils or extracts have been extracted using various solvents
- Microbiological screening consistent with similar requirements for marijuana and marijuana products
- Micro toxin screening consistent with similar requirements for marijuana and marijuana products

The only item that is included here that is not included for marijuana is the foreign matter screening, which is stems, seeds and dirt. I do want to remind that these are for products, not necessarily for raw hemp material. The statute only allows for the finished CBD products as defined under statute and under the regulation, to be received.

If the CBD product fails quality assurance testing, it may not be used as an additive in marijuana products and must be destroyed consistent with the requirements in WAC 314-55-097. This is also consistent with marijuana testing requirements. In addition to that there are provisions for re-testing and remediation to provide exceptions to this requirement, but we only have remediation methods that are acceptable for certain fields of testing. There are not necessarily as many remediation allowances or available methods that are out there for things such as pesticides and heavy metals, but we do have flexibility should those ever be developed. We provide an exemption for destruction on a case by case basis if remediation and retesting is done.

If licensee or certified lab violates any of the provisions of this section is subject to disciplinary action including possible summary suspension or revocation of the producer license, processor license, and producer/processor license or lab certification. That is done because these pose a public health and safety risk.

Timeline

April 4, 2018	Board approved filing the pre-proposal statement of inquiry (CR 101)
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Ms. Eide then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve the filing of CR 102 for 2018 Cannabis Legislation Rules

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

Acting Chair Garrett: I want to take this opportunity, I think this is your last Board meeting. We thank you, and appreciate your service here at the LCB, and we look forward to still pulling you in from time to time if needed. You won't be that far away.

Ms. Eide: No, I won't be that far, just over at the Natural Resources building. If you need anything you can always give me a call. I will miss everybody here terribly, it has been such a fantastic experience, thank you all so very much.

#### 4. GENERAL PUBLIC COMMENT

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

##### Deborah Herron - WalMart

I want to provide feedback on the CR 102 for curbside delivery. There are two places from a customer standpoint we believe that there could be some concerns about how the language is written. It sounds like we'll have an opportunity to provide comment, but wanted today to try and put that in front of you before adopting the CR 102.

First, on item "c", which would require the ID match between the person picking up the service and the person who placed the order. We find that with curbside delivery, many of the customers that are using that service are families where one adult might place the order and manages the grocery list, and the other adult either for convenience or kids schedules or whatever the case may be is the person who picks up the order. Since it is required by state law that an adult must pick up the order, over the age of 21 if there was alcohol included, we would just ask that you strike that language in "section c" and allow the requirement to be 21 or over to be able to pick up alcohol orders.

We also would add to that, many times orders are placed anywhere from 24 to 48 hours in advance up to sometimes a week or two weeks in advance. Really, the families that are using the service or homes that are using the service are planning ahead. They are thinking about what is it they need, what is it that is going to fill their shelves, who is going to pick it up and how that schedule works. Same thing for homebound individuals or folks with disabilities that maybe don't have access to a car and are using a caregiver or working with a caregiver to help pick up their groceries.

The second concern we have is in "section e", the language called "clear parent relationship". As we've talked about before our employees and I think many grocery employees that would be working with a curbside delivery are trained very specifically to look for minors, to look for intoxication, to be cognizant and alert about anything that might seem amiss in a curbside situation. We would really need to have very direct conversation with all of you about how to comply with that language. How does the LCB Board really envision that working in a car? I'll just lend that I'm a Girl Scout leader. Sometimes I'm picking up a grocery order and we're on our way home from a Girl Scout activity. One of those children might be mine, but I might have other children, and the groceries are going in the trunk of my car. They aren't being opened until I get home. Really looking at that language could be very challenging both from a customer standpoint as well as from an enforcement standpoint, and of course we want to comply with anything you are asking.

We've been in operation six weeks under the temporary rule and have had no issues. I don't know if any other grocers are here today, but they may be able to provide anecdotes as well. We would simply ask that the Board consider keeping the temporary rule that is in place as the permanent rule. It seems as though things are working, at least from our side, the way they are intended to work and would like to ask if that was an alternative.

Member Hauge: Have you had any experience with non-family purchasers doing this? There are a lot of institutions and businesses buy groceries, is that customer base utilizing this service?

Ms. Herron: I would have to check with our E-Commerce team. I know that we've had a number of circumstances of individuals that are homebound that maybe use a ride share service or some other type of transportation to come to a WalMart store and pick up their groceries. They love this service because



they don't have to get out of the vehicle and navigate the store, they can just have the groceries delivered into the vehicle. We know that there are a number of seniors and other folks that maybe are homebound or simply don't have a vehicle and they send a caregiver to pick up their groceries. I'd have to check on, I think you are talking about a commercial-sized order?

Member Hauge: Not necessarily, but like you said, Girl Scout troops getting ready to camping would buy groceries, things like that.

Ms. Herron: They would not be buying alcohol as a Girl Scout troop.

Member Hauge: I'm glad of that.

Ms. Herron: I understand where you are heading with those types of circumstances, but again, at least with our service we require a minimum \$30 order of groceries so folks are really planning ahead. This is a service for busy families, busy people, folks travelling up and down the I-5 corridor that are picking up their groceries to head home for the week.

#### Don Skakie - Citizen

I want to support the comments earlier regarding the curbside delivery. As a member of the protected class served by the ADA regulations, I want to state that it is important that access be available for all citizens regardless of ability to actually get to a store. It's understood that anyone consuming or buying alcohol should be over the age of 21. Should anyone not be able to have curbside service, the only difference would be that somebody would have to go into the store rather than get curbside service. I think it would be a good accommodation to allow anyone over 21, regardless of whether they were the person ordering or not, to make that purchase and pick up.

My other concern is in regards to Joanna's comments on the CR 102 for cannabis, regarding the budtender samples. The various effects of the different strains of cannabis are hard to determine up front and someone who is inexperienced, without the breadth of knowledge about the products, they really depend on what they are told at the point of sale which is with the budtenders face to face. The budtender sampling, I understand is very small amounts, it is unlikely that they would be diverted to the black market. I think they are an important aspect in advising customers on what the effects might be and help guide their purchases.

#### **ADJOURN**

Acting Chair Garrett adjourned the meeting at 10:34 a.m.

Minutes approved this 3 day of OCTOBER, 2018

*Not Present*

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Jane Rushford  
Board Chair

  
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Ollie Garrett  
Board Member

  
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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.

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