



Washington State Liquor and Cannabis Board Meeting

Wednesday, June 12, 2019, 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, June 12, 2019. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the May 29, 2019, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

3. ALCOHOL RELATED RULEMAKING

ACTION ITEMS (A)

ACTION ITEM 3A – Board Approval of CR 102 for Acceptable Forms of ID – Tribal ID

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

Ms. Benham: I'm here this morning to request approval to file the CR 102 with proposed revisions to WAC 314-11-025 regarding acceptable forms of identification. The proposed revisions to this rule do three things. First, they allow consideration on tribal enrollment cards from federally recognized Indian tribes located outside of Washington as acceptable form of identification as a way to verify a person's age for alcohol sales, service, consumption and possession. Second, the rules add the process for tribes to request consideration of enrollment cards as acceptable forms of identification. This process is one we currently use; it was added to the rule for clarification purposes. And last, the revisions make technical changes and update the rule language to ensure requirements are clear for all acceptable identification types.

I would like to provide some background on this rule. This rulemaking was initiated as a result of legislative inquiries that began with contact from a tribal member of a federally recognized tribe located outside of Washington. We amended the rule and came forward with proposed revisions and filed the CR 102. We heard feedback from federally recognized tribes located here in Washington that they'd like to consult on this rulemaking, so we withdrew the CR 102 on April 17 in order to consult with the tribes. Today's CR 102 and the proposed revisions are a result of that consultation and great process we went through with the tribes.

There are a few minor changes to this rule from the rule that was proposed on April 17. We reorganized it and put a couple of the requirements that apply to all acceptable forms of ID first, and then listed the acceptable ID types. I also want to note too that we maintain a list on our website of all of the approved tribal enrollment cards, and the tribes that currently have approved enrollment cards will not need to submit information for reconsideration; their cards will remain approved.

Timeline

June 12, 2019	<ul style="list-style-type: none"> • CR 102 and proposed rules filed with the Office of the Code Reviser • LCB webpage updated and notice sent to the rules distribution list
July 3, 2019	Notice published by the Office of the Code Reviser in WSR # 19-07
August 7, 2019	Public Hearing held and end of written comment period
August 21, 2019	<ul style="list-style-type: none"> • Board asked to adopt rules if no additional changes are made • Notice and Concise Explanatory Statement sent to those who commented both at the public hearing and in writing • CR 103 and adopted rules filed with the Office of the Code Reviser • LCB webpage updated and notice sent to the rules distribution list
September 7, 2019	Rules effective (31 days after filing)

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

MOTION: Member Garrett moved to approve the filing of CR 102 for Acceptable Forms of ID – Tribal ID

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

OTHER ITEMS (B)

OTHER ITEMS 3B – RULEMAKING FORECAST

Ms. Benham: Not a lot has changed since our last board meeting. First, we have the spirits distributor licensing fees rules. I'm hoping to have the CR 102 presented with the proposed rules in July. We're currently reviewing our system needs in order to track the fees and stakeholder comments.

Special occasion licensing rules are open for review and rules are going to be out for stakeholder comment by the end of June. I'm hoping to have the proposed rules and the CR 102 by the end of July or early in August.

We have winery and brewery rules open, and we are currently working with stakeholders regarding a draft of proposed revisions. I hope to have the proposed rules and the CR 102 at the end of July or early August for those.

Barrier rules are open and we hope to have a draft out for stakeholder comment by the end of June or in early July.

At our last Board meeting, we approved filing the CR 101 to open rulemaking to implement 2019 legislation. Two separate rules packages are there regarding Soju endorsements for beer and wine restaurants and spirits, beer and wine restaurants, recapping sake and manufacturers' packaging and bottling are in one rules package. We filed that CR 101 May 29 and we're hoping to have rules work sessions scheduled next month to begin drafting rules revisions. The other 2019 legislation implementation package that was opened was regarding chapter 314-38 WAC regarding permits. We're going to do a full rules review that will be implementing legislation allowing student tasting off campus at manufacturing facilities and grape growing areas. We're hoping to have work sessions scheduled next month for that rulemaking. Do you have any questions?

Chair Rushford: No questions. I hope we can also post that information on our website.

This is our last meeting in this building, and we won't have a meeting on July 10 due to ongoing construction on the first floor of the new building. Our next Board meeting will be July 17.

Janette Benham: We'll work on getting these updates on the website.

Chair Rushford: Thank you.

4. CANNABIS RELATED RULEMAKING ACTION ITEMS (A-D)

ACTION ITEM 4A - Board Adoption of Board Interim Policy 12-2019 for WAC 314-55-109 CBD Additives – Requirements, Restrictions and Quality Assurance Testing

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1).

Ms. Hoffman: I'd like to request your approval to adopt Board Interim Policy (BIP) 12-2019 regarding WAC 314-55-109. It has to do with cannabinoid additives. By way of background, RCW 69.50.326 provides that licensed marijuana processors and producers may produce a CBD product as an additive with the purpose of enhancing cannabinoid concentration of any product authorized for production, processing, and sale consistent with the control substance act. RCW 60.50.010(2)(d) defines CBD as any product containing or consisting of cannabidiol. RCW 69.50.326 also provides that licensed marijuana processors and producers must use a CBD product that is purchased from a licensed processor or producer with one exception consisting of two elements. The license producers and processors may use a CBD product obtained from a source that is not licensed under 69.50 RCW as long as the product has a THC level of .3 percent or less, dry weight on a dry weight basis and the product has been tested for

contaminants and toxins by a testing lab accredited by the LCB. LCB rules regarding cannabinoid additives became effective December 1, 2018, and established requirements, restrictions, and quality assurance standards for CBD additives. Among these is the requirement that CBD products obtained from both inside and outside the marijuana license structure must be entered into our existing traceability system. While the traceability system is capable of tracking CBD products that are produced within the license system structure, it's currently not able to trace products that are produced outside of that structure. Tracking CBD products that are produced outside of the license structure creates an additional workflow that our system is currently unable to support. So, the purpose of this board interim policy is to suspend the current requirement described in 314.55.109 that licensees must enter test results from CBD products that are obtained from a source not listed in chapter 314.55 WAC into the traceability system. All of the other requirements of 314.55.109 including but not limited to record keeping will remain in full force and effect.

Ms. Hoffman then requested approval from the Board to adopt the Board Interim Policy

MOTION: Member Garrett moved to adopt Board Interim Policy 12-2019 for WAC 314-55-109 CBD Additives – Requirements, Restrictions and Quality Assurance Testing

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4B, C, D

Board Approval of Request to Withdraw CR 102 for Vapor Products Rules

Board Approval of Request to Withdraw CR 101 for Vapor Products Rules

Board Approval of CR 101 for Vapor Products Rules (Implementing ESSHB 1873 and HB 1074

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4B 1, 4C 1, 4D 1-2).

Ms. Hoffman: Next I'd like to request approval for filing of a CR 101 for vapor products. The scope of the original rule project around vapor products has now expanded to include the implementation of 2019 legislation along with the inclusion of updated penalty grids and other elements consistent with the marijuana penalty rule we designed. It's currently underway.

I request your approval to withdraw both the CR 101 and the CR 102 that were filed on April 18 and November 28 of last year respectively and to file an updated CR101 today.

The issue paper before you provides a brief background on the current status of research related to vapor products and it also briefly describes the directives of Engrossed House Bill 1074. This is the Tobacco 21 legislation prohibiting the sale of cigarettes, tobacco products, and vapor products to persons under 21, as well as the directives of Engrossed Second Substitute House Bill 1873. This is legislation related to vapor product taxation including record keeping product and other requirements that apply to persons licensed to sell vapor products under Chapter 70.345 RCW. Rules are needed to implement this legislation and for alignment with the structure of marijuana penalty rule redesign.

Timeline

June 12, 2019	CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Informal comment period begins.
July 3, 2019	Notice published in the Washington State Register under WSR #19-13.
August 2, 2019	End of informal comment period.
September 4, 2019	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Formal comment period begins.
September 18, 2019	Notice published in the Washington State Register.
October 16, 2019	Public hearing held and formal comment period ends.
November 13, 2019	Board is asked to adopt rules if no substantive changes are made (CR103). Concise Explanatory Statement provided to individuals offering written and oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list.
January 1, 2020	Rules are effective 31 days after filing (unless otherwise specified).

Ms. Hoffman then requested approval from the Board to withdraw the proposed rules.

MOTION: Member Hauge moved to approve the Request to Withdraw CR 102 for Vapor Products Rules

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

OTHER ITEMS (E)

OTHER ITEMS 3E – RULEMAKING FORECAST

Ms. Hoffman: With respect to the penalty rules (that's implementing Engrossed Substitute Senate Bill 5318), a workgroup has been meeting consistently on that and I think we've come to a point where we're very close to being able to release a draft conceptual rule set to our industry stakeholders and partners. We're looking forward to that. If we stay on this timeline, I would suspect that after a listen and learn session related to those rules, I would have a CR 102 ready to propose to you September 4 or September 18, more likely September 18 because we have our true part of interest rules that are aligning with these penalty rules coming through at the same time. In order to allow enough time for meaningful

stakeholder engagement and feedback, I'm expecting this to happen around September 18. The last time, I had a very aggressive timeline of August 21 but I think that was a little too aggressive. I will be requesting that we open a CR 101 with respective consultation program that's also described in ESSB 5318. I have that scheduled for July 17 at this time. Additionally, with true part of interest, we're implementing ESHB 1794 in addition to making general housekeeping updates to that rule. We held our first internal workgroup on June 10. There's a lot of work around definitional terms. Control is one of the terms that we're really interested in defining in this particular ruleset. Again, in alignment with the penalty rules, I suspect that we'll have the CR 102 ready to present to you around September 18.

Quality assurance testing rules are coming along nicely. We received a preliminary small business economic impact statement from our industrial economist and that drove the conversation around our next listen and learn session which is scheduled to be held on June 25 here at LCB. We're going to invite industry partners, stakeholders, and any interested party to contribute to the conversation on how we can mitigate the impact of implementing these rules and, at the same time, talk about how we can develop phase-in strategies. Again, I had an aggressive timeline for August 21 presentation of the 102 on that for you and it's my hope that we'll make that deadline. But I'm thinking that's going to be more on the range of September.

Packaging and labeling rules for implementing House Bill ESSB 5298: we're starting to do our internal rule review on that particular ruleset. We're continuing to identify risk mitigation and phase-in strategies for that particular ruleset. Also, we are beginning to schedule meetings with industry partners regarding their concerns around the packaging and labeling rules. At this point, I can see a CR 102 being filed at some point in early October, at least with respect to the implementation of 5298. Our additional conversations with industry partners will drive how that rulemaking moves forward. Any questions?

Member Hauge: No, thank you.

Chair Rushford: No, thank you very much.

Kathy Hoffman: My pleasure. Thank you.

Chair Rushford: Kathy and Janette, the Board appreciates your due diligence and the steps you're taking with our stakeholders. Thank you.

5. GENERAL PUBLIC COMMENT

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

Gregory Foster – Cannabis Observer

Good morning, Board members. I wanted mainly to thank you for adopting the Board Interim Policy. I think that's a good step that enables your licensees to be compliant when they are introducing cannabinoid additives from outside the I-502 system. So thank you for taking that step. I also think that that's a very good illustration of some of the problems and challenges that we've had with the traceability vendor, MJ Freeway. And I think you are well aware of many of those issues.

As Ms. Hoffman indicated, the actual law that established the possibility for the addition of cannabinoid additives from outside the system was passed last summer and the rules were implemented throughout the fall. They made an assumption that we would be able to actually have a workflow in place in the

traceability system by the time that those rules actually came into place, and that seems like it would be a reasonable assumption. However, with this particular software vendor, we found that your reasonable assumptions are never met and we have not had an additional update to the system since August of this last year. They were actually contracted to have a next release in early November and just this past week, they missed yet another deadline.

We also found out today that because of the size and the scope of this next release, which is kind of contrary to contemporary software engineering practices -- every time you bundle lots and lots of new features into a release, that increases the risk overall. And so because of that increased risk, we are now going to have to have a 24-hour shutdown of basically the entire industry to ensure that the data migration can take place. This is an example of some of the challenges around traceability in general, of having a central system like this that the entire industry is dependent upon. But I think more so, it indicates the problems with this particular vendor. Industry patience for this particular vendor has already run out and I think it's becoming a challenge and a risk for the agency.

I encourage you to do what you can to work with this vendor or to do something else when it comes to traceability. And oddly enough, it seems like this vendor, MJ Freeway, is somehow doing quite well in their other endeavors. They just announced today that they are expanding a current private offering to accrue an additional \$2.2 million from investors. So, it just doesn't necessarily add up that we've had this experience in Washington State that we've had with this vendor and it seems like they're preparing to cash out and take advantage of other investors elsewhere. Thank you for all of your work. Thank you for this board interim policy.

Don Skakie – Homegrow Washington


Good morning, Chair Rushford, Board members Garrett and Hauge. I'm Don Skakie from the city of Renton and I apologize for not commenting on this interim policy earlier. It occurs to me that the suspension of testing on the CBD additive products could be problematic when it gets to the shelf. I'm wondering if the introduction of non-tested CBD into the tested system as an additive could create a failure rate at that point. That might be a concern to not only the industry but to consumers as well. So again, I apologize for not raising that issue sooner but it's just something that comes to mind today. Thank you.

ADJOURN

Chair Rushford adjourned the meeting at 10:24 am.

Minutes approved this 17 day of July, 2019


Jane Rushford
Board Chair


Ollie Garrett
Board Member

NOT PRESENT
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, cannabis, tobacco, and vapor 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