



Washington State Liquor and Cannabis Board Meeting

Wednesday, August 7, 2019, 10:00 a.m.

Boardroom, LCB Headquarters – 1025 Union Ave SE, Olympia, WA 98504

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, August 7, 2019. Member Ollie Garrett and Member Russ Hauge were also present.

Chair Rushford: Good morning, everyone. Welcome to our inaugural meeting in your new building. This building belongs to all of us, and we're very happy to be here and hope that you will enjoy it as well. I've been asked to remind that the microphones here are very sensitive, so if you'll please refrain from sidebars and other possible distractions, we appreciate it for those listening.

2. APPROVAL OF MEETING MINUTES

Chair Rushford announced the approval for the July 17, 2019 Board Meeting minutes was suspended.

3. ALCOHOL RELATED RULEMAKING

ACTION ITEMS (A-B)

ACTION ITEM 3A – Board Approval to Rescind Board Interim Policy 02-2018 for Curbside Service

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-2).

Ms. Benham: Thank you and good morning, Chair Rushford and Board members Hauge and Garrett. The first item on the agenda for me today is regarding a proposal to request approval to rescind Board Interim Policy 02-2018 regarding curbside service. Curbside service rules WAC 314-03-400 and 314-11-015 were adopted January 9 of this year with a delayed effective date of August 1. Now that the rules are effective, Board Interim Policy 02-2018 is no longer needed. If approved, the Board Interim Policy will be rescinded and notice will be sent to stakeholders.

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

MOTION: Member Garrett moved to rescind Board Interim Policy 02-2018 for Curbside Service

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3A – Board Approval of CR 102 for Spirits Distributor License Fees

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

Ms. Benham: Thank you. The second item I have on the agenda today is a request to approve filing the CR 102 regarding spirits distributor license fees. The proposed revisions to WAC 314-02-106, 314-28-070, and seven sections of chapter 314-23 WAC insure compliance of the 2017 Court of Appeals decision regarding collection of spirits distributor license fees.

Rules needed to be revised to ensure that retailers selling spirits for resale pay the distributor license fee when no other distributor license fee has been paid. For example, when the selling retailer purchases the spirits from a manufacturer or an out of state supplier and does not purchase them from a distributor. In addition to the changes made to comply with the Court of Appeals decision, changes were made to clarify beer requirements and ensure rules language of the requirements outlined in the statute. Revisions include repealing WAC 314-23-025 regarding the collection of shortfall of spirits distributor license fees since that section expired March 31 of 2013.

Timeline

August 7, 2019	<ul style="list-style-type: none">• CR 102 and proposed rules filed with the Office of the Code Reviser• WSLCB webpage updated and notice sent to the rules distribution list
August 21, 2019	Notice published by the Office of the Code Reviser in WSR # 19-16
September 18, 2019	Public Hearing held and end of written comment period
October 2, 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• WSLCB webpage updated and notice sent to the rules distribution list
January 1, 2020	Rules effective – Normally 31 days after filing the CR 103 Note: The effective date will be delayed for reporting and payment purposes

And, I wanted to note on these rules that we're requesting a delayed effective date. We will be requesting this when we file the CR 103 on January 1 of 2020. That will give everyone who needs to report a clean quarterly reporting timeframe so we won't be starting the report in the middle of the quarterly period.

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

- MOTION: Member Hauge moved to approve the filing of CR 102 for Spirits Distributor License Fees.
- SECOND: Member Garrett seconded.
- ACTION: Motion passed unanimously.

RULEMAKING TIMELINE

Ms. Benham: Thank you. The last item I have is a rules forecast for upcoming rules. Later today on the agenda we have the public hearing for the acceptable forms of ID. And in addition to filing the CR 102 for spirits distributor license fees, which we'll do today, I have special occasion license rules being drafted and I'm hoping to have these sent out for comment by the end of this week. These have taken a lot of work with a lot of statutory references that we needed to collect from different areas in order to put those all in one place so that the licensees have one place to be able to find all of the guidelines for special occasion licenses.

For winery and brewery rules, we're currently reviewing the comments. We've received a lot of comments on these and these rules have taken a lot of work. We're making revisions and anticipating having the CR 102 ready in September to file.

We're also working on the barriers rules and this is revisions to WAC 314-02-025 and 033. We've met with the Washington Hospitality Association and prevention stakeholders and have feedback on the draft rules. We should have draft rules out for stakeholder comment this month and anticipating the CR 102 in September also for these.

We have two fairly new legislation rules packages. One is for Soju, recapping sake, and manufacturers packaging and bottling. That will be revisions to WAC 314-02-015, 045, and Chapter 314 30. We filed the CR 101 May 29 and we're scheduling work sessions so we can begin drafting these rules. The second rules package for 2019 legislation also includes a chapter review and update for the permits chapter, which is chapter 314-38 WAC and will also incorporate student tasting, which was a piece of legislation that passed this year with some changes to student tasting requirements. CR 101 for that was also filed May 29 and we'll be scheduling work sessions for that this month too. So more to come on those two. Do you have any questions for me?

Member Hague: No, thank you.

Chair Rushford: Thank you for the update, Janette.

Ms. Benham: Thank you.

4. CANNABIS RELATED RULEMAKING

RULEMAKING TIMELINE

Ms. Hoffman: Good morning, Chair Rushford and Board members Garrett and Hague. I'm providing a rules update today starting with our enforcement reform, or penalty rules that implements ESSB 5318. As

I've shared previously, our final stakeholder workgroup meeting was held on July 12 and our industry partners have provided some really excellent and substantive feedback for us to consider internally and that's what we're in the process of doing right now. We have an internal meeting scheduled for next week to consider and review all of those comments. So, we remain on track at this point to share a draft conceptual ruleset with our licensed community and industry partners toward the middle of August. I still have a listen and learn session on those draft conceptual rules scheduled for August 29, and I really am committed to maintaining that date so we can move forward with that ruleset that I'll finalize later this week. Our next steps with this particular ruleset is to move through this process of listen and learn sessions. I hope to request to file a CR 102 with you in mid-October to assure that we've got a really durable set of rules. We may need to extend the date on filing the CR 102 depending on how many listen and learn sessions that we'll need in this space because we're aligning this with the TPI rules as well. So just keep that in mind when moving forward.

Another part of ESSB 5318 was the voluntary compliance program. We filed the CR 101 last month, July 17. I've only received two comments on that ruleset so far.

Next is the true party of interest rules, again implementing ESHB 1794. Our internal workgroup is going to meet on that ruleset this week. We're meeting with industry partners next Monday to discuss the substantive changes that will be made to that ruleset as well. When I was at the regulators roundtable week after last, I was able to meet with some attorneys general from other states with this concept around the definition of control. I have some interesting ideas to bring to that space moving forward. Next steps there are to continue to work with our industry partners toward, again, a draft conceptual ruleset that will be durable that we can share into the future. And at this point, I'm not really sure when our listen and learn sessions are going to happen on that but I'm expecting them to happen in September. Again, we want to align that ruleset with our penalty ruleset so all the definitions align -- definitions and concepts, I should say, align.

Quality assurance testing rules. We have our second listen and learn session scheduled to happen here on August 22. I'm really looking forward to that. I'll have an updated draft conceptual ruleset to share with our licensed community and industry partners later this week. That communication will also include some guidelines on how that dialogue is going to happen in the way that we had our first listen and learn session, but more focused on the topics of mitigation and phase-in strategies. If we remain on the timeline that we're on right now, we should have our CR 102 ready to file in late October, early November.

Finally, our packaging and labeling rules. This implements 5298. We continue to receive comment from our regulated community on them and I want to thank the community for all the meaningful comments we've received in that regard. I continue to analyze that data, verify that data to make sure that we have both qualitative and quantitative data for our small business economic impact statement that we'll be presenting to the community later, and that will become part of our CR 102 packet. I'm expecting that we'll have listen and learn sessions scheduled for the middle of September in this space. I foresee that those sessions will include all of our community. That means prevention community, other agencies that wish to comment, as well as our industry partners and associations. And given the excellent collaboration that we've experienced with this ruleset so far, I anticipate that we'll have a CR 102 ready to go by the middle of October, which would mean that we wouldn't have to bifurcate out the parts of 5298 that we need to implement by the end of the year. So, I'm really hopeful that we'll be able to accomplish that. Our next steps with this particular ruleset is for me to prepare a BIP to address the retailer sell down that I will present to you on August 21 at our next Board meeting and then continue to draft our draft conceptual rules.

And then vape rules are moving forward nicely, we're still on track. We haven't received any comments on that ruleset so far. I continue to work on the revisions that are consistent with bills 1873 and 1074. And I suspect we'll have a CR 102 ready to present to you in the middle of October. Do you have questions for me?

Chair Rushford: Has Sara been able to connect with the prevention community regarding the vape rules, or do you have any sense of that, Kathy?

Ms. Hoffman: I don't. I believe that's in the works for her, but I will circle back with her and let you know.

Chair Rushford: Thank you. Any questions from the board?

Ms. Hoffman: Oh, you know, strike that, Jane. I just remembered -- I'm sorry, Chair Rushford. Our meeting in Bothell coming up, includes a discussion of vape rules.

Chair Rushford: Okay.

Ms. Hoffman: I believe that meeting's happening on the 20th.

Chair Rushford: The 20th, yes.

Ms. Hoffman: I will be speaking at least to the packaging and labeling rules. I believe Officer Reinke will be there to present to our community on that.

Chair Rushford: Excellent. Thank you.

Ms. Hoffman: You're welcome.

Chair Rushford: I have a draft agenda that she sent last night that I haven't had a chance to review so I'm glad to hear of our plan with this important part of our community.

Ms. Hoffman: Thank you.

Chair Rushford: We're going to move to the public hearing. Janette, if you would introduce please, regarding acceptable forms of ID.

5. PUBLIC HEARINGS (A)

PUBLIC HEARING 5A – ACCEPTABLE FORMS OF ID – TRIBAL ID

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 5A 1-2).

Ms. Benham: The public hearing today is regarding revisions to WAC 314-11-025, acceptable forms of identification. 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. The rules stated that ID was acceptable for federally recognized tribes located in Washington. We revised the rule to include consideration in tribal enrollment cards for federally recognized tribes located outside of Washington as acceptable forms of ID. The Board's enforcement division currently reviews enrollment cards for

consideration and that process is also formalized in these revisions. All approved tribal enrollment cards are listed on our website and currently approved cards will not have to be submitted for re-approval. Other technical and clarifying changes were made to this rule to ensure requirements are clear for all types of acceptable identification.

We initially filed a CR 102 with the proposed rules and then withdrew it on April 17. We filed a Supplemental CR 102, which set the hearing date today. We did that in order to consult with tribes. We met with interested tribes and collaboratively drafted a better set of revisions. These revisions are a result of that consultation process and the feedback we received from the consultation was very positive. As of now, we have not received any formal comments after filing the CR 102. Do you have any questions?

Member Hague: No, thank you.

Ms. Benham: All right, thank you.

Chair Rushford: I just have one. The consultation process is in place for potentially other related issues?

Ms. Benham: We do have a consultation process for tribes. Every time we open a rulemaking we're sending notification to the tribes, and we'll hear from them if they want to engage in consultation.

Member Hague: If I could speak to that, our staff, Brett Cain, our tribal coordinator is actively working with our tribal partners in revising our consultation policy. The policy dates back to pre-cannabis legalization and we've taken this opportunity to tune it up. It's a process that exists in parallel and separate and apart from rulemaking that mandates our cooperation with the tribes. And it, as this example proves, works very well.

Ms. Benham: We received a lot of positive feedback from -- as consulting with the tribes on this rule. I think it was a precursor to the more in depth conversation about updating the consultation process, too.

Chair Rushford: We appreciate the update on the process. Thank you, Janette.

Ms. Benham: Thank you.

Chair Rushford: Is there anyone that missed the opportunity to sign in to testify? The public hearing has opened and closed, we don't have any comments. Thank you, Cindy. We'll move to the general public comments at this point, thank you.

6. GENERAL PUBLIC COMMENT

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

Joe Hyer – Percival Consulting for Marijuana Mart

Thank you, Chair Rushford and Board members. Nice new digs, and thank you for coming back into Downtown Olympia. I also own a small retail store here and all these employees will be helpful.

Today I'm here as a land use consultant. I've been consulting with licensees for about four years, mainly on city and county government issues, which is my background more than state rulemaking. Today I'm here on behalf of Michael Trobman and the Oyster Bay Group, also known as Marijuana Mart. They have been operating a retail store in Grand Mound and just successfully completed a move and have an excellent compliance record over the last four years. They, in 2016, as stores expanded, attempted to open another location, which is where I came in and helped them in Mason County, Pierce County, Grays Harbor County, Thurston County, Lewis County, and finally Cowlitz County where we have successfully opened a second store on December 16 in Longview, which has also been a great compliance record, everything actually.

Now they would like to open their third store, which I've also been working with them since 2016. At the time, they looked in Centralia and I recommended they bypass it entirely. The only zoning area allowed was heavy industrial, which is very difficult to work with, with small retail. So we moved on and looked around. That's where we got to Longview. However, when you come back because there are not many jurisdictions available, you look deeper and deeper and deeper and they did find a location in Centralia that met all of the state requirements, everything except one requirement, which was that it was in the general commercial zone of Centralia. And if you have a land use background, there's a reason it's in the general commercial zone. That's where retail belongs. The comp plan of Centralia, 244 pages of it, really says that over and over again that neighborhoods' character and land use should be done that way. So I recommended to the client that we do a comprehensive plan text amendment and simply ask for it to be allowed in that zone because it's where it's appropriate.

For the next year, they paid rent and got no revenue but we did the whole process. The actual planning commission of Centralia gave us a unanimous vote of support to add it to the zone because it was sensible land use. Unfortunately, the city council did not agree. The next year is similar, and again the council did not agree. At that time, we began looking throughout the industrial zone. Why? Because it's the only place available. The challenge in the industrial zone is not just pollution, not just large parcels, not just no retail available but it's also that most of the M2 industrial zone in Centralia is not actually in Centralia. If you're familiar with the Growth Management Act, the city of Centralia in its comp plan is 10,000 acres but inside the city limits there's only 4,000 acres. 60 percent of Centralia is not yet in Centralia and the majority of the industrial zone is outside. That puts it in the county, not in the jurisdiction available. The challenge then is parcel by parcel you eliminate environmental clean-up, government owned, 1,000-foot rule. We did come up with one parcel and it potentially could hold multiple stores and one is going in. Unfortunately, Centralia also has a law that its one store per parcel. It isn't Centralia that actually has a ban, and it isn't Lewis County, and it isn't even the port with their master planning district and it isn't state. It's the cumulative impact of these various regulations that has caused it basically to have no availability whatsoever. So the Oyster Boy Group for this store is requesting the Board issue a title certificate so that they can figure out what to do, be it either annexation of more industrial areas so more space becomes available in Centralia, which will happen in the next five years or a loosening of the zone restrictions. But without one of those two, there's not many choices left. I do have a letter from Mr. Trobman (CITIZEN SUBMISSION 1-3) as well as background information and I'm available at any point in the future to answer more questions. Thank you for taking the time today.

Chair Rushford: Thank you for the time and I'd like Jeanie or Becky to connect with you after the meeting. Thank you.

Gregory Foster – Cannabis Observer

Good morning, Chair Rushford, Board Member Hauge, Board Member Garrett. I'm here today to talk about traceability and we talked about it last time at the Board meeting. I sit on the Traceability Advisory Committee here at the Liquor and Cannabis Board and have good perspective on the impacts that the latest traceability release has had on the regulated community.

I want to actually talk about a little bit of history that predates my presence in Washington State so I've had to kind of reconstruct this from the 2017 legislative session. There was a piece of legislation that was introduced, SB 5130 at the request of the agency. Senator Rivers introduced it and this legislation in addition to increasing the annual renewal fees for all licensees from \$1,000 to \$1,300 a year, it also instituted a one-time \$480 fee throughout the fiscal year 2018 on all licensees. That fee was earmarked for the agency to use to replace the BioTrack traceability system with a to-be-determined at that time new traceability system. And at that time, this was at the time of the public hearing for this, this was early 2017 so before the RFP had been issued or anything of that nature. Senator Rivers at that time was under the impression that replacing the old system would, in her words, "offer a better return on investment for the taxpayers of the state". And to his credit, the Chair at that time of the Senate Commerce and Labor and Sports Committee at that time, he asked, "Well, how do we know that this reported new system is going to be any better than the old system?" And there wasn't a great answer for that. So, looking at the fiscal note for that bill, the agency predicted at that time that there would be 2,975 licensees that would be renewing at \$480 apiece. That would generate \$1,428,000 that the agency would then spend on replacing the traceability system. That money came directly from each of your licensees in the regulated community, nearly one and a half million dollars. And presumably, it either went to pay for the agency's expenses or went to MJ Freeway. And, hindsight is 20/20 of course and unfortunately, there was a stipulation put in that bill that said that that fee was nonrefundable. I just wanted to bring this up to show that this is just another example of how painful this has been for the regulated community. If there's anything that we can do with regards to that particular thing, those fees, that one and a half million dollars that came off the backs of your licensees, I'd encourage you to see what can be done. Thank you.

Chair Rushford: Thank you for that, Gregory -- it's a work in progress.

Rachel Weygandt – WACA / Evergreen Herbal

Good morning, Chair Rushford and Board members Garrett and Hauge. My name is Rachel Weygandt. I'm with Evergreen Herbal. I act as the Compliance Manager and Project Coordinator. We're a manufacturer of cannabis-infused edibles and other products in Seattle, Washington. We're also active members of WACA, the Cannabuiness Association and have really enjoyed their partnership in trying to work with us in what I'm going to talk to you about today, which is packaging and labeling rules. I also would like to say thank you to Kathy Hoffman and the LCB members who are also open to hearing our thoughts and concerns.

We are appreciative of the deadline that we received in the extension for our packaging and labeling rules to next summer. That is certainly helpful. But I hope that our conversations don't end there. We truly do need to take a holistic look at the packaging and labeling rules and how they're affecting small businesses. Our company, Evergreen Herbal, we have seven brands in the market. Only three of those are approved for 2020 regulations. And two of those were just approved within the last seven days. So our concern for you, moving forward, it's a larger problem than just extending the deadline. On average, our turnaround time from the time I submit to the time I receive an approval is 70 days. Sometimes we're spending up to \$50,000 for a product to rebrand towards these new rules. So, for all seven of our

products, we're anticipating having to spend \$200,000 to rebrand each of those into these new regulations.

And, that's fine. We want compliant packaging and products in the market. We don't want to make products that are geared towards children. But the current rules don't give us a solid outline for how to get there. One of our brands, Blaze, it's our number one selling product, we've been working with the LCB to rebrand since December of last year. I've submitted eight different iterations to the Board and we are nowhere near an approval. We've spent over \$50,000 just on that one product alone, and we're not even considering going any further with that one until hopefully mid-October when we get an update to these rules. Because as it stands right now, we don't know how to get this product back into the market.

Product packaging is more than a background color or the number of colors used. It's how we communicate to the consumers who voted to legalize these products. And what's happening with the restriction in the background colors and the limit of how many colors we can use is all of the products are going to look the same. Consumers will be confused. They won't know how to differentiate from one brand to another. There will be no brand loyalty and the Washington market will really suffer. I hope that we look to other states for guidance, see what's been successful, what hasn't been, and go from there.

We really hope that over the next few weeks that we can be a part of a further discussion to get some really consistent rules that are not subjective like the rules that we have now. Being told your white isn't white enough or the black isn't black enough or having two colors on a background makes it difficult to determine what a background color is, somehow means that that is appealing to a child is I don't think the intention of the rules. I really look forward to working together with Kathy and other LCB members to regulate these rules in a way that makes sense for the community, the patients, the Board and processors like us. Thank you.

Chair Rushford: We really appreciate your comments. Thank you.

Ms. Weygandt: Thank you.

Chris Marr – Consultant

Thank you Madam Chair, members of the Board. I was actually not going to make any comments but an earlier comment kind of triggered something that I need to speak to.

First of all, thanks again to the agency and licensing and education for their great work on the Soju endorsement meetings we had, two of them, actually, north of Seattle and then one down in Federal Way that I attended. My understanding, my last communication with Kim Sours, we had 79 applications and maybe a few more trickling in. Honestly, we did not know there were that many Korean-American restaurants out there. And if you could meet -- I forwarded a couple pictures, but first of all, I had a hard time tracking because most of the discussion was in Korean. But, I understand many of the questions that came up, actually we weren't specifically related to Soju but maybe more general.

I'm going to suggest and, I know resources are sometimes tight but I think this can provide a great template for reaching out to communities, especially where there are language barriers. And so especially could be Korean restaurateurs, it could be Latino communities. I think there's a great opportunity to kind of expand on this. But I'll just say, it's a great template, it's a great success, and we all look forward to toasting the Board with our glass of soju at some point.

I want to speak to the Centralia issue. I actually represent a client in Centralia, RIU 420 DBA. I won't go into the specifics of that other than to say Centralia made a decision very early on after 520 was passed to heavily restrict the location of any marijuana-related businesses. And they did so by confining them to three industrial areas. Now, that's a decision each community makes based on what it desires in its area. And so, we do have some conflict. The licensee I work with chose to live with those rules, spent a lot of money, and worked with a developer to construct buildings in that industrial area. It's a really nice kind of strip mall storefront there. After a lot of time and effort, did locate there. I understand there are two other park licenses in Centralia that wish they were somewhere else. I want to propose that I believe in the case of title certificates and also compliance with your operating requirements and rules, those were not put in place so folks that felt it was too expensive or they'd rather operate in the general commercial area, those were pretty clear. If you have zone areas for marijuana stores or marijuana businesses in a municipality, you need to comply with those rules. If you don't then you are at risk of losing those licenses, or you don't qualify for a title certificate.

So what I want to say first of all is I really sympathize with licensing. I did not know there were that many licenses potentially where these rules were applied to that were under review. I think someone said around 160. That's a lot to go through. Each set of circumstances is different. But from a policy standpoint, I just want to speak to the Board and say that's my view that yes, local governments are going to put restrictions that we have to meet, but the intent of the legislation and your rules seems to me to be clear. We need stores out there open and operating to combat the illicit market and to serve the citizens of the state. And I believe every licensee should meet those requirements. There may be specifics that Mr. Hyer was speaking to and I'll let those be discussed offline but I just want to say there's another side to this. Thank you.

Chair Rushford: Thank you, Chris. Kathy, if you would, please.

Ms. Hoffman: I just wanted to respond to Rachel's suggestion that we confer with other states. Actually we are next Monday. We have about a four-hour meeting scheduled where Oregon and Colorado are going to present to us and we can engage with them on how the packaging and labeling rules work. We can have a healthy dialogue about what works, best practices, those types of things. So we're on that, and thank you.

Chair Rushford: Thank you, Kathy. Anything else for the good of the order today? Thanks everyone for being here. We are adjourned.


ADJOURN

Chair Rushford adjourned the meeting at 10:34 am.

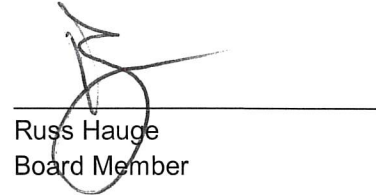
Minutes approved this 22 day of AUGUST, 2019



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, cannabis, tobacco, and vapor laws.

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