



Washington State Liquor and Cannabis Board Meeting

Wednesday, September 18, 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, September 18, 2019. Member Ollie Garrett was also present, Member Russ Hauge was excused.

2. APPROVAL OF MEETING MINUTES

Chair Rushford informed the approval of the August 21, 2019 Board meeting minutes was suspended until the next Board meeting.

3. CANNABIS RELATED RULEMAKING – TIMELINE

Ms. Hoffman: Good morning, Chair Rushford and Board Member Garrett.

I'll begin with the implementation of 5318. I'm happy to report that we released a set of draft conceptual rules on our penalty rule redesign on August 29. We currently have a listen and learn session scheduled for September 26. And so far, we've received really positive feedback. I'm really happy to share that and was anticipating that we would, but to date, we haven't received any really substantive feedback on that particular ruleset. Moving forward I still anticipate that we'll be filing a CR 102 in the mid-November range on that particular ruleset.

Voluntary compliance program. Again, implementing 5318, we still haven't received any public comment other than the one comment received asking why are we engaging in more rulemaking. A project team is being assembled for that and we'll move forward at the end of this month so we can get that program up and running.

TPI rules implementing ESHB 1794. We have a meeting with stakeholders today to go over draft conceptual rules to this point. Progress on that has been rather slow. We're still wrestling with concerns around what control means and residency requirements. So, it's a slow process but it's a really meaningful process. I still hope to have the CR 102 filed with that in the mid-November range along with the penalty rules since they, as we know, inform one another.

Quality assurance testing rules. I think you're aware we had our last "listen and learn" session on August 22. At this point, it looks like we are going to go through with the 18-month phase-in plan. I'm meeting with the marijuana examiners unit next week to go over all the comments we've received so that we can share those with the regulated community and go through our final draft rules on that. I expect those to be filed, the CR 102, at the end of October just because the small business economic impact statement and significant analysis are going to be pretty time consuming for this set.

Packaging and labeling rules. I'm happy to report that our internal workgroup has produced a nice set of draft conceptual rules that are completely different from what we had before. We're happy with their redesign, so we'll be ready to release those to the regulated community towards the end of next week and then schedule one listen and learn session. There's some urgency in getting these done based on what's happening with our concern with concentrates. One listen and learn session tentatively set for October 4 for the entire day. It's not firm yet but that's our direction at this point because ultimately, our goal is to have these rules in effect on January 1, 2020 to comply with the requirements of 5298 on therapeutic and curative claims.

Most important, this week are the vapor rules that implement 1873 and 1074. I just completed our final proposal, it is with the Attorney General's office for review right now so we'll be able to bring forward the CR 102 to you on October 2. And again, the authority that we have in our vapor rules isn't quite as extensive as we'd like given the current climate, but it's the best we could do under the circumstances and we're happy to have the authority that was conferred to us under those two measures. Any questions?

Member Garrett: No Questions.

Chair Rushford: No questions. Thank you, Kathy.

Ms. Hoffman: You're welcome.

4. ALCOHOL RELATED RULEMAKING – TIMELINE

Ms. Benham: Thank you and good morning, Chair Rushford and Board Member Garrett. The first item I have on the agenda today is an update on alcohol rulemaking. As you know, the acceptable forms of identification rule was filed on August 21 and the rules are effective September 21, so those will become effective in the next few days. That was the rulemaking that allowed consideration of tribal enrollment cards from federally recognized tribes located outside of Washington.

Today we have a hearing for spirits distributor licensing fees, I'll go over that more when we get to the hearing today.

Special occasion license rules. This is a full review and revision to Chapter 314- 05 WAC. The draft rules were sent out for staff, assistant attorney general and stakeholder comment. We received generally positive feedback on these and we're currently reviewing the comments. We'll respond to all comments before bringing the CR 102 with proposed revisions and I anticipate that will come in October. I want to over a little bit of what's changing with these rules. Clarifying rule language was added, unnecessary language was removed. Application requirements were updated and clarification was added to the guideline section. That clarification is based on the questions that come in from licensees to licensing and enforcement. And as you know, we license over 6,000 of these special occasions per year. The updates

should help cut down on the confusion and the amount of questions that come in regarding these events. The advertising and branded promotional items section was updated to include a reference to legislation that passed this past session regarding social media posting. Updates also include information taken from the advertising rules, chapter 314-52 WAC wasn't removed from that chapter, it was taken and added into the special occasion license rule regarding public and civic events to provide clarification on that.

The next set of rules I'm going to update on is the wineries and breweries rules. We're still reviewing staff comments, working through stakeholder comments and addressing some inconsistencies that were just recently brought to our attention between our rules and TTB requirements. Some of these inconsistencies have been longstanding and some are new based on changes that have happened with the TTB. We've had several meetings and work sessions with staff and stakeholders. Stakeholders include the Washington Wine Institute, California Wine Institute, Family Wineries of Washington and the Washington Brewers Guild. I anticipate the CR 102 will come in October. This will be a really large rules package when we're ready to bring this forward. There are 37 sections of the wineries rules and 21 sections of the breweries rules that have changes. Legislation that passed this last session regarding recorking unused bottles of wine in wineries and additional locations, so we removed some outdated language and the rules were rearranged for clarification purposes. We're adding requirements for alternating proprietorships on tracked production and internet sales for direct to consumer shipping for wineries and employee quality control sampling requirements.

Next is barriers rules. We've been working on these for quite a while. This has been fairly controversial. We think we're at a good landing place with these and we're anticipating having the CR 102 ready with the proposed rules in October. We've had several meetings and work sessions with staff and stakeholders, including the Washington Hospitality Association and the prevention community. What's changing with these rules is beer, wine, and spirits for wine restaurants will be allowed to have options other than a 42-inch barrier. Again, this is a compromise between a 42-inch barrier and not having any distinction at all between areas that are designated as off-limits to minors. The options will include visibly different contrasting flooring, walls of any height, large planters, floor lighting, floor beacons and steps up or down. We're still working on fine tuning these options and these requirements. We're also going to make sure that signage requirements are being clarified and updated so that the areas that are off limits are very clearly and visibly signed. We're adding a reference to the alterations WAC, which is WAC 314-03-300, so that licensees know that they can request an alteration for special or regularly scheduled events. We currently have some licensees that have an alteration for Sunday brunches, for example. This will give the restaurants the opportunity to have an alteration to their premises, but they'll have to just plan a little bit ahead to make sure that they can have the alteration approved.

The last two rules packages I have open are 2019 legislation, the first one regarding Soju, recapping sake and manufacturer's packaging and bottling. We have our first work session scheduled this week and after we start with revising, we'll know how many work sessions we need to have and have a better timeline on that. The second legislation rules package I have is a chapter review and update regarding student tasting. That's for Chapter 314-38 permits. We have the first work session scheduled next week. After then we'll have a better understanding of the timeline. Do you have any questions for me on any of these rules?

Member Garrett: On the barrier, when you said have to let you know in advance of alteration approval, is that per Sunday brunch or once they get approved it's for Sunday brunch regardless?

Ms. Benham: It's for regularly scheduled or special events. So, if they have a regularly scheduled event or anticipating that the approval will be for the Sundays that they have the event.

Ollie Garrett: Okay, but not per Sunday. It would -- once they get an approval --

Janette Benham: They'll be able to have them on Sundays.

Ollie Garrett: Okay, that was my question.

Janette Benham: Thank you. Any other questions?

Jane Rushford: No other questions but I just want to comment to both you and Kathy. Thank you for your commitment to collaboration and your due diligence. We've had a lot of rulemaking this year. It will continue but thank you very much. We'll move now to the public hearing.

5. PUBLIC HEARINGS (A)

PUBLIC HEARING 5A – Spirits Distributor License Fees

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 5A 1-4).

Ms. Benham: Today's public hearing is regarding spirits distributor license fees. I'll just go over the background and what the proposed rules do. The proposed revisions clarify who's required to pay spirits distributor license fees as a result of an August 8, 2017 Court of Appeals opinion. The Court of Appeals opinion stated in part that spirits distributor license fees cannot be collected from license distillers, craft distillers, or certificate of approval holders. WAC 314-28-070, 314-23-030, 314-23-041, and 314-23-042 were revised to remove the fee requirement.

The decision also stated that retailers selling spirits for resale must pay the distributor license fee when no other distributor license fee has been paid. WAC 314-02-106 was revised to implement this requirement.

WAC 314-23-001, 005, 021, and 022 were revised to clarify the fee requirements and insure that rules language met the requirements outlined in statute. It made additional technical and clarifying changes to the rules and WAC 314-23-025 was repealed because the provisions of the rule expired on March 31, 2013.

After considering comments received today and in writing, followed by adoption of the rules and CR 103, we plan a delayed effective date of January 1, 2020. And because this is a new reporting requirement, we revised a form by adding a new line as January 1 will be the beginning of the quarterly reporting period. As far as initial comments while drafting the rules, we received comments suggesting that we require retailers selling for retail to present a Department of Revenue reseller permit when purchasing. We didn't add that to the set of rules that you see today because we heard from retailers that they sometimes don't have that reseller permit so they request a refund from the Department of Revenue after the purchase has been made. And we also wanted to make sure that we left it up to the licensees to determine how they're going to track their sales. After we filed the CR 102 with this proposed set of rules, some of those who have commented prior to filing the CR 102 are in support of the rules and agree with how they were written. Do you have any questions for me before we open the hearing?

Chair Rushford: No questions. Thank you.

Ms. Benham: Thank you.

Chair Rushford: No one has signed in for public testimony, did we miss anyone? That's always a good sign that we've completed our work in an acceptable way. Thank you very much. This concludes the public hearing.

Thank you, Kathy. Thank you Janette. We'll move now to general public comments, we have one: Don. And again, if you missed the opportunity to sign in to comment, please see Cindy.

6. GENERAL PUBLIC COMMENT

Don Skakie – Citizen

Good morning, Chair Rushford and Board Member Garrett. For the record, my name is Don Skakie from the City of Renton.

This morning I want to follow up with what's been going on in the news. We're all away of the several deaths that have occurred recently from vaping products, be they from cannabis or tobacco or a mix thereof. We know that these are adult products. We know that we don't want young people, underage or even children, being attracted to these products before it's time appropriate. Recently, I was in a supermarket and I was -- I like beer so I was heading for the beer case, and as I passed through the aisles, the display there -- I've sent to each of you and Board Member Hauge a series of four photographs. What it depicts is alcohol that is displayed openly in the aisle unsecured at eye level of children. They depict brightly colored packaging, depicting fruits and other flavors that the Board has found to be inappropriate for cannabis. Several states have moved to ban such flavorings in vape products. More states are looking at that and even the president has looked at making a ban of that nationwide. I don't know what the Board's plan is for that but I know that the Board is taking a very serious look at all of those things.

So, in view of the Board's mission statement to regulate in a fair manner, I would ask that you look at these photographs and perhaps review what the policies are for alcohol. I have a local QFC where they have a separate alcohol area that one has to enter. It's staffed at all times. It's basically a customer service area where you can get your lottery tickets, money orders and other such things. But then once you pass that desk is the alcohol section.

In my local Albertsons store, the alcohol is somewhat restricted. There are locked cases on the more expensive products. However, wine and other products are still on the shelves at eye level of what would be children or young people, so it's a little less restrictive. But the photos I've sent you nothing is really secured in that area and there is no oversight from staff from the store. Given that this is a concern across product lines, I would ask that the board take a look at that again. –

In the end, ultimately, it's the parents' responsibility once they get the products home of how they'll be stored and controlled at home. But as we go in our adult lives taking young people to the store with us week after week, them being exposed to these images and bright colors and products, I wonder about whether we are being appropriate with the presentation that children are exposed to. Thank you for your time today.

Chair Rushford: Thank you, Don and yes, we agree that those exposures are concerning and have some restrictions in place. I'm not sure if someone here can clarify a couple points with Don after the meeting, maybe Jon or Nicola?

Is there anyone else who would like to speak to us today?

Since there are none, we are adjourned.


ADJOURN

Chair Rushford adjourned the meeting at 10:20 a.m.

Minutes approved this 23 day of OCTOBER, 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.

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For questions about agendas or meeting materials you may email dustin.dickson@lcb.wa.gov or call 360.664.1717