



Washington State Liquor and Cannabis Board Meeting

Wednesday, October 16, 2019, 10:00 a.m.
Boardroom, LCB Headquarters – 1025 Union Ave SE, Olympia, WA 98504

Meeting Minutes

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, October 16, 2019. Member Russ Hauge was also present, Chair Rushford was excused.

2. APPROVAL OF MEETING MINUTES

Acting Chair Garrett announced the approval of the October 2, 2019 Board Meeting minutes was suspended.

3. ALCOHOL RELATED RULEMAKING

RULEMAKING TIMELINE

Ms. Benham: Thank you and good morning, Board members Garrett and Hauge. I'm here this morning to provide a rulemaking timeline for all alcohol-related rules that we currently have in process.

First, we filed the CR 103 and adopted the final rules for spirits distributor licensing fees on October 2. This rulemaking package has a delayed effective date of January 1, 2020.

The next rulemaking package I want to talk about is special occasion license rules. We sent out draft rules to staff, our AAG and stakeholders for comment and we received generally positive feedback. We have just a few things to work out after reviewing the comments so we're really close to being able to file the CR 102. I hope to have the CR 102 with the proposed rules filed by October 30. We might not make that timeline and if not we'll bump it out to the next Board meeting.

Next are the wineries and breweries rules. These rules have been open for quite awhile for general revisions. There's a lot of outdated language and we're still receiving comments and working out some inconsistencies between our rules and the TTB requirements. We should have these rules ready soon. There are a lot of revisions that relate to our outdated language, and requirements and practices that have changed.

Barriers rules. This has been a really popular rules revision package. Draft rules were sent out to staff and stakeholders with the comment response deadline of October 9. These are the rules that are removing the 42-inch barrier requirement for beer and wine, and spirits, beer and wine restaurants and changing it to allow these restaurants to have a different designation as a demarcation for areas that are off limits to minors. Some of the options include: visibly different and contrasting flooring, walls of any height, large planters, floor lighting, floor beacons and steps up or down. We're reviewing the comments that we've received, we've gotten some really good comments and we'll be looking to update the first draft of these rules that were sent out for comment. We're still in the drafting stages but I'm hoping to have proposed rules ready possibly by October 30, more likely into November for this.

And the other two rules packages that I have open are related to 2019 legislation. The first one is on Soju recapping, sake and manufacturers packaging and bottling. We had an initial staff meeting and work session on September 20 and there's not a lot of rules revisions on this package. We need to have one more meeting before we send these out for stakeholder comment. And the other 2019 legislation package is a chapter review on 314-38 for permits. It will also incorporate the bill that passed regarding student tasting. We had a staff member work session on September 23 and we'll need to schedule at least one more work session on this prior to sending the rules out for comment.

Another rules package that may be in the works that I want to mention is regarding the Court of Appeals decision on trade practice rules. We received this in August and sent communications out to licensees on October 7. We're still looking at how that affects our rules and if we're going to commence rulemaking on this. We've received some comments from stakeholders on this after the communication went out to all alcohol licensees. Do you have any questions for me?

Russ Hauge: No, thank you.

Ollie Garrett: No questions. Thank you, Janette.

4. CANNABIS RELATED RULEMAKING

ACTION ITEMS (A-C)

ACTION ITEM 4A - Board Approval of Revision to CR 102 for Nicotine Vapor Products

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

Ms. Hoffman: Good morning. I'd like to start with re-introducing the CR 102 for vapor product rules. As you might recall, I introduced this on October 2. We realized after reviewing the CR 102 form that we needed to reschedule the hearing date to a later date in November. To refresh your memory, Chapter 314-35 provides a very limited framework around the manufacturing, distribution and sales of vapor products. We have two pieces of legislation, engrossed House Bill 1074 and engrossed second substitute House Bill 1873 that expand the LCB's authority. These rules move that forward by increasing the age of sale of vapor products, increasing record-keeping requirements, clarifying vapor product licensee requirements including qualification, application denials, insurance requirements, license suspension and revocation and establishing transportation requirements, establishing the ability of the Board to seize both cannabinoid vapor products and vapor products under specific circumstances, establishing forfeiture guidelines and establishing a penalty structure that aligns with our current work on marijuana penalty reform. Under the new timeline, I would file the CR 102 today, the code reviser would publish that on

November 6. The public hearing would be held on November 26 and that would also be the end of the formal comment period. I would then come back before you on December 11 and ask you to adopt final rules. We could file those rules on the same day (December 11). There's a possibility that we could file on the 18th as well if we receive significant comment and need to respond. At this time, I'm scheduling that for December 11. This would make the rules effective on January 1, 2020.

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

MOTION: Member Hauge moved to approve the Revision to CR 102 for Nicotine Vapor Products

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4B - Board Adoption of Emergency Rules for Marijuana Vapor Product Signage

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4B 1-5).

Ms. Hoffman: Next I have two emergency rules that I'd like to request your approval on. I know at LCB we don't do a lot of emergency rules. I want to review that process before we move forward with this.

Consistent with RCW 34.05.350, that's part of the Administrative Procedures Act, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of public health, safety, or general welfare and that observing the time requirements of notice and opportunity for comment upon adoption of a permanent rule would be contrary to the public interest. This rule process is exempt from filing of the CR 101, analytical and public hearing requirements. An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser unless a later date is specified in the order of adoption and may not remain in effect for longer than 120 days after filing. That doesn't mean that it just automatically falls off the books, we can either rescind it when necessary or recall it when necessary, or we can extend it if the emergency approved rule is still in place.

The first emergency rule I'd like to request your approval on today relates to mandatory signage. As you might be aware, I'm sure we all are, on September 27, Governor Inslee issued Executive Order 19-03 entitled "Addressing the vaping use public health crisis". This Executive Order orders and directs the LCB, the Washington State Department of Health and the Washington State Board of Health to engage in specific activities. Some of those that have already occurred in the adoption of the State Board of Health rules last Wednesday.

Part of that executive order also requires the LCB to require the posting of warning signs regarding the health risks of vaping at retailers where vapor products containing THC are sold. This emergency rule would add a section to WAC 314-55-086 with respect to mandatory signage and the additional language would require the posting of this sign for the next 120 days unless we need to extend it or it becomes part of the actual ruleset. So at this time, I'd like to request your approval to adopt and file the emergency rule that I described, it should become effective tomorrow.

MOTION: Member Hauge moved to adopt Emergency Rules for Marijuana Vapor Product Signage

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 4C - Board Adoption of Emergency Rules for Marijuana Vapor Products Ingredient Disclosure

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4C 1-5).

Ms. Hoffman: The second emergency rule is with respect to mandatory disclosure of all compounds used in the production and processing of marijuana vapor products for inhalation. Again, we have an Executive Order that requires LCB to require manufacturers of THC vapor products to disclose all compounds, including ingredients, solvents, additives, et cetera used in the production and processing as well as the source of those vapor products.

We've established a new rule section under WAC 314-55, and this would be 1055, requiring disclosure of those ingredients on a form that we've developed in collaboration with our industry partners. The original rule language that we've provided to the public just required licensees to retain that form on their premises and keep it updated on a regular basis. But we've gone back and now require that those forms be provided for the LCB either in electronic form or through mail until the time that we have a database in place to support tracking these forms. I'd like to request your approval to file this emergency rule with respect to disclosure of compounds with the code reviser.

MOTION: Member Hauge moved to adopt the Emergency Rules for Marijuana Vapor Products Ingredient Disclosure

Member Hauge clarified that the disclosure would be on a form to be kept on premise of the LCB.

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

RULEMAKING TIMELINE

Ms. Hoffman: Thank you very much. All right, next is our rules update. Please note that some work has been delayed a little bit by the things that I was just talking about.

Penalty rules. We have our next listen and learn session scheduled for October 31. And at this time assuming everything goes as planned, I will have a CR 102 proposal to provide to you on either November 26 or December 11. The next listen and learn session will concentrate on going through the penalty grids with our regulated communities and partners and anyone who wishes to attend. We're making great progress on those rules and looking forward to bringing those to you in November or December.

As part of the work under ESHB 5318 with respect to penalties, we also have voluntary compliance program that we opened with a CR 101 in July. Our internal project team has a kickoff meeting this Friday, and during that meeting we plan to develop a collaborative schedule for program development in consultation with marijuana licensees and their employees consistent with the legislation that is moving

this rulemaking forward. And since I anticipate that there's going to be several work group sessions on this particular project, I anticipate rules to be ready to present to you in the spring of 2020.

We're still moving forward with TPI (true party of interest) rules to the extent possible. We continue to collaborate with our industry partners on this. Our next meeting with industry partners is October 22. Because these rules are very complex, we're not able to move them at the same time as the penalty rules. So, they'll still inform one another but they're just going to be introduced to you at separate times. I hope to have the CR 102 ready for you with proposed rule language around the first of the year, if not shortly thereafter.

Quality assurance testing rules are still moving forward. We're still moving forward with everything we've said we were going to at this point with the 18-month staggered phase-in approach. We are still working on rule refinement and making sure that we're aligning with packaging and labeling rules to the extent necessary and the things that we're thinking about with respect to the Executive Order. I still hope to have our CR 102 ready to go by mid-November for that particular rule project.

And then on to our packaging and labeling rules. We had an excellent listen and learn session on October 11 that was scheduled for the entire day. I think we went from 9 to 3pm and brought together our industry partners, licensee community, prevention community and we came up with few substantive changes to the draft conceptual rules. At this point, we're scheduled to receive final comments on October 18, then I'll meet with internal staff on October 25 to finalize our proposal. I intend to present a proposal to you on October 30 to set a hearing date for December 11 so that would put us in place for finalization on January 1, 2020.

Other things on the horizon are Tier I expansion, that's been something we've talked about in caucus. Once some of these other rule projects move toward finalization, we want to revisit advertising rules and other rule hygiene around concerns with our licensing division. That is all I have at this point, may I answer any questions?

Acting Chair Garrett: Any questions?

Member Hauge: No, thank you.

Acting Chair Garrett: Thank you, Kathy.

Ms. Hoffman: Thank you.

Ollie Garrett: Cindy, do we have anyone signed in for public comments? Thank you. Aaron Barfield. Please state your name and affiliation for the record.

5. GENERAL PUBLIC COMMENT

Acting Chair Garrett: Cindy, do we have anyone signed in for public comments? Thank you. Aaron Barfield. Please state your name and affiliation for the record.

Aaron Barfield – Black Excellence in Cannabis

My name is Aaron Barfield. I'm here on behalf of Black Excellence in Cannabis. When we were here at the last meeting we were given these self-identified race charts which stated that four percent of the retail stores in recreational cannabis are owned by African Americans. In the research that I've done and

people I've talked to in the group, I can only find maybe three stores in entire state that are actually owned and operated by African Americans. According to this chart, four percent of the 422 active retail licenses that are currently active, that would represent 17 black owned and operated stores. There's no way that these numbers are accurate. The three stores that I can come up with actually represents less than one percent, which should just be embarrassing for the state. This state should be leading the way in diversity and instead with cannabis, we're leading the way with really just greed and discrimination. As a group, we're planning on taking it to the next step and launching a petition and if we have to, we'll be picketing outside of the retail stores. We're going to do what we need to do to get the Governor's attention and make sure that things are fixed and the mess that has been made of the cannabis industry in Washington State is cleaned up. That's it. Thank you.

Acting Chair Garrett: Thank you. Does anyone recall the date range for the last study we did?

Ms. McShane: It was done last year. I can get that information to you.

Ollie Garrett: Thank you.

Brooke Davies – Washington Cannabusiness Association

Good morning Board Members Garrett and Hauge. My name is Brooke Davies, I'm here today on behalf of the Washington Cannabusiness Association. As you know, Friday evening around 6:30 pm, the agency sent out to the licensed cannabis community further guidance on exactly which products would be affected by the new emergency vape rule. That guidance essentially stated that only products with cannabis derived terpenes would be allowed under this rule. So the majority of the products on the products now need to come off the shelf.

While we have some serious concerns with the interpretation of characterizing flavor, today I wanted to address a concern that we have in actually getting these products off the market. We've been in constant communication with agency personnel and enforcement. Everybody has been great and very reachable. It's our understanding that normal return rules apply, which means the agency can't force a processor to take product back and the agency can't also force a processor to reimburse the retailer, which is fine, but in addition to that the agency has also said that a vendor may not issue a retailer credit for a returned product.

I worked in the industry for a long time myself and this has always been sort of a regulatory gray area whether or not you can issue someone a credit for return. And to my knowledge, the agency, until now, has never really taken a formal position on this practice on the WAC section 115 where they talk about what method of payment can a licensee use to purchase marijuana. Under section four there's language under prepaid account, which I always thought would allow for a credit on a return because it talks about, if you've already paid for the product it's okay to accept it at a later date as long as there's no over extension of credit and you keep accurate accounting records. I always took that to mean that a processor couldn't bring a retailer product that they haven't paid for and then they sell it to the public and pay them back later over an extension of credit. But if I've already paid and I have accurate accounting records, I can accept that product at a later date, which I thought would be applied in this case, which it's not. That's the agency's position. So, I'm not here to argue about that but I want to make a point that not allowing vendors to issue a retailer a credit in this case is really detrimental. We have members, one retailer, not a particular big or small one that has \$60,000 worth of product that needs to go back, that's the wholesale price of it. This interpretation is going to disproportionately affect the smaller processors who are not able to reimburse their retail partners. The big guys that do have the funding to reimburse

them, they're going to be able to maintain their relationship with the retailer, where the small guys that cannot, they're going to have to cut their losses. Allowing some flexibility to allow them to issue a credit that they can use later, or perhaps exchange for a compliant product, gives some flexibility to licensees to manage this.

I think that the language in the WAC would allow this practice to take place. If that's not true then I would ask if we could look some other options, maybe just in this case, to allow for a credit in exchange for compliant products, or some other options besides only allowing to reimburse someone fully in cash. Thank you for the opportunity to speak. If you have any questions, I'm happy to answer them.

Member Hauge: Has this issue been formally communicated to anybody in the agency? In other words, have you sent an email or a letter?

Ms. Davies: Yes, I have. I've spoken with the acting chief, Steve Johnson, who dug a little bit into the WAC and I think talked to some other agency personnel and come back and said that they don't think that the prepaid account language applies to returns. They think it applies, in a sense of, if I were to place an order on Monday, and I want to for some reason send a check on Tuesday but not have the product delivered until Friday, that that's what the language applies to and not to the returned product. So that's been the response.

Member Hauge: Would you please send that communication to Ollie and myself.

Ms. Davies: Yes, I'd be happy to.

Member Hauge: I'm certainly not second guessing our people at this time but I think that this is a special enough set of circumstances that we should maybe take a little more time in figuring out what we're going to do here.

Ms. Davies: I agree. Thank you. I'll send that.

Acting Chair Garrett: Thank you.

Chris Marr - Consultant

Good morning Board members Hauge and Garrett. My name is Chris Marr, I represent a number of licensees, producer/processors, and retailers in the industry. If you'll forgive me, I'm going to expand a little bit on the issue of return credit that Brooke talked about.

This vapor ban that's impacting the regulated cannabis industry, to my knowledge, is the largest recall implemented by this agency. I may be wrong, maybe go back to prohibition days when there were others. But let's set aside the issue of lost sales. As Brooke eluded to the economic losses related to pulling product and returning or destroying it will be significant. And it comes at a time as the Board has addressed in potential legislation when many producer/processors are struggling financially.

Now, this may get resolved over four months, maybe not. But today it is an existential threat and it's very real to a number of licensees. While everyone will be affected, it's the smaller producers and retailers who I believe will be hit the hardest. Large processors have diverse product lines. They have cash flow to provide voluntary refunds and could use this as an opportunity to grab more market share. They also, in the long run, have the ability to scale cannabis and hemp extraction to comply with the new terpene

restrictions, which is another issue. Small producers, many of whom have moved from flower to value added products such as vape cartridges will be hit hard. They have inventory tied up in banned products as Brooke mentioned. And also, smaller retailers can't absorb the cost of eating recalled product on their shelves that processors can't take back.

As Brooke pointed out, you have the ability to address this language by directing the agency to utilize a plain language reading of WAC section 115, quote, "A marijuana licensee must pay cash for marijuana prior to or at time of delivery. LCB will recognize the following forms of payment as cash payment for the purpose of this section, number four, prepaid accounts." So, it's a matter of interpreting it as a prepaid account. I think you're hearing this and I appreciate you're willing to look at that. I would ask you to reexamine that and I would second Brooke's observation that enforcement, and Deputy Chief Johnson in particular, has been very good about in real-time being responsive to questions that we see pop up and understands it's mutually beneficial for the industry to, as soon as we find out, maybe there's misinformation or some things, interpretation, he doesn't always have the answers on the spot, but he does a good job of turning around and answer fairly quickly.

I do want to say I know the rulemaking was not by this agency, it was by Department of Health, it's by Executive Order. I know we're all responding to that. And, I sense a spirit of the industry saying, "Look, let's agree to carry debate about some of these other points a little bit later. Let's find out right now what's emergent, what as a group we can pull together to avoid unnecessary costs and pain for the industry and move from there." So, thanks for your help.

Gregory Foster – Cannabis Observer

For the record, my name is Gregory Foster, a citizen observer with Cannabis Observer. It's good to see you all today. I appreciate the hard work that everyone's been putting in, especially Ms. Hoffman here.

Gregory Foster: I wanted to also address the vaping-related or vaping-associated lung injury situation. I'll provide just some perspective. I did attend the State Board of Health meeting where they made the emergency rulemaking, and have that context to share here.

This is not unique to Washington State. This is something that's happening all around the country, although, strangely confined to the United States. We're not seeing the same sort of thing in the European Union, which kind of says something about what the actual causes of this might be. Here we actually haven't taken the most extreme form of reaction to the situation. In Massachusetts they've banned outright all vaping products and the Governor there actually said something interesting, which I wanted to share. He said, "We didn't enter this one easily. We appreciated the destruction it was going to create, and people certainly have access to the courts."

I wanted to reiterate some of the things that Chris Marr and Brooke were saying here, were that this is creating substantial destruction within the cannabis industry and probably much more so within what we traditionally have called the vapor products industry, who you don't hear from that much here. You have lost jobs and you have lost revenue in the cannabis industry. I would think that probably on the nicotine vapor side, you're seeing businesses close. I think you know that I approach things from a standpoint of principle and wondered whether this really was justified. Are we punishing bad actors with the actions that we're taking?

I think there's two different things that are happening here. You have the vaping associated lung injuries, which have precipitated this situation. And no one's discounting the fact that people are dying and that there have been seven cases in Washington State, which is actually rather low compared to other places, and I think it's testimony to the ways that we have regulated the cannabis marketplace here. But that's not addressed by any of this actual emergency rulemaking. We don't know the causes for what's been identified, and none of that is being addressed as part of this. Instead, we're addressing flavored vapor products and this was attempted to be addressed in the last legislative session as part of HB 1932, which was heard in the commerce and gaming committee and didn't go anywhere. So, the lawmakers already have been addressing this and perhaps should have been given more time to deliberate on this since the issue of flavors being appealing to children has been known for some time. And also, it seems adults also like flavors.

So I hope that -- my impression is that the agency has been offering some pushback to the Department of Health and the Governor's office. We need you to continue trying to provide a little bit of sanity and perspective in this situation because it's hurting your regulated communities. Thank you.

Jim Sultan – Citizen

Good morning, members of the Board. For the record, my name is Jim Sultan and I am a former I-502 retail store owner and that in itself reflects part of the reason I'm here today. I would like to first condone or second the presentation by Mr. Barfield and to applaud the work that he's doing to look at racial disparities in the cannabis industry as its being implemented here in Washington State.

I think you will agree that in Washington, Colorado, and other states where marijuana has been legalized, probably the impetus has always been related to racial disparities in the criminal justice system, the unfairness with which black and brown people have been persecuted through state laws for using or possession or consumption of marijuana products. Part of the rationale for establishing a legal regime was to rectify or reverse that problem. But unfortunately, that has not been a priority here in Washington. It's understandable, I'm not criticizing the LCB, I think it's very difficult to start a new industry and what you have done has been salutary in many ways. But at the same time, it's a little bit hypocritical to base it on the reference to communities of color and then ignore the communities of color in the implementation phase.

Part of that disparity is magnified in the criminal justice system but part of it is also reflected in the kinds of stores and grow operations and cultivations and production processing facilities in the state, where you do not find African American, Latino, or other minority groups well represented at all. This can be effectively reversed if the agency is proceeding in a way that's consistent with I-502. To wit, we note the distinction between policy and practice. The policy studies are being done by the Washington State Institute for Public Policy and the Alcohol and Drug Abuse Institute as reflected in the paper presented to the state in June of 2018 by the doctoral candidate Caislin Firth. There, the author looked primarily at the criminal justice system and saw as a comparison was undertaken before and after 502 implementation and pointed out that more black and brown people were being arrested and convicted. It was the same after the implementation and nobody blinked an eye. No one is blinking yet, and we are here trying to call attention to what we think is an imperative. It is mandatory to look at this. It is important not to pay lip service to it. What gets measured gets done. We're not measuring it and that was pointed out in Mr. Barfield's presentation.

Finally, I would ask to consider an analogy if you will between higher education and what we're doing in this industry, as far-fetched as that may seem. I was the former executive director of the Higher Education

Coordinating Board here in the state of Washington. I know that everyone always says diversity is a premium value and then goes along their merry way. But if diversity is a premium value, it would be reflected in the faculty of our colleges and universities and it's not. It constantly grows worse. I would ask the Board to intervene and to implement policies based on data, based on studies, such as are authorized by the law so that you can rectify and reverse this trend. Thank you so much for your time.

ADJOURN

Acting Chair Garrett adjourned the meeting at 10:36 a.m.

Minutes approved this 13 day of NOVEMBER, 2019

Not Present

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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