



Washington State
Liquor and Cannabis Board

Washington State Liquor and Cannabis Board Meeting

Tuesday, November 26, 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 Tuesday, November 26, 2019. Member Russ Hauge was present, Member Ollie Garrett participated by phone.

Chair Rushford: Good morning, everyone, and welcome. Thanks for adjusting your schedules so we could have our Board meeting today, we knew that several people would be traveling tomorrow or not available, so, happy Thanksgiving. We're going to start with consideration of the November 13 meeting minutes.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the November 13, 2019, meeting minutes.

SECOND: Chair Rushford seconded.

ACTION: Motion passed unanimously.

3. ALCOHOL RELATED RULEMAKING

ACTION ITEM (A)

ACTION ITEM 3A - Board Approval of CR 102 for Barrier Requirements for Liquor Licensed Establishments

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

Ms. Benham: Good morning and thank you. This morning I'd like to request approval to file a CR 102 and proposed rules regarding barriers in beer, wine, and spirits, beer and wine restaurants. This rulemaking was initiated by a rules petition requesting the Board revise rules that require restaurants to have a 42-inch barrier designating areas off limits to minors. After review and discussion, as you know, we agreed to open rules to explore options other than a 42-inch barrier.

The 42-inch barrier requirement was implemented through rules adopted in February of 2000. There have been several discussions since then over several years regarding effective ways to designate areas of liquor licensed establishments that are off limits to minors. In the process of drafting these rules, several discussions and work sessions were held with stakeholders and staff members. As a result, I believe we have a good set of rules to implement and move forward with.

Specifically, I want to go over the revisions to WAC 314-02-025 and 033. The revisions outline several demarcations to designate areas classified as off limits to minors. They clarify that floorplans and demarcation options must be approved by the Board and specifically exclude tape, paint, or stickers on floors, walls, or ceilings as options for demarcations. They update the requirements for minor prohibited signs to include the requirement that signage be visible to patrons who are approaching the off limits areas and also again, once inside the off limits area. They allow licensees to request reclassification of their off limits areas as open to minors for regularly scheduled or special events with prior Board approval. I also want to note that reclassification requests are considered an alteration to a licensed premises under WAC 314-03-300. In addition, they make technical and clarifying changes and correct an error that was in WAC 314-03-200.

Timeline

November 26, 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
December 4, 2019	Notice published by the Office of the Code Reviser in WSR # 19-24
January 8, 2020	Public Hearing held and end of written comment period
January 22, 2020	<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
February 22, 2020	Rules effective – Normally 31 days after filing the CR 103

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

MOTION: Member Hauge moved to approve the filing CR 102 for Barrier Requirements for Liquor Licensed Establishments

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

RULEMAKING TIMELINE

Ms. Benham: The spirits distributor license fees rules were adopted and the CR 103 was filed on October 2. These rules had a delayed effective date of January 1 of 2020.

Special occasion license rules. We filed the CR 102 on November 13 and we have a public hearing coming up on January 8. So far, on these rules, I have not received any comments.

After filing the barriers rules today, the public hearing will be on January 8.

Rules I'm still in the process of working on are wineries and breweries rules. I hope to dedicate a lot of time to these now that the barriers and the special occasion license rules are moving forward. I'm hoping to have the CR 102 by the end of the year.

We also have 2019 legislation, two separate rules packages. One is regarding soju, recapping sake, and manufacture's packaging and bottling. The other is legislation and chapter review of legislation regarding student tasting. That is through the permits chapter. I hope to also have these by the end of the year.

At the last Board meeting, we opened rulemaking regarding alternating proprietorships for distilleries and craft distilleries. There's going to be more to come on that, we're just at the beginning stages of drafting.

On the horizon, we've been reaching out to stakeholders regarding the trade practice rules, and this is a result of an August Court of Appeals decision. There are some rules that need to be repealed but we want to reach out to stakeholders to see what questions and what issues they're running into regarding the Court of Appeals decision. We will open these rules after the first of the year.

Chair Rushford: Thank you. I'm going to amend the agenda today because the next subject indicates cannabis-related rulemaking but we're actually addressing vapor today. That was an oversight on our part. Given this, I want to introduce where we are today regarding vapor products.

As many of you know, concern around the use of vapor products has significantly increased in the last several months. These concerns hinge on several factors, including but not limited to the composition and content of the concentrates used in vapor products and the product delivery system. On September 27, Governor Inslee issues Executive Order 19-03 addressing the vaping use public health crisis. On October 10, 2019, the State Board of Health issued emergency rules as WSR 19-21-050 prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW. These were consistent with the directives of Executive Order 19-03 addressing the vaping use public health crisis. Those rules and that ban exists under chapter 246-80 WAC under Washington State Board of Health rules. So there's a distinction between the various rules that the entities have.

Today's hearing solely concerns chapter 314-35 WAC concerning vapor product licensing and enforcement. If you wish to comment on the flavor ban issued by the Washington State Board of Health, you may visit their website or call their number. We'll post that on our website so that you have that information.

4. VAPOR RELATED RULEMAKING

PUBLIC HEARING 4A – Vapor Products Rules

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

Ms. Hoffman: Thank you, Chair Rushford, Board Member Hauge and Garrett. I'll likely be repeating something very similar to what you just said, but I'd like to introduce the background to set the stage today's hearing.

This rule project initially began in April of 2018 with the CR 101 issued as WSR 18-09-116 under the premise that the agency would explore ways to further define and clarify existing requirements around vapor licensing and enforcement. The Board later approved and we filed a CR 102 proposal on November 28, 2018 under WSR 18-24-031. A public hearing was held on January 9, 2019 and the agency moved toward rule finalization. However, during the 2019 legislative session, two bills were introduced and later enacted that directed the LCB to update and revise existing regulatory structures around licensing and enforcement of vapor product retailers.

The first was Engrossed House Bill or EHB 1074 that prohibited the sales of cigarettes, tobacco products, and vapor products to persons under the age of 21. This aligned Washington with several other states who have raised the legal minimum sales age of tobacco and vapor products to 21 in an effort to save lives and reduce healthcare costs.

The second piece of legislation was Engrossed Second Substitute House Bill or ESSHB 1873. In addition to establishing a vapor tax structure that applied to all persons licensed to sell vapor products under chapter 73-45 RCW, it also contained statutory amendments and new sections that include but are not limited to the establishment of record-keeping, business, product sales, and distribution requirements that also apply to all persons licensed to sell vapor products under chapter 73-45 RCW.

On June 12 of this year, the LCB withdrew both of the prior rulemaking that was filed under WSR 18-09-116 and 18-24-031 and refiled a new CR 101 as WSR 19-13-036 to implement the directives of both pieces of legislation and to consider clarifying and technical updates that would ensure consistency and enforceability throughout the ruleset. From the time the CR 101 was filed to the time the CR 102 was filed on this project on October 16 as WSR 19-21-102, and that's the rule proposal we're talking about today, no comments were received on this project. However, and to repeat what you said Chair Rushford, concern around the use of vapor products has significantly increased over the last several months. These concerns hinge on several factors, including but not limited to the composition and content of the concentrates used in vapor products as well as the product delivery system.

On September 27, Governor Inslee issued Executive Order 19-03 addressing the vapor use public health crisis. And subsequently, on October 10, the Washington State Board of Health issued emergency rules as WSR 19-21-050 prohibiting the sale of flavored vapor products by persons licensed under chapter 69-50 or 73-45 RCW, consistent with the directives of that order, those rules and that ban exist under chapter 246-80 WAC as Washington State Board of Health rules. So again, to be clear, the subject of the hearing today concerns amendments and new sections of the rule residing in chapter 314-35 WAC concerning vapor product enforcement under the jurisdiction of the Washington State Liquor Control Board.

This rule proposal embodies and realizes the directives of EHB 1074 and ESSHB 1873 expanding LCB's regulatory authority 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, establishes transportation requirements, establishes the ability of the board to see both cannabinoid vapor products and vapor products under specific circumstances, establishes forfeiture guidelines and establishes a penalty structure that aligns with the current Board penalty reform work that we're doing under the marijuana rules.

A small business economic impact statement was prepared and offered at the time of the proposal. The synopsis of that document is contained in the CR 102 proposal and addresses the proposed requirement that licensees carry commercial general liability insurance. These new rule sections and amendments support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Chair Rushford: Any questions from members Hauge or Garrett?

Member Hauge: No, thank you.

Member Garrett: No questions.

Chair Rushford: Thank you very much Kathy for that important summary and introduction. Cindy indicates that we don't have anyone signed in for public hearing, we might have a few folks that are tangled in the accident on the freeway as Ollie has been. They can submit their comments. Kathy, would you please clarify the opportunity?

Ms. Hoffman: Yes. We have received a few written comments, most of them related to the Board of Health ban. One spoke to a minor rule suggestion and a minor change. People can submit comments through 5PM this evening to the LCB rules webpage.

Chair Rushford: Thank you very much. This concludes our public hearing. Thank you, Kathy.

CANNABIS RELATED RULEMAKING TIMELINE

Ms. Hoffman: As you know, our penalty rule hearing is scheduled for January 8. To date we have not received any comment on that particular rule package. We're looking forward to moving that forward on the 8 and then finalizing -- bringing a CR 103 to you by the end of January, assuming that we don't receive any substantive comment.

Voluntary compliance program also implementing ESHB 5318. We had a stakeholder meeting a couple of weeks ago. We're still curating those comments and preparing to move forward with drafting what that compliance program will look like consistent with those comments that we received and consistent with what our enforcement branch is already doing with respect to consultation. I'll align those two things moving forward.

True party of interest, again, implementing ESHB 1794. The next meeting is scheduled for December 18 with industry partners. I'm anticipating at this point that we'll have a proposal to bring to you by mid-January. This may include some significant analysis on the small business economic impact statement, just to make sure that we've thoroughly fleshed out whether or not this is going to have any significant financial impact on the industry. I want to make sure that package is thoroughly complete for you before I bring it to you.

Quality assurance testing rules. The good news is I sent our proposal to the Code Reviser yesterday. The next bits of work to do on that are completing a small business economic impact statement and fully filling out the significant analysis with all the activity that's occurred with that project to this point. At this point,

I'm hoping to have the CR 102 to you by December 18. If not, it will be prepared and presented on January 8.

Packaging and labeling rules. We currently have our hearing scheduled for December 11. We received two non-substantive comments. It really just helped us to align some of the language that's been proposed so far. We received one comment from our prevention community today, which sort of indicates to me that our outreach with prevention was successful and we were happy to receive that comment.

I presented on the vapor products rule today. We're still monitoring our emergency rules around the flavor ban and now working with the vitamin E acetate ban that was issued by the Board of Health.

On the horizon, I hope to bring the CR 101 with respect to tier one expansion to you before the end of the year. And that would mean withdrawing some existing CR 101s that have been filed in the marijuana space in the last couple years that we need to bring in, reassess, and move forward with in the future. And as I've mentioned before, we'd like to open up our advertising rules for additional consideration. I think we're also thinking about changes we might want to make in the transportation space within marijuana as well.

Chair Rushford: Comments or questions from the Board?

Member Hauge: No, thank you.

Chair Rushford: Ollie?

Member Garrett: No questions.

Chair Rushford: Thank you again, Kathy.

Before we move to the public comment portion of our agenda, I want to indicate that we'll be changing the timeframe in the new year. We're going to go to a three-minute testimony. That seems adequate for our stakeholders and others. I wanted to clarify that we'll do this, and it's a change that accommodates the requirements demonstrated for this portion of the agenda.

Do we have anyone signed in Cindy?

Ms. Doughty: No.

Chair Rushford: Did anyone miss the opportunity to sign in? If not, we have completed the orders of the day and we are adjourned. Thank you for being here. Happy Thanksgiving. Drive safely.

5. GENERAL PUBLIC COMMENT

There were no comments.


ADJOURN

Chair Rushford adjourned the meeting at 10:21 am.

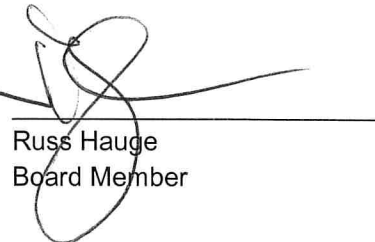
Minutes approved this 11 day of DECEMBER, 2019



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.

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

