



Washington State Liquor and Cannabis Board Meeting

Wednesday, January 22, 2020, 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 am on Wednesday, January 22, 2020. Member Russ Hauge was present. Chair Jane Rushford was excused

2. ALCOHOL RELATED RULEMAKING AND TIMELINES

RULEMAKING TIMELINES

Ms. Benham: Good morning, Board members Garrett and Hauge. First we have our special occasion license rules. We had a public hearing on January 8 and as you know, we had several people testify at the hearing and we also received several comments. We're currently reviewing the comments. We have a meeting today to talk with the nonprofits organization to walk them through the rules revisions and hopefully address any additional concerns that they may have.

Later on the agenda, we have a presentation regarding the CR 103 for our barriers rules so I'll wait to talk about that. Also we have a public hearing about our 2019 legislation regarding Soju recapping Sake and manufacturer's packaging and bottling today.

Our breweries and wineries rules are still open. We are considering and cross-referencing all comments received from staff and stakeholders, which is turning out to be quite a long process. I anticipate having the CR 102 in the first quarter of 2020.

We have an additional 2019 legislation rules package and chapter review and update that's regarding student tasting and a bill that passed during the last session. We're reviewing chapter 314-38 permits and I anticipate having the CR 102 ready for review and approval early this year. The changes are not quite as extensive as we initially thought they would be in this rules package.

We also have alternating proprietorships for distilleries and craft distilleries. The CR 101 for these rules was filed November 13 of 2019. There is a Board Interim Policy (BIP) in place and rules will be revised to implement the BIP. We have not had comments or any problems with our BIP at this point, so I anticipate rules in early 2020 and they should be right in line with the BIP.

On the horizon, we have rulemaking regarding trade practice rules as a result of an August Court of Appeals decision. We're currently reaching out to stakeholders, and I've reached out to the stakeholders

who expressed interest at our alcohol advisory council meeting for input, and should have input from them within the next couple of weeks. I have the CR 101 anticipated in the first quarter of 2020. At a minimum with these rules we'll be repealing the three sections of rules that we need to repeal.

In the first and second quarters of this year I would like to review and update the rules for private clubs. We have some inconsistencies in our rules there. I also plan to review and update our advertising rules. We did have to pull a section out of the advertising rules and plug it into our special occasion license rules so we need to update that to remove that section. Do you have any questions for me?

Member Garrett: No questions, thank you.

ACTION ITEM (A)

ACTION ITEM 2A - Board Adoption of CR 103 for Barrier Requirements for Liquor Licensed Establishments

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

Ms. Benham: The next item I have on the agenda today is to request that the Board adopt rules regarding barrier requirements for liquor licensed establishments. These rules revise WAC 314-02-025 and 033 and WAC 314-03-200. Specifically, the revisions outline several demarcation options to designate areas of beer, wine, and spirits, beer and wine restaurants classified as off limits to minors. They clarify that floor plans and demarcation options must be approved by the Board and specifically exclude tape, paint, or stickers on the floors, walls, or ceilings as demarcation options. They update their requirements for minor prohibited signs to include the requirements that signage be visible to patrons who are approaching the off limits areas and also once inside the off limits area. They allow licenses to request reclassification of their off limits areas as open to minors for regularly scheduled or special events with prior Board approval and reclassification requests are considered an alteration to a licensed premises under WAC 314-03-300. The rules change references to demarcations instead of barriers and correct an error in WAC 314-03-200, referencing the demarcations must be placed no more than ten feet apart for outside sidewalk café service under 6(c) and make technical and clarifying changes.

The rules that we had a hearing on, there were just a few minor non-substantive clarifying changes, and the changes were made to ensure all language referencing areas classified as off limits to minors was uniform. We had a couple of references to restricted areas and added "classified as" to WAC 314-02-025 specifically in section 3 and "restricted" was removed and "classified as off limits to minors" was added to WAC 314-02-025 3(B)(iii). And, "classified as" was added to WAC 314-02-0256. These are just minor substantive changes to make sure that all references were uniform.

We received written comments in addition to the comments heard during the public hearing. The concise explanatory statement will be sent to those who commented and will be posted on the agency's webpage. We received several comments in support of the proposed rules, specifically in favor of the ability to allow for more flexibility in space and design options and appreciation for working with the industry to revise the 42-inch barrier requirement. Other comments received, request that we eliminate the barrier or demarcation options altogether and ask what purpose any sort of barrier serves. I want to add that while we were drafting these rules revisions we took into consideration several different options including no barriers or demarcations and allowing minor access to all areas of the restaurants except for sitting or standing at the bar. Demarcation options and required signage provide a visual cue for patrons, restaurant staff and members of the enforcement community that persons under the age of 21 are not

allowed in the area. Through the rulemaking process, several stakeholders provided input including members of the prevention community, licensees and other businesses that participate in the design and development of restaurants. The rules were revised in consideration of underage access, persons in recovery, social norms, exposure to alcohol and advertising, flexibility in restaurant design options for businesses, and the laws and rules currently in place regarding alcohol service, age verification and signage requirements. We also heard from stakeholders that the demarcation options should be extended to outside seating areas. We didn't consider that in these rules at this time as there are several other factors to take into consideration, including public right of way and city or county codes that vary throughout the state. We realize there is a desire to address outside seating areas in rules and we may look at clarifying the outside area requirements in the future.

As we look at implementation of this, I want to clarify that as businesses look at changing floorplans, all floorplan changes are considered an alteration to the licensed premises and must be approved by the licensing division. We have a plan in place for implementation of the revised rules. Licensing's training team will work with investigators, staff, customer service office, enforcement, and the industry to educate, communicate, and ensure all approved floorplans and alterations are well documented in our system. That way when enforcement officers are out they'll know what the approved floorplan should look like. Enforcement is also sending communications out to officers with updates on the rules changes. We're looking into setting up a repository to log any difficulties we encounter and a plan to address them. And we'll also be looking at how many alteration requests we receive.

If approved for filing, we'll file the rules today and they'll be effective February 22 of 2020. Do you have any questions for me?

Member Hauge: No. Thank you for sticking with it.

MOTION: Member Hauge moved to adopt the CR 103 for Barrier Requirements for Liquor Licensed Establishments:

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

PUBLIC HEARING (B)

PUBLIC HEARING 2B - 2019 Legislation Implementation Regarding WAC 314-02-015, WAC 314-02-045 and Chapter 314-30 WAC (Soju Endorsement, Recapping Sake, Manufacturers Packaging)

Janette Benham, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 2B).

Ms. Benham: The next item on the agenda is a public hearing regarding 2019 legislation implementation regarding the Soju endorsement, recapping Sake, and manufacturer's packaging and bottling. Substitute House Bill 1034 passed in 2019 and created an endorsement that allowed spirits, beer, and wine restaurants to serve bottles of Soju for on-premises consumption to tables of two or more patrons. The new law also allows restaurants to recap Soju bottles and for patrons to remove recapped Soju bottles from the premises. WAC 314-02-015 was revised to allow service of Soju by the bottle. I also have a note here that the bill required the Board develop a responsible sale and service of Soju training curriculum for individuals serving Soju. Training curriculum is not added to the rules but was developed for our licensing

division and is available on the WSLCB website. The training curriculum and information related to the Soju endorsement are also on the website in the Korean language.

The next bill in this rules package regarding 2019 implementation is House Bill 1672, which allows spirits, beer, and wine restaurants and beer and wine restaurants to recap Sake purchased for consumption at the meal. The new law also allows patrons to remove recapped sake from the premises. WAC 314-015 and 314-02-045 were revised to allow recapping and removal of Sake.

The last bill in this rules package is Senate Bill 5909, allowing manufacturers licensed under RCW 66.24.150 to contract with distilleries, breweries, and wineries to provide packaging services. WAC 314-30-010 was revised to include packaging and add a reference to the packaging provisions outlined in statute. Additional technical and clarifying changes were made to all revised sections of WAC and unnecessary language in WAC 314-30-010 was removed. So far, we have not received any comment on the proposed rules. Do you have any questions before we start the hearing?

Member Hauge: No.

Acting Chair Garrett: No questions.

Ms. Benham: Thank you.

Acting Chair Garrett: No one has signed up, so that closes the public hearing. Kathy.

3. CANNABIS RELATED RULEMAKING AND TIMELINES

ACTION ITEMS (A-B)

ACTION ITEM 3A - Board Approval of CR 102 for QC Testing

Kathy Hoffman, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-7).

Ms. Hoffman: Good morning Board members Garrett and Hauge. I'm presenting a CR 102 today on quality control rules for marijuana. I'm going to take a little time to explain where we've been with this rule package because it's been open for some time.

I'd like to request your approval this morning to file this proposal regarding revisions to marijuana quality control rules that are currently referred to as quality assurance testing rules. This proposal would require that by March of 2021, all marijuana produced, processed, and sold in Washington State be tested for pesticides and heavy metals in addition to the current I-502 suite of tests. This rule project was initiated in August of 2018. When I began working on it in late October of 2018, over 50 comments had been received on the CR 101 alone before any rule development discussion had started.

In April of 2019, we hosted our first "listen and learn" session on these rules and invited stakeholders and any other interested parties to provide comment and participate in the rule development process. To alert stakeholders, we sent messaging in late March of 2019 to nearly 4,000 delivery subscribers including all marijuana licensees, cannabis testing labs, and those interested in our traceability system and many others. We provided draft conceptual rule revisions along with that messaging, specifically to WAC 314-55-101 regarding testing protocols, 314-55-102 regarding quality assurance testing, and 314-55-1025 regarding proficiency testing. We asked the community to share what they liked, what they didn't like, and what they proposed for alternative language. It's important to note that this was the first session that we'd

ever had under this model and there were more lab representatives present than there were processors and producers and others for that particular session. However, I did receive comments from those additional entities following that session. It's also important to realize that because this was a new approach for our licensed community, some were hesitant and unsure about how to participate and I think we've made great progress towards including everyone in the last year.

We took the data collected from that meeting and attempted to develop themes. Opinions and ideas differed greatly concerning topics such as lot size, whether to test intermediate or end products and whether to require pesticide and heavy metal testing at all. We heard that this shift would impact both licensees and accredited labs. We also heard that consumers were concerned that pesticide and heavy metal testing was optional for recreational products.

We held a second "listen and learn" session in August of last year to invite ideas regarding mitigation and phase-in strategies. A greater number of processors and producers participated in the session, both in person and remotely. And again, there were many differing opinions and ideas shared at this meeting. All told, I received more than 300 comments on the draft conceptual rules that we shared for comment last August and I continue to receive comment even as recently as Monday on that August draft conceptual rules.

The rules package before you proposes to incrementally phase in mandatory pesticide testing by September 1 of 2020 and heavy metals testing by March 1 of 2021, in addition to current testing requirements for all marijuana products produced, processed, and sold in our state. In addition, the proposal accomplishes the following:

- Reaffirms existing protocols designed to reduce where possible product contamination during and after sample deduction
- Currently retains the five-pound lot size for collection
- Updates, reorganizes, and streamlines rule language where appropriate to assure scientific accuracy
- Adds an allowance for terpene testing if terpenes are added to a product and such an addition is claimed on labeling.

I wanted to point out a couple of things in the rule package that are new to LCB's rule packages. The first of these is a significant analysis. The LCB isn't required by the administrative procedures act to prepare this document, but given the nature of these revisions, our commitment to transparency, and wanting to assure that when we memorialized our current thinking related to this proposal, I prepared this document. Its format follows the framework established in RCW 3405328. The second is a small business economic impact statement or SBIS. I prepared one of these for the vapor products rules, although it was a bit smaller in scale. In early 2019, LCB contracted with industrial economics through the Governor's Office of Regulatory Innovation and Assistance, or ORIAH, to perform, and I want to emphasize this, a preliminary SBIS for this project, consistent with the framework of chapter 19.85 RCW. It's the regulatory fairness act. In most circumstances, an SBIS is not completed until the actual rule proposal is prepared. In this instance, however, a preliminary SBIS was prepared to serve solely as a basis for us to understand and estimate - and I want to underscore estimate - the minor cost threshold as required by statute. This threshold helps us determine whether additional analysis is required. Longitudinal data such as employment, revenue, and general costs are not established yet for this particular industry as they are in other industries that I prepared SBIS for in the past.

This preliminary SBIS was prepared on the draft conceptual rules offered in April 2019 as well as on publicly available data at that time. We use this preliminary analysis to inform and frame the SBIS that

was provided with this particular proposal. It's also critical to understand that there are differences between an SBIS and what it accomplishes under the Regulatory Fairness Act and what a cost benefit analysis accomplishes under the Administrative Procedures Act. While this is described to an extent in the significant analysis, that's part of this rule package. We encouraged interested parties to review ORIAH's frequently asked questions regarding these documents and I can provide that website to communications if they're interested, or others.

We understand that this rule proposal is a significant shift in the requirements for recreational marijuana product testing. However, we also understand that there's general consumer assumption that all products produced and sold in the I-502 system are tested for pesticides, heavy metals, and other contaminants. This proposal would align Washington State with California, Oregon, and other states' product testing standards while mitigating both consumer and licensee risk. Our mission as an agency is to promote public health and trust through fair administration of liquor, cannabis, and vapor laws, and this rule proposal is a step toward more fully realizing that mission. So if approved for filing today, our tentative timeline is: the code reviser will publish notice on February 19. The public hearing would be held on March 18. I could arguably bring final rules to you on April 1 and then the rules would become effective on May 1 of 2020. Then the phase-in would begin happening. I anticipate and hope to receive additional constructive solution-focused comment on this proposal if approved today. And so I would ask for your approval to file this CR102 package.

Member Hauge: I want to thank you for the work that's been done on this by the entire team. I appreciate time spent on the analysis and the conversations that we've had about this. My impression is, I think it would be fair to say that after the filing of this 102, we're still going to have a lot of discussion about what this rule package should contain and what it's ultimately going to look like.

Ms. Hoffman: Absolutely. And this does not preclude us from having another "listen and learn" session. It doesn't preclude us from filing a supplemental CR 102 if necessary.

Member Hauge: Thank you very much.

Ms. Hoffman: This really does open the conversation even further than we have already.

MOTION: Member Hauge moved to approve the filing of CR 102 for QC Testing

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3B - Board Adoption of CR 103 for Marijuana Penalties

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

Ms. Hoffman: Thank you very much. The next item I have for you is to request approval for adoption of the CR 103 on our marijuana penalty rule redesign. By way of background on this package, we began the rule development process in late 2018. As most of us are aware, Engrossed Senate Substitute Bill 5318 guided and directed the rule development process for this project. These rules are now presented for adoption and reflect the outcome of an inclusive and engaged process that occurred from March of 2019 through to the public hearing on January 8 of this year. These rules accomplish the following:

- Establish a process for the issuance of a notice of correction as opposed to a similar penalty where appropriate
- Reduce the cumulative effect of escalating penalties from three to two years
- Provide a deferral option
- Restructure existing penalty grids by establishing penalty categories based on violation severity and relationship to public health and safety
- Significantly reduce the number of violations that could result in license cancellation while balancing penalties across license types
- Reincorporate and associate statutory references with violation type
- Reduce fines by 50 percent and in some cases more
- Incorporate the mandates of ESSB 5318.

At the hearing, there was one oral comment received from Cannabis Alliance in support of these rules. A second set of comments were received by email from Kitsap Public Health requesting that the LCB return to a more stringent penalty restructure and ask us to exceed statutorily defined penalties concerning allowing a minor to frequent a retail store. The rules were not changed as a result of either of these comments.

Additionally, I'd like to point out that the rule implementation plan and rule effectiveness portions of the CR 103 memorandum describe a plan that covers informing and educating persons who will be impacted by these rule revisions. What the LCB will do to promote and assist voluntary compliance in a brief overview of how training and information will be provided to LCB staff. Our effectiveness evaluation comprises a series of monitoring and cataloging processes designed to help the agency determine whether these rules realize the desired outcome of encouraging and supporting licensee compliance success. If approved today, I will file with the code reviser and rules will become effective in 31 days, or February 22, 2020.

MOTION: Member Hauge moved to adopt the CR 103 for Marijuana Penalties

SECOND: Acting Chair Garrett seconded.

ACTION: Motion passed unanimously.

RULEMAKING TIMELINES

Ms. Hoffman: Thank you very much. I'll move on to a rules update for marijuana and vapor products.

We adopted the penalty rules today.

As part of the Engrossed Senate Substitute Bill 5318, we're working on the voluntary compliance program. I am going to have the draft rules done this week that I can share with our internal work group and then I'm hoping to schedule a "listen and learn" session on those rules in late February. The CR 102 will closely follow, I'm assuming, middle of March on that project.

True party of interest rules implementing ESHB 1794 from last year. We had our last internal meeting towards the end of December. I anticipate filing the CR 102 on this project middle of February, if not late February, with a hearing on April 1 and adoption shortly thereafter. There are significant changes in those rules coming forward.

Quality assurance rules. We just approved the CR 102.

Tier one expansion., The CR 101 was filed on that project on December 18. I've received four comments so far and am looking forward to receiving more. Hopefully as the legislative session moves forward, people will be more forthcoming with comments and ideas and thoughts on those rules and where they'd like to see changes.

Vapor product rules. We're closely following legislation on both the THC and non-THC vapor product legislation moving forward. We understand that the State Board of Health may not extend emergency rules under the flavor ban but will likely extend the vitamin E acetate ban moving forward. We will adjust our emergency rules accordingly in the coming weeks.

On the horizon, we're considering reopening advertising rules in the spring. I want to see what's going to happen with the legislative session before opening these. There's some bills on the table that would influence how those rules might move forward. Any questions?

Member Hauge: No, thank you.

Acting Chair Garrett: No questions.

Ms. Hoffman: Thank you very much.

6. GENERAL PUBLIC COMMENT

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

Micah Sherman – Raven Craft Cannabis

I'm Micah Sherman. I am a Tier II producer/processor here in Olympia. I wanted to thank you guys, and especially Board member Hauge's comments, about the process of the CR 102 and the opportunity to continue to be a part of that conversation. I think that's really important for the industry to hear that this is the beginning of a conversation that is both flexible and open to a wide variety of outcomes. I think it's very accurate to reiterate that for folks in the industry right now so they come to that process in a calm and deliberate manner with the intention of moving that forward. I think that's very important.

The other thing I wanted to mention and request, I have a bill in front of the legislature right now and I want to just share a little bit of my experience with my conversations with legislators in relationship with the agency request legislation that, at this point, I haven't seen any progress in the legislature.

One of the things that I experience when approaching folks, particularly on the senate side, with our legislation was they thought that it had a lot of similarities to what the agency request legislation was looking to do and that they encouraged me to revisit my legislation as a result of what was being put forward by the agency. I found that was a barrier to having good conversations. Now that it does appear that that legislation is not going to progress, I would encourage you guys to reach out to the House Commerce and Gaming Committee and encourage them to support a public hearing for our bill, which is HB 2279, which I think is something that needs to have a public conversation. I've found that it was more difficult to have those conversations with legislators as a result of some confusion about our bill versus what you were trying to accomplish. I think there's a lot of similarities in the goals that you guys expressed about finding solutions from small farms, finding solutions to the significant lack of racial diversity and equity and ownership of cannabis businesses as well as what appears to be a really flailing medical program that needs some significant help. Our bill is really structured to be a framework to build towards solutions for all of those issues. As the stated goals of the Board from this last year, I would

encourage you to take a second look at our bill and not necessarily come out in support of it but I do think supporting a public conversation at this moment would be very helpful for our goals. Thanks.

Acting Chair Garrett: Thank you. Did we miss anyone? If not, we are adjourned.

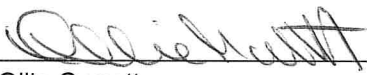
ADJOURN

Acting Chair Garrett adjourned the meeting at 10:31 am.


Minutes approved this 5 day of FEBRUARY, 2020

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

