



Washington State Liquor and Cannabis Board Meeting

Wednesday, September 15, 2021, 10:00am
This Meeting was Convened Via Web Conference

Meeting Minutes

1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, September 15, 2021. Member Ollie Garrett was present, Member Russ Hauge was excused.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the September 1, 2021, Board meeting minutes.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

3. ALCOHOL RELATED RULEMAKING TIMELINES

Presenter – Audrey Vasek, Policy and Rules Coordinator

Ms. Vasek: Good morning, Chair Postman, Board Member Garrett. I have a couple of brief updates today on the alcohol rule-making timelines.

First, for the rule project to implement 2021 Legislation, House Bill 1480 related to extending the COVID-19 alcohol allowances. A virtual "listen and learn" session was held on September 2 related to the outdoor alcohol service areas and foodservice menu requirements. That session lasted around two hours and 15 minutes, and around 55 people were in attendance. A recording of that session is available on the agency's YouTube channel on the rules webpage. The internal rule project team is currently in the process of reviewing the comments we received during that session and considering changes to the draft rules. On September 3, we also sent a GovDelivery message to all liquor licensee subscribers recruiting for interview volunteers impacted by the alcohol to-go endorsements and seeking feedback to help estimate the cost and compliance associated with the draft rules. We've received responses from around 25 interview volunteers, and beginning today and into early next week, we'll be interviewing 10 to 15 of those volunteers to help gather information to estimate potential business costs of compliance with the new draft rule requirements, which will help us meet the Regulatory Fairness Act requirements as we prepare the CR 102, also known as a rule proposal. I anticipate bringing that to the Board to consider at

the next Board meeting on September 29, and if approved on that day, the public hearing would be set for November 10.

For the rulemaking project related to axe throwing at liquor license premises, we held a kick-off meeting with the internal rule project team last week to determine the scope of the project's potential timeline and next steps. A draft CR 101 package, also known as a preproposal statement of inquiry, is currently being reviewed by the project team and I plan to present that to the Board to consider at the meeting on September 29 as well.

This concludes my rule-making updates for today. And if there are any questions, I'm happy to answer them.

Chair Postman: None from me. Thanks, Ms. Vasek. Appreciate that.

Next up is Jeff Kildahl for cannabis related rulemaking timelines. Mr. Kildahl.

4. CANNABIS RELATED RULEMAKING TIMELINES

Presenter – Jeff Kildahl, Policy and Rules Coordinator

Mr. Kildahl: Good morning, Chair Postman and Board Member Garrett. Here is a brief update on cannabis rules and progress today, September 15, 2021.

Regarding the cannabis quality control rules, we continue to work with the economists from Industrial Economics Incorporated, or IEC. We have now completed four scheduled weekly meetings with IEC. As part of that work, we sent an invitation via GovDelivery on August 30, seeking interview participants to help us understand cannabis producer and processor perspectives. We received approximately 35 applicants in total, and we stopped accepting new interview applications on September 10. As of Monday, IEC had held four interviews with producers and processors, scheduled another seven interviews and will be scheduling additional interviews in the next few days.

Next week, we will be sending an invitation via GovDelivery seeking cannabis producers, processors, and producer/processors to take an online multiple choice survey via Survey Monkey to help us understand producer/processor perspectives beyond the “deliberative dialogs” we held earlier this year. This survey will be open for one week, and all producers, processors, and producer/processors are encouraged to participate. This survey will be created and posted with help from the communications department. For these cannabis quality control Rules, we anticipate hosting a “listen and learn” session on or about October 15, putting our CR 102 proposal at approximately December 8, 2021.

With respect to the THC Compound Evaluation Rule project, a “listen and learn” forum was held September 9 and attended virtually by approximately 80 participants. To allow for additional internal review of draft conceptual rules, we may push the CR 102 proposal to October 13 rather than September 29, as originally planned. This would move our public hearing out two weeks to November 24, with adoption on or about September (sic)[December] 8. This achieves our originally stated goal of rule completion by the end of the year with an effective date before the 2022 legislative session starts.

This concludes my update for today. May I answer any questions?

Chair Postman: I just had one quick one on the quality control. The consultants are doing interviews and then is the online Survey Monkey. Will we have access to that raw data transcript of the interview, the full survey results, or do they then boil that down into a report? How do we get that?

Mr. Kildahl: They will be evaluating the information they gather for the purposes of assisting with drafting the small business economic impact statement for the CR 102 package. So, I am not sure at this time. I can double back with you about that. I'm not sure if they will be providing that full report, but I'm sure we would at least have access to the information.

Chair Postman: Okay, I'd just be curious. Thank you, we appreciate that.

Mr. Kildahl: Of course.

Chair Postman: Seeing no other questions. Thank you for that today.

Mr. Kildahl: Great. Thank you.

Chair Postman: We now move to general business for the meeting and Kathy Hoffman, our Policy and Rules Manager, has a series of proposals. I don't know what to call them -- rescissions or proposed rescissions, I'll let you explain it Kathy.

5. GENERAL BUSINESS

Presenter – Kathy Hoffman, Policy and Rules Manager

Ms. Hoffman: Thank you very much, Chair Postman. Good morning to you and Board Member Garrett. This morning I would like to ask for your approval to rescind five Board Interim Policies. I'm going to refer to them as "BIP" from here on out. But before I do that, I would like to speak to why the Board issues BIPs and why the Board might rescind or withdraw BIPs.

The Board issues these for several reasons. For example, let's look back to the E-VALI outbreak in 2019, where we saw an increase in lung injury, and even mortality, related to the use of certain vapor products. Licensed cannabis retailers reached out to us to ask if there was a way to return flavored THC vapor products to processors for credit for future purchases, given the State Board of Health temporary prohibition of flavored THC vapor products.

So, for a specific period of time, we allowed those products to be returned even though rules didn't expressly allow it. The BIP on that expired on December 31 of 2019, and because the State Board of Health did not extend or renew the flavored vapor product prohibition, the BIP is no longer needed and I'll speak to that a little later.

Another example of when a BIP might be issued is when a piece of legislation becomes law and allows a certain activity. For example, allowing members of a registered marijuana cooperative and others to purchase immature marijuana plants or clones and seeds, and the agency isn't able to get rules in place rapidly enough to establish a framework for that activity to occur. A BIP was the way for the agency to get that framework in place on a temporary basis until rules could be developed and finalized but always under the premise that the BIP would be rescinded once those rules became effective.

So, the focus on BIPs is interim, meaning that these policies aren't designed to be permanent but to serve a temporary purpose until rules are in place or the issue that the BIP addresses is resolved. Over the last several months, the Policy and Rules team has worked with Enforcement and Licensing Divisions and our Examiner's Unit to review existing BIP and determine which BIPs needed to be rescinded for the reasons I described, or which might be converted to policy statements. To date, we've identified approximately 15 BIPs that can be rescinded, so today I'll describe the first five that we've identified, and I'll bring the next five to the following Board meeting, and so on. The Board can move to rescind all or part of these first five in one motion as we discussed yesterday in caucus.

If I may, I'll go ahead and begin describing these.

Chair Postman: Yes, please.

Ms. Hoffman: Thank you. I'd like to start with BIP 02-2016 concerning UBI or Uniform Business Identifier labeling on marijuana products.

In May 2016, the Board adopted rules that increased UBI members of marijuana product labeling from 9 to 16 digits to implement two pieces of legislation. And although there were a few comments received on those rule revisions, once they became effective, licensees let the agency know that the cost of compliance would be high because, among other things, it affected labeling real estate – or, the amount of space taken up on a label. The Board issued the BIP to accommodate both the 9 and 16-digit UBI numbers to alleviate this concern.

Subsequent legislation in 2018 removed these UBI requirements -- the specific numbers, and rules effective in January of 2019 incorporated both that statutory revision and the provisions of BIP 02-2016. Other portions of the rule -- and I'm referring to WAC 314-55-105 which that concerns packaging and labeling, have changed since then, but the UBI reporting requirements have not. And so, for this reason, BIP 02-2016 can be rescinded.

I'll move now to the next BIP.

Chair Postman: Yes. In fact, we should have said, why don't you go through all five and we'll take one motion for all of them. So, you can just go through all five.

Ms. Hoffman: Thank you.

Next, I'd like to move to BIP 01-2017, concerning cooperatives purchasing directly from licensed producers. Legislation passed in 2017 and amended several sections of the Controlled Substances Act to allow members of a registered cooperative, qualifying patients, and designated providers to purchase immature marijuana plants or clones and seeds. The legislation became law in July 2017, and this BIP provided guidance and clarity to licensed producers and others about the statutory requirements while rules were being developed. This BIP was issued in July 2017 with the idea that it would be rescinded once rules became effective which indeed happened on December 1, 2018. So, for these reasons, BIP 1-2017 is no longer necessary.

I'll now move on to BIP 01-2018 concerning food service requirements for spirits, beer, and wine restaurants. This BIP was designed to recognize and honor the cultural diversity of food offerings described in WAC 314-02-035. It expanded the definition of a complete meal to provide that side dishes could be served as an entrée and broaden the definition of entrée to include foods like pho and quiche and other things. This BIP was designed to be rescinded once rules were adopted to make the BIP permanent and that happened in June of 2018. And so, as a result, this BIP is no longer necessary.

Next, I'd like to move to BIP 15-2019 concerning a return of flavored THC products to processors in exchange for credit. And I know I've already referenced this, but this BIP allowed license retailers for a limited time to return certain flavored marijuana products to licensed processors during the E-VALI outbreak in late 2019, based on the State Board of Health Emergency Prohibition of flavored vapor products. The BIP was designed to expire on December 31, 2019, and gave the Board the ability to extend if needed. And as I previously noted, the flavored vapor product prohibition was not renewed by the State Board of Health, so, as a result, this BIP is also no longer needed.

Finally, I'd like to speak to BIP 17-2019. And, Chair Postman, I know you weren't with us then, but Board Member Garrett, I suspect you might remember substantial changes being made to our packaging and labeling rules in late 2019. These changes represented both for relaxation of current rule and inclusion of several existing BIP. Those BIP were rescinded when the Board adopted the final rules, but because these changes were so significant, BIP 17-2019 provided both "phase-in" and "sell-down" periods of a year for licensees to comply with the new rules to allow for implementation flexibility and to mitigate industry compliance impact and cost. And to be clear, this was something discussed with licensees during a rule development process and so this aligned with industry requests for what I might characterize as a grace period. This BIP was designed to end on January 1 of this year. To date, we have not received any requests from our licensees to extend this BIP any further. So, for these reasons, BIP 17-2019 can be rescinded.

I would now ask for your approval to rescind BIP 02-2016, 01-2017, 01-2018, 15-2019, and 17-2019 today. May I answer any questions?

Chair Postman: Member Garrett, any questions?

Member Garrett: No questions.

Chair Postman: I do have one comment. I'm glad that you were at caucus yesterday to brief us and re-brief us because I really finally have it now after hearing it again. So, I appreciate that. And part of what we were talking about yesterday is there's a variety of reasons why we're doing this. Like with the flavored vapor issue, State Board of Health didn't reinstate that rule, so there's no reason to keep the BIP. Others were carried through in rulemaking. And this is, I think, just a good, really and partly, transparency thing. "Interim" should be interim. And around Olympia, people always say, "there's no such thing as a temporary tax or a temporary law", so, I think it's good that we hold ourselves accountable to that and either just get rid of it or move it into a permanent status if need be. So, we appreciate the work. And with that, I will take a motion to rescind the above five mentioned Board Interim Policies.

MOTION: Member Garrett moved to rescind Board Interim Policies 02-2016, 01-2017, 01-2018, 15-2019, and 17-2019.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Thanks, Ms. Hoffman. We appreciate that.

Ms. Hoffman: Thanks very much, Chair.

Chair Postman: We will see you soon for the next five. We're now to the part of our meeting for public comment.

6. GENERAL PUBLIC COMMENT

Chair Postman: I'll give a couple of quick reminders. Just a reminder for everybody that these meetings are always recorded. They now are posted pretty quickly afterward on our Board website. When I call your name, please state your name and affiliation for the record, and then remember you have four minutes to talk to us. When you have 30 seconds left, Dustin Dickson will interrupt as politely as possible to give you a 30-second warning, and then we'll need you to wrap up at the end of that. We have one person signed up, and so we call Shawn DeNae, please

Shawn DeNae – Washington Bud Co.

You know, there's a lot of issues right now on all of our plates, and it's really challenging to keep up with it, so I appreciate you guys keeping up with it all. I wanted to talk today about the proposal to move from the central trace system from LEAF to a simple CVS reporting process. It greatly concerns me.

One of the concerns I have is the audit capacity of the LCB to ensure that marijuana is neither diverted to nor inverted from unregulated sources. It feels like we're moving from an overly burdensome seed-to-sale tracking to an oversimplified reporting system that we'll be able to obscure the seed-to-sale transfers. And there is a proposal for a comprised system called Open Source THC that I don't hear you folks talking about.

So, I guess my questions are multiple on this. What is the auditing capability of the LCB if we move to a CVS reporting system? Who would be doing that auditing? How would that auditing be paid for? Is it possible that the extra money that we were charged to pay for LEAF could go to auditing? We were recently able to pin down product that was inverted into the system from hemp biomass because of the seed-to-sale tracking system, and I'm afraid that we wouldn't be able to have that capability on a CVS reporting system.

So, there is a middle proposal rather than going from way heavy seed-to-sale burdensome tracking to CVS. And there's a nice middle compromise called OpenTHC, and so, I would request that the Board look into that further.

And then the final comment on that is since we do have the contract with LEAF until the middle of next year, I would suggest that the LCB move our transition date from December 31, 2021 to, say, the end of April in 2022. Doing any major transfer like that over a holiday weekend is crazy-making, and so I'd like you guys to consider all that.

Thank you so much for the time, and I think I'm done. How can I expect answers to my questions?

Chair Postman: We'll get them to you. Thank you. I was just looking and unfortunately, our CCRS (Cannabis Central Reporting System) expert is not with us on the meeting, but I wrote down the questions, and we will get you answers probably in writing.

We do get regular updates on CCRS, as well, at our Executive Management team meetings. We can put this on the agenda for that, as well, so we'll have a public conversation about it, but we'll make sure you get answers to those questions.

In fact, if you wanted to send them in email, but I wrote down: What is our auditing capacity? Who does it? How's it paid for? Can you take some of the money used for LEAF for that? And I think the specific thing you pointed out about how the existing system was used to help focus on some of the biomass is interesting. I haven't heard about OpenTHC, so we can ask about that, as well.

So, if there is more than that, feel free to email Dustin and we'll get this to you. But we will be sure to round up answers to all of that for you as soon as we can. Okay?

Ms. DeNae: And extend the time. So, that was the last suggestion.

Chair Postman: And extend the time. Yes, to April 2022. Okay. We will ask all those questions of the folks that know a lot more about it than I do.

Ms. DeNae: Thank you, Chair Postman. I appreciate it

Chair Postman: Thank you. Appreciate your time today. And that brings up to the end of our agenda today. Any last words, Member Garrett?

Member Garrett: No, thank you.

Chair Postman: Okay. Thank you, everybody and we will adjourn the Board meeting for September 15, 2021. We'll see you next week.

Member Garrett: Thank you.

ADJOURN

Chair Postman adjourned the meeting at 10:25am.

Minutes approved this 29th day of September, 2021.



David Postman
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.

*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*