



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – WAC 314-11-025 regarding acceptable forms of identification.

Date: April 12, 2023

Presented by: Dr. Kathy Hoffman, Policy & Rules Manager

Background

On February 27, 2023, Andrew Phung submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-11-025 to add Global Entry cards to subsection (3)(c). This subsection currently includes passports, passport cards, and NEXUS cards as acceptable forms of identification to verify a person’s age for the purpose of selling, serving or allowing a person to possess or consume alcohol.

In the rule petition, Mr. Phung provides:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC 314-11-025

I am requesting the following change: Under section (3)(c) Global Entry cards should also be listed. Like Nexus cards, a Global Entry card is also a valid federally issued ID by the U.S. Customs Agency.

This change is needed because: Global Entry cards are used as forms of id by many consumers. All of the required information for acceptable forms of id is present on Global Entry cards.

The effect of this rule change will be: Section (3)(c) should read "A passport, passport card, NEXUS card or Global Entry card;"

The rule is not clearly or simply stated: _____

In the email containing the rule petition, Mr. Phung also offered:

I’ve attached a petition have Global Entry Ids as a valid form of Id for WAC 314-11-025 section (3)(c), as it’s a federally issued ID card with all the pertinent information for an id.

I am not a lawyer, so I’m unsure if you’re the right person I should be sending this form to. Please lmk if I’m not!

Issue

Whether the Board should initiate rulemaking to consider amending WAC 314-11-025(3)(c) to add Global Entry cards to the list of acceptable forms of identification to verify a person's age for the purpose of selling, serving or allowing a person to possess or consume alcohol.

Authority

Laws

[RCW 66.08.030](#) provides the Board with general authority to make regulations that include but are not limited to possession and sale of alcohol products, including liquor, beer, wines and spirits.

[RCW 66.20.170](#) provides that a card or identification may be accepted by any licensee as evidence of legal age of the person presenting such card, provided that the licensee complies with the conditions and procedures described in statute and any regulations made by the Board.

[RCW 66.20.180](#) provides that a card of identification must be presented to a licensee, a peace officer or an enforcement officer of the board to determine whether the person is of legal age to purchase liquor when procuring liquor from a licensed establishment.

[RCW 66.20.190](#) provides that, in addition to presentation and verification of an identification card, an identification card holder may be required to sign a certification card by a licensee.

[RCW 66.44.270](#) provides that it is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

Rules

[WAC 314-11-025](#) describes acceptable forms of identification to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

Analysis

The Board has statutory authority under RCW 66.08.030 to create rules regarding the sale of alcohol products sold in Washington state. RCW 66.20.170 through .190 describe how identification cards may be accepted as evidence of legal age to purchase products containing alcohol in Washington state. WAC 314-11-025 further clarifies these statutes by describing acceptable forms of identification.

Rule Background

Original rules describing forms of acceptable identification to establish age for purposes of purchasing products containing alcohol were promulgated in March 2001. Modifications were made over the course of the next several years to include additional forms of identification and adjust statutory references following privatization. Passport cards and NEXUS cards were added as acceptable forms of identification in May 2018 (see [WSR 18-08-094](#)), and tribal identification was added to the list on September 2019 (see [WSR 19-17-089](#)).

Global Entry Cards as an Acceptable Form of Identification

As noted above, current rule recognizes passports, passport cards, and NEXUS cards as part of the list of acceptable forms of identification to purchase alcohol. The requested addition - Global Entry – is part of the collection of Trusted Traveler Programs¹, along with NEXUS, administered by U.S. Customs and Border Protection (CBP) division of the United States Department of Homeland Security. Both programs are designed to expedite travel at U.S. ports of both departure and entry, and when crossing international borders. Both programs allow card holders to pass through high levels of security quickly when traveling and enrolling in either program requires a rigorous background check, including a criminal history background review, and an in-person interview.²

Difference between Global Entry and NEXUS Cards

There are differences between these two Trusted Traveler programs. NEXUS is a bilateral program governed by CBP *and* the Canada Border Services Agency. The NEXUS program allows pre-screened travelers expedited processing when entering the United States and Canada. To qualify, an applicant must pass law enforcement checks by both the United States *and* Canada and be interviewed at a NEXUS Enrollment Center. Membership may be denied if the applicant provides false or incomplete information or has been convicted of a criminal offense.

In contrast, Global Entry is administered only by the CBP, and is available for U.S. citizens, U.S. lawful permanent residents, and nationals of select countries. It is geared more toward expediting immigration and customs processes. Additional requirements in terms of background checking may apply depending on country of citizenship. Canadian citizens and residents are eligible for Global Entry benefits through membership in the NEXUS program.

NEXUS and Global Entry cards possess very similar characteristics, as illustrated below:

¹ <https://www.cbp.gov/travel/trusted-traveler-programs>

² <https://www.cbp.gov/travel/trusted-traveler-programs/global-entry>

One risk to approving more options for acceptable forms of identification could mean the clerk/bartender may accidentally accept counterfeit identification of underage persons because there are more options, and they have difficulty being astute at noticing abnormalities among all the acceptable forms of identification. To counter this risk, the licensee can create a policy to set standards to what they want to accept. We see them NOT accepting vertical forms of identification, which has saved them from failing compliance checks.

Finance

The Finance division did not identify any impacts.

Information Technology/Infrastructure

The IT division did not identify any impacts.

Public Health/Prevention

From the public health perspective, our concerns are very similar to those expressed by the Enforcement Team. While it makes sense that a federally recognized identification card that has all the necessary information would be acceptable, the concern lies in the ability of licensees to determine whether the identification being shown is legitimate or fraudulent. MAST training would need to be updated, as well as the training the Enforcement Team provides for licensees.

In addition, allowing different identification types for different products will likely cause some confusion for retailers who sell tobacco and alcohol products. With any changes we would want to do what we can to mitigate the potential for underage access to the products.

Interagency

Department of Health

The requested rule revision would not impact Department of Health operations, rules or standards.

Labor & Industries

The requested rule revision would not impact Department of Labor & Industries operations, rules or standards.

Intergovernmental

Tribes

Tribes will begin utilizing similar cards in the coming years, and this poses no negative impacts for LCB Tribal Relations. It would be considered a positive step forward.

DEIB, Social Equity

Globalization provides opportunities for increased diversity, offering ways to learn about new people, places and things. Expanding acceptable forms of identification to include Global Entry Cards may increase the ability of these global travelers to provide another form of identification to verify age when purchasing alcohol products or products containing alcohol in Washington. From this perspective, adding Global Entry cards as a form of acceptable identification may broaden the range of consumers able to participate in the Washington alcohol retail and hospitality industries. However, from a diversity, equity, inclusion and belonging perspective, the relationship between the benefits of globalization and possession of a Global Entry Card may underscore a lack of access to resources in countries, including the United States, where international travel is only available to individuals with resources to do so.

Options

Option 1: Deny the petition. Maintains status quo.

- Risk: May unintentionally exclude a type of acceptable identification that is already identified in rule (NEXUS card).
- Benefit: Maintain alignment with state tobacco and vapor law pertaining to acceptable forms of identification.

Option 2: Deny the petition and offer an alternative approach to the issue.

- Risk: Issuing a guidance document or policy statement does not provide regulatory predictability or stability since neither have the effect of rule.
- Benefit: May allow a particular activity to occur before it is expressed in rule.

Option 3: Accept the petition, agree to initiate the rulemaking process



- Risk: There is always the possibility that if accepted, a rule petition may not ultimately become rule. Additionally, if accepted, making this change in alcohol rules may set different standards for alcohol and cannabis than tobacco and vapor product rules. It would likely be appropriate to amend WAC 314-55-150 for a consistent state approach to age verification of all regulated products. However, this will create a technical gap between alcohol and cannabis age verification and

that of tobacco and vapor product age verification, as those acceptable forms of identification are identified in statute in RCW 70.155.090 and RCW 70.345.120.

- Benefit: Adds an additional option to the existing list of acceptable forms of identification that recognizes both U.S. and international citizens.

Board Action

After considering the various options identified by Director's Office staff, the Board accepts/denies the petition for rulemaking received on February 27, 2023, from Mr. Andrew Phung.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 David Postman, Chair	<u>4.12.2023</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Ollie Garrett, Board Member	<u>4.12.2023</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Jim Vollendroff, Board Member	<u>4.12.2023</u> Date

Attachments

1. Email from Mr. Phung
2. Laws and Rules cited under the "Authority" section above.