



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

- Preproposal Statement of Inquiry was filed as WSR 16-09-116 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 314-55-075, What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?

WAC 314-55-079, What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?

WAC 314-55-410, Cooperatives.

Hearing location(s):

Washington State Liquor Control Board
Board Room
3000 Pacific Ave SE
Olympia, WA 98504

Date: September 7, 2016 Time: 10:00 am

Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator

Address: PO Box 43080

Olympia, WA 98504

e-mail rules@lcb.wa.gov

fax (360) 664-9689 by (date) September 7, 2016

Assistance for persons with disabilities: Contact

Joanna Eide by August 31, 2016

TTY () _____ or (360) 664-1622

Date of intended adoption: On or after September 21, 2016

(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of this rule making is to amend rules to adhere to changes made to state law by the 2016 Legislature. Changes include adjustments to accommodate and provide requirements and direction for cooperative members purchasing plants from licensed producers and to allow licensed retailers to dispose of marijuana products so long as retailers follow the disposal requirements for other marijuana licensees.

Reasons supporting proposal: Rule changes are needed to implement changes to marijuana laws passed during the 2016 Legislative Session. Specifically, the WSLCB is proposing rule changes relating to the following measures passed by the Legislature:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives (SL 2016 c 170)
- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet (SL 2016 c 171)

Statutory authority for adoption: RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

Statute being implemented: RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 27, 2016

TIME: 10:39 AM

WSR 16-16-051

DATE
July 27, 2016

NAME (type or print)
Jane Rushford

SIGNATURE

TITLE
Chair

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Joanna Eide, Rules Coordinator	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1622
Implementation....Becky Smith, Licensing Director	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1615
Enforcement..... Justin Nordhorn, Chief Enforcement	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1726

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide, Policy and Rules Coordinator
Address: Washington State Liquor and Cannabis Board
3000 Pacific Ave. SE
Olympia, WA 98504
phone (360) 664-1622
fax (360)664-9689
e-mail Joanna.Eide@lcb.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

phone () _____
fax () _____
e-mail _____

No: Please explain: A cost-benefit analysis was not required under RCW 34.05.328.



Date: July 27, 2015

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Agency Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator

**Subject: Small Business Economic Impact Statement
2016 Marijuana Legislation Implementation**

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed amendments to WAC 314-55-079 and 314-55-410. The changes to WAC 314-55-075 are technical in nature and simply align the provisions of that rule with statutory changes, meaning they do not impose any new requirements on small businesses, so those changes are not included in this analysis.

1. Description of reporting, record keeping and other compliance requirements of the proposed rule:

WAC 314-55-079

The proposed amendments to WAC 314-55-079 are in response to the statutory changes made by the 2016 Legislature that allow licensed retailers to open marijuana packaging for purposes of disposal as authorized by the board. The rule change directs retailers who choose to dispose of marijuana products to comply with the same provisions (WAC 314-55-097) for disposal under WSLCB rule and state law that licensed producers and processors must follow when disposing marijuana products. This is an optional requirement as retailers can still choose to send products back to processors for disposal as they already do. However, this change was needed as some processors that retailers originally purchased product from have since gone out of business, leaving some retailers with marijuana products on hand that they cannot sell nor dispose of. The WSLCB will continue to look at waste disposal options and requirements for licensees along with the Dept. of Ecology and local waste management organizations to see where improvements may be made.



WAC 314-55-410

Rule amendments are proposed to provide guidance and requirements for producers and members of registered cooperatives purchasing plants from licensed producers. Added language includes proof of membership in a cooperative and identification requirements, provisions related to the 24 hour hold prior to transferring plants, requirements that the transfer of plants be performed at the producer's licensed premises, and prohibiting deliveries of plants. Producers are not required to sell plants to members of registered cooperatives, so they will only need to comply with these new requirements if they choose to sell to members of a cooperative.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

WAC 314-55-079

Retailers may choose to use professional services for disposal purposes, but they will not be required to comply with the requirements of this rule change.

WAC 314-55-410

Producers will not need any professional services to comply with the new requirements. Producers will be able to engage

3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:

WAC 314-55-079

The costs of compliance will depend on decisions made by retailers. If retailers choose to obtain dispose of marijuana products themselves, costs may or may not be higher than those retailers who choose to send products back to processors for disposal. No additional equipment or supplies are required by the proposed new rule language if a retailer does not choose to dispose of marijuana products itself. If they do choose to, they may need to purchase or create equipment or supplies. These may vary depending on the amount of disposal a retailer chooses to engage in or may need to engage in, and the products they may be disposing of may vary as well necessitating different disposal methods. The costs for disposal for certain products may also vary based upon the retailer's location as local waste authorities and such have different requirements and costs. Because the costs may vary quite widely depending on choices made by the individual retailer, it is difficult to estimate costs. However, the WSLCB does not anticipate that the costs for equipment, supplies, labor and increased administrative costs will be more than minor.



WAC 314-55-410

There should be little to no costs associated with complying with the proposed requirements in this rulemaking. Sales of plants by producers to members of regulated cooperatives will be voluntary on the part of producers, and should not take more than a calculator to achieve. The only costs a producer may incur as part of choosing to engage in such sales would be to increase in employee workload. Again, this is not a requirement. It is optional.

4. Will compliance with the rules cause businesses to lose sales or revenue?

WAC 314-55-079

The new requirements are to allow for disposal of marijuana products that are already not going to be sold and only apply to those who choose to engage in the disposal of marijuana products, so they do not impact sales or revenue.

WAC 314-55-410

The new requirements will not impact sales or revenue generated from those sales. The new requirements may actually serve to facilitate sales between producers and members of a registered cooperative.

5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- a. **Cost per employee;**
- b. **Cost per hour of labor; or**
- c. **Cost per one hundred dollars of sales**

Many marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on collection on the value of marijuana at retail and wholesale and sales information. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. Sales and excise tax payments data can assist with estimating profits, however, each business is different and costs are not known so there is not enough information for the WSLCB to determine profit margins.

For both of these rule changes, the requirements will only apply if the businesses choose to engage in the activities that include the requirements. Additionally, costs will vary depending on the level of activity the licensee engages in, the location they are



situated in, and other related factors. The costs for compliance, though they will vary, will be minor.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

Since the proposed changes to requirements in this rulemaking will only need to be adhered to should the respective licensee choose to engage in the activity, the WSLCB has reduced the amount of costs on small businesses as much as possible. No new costs will be incurred for those who do not choose to engage in the activities to which they apply. Even if a licensee chooses to engage in the activities the requirements apply to, costs of compliance will be minor.

7. A description of how the agency will involve small businesses in the development of the rule:

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process.

8. A list of industries that will be required to comply with the rule:

Licensed marijuana retailers will be required to comply with these rules if they choose to dispose of marijuana products.

Licensed producers will be required to comply with the changes to rules if they choose to engage in sales of plants to members of registered cooperatives.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

The changes in these proposals will not result in the loss of jobs. It is unclear whether the new requirements would create jobs, though the changes in law may enable that. Whether this occurs is dependent on many factors, including internal decisions made by businesses which cannot be foreseen by the WSLCB.

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?

(1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees((-)); and

(ii) Marijuana plants to members of a registered cooperative under the conditions provided in WAC 314-55-410.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. Outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB. The WSLCB may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production will be imposed at a later date. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?

(1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(10) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.

WAC 314-55-410 Cooperatives. (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four (~~members are allowed in~~) qualifying patients or designated providers may become members of a cooperative;

(d) (~~A member can only belong to~~) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. (~~A monetary contribution or donation is not considered assistance.~~) Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on (~~their~~) his or her recognition card(~~s~~). At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable marijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located in the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. The following is required to register a cooperative (~~a registered member must~~):

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each (~~member's~~) person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement (~~of~~) from the property owner granting permission to engage in a cooperative must also be submitted (~~and must~~) that includes a tele-

phone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the ~~((medical))~~ marijuana is planned to be grown.

(3) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and WSLCB staff.

(4) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

(5) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

(6) A person may request an administrative hearing to contest a denial of registration or a revocation of a cooperative's registration under subsections (4) and (5) of this section as provided in chapter 34.05 RCW.

(7) Cooperative members purchasing plants from licensed producers.

(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.

(b) Members of a cooperative who wish to purchase plants from a licensed producer must:

(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;

(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and

(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.

(c) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.