



Washington State Liquor Control Board

Proposed Rulemaking for WAC 314-55 Marijuana Licenses, Application Process, Requirements and Reporting

Revised

SEPA Determination of Nonsignificance (DNS) and Addendum to Environmental Checklist

September 26, 2013

The Washington State Liquor Control Board (WSLCB) conducted a SEPA nonproject review and filed an Environmental checklist (checklist) and Determination of nonsignificance (DNS) on June 3, 2013. This is an addendum to that checklist and DNS. The proposal is a rule establishing a system to license and regulate marijuana production, distribution and possession for persons over 21 years of age imposed by the passage of Initiative-502 (I-502).

I-502 requires a tightly controlled and regulated marijuana market including strict controls to prevent diversion, illegal sales and sales to minors while providing reasonable access to products to mitigate the illicit market. The requirements in the proposal are designed to comply with the initiative's mandate. These rules will reduce adverse environmental impacts caused by current unregulated marijuana grows on public and private lands and facilities.

On July 3, 2013, the WSLCB filed proposed rules with the state code reviser (CR 102). The Board held five public hearings across the state and solicited public input on its proposed rules. Based on public comments, the Board chose to revise its rules. The Board filed revised rules on September 4, 2013 (Supplemental CR 102).

The WSLCB contracted with BOTEC Analysis Corporation to provide technical expertise. BOTEC submitted a white paper on the environmental risks and opportunities in marijuana cultivation. The final report was submitted June 28, 2013 and a final revised report was submitted September 7, 2013. The final revised report is attached and some of the information is summarized in the addendum below.

Addendum to existing checklist analysis:

The original checklist in Part D, Supplemental Sheet for Nonproject Actions (1) did not address Water Quantity as it relates to outdoor cultivation of cannabis. Water use and fertilizer runoff to streams or groundwater is also a concern for outdoor cultivation as for any crop. Illegal growing has had damaging effects when water is illegally diverted through PVC pipes to nearby grow operations, with negative effect on pH, stream flow, water temperature and nutrient content. This is an environmental cost that a legal regime may avoid. Outdoor cultivators will need to follow state and local water resource laws and requirements.

The original checklist in Part D, Supplemental Sheet for Nonproject Actions (1) under Toxic Waste erroneously stated that high-intensity discharge (HID) bulbs are not recyclable. HID light bulbs and all mercury containing bulbs are now required to be recycled under RCW 70.275.080.

The original checklist in Part D, Supplemental Sheet for Nonproject Actions (2) did not address how outdoor cultivation of marijuana could affect wildlife. Endangered species candidates like the fisher, which populate the Pacific Northwest, can be harmed by rodenticides that are used for marijuana cultivation.

Research has linked rat poisons used during illegal marijuana cultivation to fisher deaths near illegal cannabis cultivation sites. Rodenticides such as brodifacoum may also affect owls, martens and foxes. The proposed regulations restricting pesticide types and regulating their use would lessen this environmental impact.

Addendum to checklist based on new and revised language:

Below are the substantial revisions that the LCB has made to the rules based on public input and continued research and discussion.

Production Limits

- Added language that limits the total amount of useable marijuana to be produced to 40 metric tons
- Added language that sets the maximum amount of space for marijuana production at two million square feet

Effect of proposed measures:

The production limits will lessen the environmental impact by controlling the amount of marijuana that can be legally produced.

Production Tiers

- Added language that creates three production tiers based on square footage. Applicants are limited by the size category of their production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories:
 - Tier 1 – less than 2000 square feet
 - Tier 2 – 2000 to 10,000 square feet
 - Tier 3 – 10,000 to 30,000 square feet

Effect of proposed measures:

The three production tiers limit the amount of marijuana production to two million square feet in the state. This will lessen the environmental impact by controlling the amount of marijuana that can be legally grown and produced.

Market Control Limits

- Limits any entity and/or principals within any entity to three producer or processor licenses.
- Limits any principal and or entity to no more than three retail licenses with no multiple location licensee allowed more than 33 percent of the allowed licenses in any county or city

Effect of proposed measures:

The proposed rule directly affects the environment as it relates to water, air, aesthetics, plants, animals, marine life, energy or natural resources, transportation or public services and utilities by controlling the amount of marijuana that can be cultivated by an entity and/or principals in the state.

On-Site Product Limits

- Established the maximum amount of marijuana allowed on a licensee's premises at any time based on the type of grow operation (indoor, outdoor, greenhouse).
 - Producer License
 - Outdoor or greenhouse: 125 percent of year's harvest
 - Indoor: Six months of its annual harvest
 - Processor License
 - Six months of their average useable marijuana (plant material); and
 - Six months average of their total production (finished product)
 - Retailer License
 - Four months of their average inventory

Effect of proposed measures:

The proposed rule directly affects the environment as it relates to water, air, aesthetics, plants, animals, marine life, energy or natural resources, transportation or public services and utilities by controlling the amount of marijuana that can be cultivated and stored on a licensee's premises.

Retail Stores

- A maximum of 334 retail stores will be allowed in the system
- Stores locations are allocated based on population and consumption data

Effect of proposed measures:

The proposed rule directly affects the environment as it relates to water, air, aesthetics, plants, animals, marine life, energy or natural resources, transportation or public services and utilities by controlling the amount of recreational marijuana stores and inventory in the state.

Tightened Definitions

- Added a definition for “plant canopy” to clarify what area is considered in the square footage calculation for marijuana producers”
- Revised the definition of “Public Park” to include parks owned or managed by a metropolitan park district. Clarified that trails are not included in the definition of “Public Park”
- Revised the definition of “recreation center or facility.” Added the language “owned and/or managed by a charitable non-profit organization, city, county, state, or federal government”

Effect of proposed measures:

The proposed rule directly affects the environment as it relates to water, air, aesthetics, plants, animals, marine life, energy or natural resources, transportation or public services and utilities by controlling the area where recreational marijuana can be produced, processed and sold at retail stores.