



**Washington State
Liquor and Cannabis Board**

Date: July 27, 2016

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

From: Karen McCall, Sr. Agency Rules and Policy Coordinator

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

Subject: **Approval to file revised proposed rules (Supplemental CR 102) to revise Chapter 314-29 Penalty guidelines**

As part of the Liquor and Cannabis Board’s on-going rules review process, Chapter 314-29 WAC is being reviewed for relevance, clarity, and accuracy. At the public hearing on June 15, 2016, stakeholders provided comment on the proposed rules. Based on those comments revisions have been made to the original proposed rules.

Process

The Rules Coordinator requests approval to file the revised proposed rules (Supplemental CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 27, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 27, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
August 17, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 7, 2016	Public Hearing held
September 7, 2016	End of written comment period
September 21, 2016	Board is asked to adopt rules
September 21, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 21, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 22, 2016	Rules are effective (31 days after filing)



Washington State
Liquor and Cannabis Board

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Rule Making on Chapter 314-29 WAC Penalty

Guidelines

Date: July 27, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file revised proposed rules (Supplemental CR 102) to revise Chapter 314-29 WAC Penalty guidelines.

Why is rule making necessary?

As part of the Liquor and Cannabis Board's on-going rules review process, rules regarding how to apply for a liquor license are being reviewed for relevance, clarity, and accuracy. At the public hearing on June 15, 2016, stakeholders provided comment on the proposed rules. Based on those comments revisions have been made to the original proposed rules.

What changes are being proposed?

Amended Section. WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation? Explained actions the board may take if a monetary penalty is not paid by the due date.

Amended Section. WAC 314-29-020 Group 1 violations against public safety. Added language that group 1 violations will be counted sequentially rather than independently by group.

New Section. WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. Created a new section for sports entertainment facility license public safety violations. Since this license type is unique from all other on-premises licenses, the penalties should be different.

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?

(1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-020 Group 1 violations against public safety. (1) Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: Sale or service to minor: Sale or service of alcohol to a person under 21 years of age. Minor frequenting a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

NEW SECTION

WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

(1) General public safety violation penalties.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Violations involving minors: Sale or service to minors outside of WAC 314-29-038(c): Sale or service of alcohol to a person under 21 years of age. Minor frequenting a restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Sale or service to an apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) WSLCB youth access compliance checks, in accordance with chapter 314-31 WAC.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.					

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.



**Washington State
Liquor and Cannabis Board**

Date: July 27, 2016

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

From: Karen McCall, Agency Rules Coordinator

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

Subject: **Approval for filing a pre-proposal statement of inquiry (CR 101) to revise several chapters in 314 WAC**

As part of the Liquor and Cannabis Board’s on-going rules review process, Chapters 314-02, 314-07, 314-11, and 314-12 WAC are being reviewed for relevance, clarity, and accuracy.

Process

The Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 27, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 27, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
August 17, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 17, 2016	End of written comment period
September 21, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
October 5, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 2, 2016	Public Hearing held
November 2, 2016	End of written comment period
November 16, 2016	Board is asked to adopt rules
November 16, 2016	Agency sends notice to those who commented both at the public hearing and in writing.

November 16, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 17, 2016	Rules are effective (31 days after filing)

Approve Disapprove _____ Date
 Jane Rushford, Chair

Approve Disapprove _____ Date
 Ruthann Kurose, Board Member

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making on Chapters 314-02, 314-07, 314-11, and 314-12 WACs

Date: July 27, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file the first stage of rulemaking (CR 101) to review four chapters in **314 WAC**.

Why is rule making necessary?

As part of the Liquor and Cannabis Board's on-going rules review process, rules in the following WAC Chapters are being reviewed for relevance, clarity, and accuracy:

- Chapter 314-02 Requirements for retail liquor licenses.
- Chapter 314-07 How to apply for a liquor license.
- Chapter 314-11 General requirements for licensees.
- Chapter 314-12 General – Applicable to all licensees.

Process

The rule making process begins by announcing LCB's intent to change the existing rule by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary rule changes. At the CR 101 stage of the process, no proposed language is offered. The public may comment on the subject of this rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process.

Issue Paper

Rules to Implement 2016 Marijuana Legislation

Date: July 27, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) amending rules in Chapter 314-55 WAC, marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation and make other needed technical changes.

Why is rule making necessary?

Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session and to make needed technical changes. These rule changes will implement changes made to law in the following bills:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives
- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet

What changes are being proposed?

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

Minor changes to rule language to clarify that producers may sell plants to members of a registered cooperative.

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

Minor changes to rule language to allow retailers to dispose of marijuana (as allowed by HB 2521 listed above) so long as they follow the disposal requirements provided in WAC 314-55-097.

Amendatory section. WAC 314-55-410 Cooperatives.

HB 2520 changed state law to allow members of a cooperative to purchase plants from producers. 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.

Attachment: Proposed Rules



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.



**Washington State
Liquor and Cannabis Board**

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, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

Subject: **Approval for filing proposed rules (CR 102) to amend rules in chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation.**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) amending rules in Chapter 314-55 WAC, marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation and make other needed technical changes. These rule changes will implement changes made to law in the following bills:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives
- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 27, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 27, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 102)
August 17, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 7, 2016	End of written comment period
September 7, 2016	Public Hearing held
September 21, 2016	Board is asked to adopt rules
September 21, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 21, 2016	Agency files adopted rules with the Code Reviser (CR

	103)
October 22, 2016	Rules are effective (31 days after filing)

Approve Disapprove _____ _____
 Jane Rushford, Chairman Date

Approve Disapprove _____ _____
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Marijuana Recalls Rules

Date: July 27, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt rules creating a new section regarding marijuana product recalls in Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting.

Why is rule making necessary?

Permanent rules are needed to create a recall process for marijuana and marijuana products that pose a risk to consumers. Marijuana and marijuana products sold in WSLCB licensed retail stores are a consumable product and it is important that they are safe for human consumption. In the event that product posing a risk to consumers is discovered, regulations and a process need to be in place to allow for affected product to be identified and removed from the marketplace in a fast and efficient manner.

Public Comment

No public comment was received at the public hearing held on July 13, 2016. Only 8 written comments were received.

What changes are being proposed?

New Section. WAC 314-55-225 Marijuana recalls.

The new section creates a process for marijuana recalls. Staff drafted this process to mirror the process WSDA uses for food product recalls and used information compiled from researching how WSDA, Dept. of Health, and the FDA conduct recalls. The rule outlines:

- When licensees may conduct a market withdrawal in cases where they wish to pull pack products that does not involve a risk to consumers;
- When a recall is required and the steps a licensee must take to recall and destroy affected products; and
- When the WSLCB may seek a Board-directed recall and an order for destruction of products.

Attachment: Proposed Rules



Notice of Permanent Rules for Marijuana Recalls

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules for Marijuana Recalls.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

What are the agency's reasons for adopting this rule?

New rules are needed to establish a marijuana and marijuana product recall process and requirement. In the event that product posing a risk to consumers is discovered, regulations and a process need to be in place to allow for affected product to be identified and removed from the marketplace in a fast and efficient manner. This rule establishes a recall process similar to food recall processes of other state and federal agencies. These rules will protect the health and welfare of marijuana consumers in the state of Washington.

Summary of public comments received on this rule proposal.

CR-101 – filed March 23, 2016, as WSR 16-07-156.

CR 102 – filed May 18, 2016, as WSR 16-11-113.

Public Hearing held July 13, 2016.

Written Comments Received:

- 1. Two (2) Comments were received supporting the adoption of the proposed rules as filed in the CR-102.**

WSLCB response: The final rules were not changed from proposed rule to adopted rule.

- 2. One (1) comment was received expressing concern about costs to the retailer as a result of recalled product. The commenter wanted reimbursement to the**



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retailer for the recalled product to be mandatory, and there was a discussion of warranties.

WSLCB response: Thank you for your comments and taking the time to contact the WSLCB. What you are discussing is something that licensees will have to negotiate amongst themselves and not something regulated through rule. It is not prohibited though. We do not require refunds in rule because it is a civil matter. The WSLCB is not going to regulate business contracts or these type of market-driven decisions. This has always been in rule. WAC 314-55-077 (14): A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

Was this comment reflected in the final rule? No, the final rules did not accommodate this comment. It is more appropriate for these decisions to be dealt with by the business on a case by case basis. WSLCB will not interfere in civil matters and such business decisions between licensees.

- 3. Comment Summary (single comment): The WSLCB should create an emergency fund for recall efforts. Recalls will be especially difficult in the cannabis industry. The proposed rule does not include either a financial requirement placed on licensees to ensure that all licensees have the cash on hand to buy the product back or an alternative mechanism that would enable licensees to finance the cost of a recall.**

WSLCB response: The proposed rules mirror those recall provisions in other industries that also do not provide what you suggest. It is up to industry members to ensure they are adequately prepared for a potential recall and whether they will refund money for product. That is a civil matter between those impacted by a recall event. Many of the items mentioned in the comment are risk-based decisions that each licensee will have to make on its own.

Was this comment reflected in the final rule? No, the final rules did not accommodate this comment. It is more appropriate for these decisions to be dealt with by the business on a case by case basis. WSLCB will not interfere in civil matters and such business decisions between licensees.

- 4. One (1) comment was received with less of a comment about the proposed rules and more on the logistical process of dealing with a recall event within the traceability system. Suggestions were made on changes to the traceability system that could make responding to a recall event easier for a licensee.**

WSLCB response: The WSLCB will look into whether the change suggested can be accomplished in the traceability system.



Washington State Liquor and Cannabis Board

Was this comment reflected in the final rule? No, as this comment was not directed at the rules but at the traceability system and how it could be changed to help licensees comply with rule requirements more easily. The WSLCB will look into the feasibility of making the changes requested to the traceability system.

5. One (1) comment was received asking for clarification in rules for how consumers may return recalled product.

WSLCB response: The rule changes that were recently adopted by the Board on May 18th and will be effective on June 18th include new provisions that will allow the customer to return products along with the original packaging. So, that will be in place very soon. You can find a copy of the recently adopted rules at the following link listed under "2015 Marijuana Legislation Implementation": <http://lcb.wa.gov/rules/recently-adopted-rules>. There was also a bill that passed this last legislative session that will allow retailers to open marijuana for the purposes of disposal. You can view a copy of that bill here: <http://app.leg.wa.gov/billinfo/summary.aspx?bill=2521&year=2015>. We are currently working on rules to implement this as the new provision in the bill states "as authorized by the board," since we don't have anything stating how to do that or what is authorized. The same disposal requirements for producers and processors will apply to disposals, and we will be looking to make some improvements to those rules in an upcoming rulemaking.

Was this comment reflected in the final rule? No. No changes to rule language were needed to accommodate this comment.

Public Hearing Comments:

No public testimony was offered at the public hearing.

WAC Changes from Proposed Rules (CR-102) to the Rules as Adopted:

None. The rule was adopted without any changes to the proposed rules from the CR-102 filing.



Washington State
Liquor and Cannabis Board

Date: July 27, 2016

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

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval of final rules (CR 103) to create a new section regarding marijuana recalls in Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting.**

At the Board meeting on July 27, 2016, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for a new section regarding marijuana recalls in Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules is attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments.

After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

NEW SECTION

WAC 314-55-225 Marijuana recalls. (1) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Affected product" means marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products subject to a recall.

(b) "Affected licensee" means a licensee whose marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products are subject to a recall. More than one licensee may be an affected licensee in a recall.

(2) **Exempt market withdrawals.**

(a) A licensee may withdraw from the market marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products by its own determination for reasons that do not pose a risk to consumers such as for aesthetic reasons or other similar deficiencies in product or packaging.

(b) If a licensee initiates a market withdrawal for a reason that does not pose a risk to consumers, the licensee must notify the WSLCB by contacting the local WSLCB enforcement officer assigned to the local area within forty-eight hours of beginning the market withdrawal. Licensees withdrawing marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this subsection (2), for reasons other than risk to consumers, are exempt from the remaining requirements of this section.

(3)(a) **When a recall is required.** A recall is required when circumstances exist that pose a risk to consumers. Factors that contribute to a determination of a recall situation include, but are not limited to, the following:

(i) Evidence that pesticides not approved by the board are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products above the action levels prescribed by board rule;

(ii) Evidence that residual solvents are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products at levels above the action levels prescribed by board rule; or

(iii) Evidence of another condition that poses a risk to consumers including, but not limited to, ingredients in marijuana-infused products that are unfit for human consumption.

(b) **Licensee-initiated recalls.**

(i) If a licensee initiates a recall due to a condition that poses a risk to consumers and would make a recall appropriate under this subsection (3), the licensee must:

(A) Immediately notify the local WSLCB enforcement officer; and

(B) Secure, isolate, and prevent the distribution of all marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products that may have been exposed to the condition warranting the recall. The licensee is prohibited from destroying any affected product prior to notifying the WSLCB and coordinating with the local WSLCB officer on destruction activities.

(ii) If the WSLCB determines the licensee fails to engage in recall efforts that meet the urgency of the risk to consumers, the WSLCB may seek a board-directed recall as provided in this section depending on the circumstances.

(c) **WSLCB investigation-initiated recalls.**

(i) If the WSLCB determines that a recall is not appropriate after an investigation, the WSLCB enforcement division may release administrative holds placed on marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products as part of the investigation as appropriate, unless an administrative hold is necessary under a continuing investigation.

(ii) If the WSLCB determines that a recall is appropriate after an investigation, the WSLCB notifies the board and requests the board issue a recall. If the board issues a recall, the WSLCB notifies the affected licensee that is the source of the issue giving rise to a recall.

(d) **Recall plans.** All licensees must develop a recall plan within sixty days of the effective date of this section that sets the procedures the licensee will follow in the event of a recall of the licensee's product or products under the licensee's control. If a licensee becomes an affected licensee as part of a recall and the affected licensee distributed affected product to consumers or to retailers, the affected licensee must immediately notify all licensees that received affected product, and issue a press release and other appropriate public notification to inform consumers of the recall and identifying information about the affected product recalled.

(i) A recall plan must include, at a minimum, the following:

(A) Designation of a member of the licensee's staff who serves as the licensee's recall coordinator;

(B) Procedures for identifying and isolating product to prevent or minimize its distribution to consumers;

(C) Procedures to retrieve and destroy product; and

(D) A communications plan to notify those affected by the recall, including:

(I) How the affected licensee will notify other licensees in possession of product subject to the recall; and

(II) The use of press releases and other appropriate notifications to ensure consumers are notified of the recall and affected product information if the affected product was distributed to consumers.

(ii) A recall must follow the procedures outlined in the recall plan unless otherwise agreed by the WSLCB and the licensee. The affected licensee must ensure recall procedures are conducted to maximize recall of affected product and minimize risks to consumers.

(e) **Destruction of affected product.** An affected licensee must coordinate destruction of affected product with the local WSLCB enforcement officer and allow WSLCB enforcement to oversee the destruction of affected product recalled to ensure the destruction of affected product that poses risks to consumers.

(f) **Recall reports and audit.** The affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must report to the WSLCB periodically on the progress of the recall efforts. The periodic reports must occur at a minimum of once a week or as otherwise specified and agreed to by the WSLCB and the affected licensee in the recall plan.

(g) **Recall closure.** If the WSLCB determines that the recall efforts are successful and risks to public health and safety are no longer present, the WSLCB may recommend closure of the recall to the board.

(4) **Board-directed recall.**

(a) Upon the recommendation by the WSLCB enforcement division, the board may issue a directed recall if:

(i) The affected licensee does not comply with a recall under subsection (3) of this section;

(ii) The affected licensee does not comply with the recall plan or recall reporting requirements under subsection (3) of this section; or

(iii) The WSLCB enforcement division determines that affected product may be diverted or is being diverted from the licensed business, or another circumstance that makes the affected licensee's destruction of the product inadvisable or a risk to consumers.

(b) If the board issues a directed recall, the WSLCB will notify consumers of the recall and all licensees that may possess product affected by the recall if notice has not yet occurred.

(c) Under a directed recall, the WSLCB enforcement division may seek an order for destruction of the affected product from the board.

(i) If the board issues an order for destruction, the WSLCB enforcement division may seize and conduct the destruction of affected product.

(ii) An order for destruction will include notice to the licensee and opportunity for hearing before destruction, unless there is evidence of an immediate danger to public health, safety, or welfare to justify an immediate order for destruction, with an opportunity for an expedited hearing after the destruction.

(d) If a destruction order is issued and the WSLCB seizes product affected by the recall and conducts the destruction of the product, the affected licensee may be responsible for reimbursing the WSLCB for costs associated with product destruction.

(e) If the board finds that an immediate danger to the public health, safety, or welfare requires immediate WSLCB action, a licensee may also be subject to summary suspension under RCW 66.08.150(4).

(5) The WSLCB will maintain a recall web page on its web site of all current and closed recalls of record.



Liquor and Cannabis Board Revised Interim Policy BIP-03-2016

Subject: ESSB 6328 Vapor Products Implementation

Effective Date: August 1, 2016

Ending Date: Upon adoption of rules to implement this policy.

Approved: _____
Jane Rushford, Chair

Ruthann Kurose, Board Member

Purpose:

This Interim Policy is to address needed details and requirements to implement new vapor products licenses and provisions related to mail and internet sales of vapor products. The 2016 Legislature passed ESSB 6328 (Laws of 2016 ch. 38) that established a new licensing and regulatory framework for vapor products. Vapor products were previously unregulated.

The WSLCB is currently engaged in permanent rulemaking to establish rules as provided under the authority conveyed within ESSB 6328. Though many of the provisions of ESSB 6328 became effective on June 28, 2016, other provisions of the bill in sections 5 through 10 and 28 do not become effective until 30 days after the license application is made available by the WSLCB. The WSLCB made the license applications as required by the bill available on July 1, 2016, making the remaining provisions of the bill effective on August 1, 2016. This Interim Policy is to ensure the WSLCB can implement the necessary components of the bill for licensing provisions and provide additional guidance and requirements for mail and internet delivery sales until permanent rules become effective.

ESSB 6328 defined vapor products as “any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.” The term also includes “any electronic cigarette, electronic, cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic, cigar, electronic cigarillo, electronic pipe, or similar product or device.” Vapor products do not include any products that meet the definition of marijuana or marijuana products, cigarette, or tobacco products.



A copy of ESSB 6328 (Laws of 2016 ch. 38) accompanies this Interim Policy.

Policy Statement

In addition to the provisions of ESSB 6328 (Laws of 2016 ch. 38), the following provisions apply to applicants for vapor products licenses, vapor products license holders, and those vapor products licensees who engage in mail and internet delivery sales of vapor products.

(1) Licensing and Records-keeping

(a) A vapor product retailer's license, vapor products distributor's license, or a vapor products delivery sale license is required to perform the functions of a vapor products retailer, vapor products distributor, or a vapor products delivery seller whether or not the vapor products the licensee deals in contain nicotine.

(b) A vapor product retailer license, vapor products distributor license, or a vapor products delivery sale license cannot be issued to a location that is a domicile.

(c) No more than one license of each vapor products license type may be issued at a single location.

(d) For the purpose of reviewing an application for a license and considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the 5 years prior to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person's qualification for a license. The WSLCB will not normally issue a vapor products license to a person or entity that has accumulated eight (8) or more points as determined by the below subsections. If a case is pending for an alleged offense that would earn eight (8) or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety (90) days of application, the WSLCB may administratively close the application.

(i) Felony conviction within the 5 years prior to application: 12 points.

(ii) Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW within the 5 years prior to application: 12 points.

(iii) Other gross misdemeanor conviction within 3 years prior to application: 5 points.

(iv) Misdemeanor conviction within 3 years prior to application: 4 points.



Washington State Liquor and Cannabis Board

(v) Nondisclosure of any of the above: 4 points each in addition to underlying points.

(e) For the purpose of reviewing an application for a license and considering the denial of a vapor products license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor products license to a person or entity that has four (4) or more violations within the two (2) years prior to the date the application is received by the WSLCB.

(2) Mail and Internet Delivery Sales

(a) A vapor products delivery sale license holder must clearly label all vapor products cases or outside shipping packages of vapor products sent into or out of this state to indicate that the package cannot be delivered to a person under eighteen years of age.

(b) A vapor products delivery sale license holder must ensure that the private carrier used to deliver vapor products within Washington State:

(i) Obtains the signature of the person who receives the vapor products upon delivery; and

(ii) Verifies the age of the recipient.