



**Washington State
Liquor and Cannabis Board**

Date: July 13, 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 revised proposed rules (Supplemental CR 102) to revise WAC 314-12-215 Alcohol Impact Areas.**

This rulemaking is a result of a stakeholder request. The Washington Beer & Wine Distributors Association (WBWDA) submitted a petition for rulemaking to revise WAC 314-12-215 Alcohol Impact Areas.

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 13, 2016, and is attached to this order.

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

July 13, 2016	Board is asked to approve filing the revised proposed rules (Supplemental CR 102)
August 3, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 24, 2016	End of written comment period
August 24, 2016	Public Hearing held
September 7, 2016	Board is asked to adopt rules
September 7, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 7, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 8, 2016	Rules are effective (31 days after filing)

_____ Approve

_____ Disapprove

Jane Rushford, Chairman

Date

_____ Approve

_____ Disapprove

Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Issue Paper

Alcohol Impact Area Rules – Supplemental CR 102

Date: July 13, 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 proposed rules (Supplemental CR 102) to revise WAC 314-12-215 Alcohol Impact Areas.

Why is rule making necessary?

The Washington Beer & Wine Distributors Association (WBWDA) submitted a petition for rulemaking to revise WAC 314-12-215 Alcohol Impact Areas.

Background

The board filed proposed rules on March 23, 2016, to revise the Alcohol Impact Area rules found in WAC 314-12-215. At the public hearing held on May 4, 2016, 2016, the board heard comments from stakeholders on the proposed rules. Based on the comments received staff is recommending changes to the proposed rules.

What changes are being propose?

WAC 314-12-155 Alcohol impact areas-Definitions-Guidelines.

- Clarification of minimum requirements for an alcohol impact area recognition packet;
- Clarification on conditions or restrictions the board may recognize for an alcohol impact area;
- Removal of a minimum alcohol content on restricted products;
- Addition of a list of products the board will ban in all alcohol impact areas and the requirement that must be met to add additional products to the banned products list;
- Revisions to the reporting requirements for a local jurisdiction on recognized alcohol impact areas; and
- Clarification of information required in reports to the board from local authorities on recognized alcohol impact areas.



AIA Banned Products List

(All Flavors, Products, and Container Sizes)

<u>Beer Brand Name</u>	<u>Alcohol Content by Volume</u>
Big Bear	5.7% - 7.5%
Bud Ice	5.5%
Bull Ice	8%
Busch Ice	5.9%
Camo Black Ice	10.5%
Colt 45 Ice	6.1%
Colt 45 Malt Liquor	6.4%
Core High Gravity	5% - 10%
Four Loko	12%
Hard Wired	6.9%
Hamm's Ice Brewed Ale	6.1%
Hamm's Ice Brewed Beer	6.1%
Hurricane	5.9%
Hurricane High Gravity	8.1% - 9%
HG 800	5.9% - 8%
Ice House	5.5%
Joose	9.9%
Keystone Ice	5.9%
King Cobra Malt Liquor	5.9%
Lucky Ice Ale Premium	6.1%
Lucky Ice	6.1%
Magnum Malt Liquor	5.9%
Mike's Harder Lemonade	8%
Mickey's	5.6% - 5.8%
Milwaukee Best Ice	5.9%



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Milwaukee Best Premium Ice	5.9%
Natural Ice	5.9%
Old Milwaukee Ice	5.9%
Olde English 800	7.5% - 8%
Olympia Ice	6.1%
Pabst Ice Ale	6.1%
Rainier Ice Ale	5.9%
Red Bull Malt Liquor	7%
Red Dog	5%
Schlitz High Gravity	8.5%
Schmidt's Ice	5.9%
Sparks	6% - 8%
Special 800 Reserve	6%
St. Ide's Liquor and Special Brews	6% - 7.3%
Steel Reserve	5.5% - 8%
Tilt	6.6% - 8%

Wine Brand Name

Alcohol Content by Volume

Cisco	18%
MD 20/20	13% - 18%
Night Train Express	17.5%
Thunderbird	17.5%
Wild Irish Rose	18%

WAC 314-12-215 Alcohol impact areas—Definition—Guidelines. (1) What is an alcohol impact area(~~, and how is it different~~)?)

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire (~~territory~~) geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, (~~other similar records,~~) community group petitions, public testimony or testimony by current or former chronic public (~~inebriants;~~

~~(iii)~~) inebriates.

(d) Minimum requirements for an alcohol impact area petition packet:

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section)(

~~(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and~~

~~(v))~~. The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(3) What conditions or restrictions may the board recognize for an alcohol impact area?

(a) Restrictions may include, but are not limited to:

(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; ~~((e))~~ and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a list of products that will be banned in alcohol impact areas. The list can be found on the WSLCB web site. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. ~~((e))~~ Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public ~~((inebriants))~~ inebriates; litter pickup; or other statistically documented evidence ~~((that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.~~

~~(d) Restricted beer and wine products must have minimum alcohol content of five and seven tenths percent by volume and twelve percent by volume, respectively.~~

~~(e) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category such as alcoholic energy drinks) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board, in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (e) of this subsection).~~

~~((f)) (c) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.~~

(4) What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily ((discontinuing to sell a)) discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

(5) What will the board do once it recognizes an alcohol impact area?

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

~~(b) ((No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.~~

~~(c))~~ The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

(6) What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a sixty-day comment period.

(b) For renewals, the board will notify a local authority at least ninety calendar days before a current license expires. The same requirements in (a)(i) and (ii) of this subsection apply to the ninety-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

(7) When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than thirty calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation ~~((+see))~~ as contained in subsections (2) and (3) of this section(+).

(d) Prohibition of a new product added to an existing prohibited products list takes effect no ~~((less))~~ sooner than thirty calendar days following the board's recognition of a modified prohibited products list.

(8) Reporting requirements and five-year assessments.

(a) A year after the implementation of the alcohol impact area a local authority shall submit ~~((annual))~~ a report~~((s))~~ to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report~~((s-are))~~ is due no later than sixty calendar days following ~~((each anniversary of the board's recognition of an))~~ the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, tenth, fifteenth, et cetera, anniversary of the board's recognition of ~~((an))~~ the alcohol impact area. The five-year assessment process is as follows:

(i) Within ~~((ten))~~ twenty calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, ~~((annual))~~ report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one twenty calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial twenty-day deadline.

(iii) The board will complete an assessment within sixty calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties~~((; and~~

~~((ii) Each annual report submitted during a five year period)).~~

An assessment ~~((shall))~~ may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation((7)) or illegal activity associated with liquor sales or consumption((7)) within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will ((~~reduce~~)) affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one twenty-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the twenty-day deadline.



**Washington State
Liquor and Cannabis Board**

Date: July 13, 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 proposed rules (CR 102) to revise several chapters in 314 WAC**

This rulemaking is the result of 2016 legislation. New rules and revisions to current rules are needed to implement the following legislation:

- **SHB 2831 Creates a wine retailer reseller endorsement for qualifying beer and/or wine specialty shop licenses**
- **HB 2605 Creates a special permit for breweries to conduct private tasting and sales events**
- **ESSB 6470 Allows domestic wineries to sell their own product at Special Occasion licensed events; Creates a special permit to allow an individual or business to sell a private collection of wine or spirits**

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 13, 2016, and is attached to this order.

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Approve Disapprove _____
 Jane Rushford, Chair Date

Approve Disapprove _____
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Issue Paper

2016 Liquor Legislation Implementation

Date: July 13, 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 proposed rules (CR 102) to revise the following:

- **WAC 314-02-103 What is a wine retailer reseller endorsement?**
- **Chapter 314-05 WAC Special Occasion licenses**
- **Chapter 314-38 WAC Permits**
- **Chapter 314-24 WAC Domestic Wineries and Domestic Wine Distributors**

Why is rule making necessary?

New rules and revisions to current rules are needed to implement the following legislation that passed during the 2016 legislative session:

- **SHB 2831 Creates a wine retailer reseller endorsement for qualifying beer and/or wine specialty shop licenses**
- **HB 2605 Creates a special permit for breweries to conduct 12 private tasting and sales events per year**
- **ESSB 6470 Allows domestic wineries to sell their own product at Special Occasion licensed events; Creates a special permit to allow an individual or business to sell a private collection of wine or spirits to another individual or business**

What changes are being made?

Amended Section. WAC 314-02-103 What is a wine retailer reseller endorsement? Added beer and/or wine specialty shop license to this rule.

Amended Section. WAC 314-05-020 What is a special occasion license? Added language that allows a special occasion licensee to sell wine in original, unopened containers for on-premises consumption at a special occasion event. Prior board approval is required.

New Section. WAC 314-24-240 Domestic wineries at special occasion licensed events. Created a new rule to outline the requirements a winery must meet to sell wine of their own production for off-premises consumption at special occasion licensed events.

Amended section. WAC 314-38-020 Permits—Fees established. Added the permits established in the 2014 and 2015 legislative session:

- Alcohol tasting by students;
- Winery special permit;
- Distillery special permit;
- Brewery special permit.

Amended Section. WAC 314-38-080 Class 18 special winery permit. Made a correction to this rule.

Amended Section. WAC 314-38-090 Class 19 special distillery permit. Made a correction to this rule.

New Section. WAC 314-38-095 Class 20 special brewery permit. Clarified the requirements the brewery must meet for this permit.

New Section. WAC 314-38-100 Accommodation sale permit. Clarified the requirements and process for an accommodation sale permit.

AMENDATORY SECTION (Amending WSR 84-14-028, filed 6/27/84)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(12).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(15).

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-080 Class 18 special winery permit. (1) The special winery permit is for domestic wineries.

(2) A special winery permit allows a manufacturer of wine to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for off-premises consumption.

(3) ~~((The activities at the event are limited to the activities allowed on the winery premises.~~

~~(4))~~ The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.

- (a) The application must be submitted to the board at least ten days prior to the event.
- (b) The special permit must be posted at the event.
- ~~((+5))~~ (4) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-090 Class 19 special distillery permit. (1) A special distillery/craft distillery permit is for Washington distillers only.

(2) A special distillery/craft distillery permit allows a manufacturer of spirits to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery/craft distillery premises.

(4) The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-095 Class 20 special brewery permit. (1) A special brewery/microbrewery permit is for Washington brewers only.

(2) A special brewery/microbrewery permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for off-premises consumption.

(3) The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(4) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-100 Accommodation sale permit. (1) An accommodation sale permit is for an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must complete an application for accommodation sale permit and submit with a fee of twenty-five dollars to the WSLCB.

(3) Once the WSLCB verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release the wine and/or spirits to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the WSLCB.

(6) The following are definitions for the purpose of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.

WAC 314-02-103 What is a wine retailer reseller endorsement?

(1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license or the holder of a beer and/or wine specialty shop license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

~~((4))~~ (5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

~~((5))~~ (6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

WAC 314-05-020 What is a special occasion license? (1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; (~~and~~)

(b) Spirits, beer, and wine in original, unopened containers for off-premises consumption; and

(c) Wine in original, unopened containers for on-premises consumption if permission is obtained from the WSLCB prior to the event.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is \$60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.



Date: July 13, 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 proposed rule (CR 102) for WAC 314-02-130 What types of changes to a licensed premises require board approval?**

The outside service requirements in the current rule need to be revised for clarity. Some stakeholders have commented that the outside service rules need to allow for different types of businesses and business locations an exception from current requirements on a case by case basis.

Process

The Rules Coordinator requests approval to file the proposed rule (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 13, 2016, and is attached to this order.

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

July 13, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
August 3, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 24, 2016	Public Hearing held
August 24, 2016	End of written comment period
September 7, 2016	Board is asked to adopt rules
September 7, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 7, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 8, 2016	Rules are effective (31 days after filing)



Washington State
Liquor and Cannabis Board

_____ Approve

_____ Disapprove

Jane Rushford, Chairman

Date

_____ Approve

_____ Disapprove

Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Outside Liquor Service Requirements

Date: July 13, 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 proposed rule (CR 102) to revise **WAC 314-02-130 What types of changes to a licensed premises require board approval?**

Why is rule making necessary?

The outside service requirements in the current rule need to be revised for clarity. Some stakeholders have commented that the outside service rules need to allow for different types of businesses and business locations an exception to current requirements on a case by case basis.

What changes are being proposed?

Amended Section. WAC 314-02-130 What types of changes to a licensed premises require board approval? Added language that the board may grant limited exceptions under certain conditions to the required 42 inch high barrier for outside alcohol service areas.

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
<p>(1)</p> <ul style="list-style-type: none"> • Excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • Excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • Reclassifying a lounge as open to persons under twenty-one years of age; • Extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); • Initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; 	<p>(a) The board's licensing and regulation division will make initial contact on the request for alteration within five business days.</p> <p>(b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.</p> <p>(c) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>
<p>(2)</p> <ul style="list-style-type: none"> • Any alteration that affects the size of a premises' customer service area. 	<p>(a) The board's licensing and regulation division will make an initial response on the licensee's request for alteration within five business days.</p> <p>(b) The licensee must contact their local liquor control agent when the alteration is completed.</p> <p>(c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.</p> <p>(d) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>

(3) For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the des-

ignated alcohol serving areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed at a minimum of ten feet apart.

(4) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(5) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point.

(6) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.



Date: July 13, 2015

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 proposed rule (CR 102) for WAC 314-23-085 What type of discounts are not allowed?**

On September 9, 2015, the board adopted new rules around fair trade practices. WAC 314-23-085 in particular addresses what type of discounts are not allowed between a distributor and retailer. Our distributor stakeholders are concerned with the exception allowed in this rule and the effect it will have on their normal business practice.

The board notified stakeholders after the rule was adopted that the board would not be enforcing this rule until the board could re-evaluate the circumstances surrounding the rule and the effect on our stakeholders.

Process

The Rules Coordinator requests approval to file the proposed rule (CR 101) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 13, 2016, and is attached to this order.

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

July 13, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
August 3, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 24, 2016	Public Hearing held
August 24, 2016	End of written comment period
September 7, 2016	Board is asked to adopt rules
September 7, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 7, 2016	Agency files adopted rules with the Code Reviser (CR 103)



Washington State
Liquor and Cannabis Board

October 8, 2016	Rules are effective (31 days after filing)
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_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Rule Making on WAC 314-23-085 What type of discounts are not allowed?

Date: July 13, 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 proposed rule (CR 102) to revise **WAC 314-23-085 What type of discounts are not allowed?**

Why is rule making necessary?

On September 9, 2015, the board adopted new rules around fair trade practices. WAC 314-23-085 in particular addresses what type of discounts are not allowed between a distributor and retailer. An exception was written into the rule that allows a distributor to combine orders for multiple locations when determining a volume discount and deliver the product to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

The exception is strongly opposed by the distributors because it would essentially require them to completely change the way they do business.

The board notified stakeholders after the rule was adopted that the board would not be enforcing this rule until the board could re-evaluate the circumstances surrounding the rule and the effect on our stakeholders.

What changes are being proposed?

Amended section. WAC 314-23-085 What type of discounts are not allowed? Removed language that allowed a distributor to combine orders for multiple locations when determining a volume discount and deliver the product to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

- (1) **Volume discounts that violate local, state, or federal laws.**
- (2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment (~~(or single invoice)~~).
- (3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. (~~(The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.)~~)



Washington State
Liquor and Cannabis Board

Date: July 13, 2016

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

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval to refile Emergency Rules to continue requirements for marijuana recalls.**

Emergency rules are needed to establish a marijuana and marijuana product recall process and requirement. This request is to refile emergency rules to ensure marijuana recall requirements remain in place until permanent rules become effective. The emergency rule initially filed for these requirements expires on July 21, 2016, in advance of the effective date of permanent rules.

The emergency rule is similar to 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.

The emergency rules are necessary for the preservation of the public health, safety, and general welfare. The rule becomes effective immediately upon filing with the Code Reviser and will expire upon the effective date of permanent rules currently in process on this subject.

Process

The Rules Coordinator requests approval to file the Emergency Rules described above. An issue paper on these rules was presented at the Board meeting on July 13, 2016, and is attached to this order.

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



**Washington State
Liquor and Cannabis Board**

July 13, 2016	Board is asked to approve filing the Emergency Rules
July 13, 2016	The Emergency Rules become effective
August 27, 2016	The Emergency Rules expire (projected effective date of permanent rules)

Approve Disapprove _____ _____
 Jane Rushford, Chairman Date

Approve Disapprove _____ _____
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Issue Paper

Emergency Rules for Marijuana Recalls

Date: July 13, 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 refile emergency rules originally filed on March 23, 2016, that created a marijuana recall process for marijuana and marijuana products that pose a risk to public health and safety.

Why is rule making necessary?

Emergency rules are needed to continue the recall process for marijuana and marijuana products that pose a risk to public health and safety that was created through the filing of emergency rules on March 23, 2016, and for which permanent rulemaking is currently underway. 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 public health 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.

Process

The emergency rules are necessary for the preservation of the public health, safety, and general welfare. The rule becomes effective upon filing with the Code Reviser's Office and will expire upon the effective date of permanent rules on this subject currently in process.

What are the changes?

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

The emergency rule 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.

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.



Washington State
Liquor and Cannabis Board

Date: July 13, 2016

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

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval for filing proposed rules (CR 102) to amend rules in chapter 314-55 and 314-42 to establish an electronic payment requirement for marijuana excise tax payments.**

Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the Legislature in the 2016 Supplemental Budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. The LCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedures Act (Chapter 34.05 RCW).

Rule changes to establish this requirements are needed as a result of the Legislature passing the 2016 Supplemental Budget with an included proviso related to electronic payment of the marijuana excise tax. The board adopted an emergency rule to establish the electronic payment requirement effective July 1, 2016, and approved the filing of a CR 101 to initiate permanent rulemaking on the same subject on April 20, 2016. The emergency rule and proposed permanent rules were developed based on similar requirements in the Washington State Dept. of Revenue’s laws and rules.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on July 13, 2016, and is attached to this order.

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

April 20, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
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**Washington State
Liquor and Cannabis Board**

May 4, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
July 13, 2016	End of written comment period
July 13, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
August 3, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 24, 2016	Public Hearing held
August 24, 2016	Public Hearing held
August 24, 2016	End of written comment period
September 7, 2016	Board is asked to adopt rules
September 7, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
September 7, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 8, 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 Excise Tax Electronic Payments Budget Proviso Implementation

Date: July 13, 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 to establish an electronic payment requirement for marijuana excise tax payments.

Why is rule making necessary?

Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the Legislature in the 2016 Supplemental Budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. The LCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedures Act (Chapter 34.05 RCW).

Background

Rule changes to establish this requirements are needed as a result of the Legislature passing the 2016 Supplemental Budget with an included proviso related to electronic payment of the marijuana excise tax. The board adopted an emergency rule to establish the electronic payment requirement effective July 1, 2016, and approved the filing of a CR 101 to initiate permanent rulemaking on the same subject on April 20, 2016. The emergency rule and proposed permanent rules were developed based on similar requirements in the Washington State Dept. of Revenue's laws and rules.

What changes are being proposed?

Amendatory Section. WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees?

Amendments are proposed to WAC 314-55-089 to add provisions to require marijuana excise tax payments by electronic payment, check, cashier's check, or money order. The changes also provide provisions on when payments are deemed received. A waiver process is also established to allow those to apply for a waiver from the payment requirements based on good cause. "Good cause" means the inability of a licensee to comply with the payment requirements of this section because:

- The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the electronic payment requirement and cannot obtain a cashier's check or money order; or
- Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the payment mechanism requirements.

If a licensee fails to apply for a waiver or is denied a waiver, they may be assessed a ten percent penalty should the licensee continue to tender marijuana excise tax payments in cash. If a licensee is denied a waiver, they have the right to appeal the decision under the Administrative Procedures Act, chapter 34.05 RCW.

Amendatory Section. WAC 314-42-110 Brief adjudicative proceedings.

WAC 314-55-110 is amended to allow appeals of waiver denials to proceed as brief adjudicative proceedings as allowed under RCW 34.05.482 through 34.05.494. This will ensure an expedited process for such appeals that may be more suited to handle under such proceedings rather than under formal administrative appeals under chapter 34.05 RCW.

WAC 314-42-110 Brief adjudicative proceedings. The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

- (1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;
- (2) Liquor license denials per WAC 314-07-065(2);
- (3) Liquor license denials per WAC 314-07-040;
- (4) Special occasion license application denials per WAC 314-07-040;
- (5) Special occasion license application denials per WAC 314-07-065(7);
- (6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;
- (7) MAST provider denials or revocations per WAC 314-17-070;
- (8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;
- (9) One-time event denials for private clubs per WAC 314-40-080;
- (10) Banquet permit denials per WAC 314-18-030;
- (11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);
- (12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);
- (13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;
- (14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;
- (15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;
- (16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055;
- (17) Tobacco license denials per WAC 314-33-005;
- (18) Marijuana license denials per WAC 314-55-050(2);
- (19) Marijuana license denials per WAC 314-55-050(4);
- (20) Marijuana license denials per WAC 314-55-050(8);
- (21) Marijuana license denials per WAC 314-55-050(10);
- (22) Marijuana license suspensions per WAC 314-55-050(11);
- (23) Marijuana license denials per WAC 314-55-050(12); ((and))
- (24) Marijuana license denials per WAC 314-55-050(13); and
- (25) Marijuana excise tax payment waiver denials per WAC 314-55-089.

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

- (a) On a form or electronic system designated by the WSLCB;
- (b) Filed every month, including months with no activity or payment due;
- (c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;
- (d) Filed separately for each marijuana license held; and
- (e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

(5) **Payment methods:** Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).



Washington State
Liquor and Cannabis Board

Date: July 13, 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
 Tim Gates, Marijuana Examiners Unit
 Karen McCall, Agency Rules Coordinator

Subject: **Approval for filing a pre-proposal statement of inquiry (CR 101) to initiate permanent rulemaking for technical and other housekeeping changes to chapter 314-55 WAC.**

Rule changes are needed to ensure the accuracy, clarity, and functionality of marijuana rules in chapter 314-55 WAC. This proposed rulemaking will make necessary technical and other housekeeping changes to marijuana rules, as well as changes that will ensure the smooth operation of the licensed marijuana industry and the licensing process. Staff have already identified several necessary changes and will continue to assess other changes as part of the rulemaking process.

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 13, 2016, and is attached to this order.

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

July 13, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
May 4, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 7, 2016	End of written comment period
September 7, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
September 21, 2016	Code Reviser publishes notice, LCB sends notice to

	rules distribution list
October 19, 2016	Public Hearing held
October 19, 2016	End of written comment period
November 2, 2016	Board is asked to adopt rules
November 2, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
November 2, 2016	Agency files adopted rules with the Code Reviser (CR 103)
December 3, 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

Rules to Implement 2016 Marijuana Legislation.

Date: July 13, 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 the first stage of rulemaking (CR 101) for rule changes in Chapter 314-55 WAC Marijuana Licenses, Application Process, Requirements, and Reporting to implement legislation for technical and other housekeeping changes as described below.

Why is rule making necessary?

Rule changes are needed to ensure the accuracy, clarity, and functionality of marijuana rules in chapter 314-55 WAC. This proposed rulemaking will make necessary technical and other housekeeping changes to marijuana rules, as well as changes that will ensure the smooth operation of the licensed marijuana industry and the licensing process. Staff have already identified several necessary changes and will continue to assess other changes as part of the rulemaking process.

Process

The rule making process begins by announcing LCB's intent to add and make changes to existing rules 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.



Liquor and Cannabis Board Revised Interim Policy BIP-02-2016

Subject: Registered Cooperatives Purchasing Direct from Licensed Producers

Effective Date: July 13, 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 a recent rule change to impose a new requirement that licensees place a longer, 16 digit Unified Business Identifier (UBI) number on labels of marijuana products under WAC 314-55-105. This rule change became effective on June 18, 2016, though the WSLCB issued a notice to licensees that they would have 60 days to comply with the new labeling requirements. Formerly, licensees were required to list the 9 digit UBI number on labels of marijuana products. The change to a 16 digit UBI number requirement was proposed as part of the rulemaking to implement 2015 marijuana legislation.

Though the WSLCB included the new requirement to list a 16 digit UBI on marijuana product labels as part of the formal rulemaking process, very little if any comments were received on the proposed change. However, since the rules became effective, the WSLCB has received a multitude of correspondence from licensees expressing concern and frustrations over the new requirements. Due to this concern, WSLCB staff reassessed the need for the extended UBI number listing on labels, and has discerned that the benefits of the new requirement for traceability and recall purposes do not outweigh the concerns and increased costs associated with complying with the adjusted labeling requirement. The WSLCB will be able to achieve its needs using the shorter, 9 digit UBI number with a minor increase in workload. For these reasons, and as detailed in the below Interim Policy, the WSLCB is reverting to a nine digit UBI labeling requirement on marijuana products, at a minimum. Those who choose to list the 16 digit UBI and have already changed labeling to accomplish the new requirements may continue to do so if they choose. The WSLCB plans to address this change in upcoming permanent rulemaking.

Policy Statement

In addition to the labeling requirements provided in WAC 314-55-105, labels affixed to the container or package containing marijuana or marijuana products sold at retail must include the business or trade name and the nine digit or the sixteen digit Washington state unified business identifier number of the licensees that produced, processed and sold the marijuana or marijuana products. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label.



Date: May 18, 2016

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

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: Approval for filing proposed rules (CR 102) creating a new section in Chapter 314-55 WAC regarding marijuana recalls.

New rules are needed to establish a marijuana and marijuana product recall process for marijuana and marijuana products that pose a risk to consumers.

The proposed rule is similar to 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.

The board adopted an emergency rule to establish a recall process for marijuana and approved the filing of a CR 101 to initiate permanent rulemaking on the same subject on March 23, 2016. The WSLCB will request that the emergency rule be refiled at the July 13, 2016, meeting as the emergency rule will expire prior to the effective date of permanent rules (July 21, 2016).

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on May 18, 2016, and is attached to this order.

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

March 23, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
April 6, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
May 18, 2016	End of written comment period
May 18, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
June 1, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
July 13, 2016	Board is asked to readopt emergency rules
July 13, 2016	Public Hearing held
July 13, 2016	End of written comment period
July 27, 2016	Board is asked to adopt rules
July 27, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
July 27, 2016	Agency files adopted rules with the Code Reviser (CR 103)
August 27, 2016	Rules are effective (31 days after filing)

Approve Disapprove
 J. Rushford 5-18-16
 Jane Rushford, Chairman Date

Approve Disapprove
 Ruthann Kurose 5/18/16
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Issue Paper

Marijuana Recalls Rules

Date: May 18, 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 to create a marijuana recall process for marijuana and marijuana products that pose a risk to consumers.

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.

Background

The board adopted an emergency rule to establish a recall process for marijuana and approved the filing of a CR 101 to initiate permanent rulemaking on the same subject on March 23, 2016. The WSCLB will request that the emergency rule be refiled at the July 13, 2016, meeting as the emergency rule will expire prior to the effective date of permanent rules (July 21, 2016). The emergency rule and proposed permanent rule were developed based on WSDA's recall process, and the recall requirements are similar to those in other industries that produce consumable products.

What changes are being proposed?

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

The emergency rule 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.

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.



Date: May 18, 2015

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

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Tim Gates, Interim Marijuana Examiners Unit Supervisor

Subject: **Small Business Economic Impact Statement
Marijuana Product Recall Rules**

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement:

WAC 314-55-225 Marijuana recalls.

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

WAC 314-55-255, Marijuana recalls, is a proposed new WAC section that details a new process for recalls of marijuana. It contains new several reporting and other compliance requirements, some which apply to all licensees and some that will only apply to licensees that conduct a “market withdrawal” or are affected by a recall event.

- a) The following requirement applies to all licensees: Creation of a recall plan within 60 days of the effective date of the proposed rule. The recall plan details the procedures a licensee will follow should the licensee be affected by a recall event.
- b) The following new requirements will only apply to licensees who conduct a market withdrawal or are affected by a recall (case-by-case basis):
 - a. Reporting to a local WSLCB enforcement officer when conducting a “market withdrawal;”
 - b. Immediately notifying a local WSLCB enforcement officer when initiating a recall;



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- c. Tracking of affected product and the amount of affected product returned to the licensee as part of the recall effort; and
- d. Recall status reporting throughout a recall event at a minimum of once per week during a recall;

The recall requirements in the proposed rule are similar to recall requirements in other industries that produce consumable products and mirror the recall requirements of the Washington State Department of Agriculture (WSDA).

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

There are no professional services licensees will need to create a recall plan or to comply with the requirements of a recall event. The WSLCB will make a recall plan example available for licensees to use in creating a licensee's individual recall plan. A licensee may elect to retain professional services, but should not require them in order to comply with the provisions of the proposed rule.

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

The only cost for compliance that will impact all licensees are employee hours in creating a recall plan. These costs will be mitigated by the WSLCB making a recall plan example available for licensees to use in creating a licensee's individual recall plan. Additionally, because each licensee compensates its employees at different rates, and the WSLCB does not collect or have access to data on the amounts employees are paid, these costs will vary by licensee. WSLCB estimates that costs associated with complying with the new requirements in the proposed rules related to creating a recall plan should be minimal as it should take no more than 10-20 hours of work to complete.

Whether a licensee will incur costs due to involvement in a recall is indeterminable as recalls will only be initiated on a case-by-case basis. It is not possible to determine whether a licensee will be subject to a recall in advance of the discovery of a condition warranting a recall.

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

A recall event may cause licensees to lose sales or revenue. It is important to note that a recall event will most often be triggered by a licensee failing to follow WSLCB rules for the production of marijuana. The amount of sales or revenue that may be lost is indeterminable as it is dependent on several issues.

- a) Whether a recall event is required is dependent on whether conditions exist that require one and can only be determined on a case-by-case basis.



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- b) The amount of product that may be involved in a recall will vary depending on the circumstances and how much product is found to be affected by the condition that gives rise to a recall requirement.
- c) The reaction of consumers to a recall which is difficult to predict and may depend on the licensee's actions during a recall event (i.e. the swiftness at which a licensee responds to a recall and communications to consumers).

If a recall is triggered and product is destroyed, licensees would lose revenue on the product destroyed. This amount would be dependent on how much product is involved in a recall – the amount could be minimal or substantial depending on the circumstances. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale.

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**

Virtually all 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. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale.

The additional costs associated with complying with the new requirements in the proposed rules related to creating a recall plan should be minimal compared to sales revenue as it should take no more than 10-20 hours of work to complete. The costs associated with creating a recall plan are further mitigated by the WSLCB making a recall plan example available for licensees to use in creating a licensee's individual recall plan.

The costs of complying with a recall as provided in the proposed rule is indeterminate as recalls of products cannot be predicted as they are wholly dependent on whether a licensee does not follow board rules or whether a condition is present that would trigger a recall, and the amount of product that will be impacted by a recall will vary depending on the circumstances.



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

The WSLCB sought to reduce costs on licensees through making a recall plan example available for licensees to use in creating a licensee's individual recall plan. The recall requirements in the proposed rule are similar to recall requirements in other industries that produce consumable products, mirror the recall requirements of the WSDA, and are necessary for consumer protection from products that pose risks to the consumer.

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:

All licensed marijuana licensees will be required to comply with these rules.

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

Indeterminate. Because recalls of products cannot be predicted as they are wholly dependent on whether a licensee does not follow board rules or whether a condition is present that would trigger a recall, and the amount of product that will be impacted by a recall will vary depending on the circumstances, WSLCB cannot predict whether a recall event will cause a loss of employees for a licensee.