



Washington State
Liquor and Cannabis Board

Date: November 16, 2016

To: Jane Rushford, Board Chair
Ollie Garret, Board Member

From: Karen McCall, Sr. Agency Rules Coordinator

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

Subject: **Approval of final rulemaking (CR 103) for revisions to WAC 314-12-215 Alcohol Impact Areas**

At the Board meeting on November 16, 2016, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for revisions to **WAC 314-12-215 Alcohol Impact Areas**

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

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

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

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Alcohol Impact Area Rules

Date: November 16, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt the revised rule 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.

Public Comment

Five written comments were received on this proposed rule. Three stakeholders commented at the public hearing on November 2, 2016. Seven written comments were received from stakeholders on this rulemaking.

What changes are being proposed?

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;
- 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.

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 standardized list of products that will be banned in alcohol impact areas. The list can be found on the WSLCB web site. The list contains products that are banned in the majority of current alcohol impact areas. 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) After the board has recognized an alcohol impact area the local authority may request the board approve additional products to their banned products list provided that the products are reasonably linked to the 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 inebriates; litter pickup; or other statistically documented evidence.

(d) 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.



The following is a standardized banned products list for all Alcohol Impact Areas recognized by the board after November 16, 2016.

Standardized 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%



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Mike's Harder Lemonade	8%
Mickey's	5.6% - 5.8%
Milwaukee Best Ice	5.9%
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%

Signed and Dated November 16, 2016

Jane Rushford, Chair

Ollie Garrett, Board Member



Resolution of the Washington State Liquor and Cannabis Board Recognizing the City of Spokane's Request to Amend the Banned Products List in the East Central Mandatory Alcohol Impact Areas

Whereas, the board recognizes its statutory mandate to protect the public welfare, health, peace, and safety and its responsibility to work with communities to help mitigate the negative impacts of chronic public inebriation with the sale of alcohol by the businesses it regulates.

Whereas, the board adopted the city of Spokane's East Central Alcohol Impact Area on August 1, 2012.

Whereas, the board adopted an amended banned products list requested by the city of Spokane on July 17, 2013.

Whereas, the board has considered the city of Spokane's letter dated August 3, 2016, to amend the banned products list within the East Central Alcohol Impact Area. The board also considered comments received from stakeholders on this amendment. Based on conversations with retail licensees and the Spokane Police Department, four products have been removed from the request for an amended banned product list within the East Central Alcohol Impact Area. Those products are: Bud Light Ritas, Bud Light Platinum, Bud Light Mixtails, Oculito, Reds Wickeds, and Miller Fortune. The retail licensees within the East Central Alcohol Impact Area have committed to working with the Spokane Police Department relating to these products.

Now therefore, be it resolved,

The board resolves to impose the following amended mandatory restriction requested by the city of Spokane, to take effect December 23, 2016.

No sales of the products identified on the amended Banned Products List. All flavors, alcohol content, and container sizes of the following products are hereby banned from off-premises sale by licensees in the East Central Alcohol Impact Area. (New products*)

Product Name

Busch Ice

Cobra

Hurricane (all products)

King Cobra

Natural Ice

Natty Daddy

Bud Light Lime-A-Rita

Tilt (all products)

Bacardi+ (all flavors)



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Core
Hard Wired
Earthquake High Gravity
Blast (all products)
Smirnoff XBT
Drink Four (all products)
High Gravity (all products)
Colt 45 Ice
Colt 45 Malt Liquor
Old Milwaukee Ice (all products)
Jeremiah Weed Lemonade
Mike's Harder Lemonade
Mike's Harder Punch
Keystone Ice
Magnum Malt Liquor
Mickey's (all products)
Milwaukee Best Ice
Milwaukee Best Premium Ice
Olde English 800 (all products)
Special 800 Reserve (all products)
Steele Reserve (all products)
Lucky Ice Ale
Lucky Ice Beer
Hamm's Ice Brewed Ale
Hamm's Ice Brewed Beer
Olympia Ice
Pabst Ice Ale
Rainier Ice
Schiltz High Gravity
Schlitz Malt Liquor (all products)
Dog Bite
St. Ide's Liquor and Special Brews (all flavors)
Sparks (all products)
Bull Ice
Red Bull Malt Liquor
Joose (all products)
Stack High Gravity Lager
Vampt Midnight Warrior
Vampt Smooth talker
Bud Ice*
Smirnoff Spiked (all products)*
Cayman Jack (all products)*
Parrot Bay (all products)*
Boss (all products)*
Smith and Forge Cider*
Genesee Ice*



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The board resolves that these restrictions are reasonably related to addressing the problem of chronic public inebriation demonstrated to exist in the East Central Alcohol Impact Area.

The board further resolves that such restrictions are reasonable control measures aimed at mitigating the negative effects of chronic public inebriation and are necessary to augment the city of Spokane's efforts to address such problems within the East Central Alcohol Impact Area.

Signed and Dated November 16, 2016.

Jane Rushford, Chair

Ollie Garrett, Board Member



Resolution of the Washington State Liquor and Cannabis Board Recognizing the City of Spokane's Request to Amend the Banned Products List in the Downtown Core Mandatory Alcohol Impact Areas

Whereas, the board recognizes its statutory mandate to protect the public welfare, health, peace, and safety and its responsibility to work with communities to help mitigate the negative impacts of chronic public inebriation with the sale of alcohol by the businesses it regulates.

Whereas, the board adopted the city of Spokane's Downtown Core Alcohol Impact Area on April 7, 2010.

Whereas, the board adopted an amended banned products list requested by the city of Spokane on July 17, 2013.

Whereas, the board has considered the city of Spokane's letter dated August 3, 2016, to amend the banned products list within the Downtown Core Alcohol Impact Area. The board also considered comments received from stakeholders on this amendment. Based on conversations with retail licensees and the Spokane Police Department, four products have been removed from the request for an amended banned product list within the Downtown Core Alcohol Impact Area. Those products are: Bud Light Ritas, Bud Light Platinum, Bud Light Mixtails, Oculito, Reds Wicked, and Miller Fortune. The retail licensees within the Downtown Core Alcohol Impact Area have committed to working with the Spokane Police Department relating to these products.

Now therefore, be it resolved,

The board resolves to impose the following amended mandatory restriction requested by the city of Spokane, to take effect December 23, 2016.

No sales of the products identified on the amended Banned Products List. All flavors, alcohol content, and container sizes of the following products are hereby banned from off-premises sale by licensees in the Downtown Core Alcohol Impact Area. (New products*)

Product Name

Busch Ice

Cobra

Hurricane (all products)

King Cobra

Natural Ice

Natty Daddy

Bud Light Lime-A-Rita

Tilt (all products)

Bacardi+ (all flavors)



Hard Wired
Earthquake High Gravity
Blast (all products)
Smirnoff XBT
Drink Four (all products)
High Gravity (all products)
Colt 45 Ice
Colt 45 Malt Liquor
Old Milwaukee Ice (all products)
Mike's Harder Lemonade
Keystone Ice
Magnum Malt Liquor
Mickey's (all products)
Milwaukee Best Ice
Olde English 800 (all products)
Special 800 Reserve (all products)
Steele Reserve (all products)
Lucky Ice Ale
Lucky Ice Beer
Hamm's Ice Brewed Ale
Hamm's Ice Brewed Beer
Olympia Ice
Pabst Ice Ale
Rainier Ice
Schiltz High Gravity
Schlitz Malt Liquor (all products)
Ice House
Dog Bite
St. Ide's Liquor and Special Brews (all flavors)
Sparks (all products)
Bull Ice
Red Bull Malt Liquor
Joose (all products)
Stack High Gravity Lager
Vampt Midnight Warrior
Vampt Smooth talker
Bud Ice*
Smirnoff Spiked (all products)*
Cayman Jack (all products)*
Parrot Bay (all products)*
Boss (all products)*
Smith and Forge Cider*
Genesee Ice*



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The board resolves that these restrictions are reasonably related to addressing the problem of chronic public inebriation demonstrated to exist in the Downtown Core Alcohol Impact Area.

The board further resolves that such restrictions are reasonable control measures aimed at mitigating the negative effects of chronic public inebriation and are necessary to augment the city of Spokane's efforts to address such problems within the Downtown Core Alcohol Impact Area.

Signed and Dated November 16, 2016.

Jane Rushford, Chair

Ollie Garrett, Board Member



**Washington State
Liquor and Cannabis Board**

Date: November 16, 2016

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval for filing proposed rules (CR 102) creating a new section in Chapter 314-55 WAC to establish a marijuana research license.**

Rule changes are needed to implement the marijuana research license established by RCW 69.50.372. Changes to RCW 69.50.372 were passed during the 2016 legislative session making it possible for the WSLCB to proceed with implementing the new license. RCW 69.50.372 gives the WSLCB authority to adopt rules related to the implementation of the marijuana research license in RCW 69.50.372(5), including application requirement and administrative provisions relating to the license. These rules are needed to be able to fully implement and issue the license. The Board approved a CR-101 to initiate permanent rulemaking on this subject on August 24, 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 November 16, 2016, and is attached to this order.

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

August 24, 2016	Board approved filing the pre-proposal statement of inquiry (CR 101)
November 16, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)
December 7, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list



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December 28, 2016	Public Hearing
December 28, 2016	End of written comment period
January 11, 2017	Board is asked to adopt rules
January 11, 2017	Agency sends notice to those who commented both at the public hearing and in writing.
January 11, 2017	Agency files adopted rules with the Code Reviser (CR 103)
February 11, 2017	Rules are effective (31 days after filing)

Approve Disapprove _____ Jane Rushford, Chair _____ Date

Approve Disapprove _____ Ollie Garrett, Board Member _____ Date

Attachment: Issue Paper

Issue Paper

Rules to Implement the Marijuana Research License

Date: November 16, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to create rules in Chapter 314-55 WAC Marijuana Licenses, Application Process, Requirements, and Reporting to implement the marijuana research license established by RCW 69.50.372 as amended during the 2016 legislative session.

Why is rule making necessary?

Rule changes are needed to implement the marijuana research license established by RCW 69.50.372. Changes to RCW 69.50.372 were passed during the 2016 legislative session making it possible for the WSLCB to proceed with implementing the new license. RCW 69.50.372 gives the WSLCB authority to adopt rules related to the implementation of the marijuana research license in RCW 69.50.372(5), including application requirement and administrative provisions relating to the license. These rules are needed to be able to fully implement and issue the license. The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on August 24, 2016.

What changes are being proposed?

New Section. WAC 314-55-073 Marijuana research license.

A new WAC section is proposed to create and implement the marijuana research license. Much of this rule draft is administrative in nature as it delineates the process that applicants must follow to obtain a marijuana research license.

Specific requirements for application materials are included. These must be detailed and allow for flexibility in document submittal as research projects that will be proposed by applicants will vary significantly. Since multiple projects may be allowed under a single license, the rule includes requirements related to adding additional research projects. Each project must be reviewed similar to the initial review the WSLCB's scientific reviewer will complete for initial applications for a license. Incomplete applications will not be considered and will be withdrawn.

Provisions are included for the WSLCB's scientific reviewer to follow as part of the applicant and project review process. The reviewer must identify any existing conflicts of interest and take steps to ensure that those reviewer members that have a conflict of interest are screened appropriately. The draft rule also

provides restrictions on when a research license application will be recommended by the scientific reviewer. Specifically, the WSLCB will not grant a license to an applicant that has outstanding fees owing to the reviewer since review fees will be paid directly to the reviewer by an applicant under RCW 69.50.372.

Security restrictions are included, as well as requirements relating to traceability. Research licensees must follow the same requirements as other licensed marijuana businesses to ensure that no marijuana is diverted to the illegal market. The rule also provides parameters that research licensees that also hold other marijuana licenses must follow to allow research to be conducted at those licensed premises where it does not conflict with the nature of the other marijuana license the research licensee holds, so long as plants or products held for research purposes are not comingled with other marijuana or plants on the premises. Research licensees must follow disposal requirements in WAC 314-55-097 for disposal of marijuana no longer needed for research purposes.

The rule includes reporting and auditing requirements that will apply to both licensees and the scientific reviewer so the WSLCB can ensure the proper functioning of the license and monitor progress. The rules also require the scientific reviewer report information regarding any violations of rule requirements to the WSLCB. Reports and reviews are required for the renewal of the research license, which the scientific reviewer will play a role in.

The draft rule includes provisions relating to administrative appeal should an application be withdrawn, denied, or revoked.

N E W S E C T I O N

WAC 314-55-073 Marijuana research license.

A marijuana research license allows a holder of the license to produce, process, and possess marijuana for the limited research purposes provided in RCW 69.50.372. The WSLCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the requirements for marijuana research licensees provided in RCW 69.50.372.

(1) Eligibility and continuing requirements for research license applications, prohibitions and restrictions.

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a marijuana research license.

(b) Other marijuana licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the marijuana business, except:

(i) Licensed producers with a research license and approved research project may grow marijuana plants or possess marijuana for research purposes at the producer's licensed premises. However, all marijuana grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to marijuana grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess marijuana for research purposes at the processors licensed premises. However, all marijuana possessed for research purposes must be kept wholly separated and distinct from all marijuana possessed for commercial purposes or purposes other than those related to the research project and must not be comingled with or diverted to marijuana possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow marijuana plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on marijuana and marijuana products by the WSLCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all marijuana possessed for research purposes is wholly separated from and is not comingled with marijuana possessed for state required testing purposes for licensed producers or processors or marijuana possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be 21 years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) No applicant for a research license may possess any marijuana plants or marijuana unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the WSLCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the WSLCB in writing

(2) Initial Applications

(a) Application made with Business Licensing Services (BLS).

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within 30 days of the date of the application letter from the WSLCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the WSLCB will not be considered by the reviewer and the WSLCB will withdraw the application after receiving notice in writing from the reviewer.

(b) Additional application materials requirements.

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, marijuana research license application form, and signature page form created by the WSLCB and available at the WSLCB's website at www.lcb.wa.gov.

(B) A research plan limited to four pages that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of marijuana to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(D) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is 21 years of age or older. Biosketches must be

prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(E) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(F) For all project(s) involving human or animal subjects, documentation of all required Institutional Review Board (IRB) or Institutional Animal Care and Use Committee (IACUC) approvals. Documents must be provided on IRB or IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(ii) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All non-form documents must conform to the following requirements:

(A) 8 ½ by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

(c) Review by the WSLCB's designated scientific reviewer.

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the WSLCB's

application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372(1) and (2).

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality; and

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the WSLCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The WSLCB will provide written evaluations to applicants following completion of the review process by the reviewer along with the WSLCB's approval or denial of the research license.

(d) WSLCB requirements and licensing process. If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the WSLCB.

(i) The WSLCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020;

(ii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iii) The applicant must demonstrate access to and proficiency with the traceability system; and

(iv) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

(3) Research license withdrawal and denials.

(a) The WSLCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the WSLCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The WSLCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the WSLCB or the reviewer.

(c) If the WSLCB denies a research application for the reasons provided in subsection (3)(c)(iii) of this section or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the WSLCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

(4) Reporting required.

(a) The WSLCB or the WSLCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The WSLCB's designated reviewer must submit annual status report of all completed and ongoing research projects for the previous year to the WSLCB by December 31 of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the WSLCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.

(5) Adding an additional research project or changing existing approved research project process (after licensure).

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the WSLCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

(6) Research license renewals.

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer 90 days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within 30 days prior to or after the renewal date. The status report or

application must be received by the reviewer within 30 days of the 90-day renewal notice from the WSLCB or the license will not be renewed.

(b) The Reviewer will notify the WSLCB in writing if the licensee meets the requirements for renewal not later than 15 days prior to the licensee's renewal date.

(c) If the Reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

(d) The WSLCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the WSLCB will not renew the license.

(7) License revocation.

(a) The WSLCB may revoke an application for the following reasons:

(i) The WSLCB has reason to believe that marijuana is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued;

(iv) The WSLCB finds that the licensee possesses marijuana plants, marijuana, or marijuana products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the WSLCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the WSLCB in writing. The voluntary cancellation of a research license does not result in a hearing right.

(8) Marijuana disposal requirements

(a) Licensees must dispose of marijuana as provided in WAC 314-55-097.

(b) Licensees must dispose of marijuana if the research license is discontinued for any reason. A licensee may transfer plants to another marijuana research licensee. A licensee may work with the WSLCB to dispose of marijuana or marijuana plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue SE, Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator,

PO Box 43076, Olympia, WA 98504-3076 or, for certified mail,
WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific
Avenue SE, Olympia, WA 98501.



Washington State
Liquor and Cannabis Board

Date: November 16, 2016

To: Jane Rushford, Board Chair
Ollie Garrett, 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

Subject: **Small Business Economic Impact Statement
Marijuana Research License**

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

Small Business Economic Impact Statement:

WAC 314-55-073 Marijuana research license.

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

WAC 314-55-073, Marijuana research license, is a proposed new WAC section that details application requirements and other requirements for marijuana research license holders. It contains several reporting and other compliance requirements, which apply to all applicants and licensees. The rule also details requirements for the WSLCB's scientific reviewer regarding review of applications, research projects, and ongoing review and reporting.

- a. The following requirements apply to all applicants:
 - i. Detailed application requirements including demonstrating the scientific basis for research proposals;
 - ii. Facility requirements, including security requirements;
 - iii. Criminal background checks; and
 - iv. Financial investigations.



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- b. The following requirements apply to all holders of a research license:
 - i. Security requirements similar to those requirements for other marijuana licensees to ensure marijuana is not diverted to the illegal market;
 - ii. Prohibition of comingling of marijuana on site held for purposes other than research;
 - iii. Tracking of marijuana obtained and possessed for research purposes through the state's traceability system;
 - iv. Review and approval of any additional research projects under the license prior to obtaining marijuana and conducting research for those projects;
 - v. Project status reporting applying to both license holders and the WSLCB's scientific reviewer;

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

There are no mandatory professional services applicants or licensees will need in order to comply with the requirements. Applicants or licensees may choose to obtain professional services, but this will be voluntary in nature and may depend on the type of research the applicant or licensee intends to conduct.

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

Since this is a new license and a voluntary license, there are no costs that will apply across the board to businesses the WSLCB regulates or small businesses unless and until they choose to apply for a research license. Costs for equipment, supplies, labor and administrative costs will depend on the type of research and specific research project the applicant or licensee intends to conduct. Once licensed, research licensees will have access to the state's traceability system at no cost.

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

Rule requirements should not cause loss of sales or revenue. The research license is intended to generate scientific research and data regarding cannabis, but may also be used for commercial purposes. The WSLCB anticipates that laboratories that already conduct other types of research will apply for the research license, so adjustments for marijuana research should be minimal in those cases and should not result in loss of sales or revenue.

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**

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 if an applicant is a licensed marijuana business. The costs for compliance will vary significantly depending on the applicant, category of research proposed (see RCW 69.50.372), and complexity of the research project. For these reasons, and because it is unclear as to how many persons or entities will apply for the license and the size of any businesses that choose to apply, costs for compliance are indeterminate.

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 the application process electronic in nature and by clearly delineating application and ongoing requirements in the proposed rule. The WSLCB will work with the scientific reviewer regarding costs for review once a scientific reviewer is selected as applicants and licensees will be responsible for paying costs of review directly to the scientific reviewer as required by RCW 69.50.372. Review costs will be varied depending on the types of projects that are proposed. Each research project will be different in subject, scope, and detail. Costs incurred for review will depend on the number of projects proposed and the complexity of the research project proposal. The WSLCB will provide access to the state's traceability system at no cost to research licensees.

Because marijuana research licensees will be dealing with a Schedule I listed substance on both a state and federal level, and the WSLCB is tasked with ensuring the security of marijuana and preventing diversion into the illegal market, a high level of regulatory restriction, oversight, and reporting is appropriate. The WSLCB sought to reduce costs where possible, but has to balance cost reductions against security and traceability considerations, as well as ensure requirements are in place to ensure that licenses are appropriately granted (financial investigations and background checks). For these and other public safety reasons, the costs of compliance with rule requirements are justified.

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

Stakeholders 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 applicants for a marijuana research license and marijuana research license holders will be required to comply with these rules. Applicants could range from a multitude of industries, including from the scientific, educational, agricultural, or commercial



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industries. Licensed marijuana businesses who choose to apply for a license will also be required to comply with the rule requirements. All persons or entities that receive a research license will have to meet ongoing conditions of licensure and reporting requirements.

The WSLCB's scientific reviewer will also have to comply review and reporting requirements as part of administering the marijuana research license program. The WSLCB is currently in the process of soliciting applications for a scientific reviewer.

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

Indeterminate. It is unknown how many persons or entities will apply for a research license at this time and what types or sizes of businesses, organizations, or other entities with employees will apply for a license.



Washington State
Liquor and Cannabis Board

Date: November 16, 2016

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval of final rules (CR 103) to create a new section regarding a warning symbol for marijuana edible products in Chapter 314-55 WAC.**

At the Board meeting on November 16, 2016, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for a new section regarding a warning symbol requirement for marijuana edible products in Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting.

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

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

After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 90 days after filing, February 14, 2017, to allow for time for licensees to implement the new requirement.

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

Attachment: Issue Paper

Issue Paper

Marijuana Warning Symbol

Date: November 16, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

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

Why is rule making necessary?

A new warning symbol is needed to notify consumers and children that a marijuana edible product contains THC. Concerns have been raised about the risk of accidental consumption of edible marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Public Comment

Two comments were received at the public hearing held on November 2, 2016. All comments received are summarized in the Concise Explanatory Statement, prepared under RCW 34.05.325.

What changes are being proposed?

New Section. WAC 314-55-106 Marijuana warning symbol requirement.

A new WAC section is proposed to create a warning symbol for use on marijuana products. Marijuana licensees will be required to place the warning symbol on packaging of marijuana products meant to be eaten or swallowed. The "Not for Kids" symbol developed and made available in digital form to licensees without cost by the Washington Poison Center must be placed on the principal display panel or front of the product package. The warning symbol may be found on the Washington Poison Center's website. The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width. The warning symbol must not be altered or cropped in any way other than to adjust

the sizing for placement on the principal display panel or front of the product package.

Licensees may use a sticker made available by the Washington Poison Center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

- (a) Must be obtained from the Washington poison center;
- (b) Must be placed on or near the principal display panel or on the front of the package; and
- (c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

Minor changes were made to language in the new rule as filed with the CR-102 to further clarify that licensees may print a sticker with the warning symbol on it themselves or purchase a sticker with the warning symbol from the Washington Poison Center for placement on packages of edible marijuana products in lieu of incorporating the warning symbol on the labels or packaging of products. This change is to ensure proper effect of the intent of the rule as we received comments that it was unclear as to whether this was permissible under the draft rule language filed with the CR-102. Language was also adjusted to require those that place the symbol on white packaging or labels to line the edges of the white background with a black border to ensure visibility of the symbol. Other minor changes for editing were made that do not impact the effect of the rule requirements.

Attachment: Proposed Rules



Notice of Permanent Rules for a Warning Symbol for Marijuana Edible Products

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules for a warning symbol for marijuana edible products.

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

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

Background and reasons for adopting this rule.

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is adopting a warning symbol with the goal of deterring accidental consumption of marijuana products by children and to provide emergency services contact information for cases of accidental exposure or over consumption.

Early in 2016, Board considered requiring the placement of "Mr. Yuk" on edible marijuana products in one of the several versions of draft rules that were part of a larger rulemaking initiated in 2015. The Board removed the requirement prior to adopting the permanent rules for multiple reasons, including concern from the industry regarding the inclusion of the word "poison" on those stickers, concern about its effectiveness from the industry and the Washington Poison Center, and cost concerns related to royalties on the trademarked image. At the time the requirement was removed from the draft rules, the Board expressed its dedication to adopting a warning symbol for placement on marijuana edible products at a later date to address concerns about unintended ingestion of marijuana edibles by children and to provide a resource to the public should unintended exposure or adverse experiences after consuming marijuana edibles occur.

Around the same time, the Washington Poison Center (WPC) approached the Board offering to develop a different warning symbol as part of a rebranding project that the



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WPC was engaging in that the Board could consider moving forward. Working with a marketing firm, the WPC developed the "Not for Kids" warning symbol using a variety of resources, including industry input and members of the general public. The symbol was developed by the WPC and presented to the WSLCB as an option should the Board choose to adopt it. After reviewing the symbol and discussing issues related to trademarking the symbol and licensing, the Board chose to proceed with rulemaking to require the placement of the "Not for Kids" warning symbol on edible marijuana products.

The Board made certain that licensed marijuana businesses would be able to access the trademarked digital image at no cost, something that was not possible with the "Mr. Yuk" symbol, with the goal of reducing costs for compliance for licensees. It was also important to the Board that the symbol did not include the word "poison" or reference the Washington Poison Center by name due to the concerns raised by the industry when "Mr. Yuk" was being considered. Equally important to the Board, the symbol includes a phone number for consumers and parents to use in the event of a child accidentally ingesting the product and experiencing a negative response or for a consumer to call in the event of a negative or concerning reaction to a product.

The language of this draft rule was adjusted after the filing of the CR-102 prior to the public hearing to ensure that the intended flexibility for licensees being able to print their own stickers was clear in the rule requirements. The adjusted rule language makes it very clear that licensees may choose to incorporate the symbol on their labeling or packaging, print their own stickers for placement on packaging, or may choose to purchase stickers from the WPC to fulfill the requirement that the "Not for Kids" warning symbol be placed on all edible marijuana products. Licensees have expressed concerns about the limited "real estate" on labels and the WSLCB believes that this flexibility in complying with the new requirement will address that issue. Many licensees have already adopted the "Not for Kids" symbol on their labels and packaging in advance of any requirement to do so.

Summary of public comments received on this rule proposal.

CR-101 – filed June 15, 2016, as WSR 16-13-092.

CR 102 – filed August 10, 2016, as WSR 16-17-043.

Public Hearing held November 2, 2016.

Written Comments Received:

Below is a summary of the comments received as part of this rulemaking organized by category.



- 1. The language included in the symbol won't have the desired effect. Suggest changing "Not for Kids" to Adults Only, Kids Hands Off, Kids Stop or Bad for Kids.**

WSLCB response: Thank you for your comments.

Was the comment reflected in the final rule? The WSLCB did not change the symbol after the CR-102 filing.

- 2. Comments were received stating that the WSLCB should not "single out" marijuana edible products with this symbol and that alcohol should have a similar requirement. If you intend to require a warning symbol on cannabinoid-containing products (edibles, specifically), please also include the same label on all nicotine-containing products and ethanol-containing products that might reasonably be considered to be "appealing to children."**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? At this time, the Board is only applying the warning symbol requirement to marijuana edible products.

- 3. Labeling size restrictions make things difficult for licensees in complying with this requirement. There are a lot of different products with different sizing. This new labeling requirement is too much with everything else that is required on products. The current warnings and labeling requirements are more than enough. Comments were received expressing concern over the financial implications for having to redesign and resize packaging such a label would require.**

WSLCB response: The WSLCB is aware of the issues with limited "real estate" on product labels due to labeling requirements. The WSLCB is currently looking into ways to make improvements to product labeling requirements in general to facilitate clear understanding of requirements and product information while considering costs to licensees. Additionally, the WSLCB sought to reduce costs to licensees by ensuring that the digital image of the "Not for Kids" warning symbol is available to them free of charge and further sought to reduce costs to licensees by allowing flexibility in complying with the requirement.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 4. Don't lie to kids, don't confuse them by sending mixed message to them in the attempts to over regulate and control this industry just because of widespread fear.**



Washington State Liquor and Cannabis Board

WSLCB response: The WSLCB received similar comments when considering adopting the “Mr. Yuk” symbol as a labeling requirement earlier this year. The WSLCB believes that the “Not for Kids” symbol reduces potential confusion and will achieve the goal of deterring accidental consumption by children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 5. Keep the Washington Poison Center out of regulating marijuana. Marijuana is not poison and should not be labeled as such. Cannabis poses no serious (and certainly no fatal) health hazard due to accidental or even extreme use. Other truly toxic household substances are not subject to the Red Hand treatment.**

WSLCB response: The Washington Poison Center does not regulate marijuana. This requirement is being proposed by the WSLCB. The warning symbol does not include the word “poison,” something that the Board understands is an issue for licensees based on comments received when it was considering requiring “Mr. Yuk” stickers on marijuana edible products. Instead, just the phone number for the Washington Poison Center is included on the symbol. The “Not for Kids” symbol is a new symbol that may have additional uses beyond the requirements in this rulemaking.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 6. Licensees should be able to print their own stickers rather than be forced to purchase them from the Washington Poison Center. Allow for flexibility.**

WSLCB response: The language of this draft rule was adjusted after the filing of the CR-102 prior to the public hearing to ensure that the intended flexibility for licensees being able to print their own stickers was clear in the rule requirements. The adjusted rule language makes it very clear that licensees may choose to incorporate the symbol on their labeling or packaging, print their own stickers for placement on packaging, or may choose to purchase stickers from the WPC to fulfill the requirement that the “Not for Kids” warning symbol be placed on all edible marijuana products.

Was this comment reflected in the final rule? Yes. Rule language was adjusted prior to final adoption to ensure the language clearly allows licensees to print stickers rather than incorporate the symbol on package labels or purchase from the Washington Poison Center.

- 7. I applaud the LCCB for including the new “Not for Kids” label in its draft rules to prevent child access to marijuana-infused edible products.**



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WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 8. The Red Hand won't work; there is nothing that shows it would. This program is not justified from a public safety perspective. In fact it is damaging to the public because it provides the wrong impression and sends the wrong message for cannabis products, and will further villainize and make public acceptance more difficult for this new struggling industry.**

WSLCB response: Working with a marketing firm, the WPC developed the "Not for Kids" warning symbol using a variety of resources, including industry input and members of the general public. The symbol was developed by the WPC and presented to the WSLCB as an option should the Board choose to adopt it. Along with education and outreach, similar to what was done with "Mr. Yuk" when it was first developed, the WSLCB believes that the warning symbol will accomplish the goal of deterring accidental consumption by children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 9. There are at least circumstantial reasons to believe that the WPC may have ulterior motives in pushing this initiative, e.g., potential revenue streams from the licensing of its trademarked Red Hand, and self-aggrandizement by "going national" with this scheme.**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 10. Recommend the warning label take up 25% of the surface area of a product's packaging or display area to insure visibility.**

WSLCB response: Thank you for your comments. The requirements in rule include a minimum sizing requirement along with a requirement that the symbol be clearly visible and legible on the package. Balancing the goals of the warning symbol requirement along with licensee concerns, the WSLCB feels the sizing requirements are appropriate at this time. The WSLCB may consider adjusting the requirement in the future if needed and issues arise.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.



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- 11. Disallow any marijuana edible or infused product that resembles any commercially available food or drink product. Create more firm regulations on THC concentrations in terms of allowable purchase/home grow amounts (future consideration as market matures).**

WSLCB response: Thank you for your comments. This topic falls outside the scope of this rulemaking. However, the WSLCB understands that other states have adopted similar prohibitions. Additionally, the WSLCB is looking into ways to further detail requirements relating to products that may be especially appealing to children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

- 12. If accidental ingestion is happening, it is more likely that the products have been removed from their packaging and left unattended - a situation in which a warning symbol wouldn't help with. It would be much more beneficial to the public, and spare our already heavily regulated industry another burdensome expense, to have the Poison Control Center get their message across by producing posters, pamphlets, PSA's etc. that would not rely on the producers and processors of responsible cannabis products to disseminate.**

WSLCB response: Thank you for your comments. The WSLCB is aware of the issues surrounding products being taken out of packaging that includes the warning symbol. The WSLCB will continue to evaluate whether additional product requirements are appropriate. The warning symbol along with educational materials and outreach for the public will further the goals of the warning symbol requirement and the issues you raise.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

- 13. I disagree with the proposed rule of requiring warning labels placed on *all* ingestible products. It should not be required for capsules and tinctures.**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

Public Hearing Comments:

Two public comments were made during the public hearing. Commenters were members of the cannabis industry and expressed concerns with the warning symbol.



Washington State Liquor and Cannabis Board

Specifically, commenters stressed that marijuana is not poison and that the new requirement to place the symbol on packaging for marijuana edible products will be costly to achieve. Commenters also expressed concerns with messaging and that this requirement furthers misinformation about marijuana and “reefer madness” ideas. The WSLCB is responsible for educating and informing the public. The same requirement should apply to alcohol and tobacco. Commenters maintained that there has never been an overdose from marijuana. People experiencing adverse effect should “sleep it off.” Packing issues were also raised. Commenters felt that it would impose too high of a cost on licensees and that small packaging would have to be redeveloped to accommodate the new warning symbol along with other existing labeling requirements.

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

Minor changes were made to language in the new rule as filed with the CR-102 to further clarify that licensees may print a sticker with the warning symbol on it themselves or purchase a sticker with the warning symbol from the Washington Poison Center for placement on packages of edible marijuana products in lieu of incorporating the warning symbol on the labels or packaging of products. This change is to ensure proper effect of the intent of the rule as we received comments that it was unclear as to whether this was permissible under the draft rule language filed with the CR-102. Language was also adjusted to require those that place the symbol on white packaging or labels to line the edges of the white background with a black border to ensure visibility of the symbol. Other minor changes for editing were made that do not impact the effect of the rule requirements.

NEW SECTION

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products meant to be eaten or swallowed sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

(2) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on its label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

(a) Must meet all requirements of subsection (1) of this section; and

(b) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.



Washington State
Liquor and Cannabis Board

Date: November 16, 2016

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval of final rules (CR 103) to create a new chapter in Title 314 regarding Vapor Products rules.**

At the Board meeting on November 16, 2016, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for a new chapter in Title 314 regarding Vapor Products rules.

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

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

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

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

Attachment: Issue Paper

Issue Paper

Vapor Products Rules

Date: November 16, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt rules creating a new Chapter in Title 314 WAC, Chapter 314-35 WAC, to implement ESSB 6328 relating to vapor products and tobacco regulation passed during the 2016 Legislative Session.

Why is rule making necessary?

Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session creating a new regulatory scheme for vapor products. The new rules proposed as part of this rulemaking supplement the laws created by the legislature, mostly found in Chapter 70.345 RCW.

Public Comment

No public comment was received at the public hearing held on November 2, 2016. Several written comments were received and are summarized in the Concise Explanatory Statement. Many questions regarding licensing under statute were received but are not included in this rulemaking as they were not comments regarding the rules.

What changes are being proposed?

New Section. WAC 314-35-010 Vapor products – Introduction.

This new rule informs the reader that chapter provides rules that apply in addition to those requirements included in Chapter 70.345 RCW regarding manufacturers, distributors, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

New Section. WAC 314-35-020 Vapor product licenses required – Licensing requirements, denials, suspensions, and revocations.

This new rule details additional requirements for vapor product license applications, how the WSLCB will assess applications for vapor product licenses, and information regarding the suspension, denial, nonrenewal, etc. of vapor product licenses. The rule also states that an appeal for the WSLCB denial,

suspension, revocation, or nonrenewal of a vapor product license will be conducted under a brief adjudicative proceeding.

New Section. WAC 314-35-030 Vapor product licensee recordkeeping requirements. This new rule details the records keeping and records creation requirements for each vapor product license type to ensure compliance with sales between vapor products licensees as they may not do business with an unlicensed entity. Records must be kept for a period of 5 years.

New Section. WAC 314-35-040 Age-restricted vapor products retailer licensed locations. This new rule details notification requirements for those vapor products retailer licensed locations that choose to operate age-restricted (no entrance for person under eighteen) locations. Age-restricted locations must notify the WSLCB that they intend to be age-restricted either at the time of application for a license, or ten days prior to becoming an age-restricted location on a form provided by the WSLCB. The rule also requires the posting of signs provided by the WSLCB at an age-restricted vapor product retailer licensed location which must not be removed at any time during opening hours.

Attachment: Proposed Rules

**Chapter 314-35 WAC
VAPOR PRODUCTS**

NEW SECTION

WAC 314-35-010 Vapor products—Introduction. This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

NEW SECTION

WAC 314-35-020 Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations. (1) The vapor product license types are: Vapor product retailer's license, vapor product distributor's license, and vapor product delivery sale license. A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is required to perform the functions of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not the vapor product contains nicotine.

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

(3) A person or entity must meet certain qualifications to receive a vapor product license, and must continue to meet those qualifications to maintain the license.

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

(5) A licensed location must be separated from other vapor product businesses and not accessible through neighboring businesses.

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

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

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

(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 314-35-030 Vapor product licensee recordkeeping requirements. (1) Vapor product distributors and manufacturers must keep complete and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of vapor products made. These records must show the names and addresses of purchasers, the inventory of all vapor products, and other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. Vapor product licensees must preserve legible copies of all such invoices for five years from the date of sale.

(3) Every licensed vapor product retailer must procure itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, and all prices and discounts.

(4) The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept un-

der this section must be preserved for five years from the date of purchase.

NEW SECTION

WAC 314-35-040 Age-restricted vapor products retailer licensed locations. (1) Age-restricted vapor products retailer licensed locations must register as such with the WSLCB by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the WSLCB in writing ten business days prior to a change in the age-restriction status. The appropriate form is available on the WSLCB web site.

(2) Holders of a vapor product retailer license where entry into the licensed premises is age-restricted to persons eighteen years of age or older must post signs provided by the WSLCB at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time during opening hours of the licensed vapor products retail establishment.



Notice of Permanent Rules for Vapor Products Rules

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

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

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

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

Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session creating a new regulatory scheme for vapor products. The new rules proposed as part of this rulemaking supplement the laws created by the legislature, mostly found in Chapter 70.345 RCW.

Summary of public comments received on this rule proposal.

CR-101 – filed April 20, 2016, as WSR 16-09-118.

CR 102 – filed September 21, 2016, as WSR 16-19-101.

Public Hearing held November 2, 2016.

Written Comments Received:

Several comments were received during the comment period after the CR-101 was filed, but prior to the CR-102 filing date. Comments received prior to the CR-102 filing were mostly concerning tasting/sampling and labeling, as well as support for the regulation of vapor products in general. Many questions were received regarding how to obtain vapor products licenses and how the new state laws function especially in light of FDA deeming regulations issued in May 2016. These questions are not included in the rulemaking file as they were not comments on the rules. Included below are the comments received during this rulemaking.

- 1. Comments were received regarding packaging and labeling of vapor products.**
Commenters expressed concerns about the differences between Washington State



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law packaging and labeling requirements and the requirements included in the FDA's deeming regulations released in May 2016. Other commenters requested that the WSLCB add provisions to provide additional labeling requirements, including minimum size requirements. Another comment was received asking the WSLCB to allow for labeling of nicotine as percent by volume, rather than the amount of nicotine labeled as milligrams per milliliter.

WSLCB response: The draft rules as part of this rulemaking address implementing the vapor products licenses and related administrative subjects and do not address packaging and labeling. Those requirements are in state law, under chapter 70.345 RCW. The WSLCB cannot change packaging and labeling requirements established in state law – only the Legislature can do so. The rulemaking authority provided in ESSB 6328 is somewhat limited in that it allows the WSLCB to make rules to regulate the licenses and mail and internet sales and it is not clear that the rulemaking authority would extend to additional requirements for packaging and labeling that are requested by commenters.

Was this comment reflected in the final rule? No. The packaging and labeling provisions are included in statute. The Legislature may consider changing statute as a result of the FDA's deeming regulations in the future to reconcile any redundancies or conflicts between federal and state law and regulations.

2. Clarify that the definition “vapor products” specifically includes vapor products that are labeled as non-nicotine vapor products.

WSLCB response: The definition of vapor products in statute describes products that “may contain nicotine,” which the WSLCB interprets to include products that do and do not contain nicotine.

Was this comment reflected in the final rule? No, the final rules were not adjusted as a result of this comment. The definition of vapor products is contained in statute and cannot be changed by the WSLCB through rulemaking, it can only be supplemented.

3. Create specificity in the preemptive language of ESSB 6328.

WSLCB response: The Legislature provided the preemption language in ESSB 6328. The WSLCB defers to the Legislature's language.

Was this comment reflected in the final rule? No. The WSLCB will work with local jurisdictions if there are questions as to what is permissible.

4. Set minimum requirements for tastings.

- a. Clarify that due to the new FDA deeming rule, no free samples or tasting of nicotine containing e-liquids or vaping products may be offered or provided.



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- b. Establish a registry or permit through the LCB for any licensed vapor product retailer that wishes to provide tastings to customers.
- c. Require rigorous ventilation standards be met before approving any tasting locations to help prevent vapor drift to adjacent businesses.
- d. Require that tastings may only occur by customers and that no more than three customers may taste at any one time to help prevent a lounge-like atmosphere from developing.
- e. Prohibit the vapor product retail staff from vaping within the licensed vendor. The use of videos and other technology could be used in place of an in-person demonstration.

WSLCB response: The WSLCB has been working with stakeholders to ensure that the parameters around tastings are understood. The FDA regulations prohibit free samples or tastings of products that contain nicotine, but that prohibition does not extend to products that do not contain nicotine. The WSLCB appreciates your concerns about the creation of a lounge environment and will continue to monitor vapor products businesses and address issues as necessary.

Was this comment reflected in the final rule? No. At this time, the WSLCB is focusing on implementing the licenses and may revisit some of these issues at a later date.

5. Require that all licensed retail outlets must be permanent fixed locations (no mobile vending locations allowed).

WSLCB response: This will be a requirement in the rules as drafted. A physical address is required.

Was this comment reflected in the final rule? Yes.

6. Create an advisory committee and include public health agencies as primary stakeholders.

WSLCB response: The rulemaking authority provided in ESSB 6328 is somewhat limited in that it allows the WSLCB to make rules to regulate the licenses and mail and internet sales. For this reason, the WSLCB is limiting this rulemaking to implementing the current regulatory scheme established by the Legislature and may revisit additional issues at a later date, at which time it will consider convening an advisory committee or group. Rulemaking authority may require some adjustments to accomplish some of those additional items.

Was this comment reflected in the final rule? The WSLCB did not convene an advisory committee, but did take comments from various stakeholders as part of the rulemaking process.



7. Provide local health departments an opportunity to implement tobacco and vapor product enforcement activities within their jurisdiction.

WSLCB response: The statute was designed with specific preemptions which the WSLCB cannot change through rulemaking.

Was this comment reflected in the final rule? No. The statute was designed with specific preemptions which the WSLCB cannot change through rulemaking.

8. Carefully consider a definition for tasting that ensures retail outlets do not allow or promote lounging activities.

WSLCB response: The rulemaking authority provided in ESSB 6328 is somewhat limited in that it allows the WSLCB to make rules to regulate the licenses and mail and internet sales. For this reason, the WSLCB is limiting this rulemaking to implementing the current regulatory scheme established by the Legislature and may revisit additional issues at a later date. The WSLCB appreciates your concerns about the creation of a lounge environment and will continue to monitor vapor products businesses and address issues as necessary.

Was this comment reflected in the final rule? The WSLCB did not further define tastings as part of this rulemaking.

9. Clarify the restrictions on coupons. Please consider the FDA deeming regulations for coupons which supersede state law in this area. Clarify the level of discount that is acceptable and consistent with the intent of not getting adults and children attracted to these products and to be consistent with tobacco regulations.

WSLCB response: The WSLCB understands that there are several state provisions that are preempted by the federal regulations that the FDA approved earlier this year. The WSLCB and vapor products businesses have to abide by both the federal and state requirements and defer to federal requirements where those conflict with state law and regulations. The rulemaking authority provided in ESSB 6328 is somewhat limited in that it allows the WSLCB to make rules to regulate the licenses and mail and internet sales. For this reason, the WSLCB is limiting this rulemaking to implementing the current regulatory scheme established by the Legislature and may revisit additional issues at a later date should it be determined those issues fall within the WSLCB's rulemaking authority.

Was this comment reflected in the final rule? No. The WSLCB did not include provisions relating to discounts and coupons beyond what is included in statute as a result of ESSB 6328.



10. Do not allow other businesses to operate in the same building as a retail vape shop that allows tasting/sampling.

WSLCB response: The WSLCB will not license a vapor products business within another WSLCB regulated business, which is a similar restriction to other licenses that the WSLCB has jurisdiction over. They must be separate. It is unlikely that the WSLCB could prohibit other businesses from operating in the same building unless it was a shared space.

Was this comment reflected in the final rule? Somewhat. It is likely that the provisions in rule accommodate most of these concerns.

11. I applaud the LCCB for including the new “Not for Kids” label in its draft rules to prevent child access to marijuana-infused edible products. I urge the LCCB to extend this requirement to vials of vaping solution, regardless of whether or not they contain nicotine. These vials are often packaged in ways that make them appealing to children. The Washington Poison Center already deals with calls involving children ingesting vaping solution.

WSLCB response: Thank you for your comments. At this time, the WSLCB is only considering the application of “Not for Kids” warning symbol on edible marijuana products.

Was this comment reflected in the final rule? No. At this time, the WSLCB is only considering the application of “Not for Kids” warning symbol on edible marijuana products.

12. Support increased requirements for record generation for vapor product licensees to enhance enforcement efforts that ultimately help keep the dangerous and unproven products out of the hands of youth.

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirement is already contained in the rule language.

13. Support for reporting requirements for age restricted vapor product locations as they are critical to enforcement efforts and limiting access to minors.

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? Yes as the reporting requirements remain in the rule and were unchanged prior to adoption.

14. Maximize setback of vape stores from youth sensitive areas similar to provisions for marijuana retail in revised I-502 rules.



WSLCB response: Thank you for your comments. The “set back” requirements for marijuana licenses is included in statute. The Legislature did not include similar provisions for vapor products licenses.

Was this comment reflected in the final rule? No. The WSLCB is implementing the requirements as provided by the Legislature.

15. Minimize advertising of vape products and marijuana as there is a correlation between exposure to advertising of addictive substances and increased underage use.

WSLCB response: Thank you for your comments. At this time, the WSLCB is not considering rules to restrict advertising by vapor products licensees.

Was this comment reflected in the final rule? No. At this time, the WSLCB is not considering rules to restrict advertising by vapor products licensees.

16. Consider outlet density of vape and marijuana retail. Increased density can negatively impact communities, especially communities of color, and contribute to the erosion of healthy youth norms and increase youth access.

WSLCB response: Thank you for your comments. At this time, the WSLCB is not intending to consider density as part of the licensing process.

Was this comment reflected in the final rule? No. At this time, the WSLCB is not intending to consider density as part of the licensing process.

17. Support tighter regulations on age restricted vape stores and/or requiring all vape sales to take place in stand-alone, age restricted licensed retail outlets (moving them out of convenience stores and gas stations where youth access is more likely and the product is visible to youth—consider that “vape” has crossover appeal to youth who also vape THC products).

WSLCB response: Thank you for your comments. The Legislature did not address this issue in ESSB 6328. This subject is not addressed as part of this rulemaking.

Was this comment reflected in the final rule? No. The Legislature did not address this issue in ESSB 6328. This subject is not addressed as part of this rulemaking.

Public Hearing Comments:

No public testimony was offered at the public hearing.



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

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