



Topic: Petition for Rulemaking to allow NEXUS cards and green cards as an acceptable form of ID

Date: November 15, 2017

Presented by: Karen McCall, Rules Coordinator

Problem or Opportunity

A petition for rulemaking was submitted by a private citizen requesting the board revise WAC 314-11-025 to allow NEXUS cards and green cards to be an acceptable form of identification for purchasing alcohol, marijuana, and cigarettes.

Background

The forms of acceptable identification in rule are all able to be verified by our Enforcement division. NEXUS cards are currently a valid form of identification (it is essentially a passport card) but the rule doesn't state that NEXUS cards are available. Green cards are not an acceptable form of identification since the Enforcement division is not able to verify a green card. WAC 314-11-025 currently allows the following forms of acceptable identification:

WAC 314-11-025

What are the forms of acceptable identification?

(1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol:

- (a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identocard" issued by the Washington state department of licensing per RCW [46.20.117](#);*
- (b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;*
- (c) Passport;*
- (d) Merchant Marine identification card issued by the United States Coast Guard; and*
- (e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.*

(2) If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

Recommendation

Staff recommends opening rulemaking on this issue to add the NEXUS card to the rule as an acceptable form of identification by filing a pre-proposal statement of inquiry (CR

101) to revise WAC 314-411-025. Green cards should continue to be prohibited as an acceptable form of identification.

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Issue Paper

Public Records Rules

Date: November 15, 2017

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) for rules changes in Chapter 314-60 and 314-42 WAC related to public records costs needed as a result of the passage of EHB 1595 (2017 c 304) during the 2017 legislative session and a review of Chapter 314-60 WAC.

Why is rule making necessary?

Rule changes are needed to implement changes in law due to the passage of EHB 1595 by the 2017 Legislature. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate. The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs, so emergency rules are needed to establish this until permanent rule changes can be completed. A Chapter review for Chapter 314-60 was done in conjunction with the changes needed as a result of the passage of EHB 1595 to ensure public records rules are current and well organized. A review of Chapter 314-60 WAC has not occurred since 2009. The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on July 12, 2017.

What changes are being proposed?

Many changes in this rulemaking are technical in nature aside from the changes to costs information as required by the passage of EHB 1595. Updates to references to the WSLCB are made throughout the chapter, and many organizational updates are included to ensure clarity and understandability of rules related to public records.

Amendatory Section. WAC 314-60-010, Purpose.

Technical changes to the section to update references to the WSLCB.

Amendatory Section. WAC 314-60-015, Agency description – Contact information.

Technical changes to references to the WSLCB. Updates to the description of the jurisdiction of the WSLCB – liquor, marijuana, tobacco, and vapor products – including updated statutory references. Adjustments to the description of divisions of the agency from 6 to 7 and references to organizational charts, as well as updates to location information for agency offices and removal of references to state liquor stores.

New Section. WAC 314-60-025, Public records officer.

Moved provisions related to the public records officer designation to a new section. This section explains the duties of the public records officer, contact information, and how public records and requests are handled as required in Chapter 42.56 WAC (Public Records Act). Updates to contact information and WSLCB website address. Includes references to public records officer designees to ensure that staff in the public records office are clearly delegated certain duties in fulfilling public records requests.

Amendatory Section. WAC 314-60-070, Availability of public records.

Updates and technical changes to ensure rule provisions reflect current agency practices and requirements under Chapter 42.56 WAC (Public Records Act). References to information available to the public on the WSLCB website without a public records request as many records are available immediately and free of any charges on the WSLCB website. Additional technical updates include:

- Updates to the public records inspection hours to reflect current agency practice.
- Updates to the records index information – required under Chapter 42.56 WAC (Public Records Act).
- Updates to website address and references to the WSLCB.

Amendatory Section. WAC 314-60-080, Requests for public records.

- Updates to references to the WSLCB.
- Updated email address for public records requests to reflect current contact information.
- Updated website address.
- Additions related to designees of the public records officer to ensure proper delegated authority to public records office staff.

Amendatory Section. WAC 314-60-085, Processing public records requests.

Technical changes to ensure rules reflect current agency practice for processing public records. This information is required to be in rule under Chapter 42.56 RCW (Public Records Act).

- Updates to listing of exemptions from the disclosure of public records as required under Chapter 42.56 RCW (Public Records Act).

- Additions related to designees of the public records officer to ensure proper delegated authority to public records office staff.
- Updates to provisions relating to how the WSLCB will handle records that are not retrieved by a requestor.
- Technical updates to the process the WSLCB uses for processing public records requests and supplying copies of records in physical or electronic formats. All costs of providing records must be paid by the requestor before receiving records, whether produced in installments or in total.

Amendatory Section. WAC 314-60-090, Costs of providing copies of public records.

Changes to provisions related to costs of providing public records as required due to the passage of EHB 1595 by the 2017 Legislature. Costs provisions must be in agency rule for an agency to be able to charge costs for producing public records under Chapter 42.56 RCW (Public Records Act). The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs. Proposed changes adopt costs for providing public records through adapting the costs schedule included in EHB 1595 section 3 (RCW 42.56.120). The rule makes it clear that no costs are assessed for records accessed through the WSLCB’s website, unless requested to be provided by other means. The rule also provides an option for a requestor to ask to receive an estimate of the applicable charges for a public records request before any copies are made, and the WSLCB will provide an opportunity for the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The board may require a deposit of up to 10% of the cost of providing copies for a request, including a customized service charge.

Amendatory Section. WAC 314-60-100, Exemptions.

Technical changes to rule provisions to ensure rules are current. Updates to statutory references for exemptions from disclosure for certain records. Removal of provisions that are no longer applicable due to the privatization of liquor after passage of Initiative 1183.

Amendatory Section. WAC 314-60-110, review of denials of public records requests.

Minor technical changes to update contact information for requests for review of public records request denials. References added to ensure public records officer designees (public records staff) are clearly delegated certain duties.

Repealers.

The WSLCB proposes repealing WAC 314-60-404, Operations and procedure, and WAC 314-60-087, Processing public records requests – Electronic records, as the relevant provisions in those rules are incorporated into other sections in this rule making.

New Section. WAC 314-42-001, Board operations and procedure.

A new section is proposed in Chapter 314-42 WAC, Liquor control board operations, to move provisions related to Board operations that were in Chapter 314-60 (Public records) to a more appropriate location. Technical updates to language were done as part of the proposed changes to ensure provisions are updated.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-010 Purpose~~((Washington state liquor control board))~~. The purposes of this chapter are to:

(1) Describe the organization of the Washington state liquor ~~((control))~~ and cannabis board ~~((LCB))~~ WSLCB;

(2) ~~((Ensure that LCB))~~ Detail how the WSLCB complies with laws governing the disclosure (release) of public records; and

(3) Explain how an individual or organization ~~((can))~~ may obtain public records.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-015 Agency description—Contact information~~((Public records officer))~~. (1)(a) The ~~((board))~~ Washington state liquor and cannabis board (WSLCB) is an agency created to exercise the police power of the state in administering and enforcing ~~((all of the))~~ laws and regulations relating to alcoholic beverage control (Title 66 RCW), marijuana (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

(b) The board issues licenses ~~((to persons who handle liquor))~~ relating to liquor, marijuana, tobacco, and vapor products; and collects taxes imposed on liquor ~~((; and distributes and sells spirituous liquor))~~ and marijuana.

~~((b))~~ (c) The ~~((board))~~ WSLCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of eighteen years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) ~~((The "Washington state liquor control board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that an appointment or reappointment is made every two years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.~~

~~((3) The board delegates certain administrative functions to an administrative director appointed by the board.~~

~~((4))~~ The Washington state liquor ~~((control))~~ and cannabis board is organized into ~~((six))~~ seven divisions:

(a) ~~((The))~~ Board administration;

(b) Director's office;

~~((b))~~ (c) Licensing and regulation;

~~((e))~~ (d) Enforcement and education;

~~((d) Administrative services;~~

~~((e) Business enterprise))~~ (e) Finance;

(f) Information technology; and

~~((f))~~ (g) Human resources.

~~((5))~~ (3)(a) The administrative offices of the Washington state liquor ~~((control))~~ and cannabis board are located at 3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080.

(b) ~~((LCB))~~ WSLCB staff is also located at~~((~~

~~(i) The distribution center, 4401 East Marginal Way South, Seattle, Washington;~~

~~(ii) State liquor stores in areas throughout the state; and~~

~~(iii)) enforcement offices maintained in major cities throughout the state.~~

~~((c) LCB contracts with individuals to sell liquor on commission. These contract liquor stores are located in areas throughout the state.~~

~~(d) Exact locations of state liquor stores, contract liquor stores,)) Enforcement offices((,)) addresses and contact numbers are located on the ((LCB home page at www.liq.wa.gov)) WSLCB's web site at www.lcb.wa.gov.~~

~~((6) Any person wishing to access LCB public records should contact the LCB's public records officer:~~

~~Public Records Officer~~

~~Liquor Control Board~~

~~3000 Pacific Avenue Southeast~~

~~Olympia, Washington 98504~~

~~360-664-1714~~

~~Fax 360-664-9689~~

~~email publicrecords@liq.wa.gov~~

~~Information is also available on the LCB web site at www.liq.wa.gov.~~

~~(7) The public records officer will oversee compliance with the act and the implementation of the LCB's rules and regulations regarding release of public records, coordinating the staff of the public records unit and the LCB employees in this regard, and generally coordinating compliance by the LCB with the public records disclosure requirements of chapter 42.56 RCW. The public records officer will provide the "fullest assistance" to requestors; create and maintain for use by the public and LCB officials an index to public records of the LCB; ensure that public records are protected from damage or disorganization; and to prevent public records requests from causing excessive interference with essential functions of the LCB.)~~ (4) An organizational chart is available from the board's public records office which illustrates the general structure of the WSLCB's operations. More information on the construct of the WSLCB is also available on the WSLCB's web site at www.lcb.wa.gov.

NEW SECTION

WAC 314-60-025 Public records officer. (1) The WSLCB public records officer:

(a) Receives all public records requests made to the WSLCB;

(b) Provides "fullest assistance" to persons seeking WSLCB public records;

(c) Oversees the WSLCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain WSLCB public records, to the extent required by RCW 42.56.070; and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) Any person wishing to access WSLCB public records should contact the WSLCB's public records officer or designee at:

Public Records Officer
Liquor and Cannabis Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1693
Fax: 360-664-9689

Email: publicrecords@lcb.wa.gov

Current contact information is also available on the WSLCB web site at www.lcb.wa.gov.

(3) The public records officer may designate one or more WSLCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-070 Availability of public records. (1) Many records are available on the WSLCB's web site at www.lcb.wa.gov. Requestors are encouraged to search for and view records on the WSLCB's web site in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) Hours for inspection of records.

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the ((LCB)) WSLCB, Monday through Friday, from ((8)) 9:00 a.m. to ((4)) noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

((+2)) (b) Records must be inspected at the offices of the WSLCB and may not be removed from WSLCB offices. The majority of public records are located at the WSLCB's central office, although some may be located in other locations, including the regional offices.

(4) Records index. ((An)) The WSLCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available ((for use by members of the public)) on the WSLCB's web site at www.lcb.wa.gov, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases((-));

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency(~~(-)~~); and

(c) (~~Administrative staff manuals and instructions to staff that affect a member of the public.~~

(d) ~~Planning policies and goals, and interim and final planning decisions.~~

(e) ~~Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others.~~

(f) ~~Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.~~

~~(3)) Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.~~

(5) Organization of records. The ((LCB)) WSLCB will maintain its records in a reasonably organized manner. The ((LCB)) WSLCB will take reasonable actions to protect records from damage and disorganization. ((A requestor shall not take LCB records from LCB offices without the permission of the public records officer. A variety of records is available on the LCB web site at www.liq.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.))

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-080 ((Making)) Requests for public records. An individual may request a public record orally or in writing. The ((board)) WSLCB encourages ((that)) all public records requests be submitted in writing ((and)). Public records requests may be sent to the WSLCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the ((board)) WSLCB is available at its main office and on its web site at www.lcb.wa.gov. ((The)) A written request or ((prescribed)) public records request form ((shall)) must be submitted or presented to the public records officer or designee and may be sent to the WSLCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number(~~(- fax number)~~), and email address of the ((person requesting the record.)) requestor;

(b) The date and time of day ((and calendar date on which the request was received at the main office of the board.)) of the request;

(c) ((A detailed description of the public record being requested.)) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described((-)); and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the ((LCB)) WSLCB.

(2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

~~((3) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Standard photocopies will be provided at fifteen cents per page. (See WAC 314-60-090.)~~

~~(4) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (or when a request is made by or on behalf of an attorney for a party) the request shall be referred to the assistant attorney general assigned to the board for an appropriate response.)~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-085 Processing public records requests. (1) Order of processing public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days ~~((of))~~ after receipt of the request, the public records officer or designee will do one or more of the following:

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) If no response is received. If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the WLSLB received the request.

(4) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask

him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

~~((4))~~ **(5) Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the ~~((LCB))~~ WSLCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((5))~~ **(6) Inspection of records.**

(a) Consistent with other demands, the ~~((LCB))~~ WSLCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. ~~((The requestor shall indicate which documents he or she wishes the agency to copy.))~~ If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must ~~((claim or))~~ review the assembled records within thirty days of the ~~((LCB's))~~ WSLCB's notification to him or her that the records are available for inspection ~~((or copying))~~. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to ~~((claim or))~~ review the records. If the requestor or a representative of the requestor fails to ~~((claim or))~~ review the records within the thirty-day period or make other arrangements, the ~~((LCB))~~ WSLCB may close the request ~~((and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request))~~. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

~~((6))~~ **(7) Providing copies of records.** ~~((After inspection is complete, the public records officer shall make the requested copies or arrange for copying.~~

~~(7))~~ (a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the WSLCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the WSLCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the WSLCB's offices, the requestor must pay for and pick up the copies within thirty days of the WSLCB's notification to him or her that the copies are available for pickup. The WSLCB will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the WSLCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay

for or pick up the copies within the thirty-day period, or fails to make other arrangements, the WSLCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the WSLCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the WSLCB keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection ~~((and copying))~~ or copies of records in installments, if he or she reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the WSLCB prior to delivery of the installment. If, within thirty days, the requestor fails to ~~((inspect the entire set of records or))~~ pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((+8))~~ (10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ((LCB)) WSLCB has completed ~~((a diligent search for the requested))~~ the records request and made any located nonexempt records available for inspection.

~~((+9))~~ (11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor ~~((that the LCB has closed the request))~~.

~~((+10))~~ (12) **Later discovered documents.** If, after the ((LCB)) WSLCB has informed the requestor that it has provided all available records and closed a request, the ((LCB)) WSLCB becomes aware of additional responsive ~~((documents))~~ records existing at the time of the request, it will promptly inform the requestor of the additional ~~((documents))~~ records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-090 Costs of providing copies of public records. (1) No fee ~~((shall be))~~ is charged for the inspection of public records.

(2) ~~((After the first one hundred free copies, the board charges one or more of the following fees for copies of public records:~~

~~((a) Up to fifteen cents per page for black and white photocopies of a record;~~

~~((b) The actual cost of manuals, blueprints, and other nonprinted materials such as CDs, audio tapes, or video tapes;~~

~~(c) Up to fifteen cents per page for scanning existing WSLCB paper or other nonelectronic records. There will be no charge for emailing electronic records to a requestor, unless a scanning fee applies; and~~

~~(d) The cost of postage, when items are mailed. (See RCW 42.56.070.)~~ The WSLCB does not charge any fee for access to or downloading records posted on its internet web site prior to a request, unless the requestor specifically requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the WSLCB.

(3)(a) The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requestors as the type of request and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs, and conducting a study would interfere with other essential agency functions. Additionally, through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including costs for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(b) The following fee schedule adapted from RCW 42.56.120 applies to physical and electronic copies of public records provided by the WSLCB. Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

Public Records Fee Schedule	
Charge:	Record Type:
<u>15 cents/page</u>	<u>Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.</u>
<u>10 cents/page</u>	<u>Scanned records, or use of agency equipment for scanning.</u>
<u>5 cents/each 4 electronic files or attachment</u>	<u>Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.</u>
<u>10 cents per gigabyte</u>	<u>Records transmitted in electronic format or for use of agency equipment to send records electronically.</u>
<u>Actual cost</u>	<u>Digital storage media or devices.</u>
<u>Actual cost</u>	<u>Any container or envelope used to mail copies.</u>
<u>Actual cost</u>	<u>Postage or delivery charges.</u>

Public Records Fee Schedule	
<u>Actual cost</u>	<u>Customized service charge (in addition to fees for copies - See copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such requestor of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requestor to amend the request in order to avoid or reduce the cost of the customized service charge.</u>
Option for Copies:	
<u>Up to \$2 flat fee</u>	<u>As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.</u>

(4) If the requestor asks the WSLCB to provide a summary of the applicable charges before any copies are made, the WSLCB will provide an estimate and will allow the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The WSLCB may require a deposit of up to ten percent of the cost of providing copies for a request, including a customized service charge.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-100 Exemptions. (1) The Public Records Act (chapter 42.56 RCW) (~~provides that a number of types of documents are~~) exempts a number of types of records from public inspection, production, and copying. In addition, (~~documents~~) records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

(a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)

(b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)

(c) **Criminal history reports.** Certain criminal history information concerning nonconviction data is prohibited from disclosure under chapter 10.97 RCW. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)

(d) **Crime victims.** Files and information. (RCW 7.68.140)

(e) (~~Individual purchases.~~ All records whatsoever of the board showing purchases of liquor by any individual or establishment. (RCW 66.16.090)) **Attorney client privileged communications, mediation communications.** Communications protected by RCW 5.60.060(2), 42.56.290 and 7.07.030 exempt from disclosure.

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which (~~LCB~~) WSLCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c)(2)(C)(vii)(1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

(i) (~~Special order requests and records of purchases by any person or persons, including spirits, beer, and wine restaurant licensees.~~ (See RCW 66.16.090.)

~~(j))~~ Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)

~~((k))~~ (j) Financial or proprietary information supplied to the ~~(board)~~ WSLCB by a licensed Washington liquor retailer containing the identity and amount of beer or wine purchased directly from a domestic winery, brewery, microbrewery, or a certificate of approval holder with a direct shipping to Washington retailer endorsement. (See RCW 66.24.210, 66.24.290, and 42.56.270.)

(2) The WSLCB is prohibited by statute from disclosing lists of individuals for commercial purposes(~~(. (See))~~ under RCW 42.56.070(~~(.)~~))

~~(3) Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The LCB will not charge sales tax when it makes copies of public records).~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-110 Review of denials of public records requests.

(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by ~~((tendering))~~ submitting a written request for review. The written request ~~((shall))~~

must specifically refer to the written statement by the public records ((~~staff member~~)) officer or designee which constituted or accompanied the denial. ((~~Send your~~)) A written petition for review may be sent to:

Public Records Officer((, ~~Public Records Unit~~))
P.O. Box 43080
Olympia, Washington 98504-3080
((~~360-664-1714~~
~~jdk@liq.wa.gov~~)) 360-664-1693
publicrecords@lcb.wa.gov

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative director. The administrative director shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the ((~~LCB's~~)) WSLCB's receipt of the request for review of the original denial, or within such other time as the ((~~LCB~~)) WSLCB and the requestor mutually agree to.

(3) If the ((~~LCB~~)) WSLCB denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter((~~. The attorney general has adopted rules on such requests~~)) as provided in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-60-040	Operations and procedure.
WAC 314-60-087	Processing public records requests— Electronic records.

NEW SECTION

WAC 314-42-001 Board operations and procedure. This section details the general course and method by which the operations of the board are channeled and determined in addition to the other functions and procedures of the board as provided in Title 314 WAC.

(1) The "Washington state liquor and cannabis board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor, with the consent of the senate, for staggered terms of six years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor and cannabis board.

(2) The board delegates certain administrative functions to an administrative director appointed by the board as provided in WAC 314-42-010.

(3) Pursuant to the requirements of the Open Public Meetings Act, chapter 42.30 RCW all determinations and business of the board will be made and conducted in meetings open to the public, except matters exempt from the act under RCW 42.30.140 or properly conducted in executive session pursuant to RCW 42.30.110.

(a) The board holds regular meetings as published with the office of the code reviser in the *Washington State Register* per RCW 42.30.075 and as published on the board's web site at www.lcb.wa.gov. For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, conduct rule making activities, and adopt resolutions at its regular board meetings as published in the *Washington State Register* and posted on the WSLCB web site.

(b) Occasionally the board may deem it necessary to cancel meetings or conduct business at times other than as published in the *Washington State Register*. For these occasions, stakeholder notification will occur as provided in the Open Public Meetings Act, chapter 42.30 RCW.



Washington State Liquor and Cannabis Board

Date: November 15, 2017

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, 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
Missy Norton, Public Records Officer

Subject: Approval for filing proposed rules (CR 102) related to public records.

Rule changes are needed to implement changes in law due to the passage of EHB 1595 by the 2017 Legislature. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate. The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 34.05 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs, so emergency rules are needed to establish this until permanent rule changes can be completed. A Chapter review for Chapter 314-60 was done in conjunction with the changes needed as a result of the passage of EHB 1595 to ensure public records rules are current and well organized. A review of Chapter 314-60 WAC has not occurred since 2009. The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on July 12, 2017.

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 15, 2017, and is attached to this order.

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

July 12, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
November 15, 2017	Board is asked to approve filing the proposed rules (CR 102 filing)



Washington State
Liquor and Cannabis Board

December 6, 2017	Code Reviser publishes notice, LCB sends notice to rules distribution list
January 10, 2018	Public Hearing
January 10, 2018	End of written comment period
January 24, 2018	Board is asked to adopt rules
January 24, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
January 24, 2018	Agency files adopted rules with the Code Reviser (CR 103)
February 25, 2018	Rules are effective (31 days after filing)

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: Issue Paper

Issue Paper

Emergency Rule – Public Records

Date: November 15, 2017

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 renew an emergency rule related to public records costs needed as a result of the passage of EHB 1595 (2017 c 304) during the 2017 legislative session. The Board previously adopted this emergency rule on July 12, 2017. This renewal will extend the emergency rule until permanent rulemaking is completed.

Why is rule making necessary?

This emergency rule is necessary due to changes in law due to the passage of EHB 1595 by the 2017 Legislature. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate. The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs, so emergency rules are needed to establish this until permanent rule changes can be completed.

Process

The emergency rule is necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rule making would be contrary to the public interest. The rule will become effective on November 17, 2017, when the previously adopted emergency rule expires, and will expire 120 days after filing on March 17, 2018, or when permanent rules on this topic become effective, whichever is sooner.

What are the changes?

New Section. WAC 314-60-095, Costs for providing public records.

The emergency rule adopts costs for providing public records through adapting the costs schedule included in EHB 1595 section 3. The rule makes it clear that no costs are assessed for records accessed through the WSLCB's website, unless requested to be provided by other means. The rule also provides an option for a requestor to ask to receive an estimate of the applicable charges for a public records request before any copies are made, and the WSLCB will provide an opportunity for the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The board may require a deposit of up to 10% of the cost of providing copies for a request, including a customized service charge.

NEW SECTION

WAC 314-60-095, Costs for providing public records.

This section supersedes costs for public records provisions in WAC 314-60-090.

The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requesters, as the type of request, and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs at this time.

The board does not charge any fee for access to or downloading records posted on its internet website prior to a request, unless the requester specifically requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the board. The board intends to use the following fee schedule as set out in section 3 of EHB 1595 passed during the 2017 legislative session, to be codified in RCW 42.56.120, unless it determines in a later rulemaking that the actual costs of providing records exceeds the charges in the schedule below.

PRA Fee Schedule	
Copies:	
15 cents/page	Photocopies, printed copies of electronic records when requested by the requester, or for the use of agency equipment to make photocopies.
10 cents/page	Scanned records, or use of agency equipment for scanning.
5 cents/each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents per gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.
Actual cost	Customized service charge (in addition to fees for copies – see copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such requester of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requester to amend the request in order to avoid or reduce the cost of the customized service charge.
<i>The copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request</i>	
Option for Copies:	
Up to \$2 flat fee	As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.

If the requester asks the board to provide a summary of the applicable charges before any copies are made, the board will provide an estimate and will allow the requester to revise the request to reduce the number of copies to be made to reduce the charges. The board may require a deposit of up to ten percent of the cost of providing copies for a request, including a customized service charge.



**Washington State
Liquor and Cannabis Board**

Date: November 15, 2017

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, 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
Melissa Norton, Public Records Officer

Subject: Approval to refile an emergency rule related to public records costs.

This emergency rule is needed to adopt changes to costs for providing public records as a result of the passage of EHB 1595 (2017 c 304) during the 2017 legislative session. This emergency rule adopts the cost schedule in EHB 1595 section 3. The Board previously adopted this emergency rule on July 12, 2017. This renewal will extend the emergency rule until permanent rulemaking is completed.

The emergency rule is necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rule making would be contrary to the public interest. The rule will become effective on November 17, 2017, when the previously adopted emergency rule expires, and will expire 120 days after filing on March 17, 2018, or when permanent rules on this topic become effective, whichever is sooner.

Process

The Policy and Rules Coordinator requests approval to file the emergency rule described above. An issue paper on this rule was presented at the Board meeting on November 15, 2017, and is attached to this order. Permanent rulemaking on this subject is currently underway.

If approved for filing, the timeline for this emergency rule is outlined below:

November 15, 2017	Board is asked to approve filing the Emergency Rule
November 17, 2017	Rules Coordinator files the Emergency Rule with the Code Reviser
November 17, 2017	The Emergency Rule becomes effective
March 18, 2018	The Emergency Rule expires*

* Staff may request refiling of the emergency rule if permanent rulemaking (if approved by the Board) is not completed by the expiration date of this rule.



Washington State
Liquor and Cannabis Board

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: Issue Paper

Issue Paper

Marijuana Advertising Rules

Date: November 15, 2017

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) for changes to advertising rules in Chapter 314-55 WAC as a result of the passage of ESSB 5131 during the 2017 Legislative Session.

Why is rule making necessary?

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 with the passage of ESSB 5131, which became effective on July 23, 2017. Guidance and information on the upcoming changes to the law was shared with licensees and stakeholders and was posted on the WLSCB's website in advance of the effective date of the changes to the law. While rulemaking did not delay the effective date of the new changes to advertising restrictions and requirements, rule changes in Chapter 314-55 WAC are needed to provide further clarification to the new requirements and to adhere to legislative direction included in ESSB 5131. The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on July 12, 2017. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and the escalating penalty provisions related to advertising violations required under ESSB 5131 will be handled in that separate rulemaking.

What changes are being proposed?

Amendatory Section. WAC 314-55-155, Advertising.

Language stating that the requirements in WAC 314-55-155 apply in addition to the requirements set forth in RCW 69.50.369. Many of the proposed changes to rule reiterate the language in statute to attempt to have a holistic view of advertising restrictions in the rule. The rule organization is changed to first list general advertising restrictions for all marijuana advertising, then list those restrictions that apply to outdoor advertising and advertisements of marijuana products. Proposed changes to rule language for clarifying changes beyond those included in statute include the following:

- Clarifying that the minimum distance of 1,000 feet for advertisements is reduced for licensees that are located within that minimum distance consistent with local ordinances that reduce the buffer.

- Examples of language that may be used to state that marijuana products may be purchased or possessed only by persons 21 years of age or older as required by RCW 69.50.369.
- Clarification on what constitutes a prohibited depiction of plants or products on outdoor advertising under RCW 69.50.369.
 - A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.
 - A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.
- Clarifying what constitutes stating the location of the business on outdoor signs/advertisements. Includes allowances for physical address or location, directional information, website address, email address or phone number.
- Clarification on what information constitutes “identifying the nature of the business” on outdoor signs/advertisements.
- Adjustments to language to make it clear that outdoor double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.
- Clarification/definition on what constitutes an “adult only facility” and thereby exempt from certain restrictions on outdoor advertising with limitations.
- Clarification that a sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, or that the licensed location has an ATM inside is not considered advertising for the purposes of this section.
- Clarification that “Adopt-a-Highway” signs erected by the Washington State Department of Transportation (WSDOT) under a current valid sponsorship with the WSDOT are not considered advertising for the purposes of this section.
- Clarification that warning statements required under WAC 314-55-155 apply to all advertisements of marijuana businesses or marijuana products except for outdoor advertisements. Additional technical change to require minimum type size not less than 10% of the largest type used in the advertisement to ensure warnings are adequately visible and to support the intent of the warning statements being present. This minimum size type requirement mirrors requirements for political ads by the Public Disclosure Commission.
- Definition of “adult only facility” as used in WAC 314-55-155 and RCW 69.50.369 as a definition of the term was not included in the legislative changes to law.

- Definition of “billboard” to ensure the intent of the Legislature is carried out in statute and rule requirements. The WSLCB surveyed sizes of billboards present in the current advertising industry and reviewed RCW 17.04.070 to determine the proposed definition. “Billboard” is defined as “a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ten feet in height by twenty feet in width.”
- Definition of “off-premises sign” to ensure the term “billboard” is clear for licensees and Enforcement. “Off-premises sign” means “a sign relating, through its message and content, to a business activity, use product, or service not available on the premises upon which the sign is erected.”

RCW 69.50.369

Marijuana producers, processors, researchers, retailers—Advertisements—Rules—Penalty.

(1) No licensed marijuana producer, processor, researcher, or retailer may place or maintain, or cause to be placed or maintained, any sign or other advertisement for a marijuana business or marijuana product, including useable marijuana, marijuana concentrates, or marijuana-infused product, in any form or through any medium whatsoever within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(2) Except for the use of billboards as authorized under this section, licensed marijuana retailers may not display any signage outside of the licensed premises, other than two signs identifying the retail outlet by the licensee's business or trade name, stating the location of the business, and identifying the nature of the business. Each sign must be no larger than one thousand six hundred square inches and be permanently affixed to a building or other structure. The location and content of the retail marijuana signs authorized under this subsection are subject to all other requirements and restrictions established in this section for indoor signs, outdoor signs, and other marijuana-related advertising methods.

(3) A marijuana licensee may not utilize transit advertisements for the purpose of advertising its business or product line. "Transit advertisements" means advertising on or within private or public vehicles and all advertisements placed at, on, or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

(4) A marijuana licensee may not engage in advertising or other marketing practice that specifically targets persons residing outside of the state of Washington.

(5) All signs, billboards, or other print advertising for marijuana businesses or marijuana products must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older.

(6) A marijuana licensee may not:

(a) Take any action, directly or indirectly, to target youth in the advertising, promotion, or marketing of marijuana and marijuana products, or take any action the primary purpose of which is to initiate, maintain, or increase the incidence of youth use of marijuana or marijuana products;

(b) Use objects such as toys or inflatables, movie or cartoon characters, or any other depiction or image likely to be appealing to youth, where such objects, images, or depictions indicate an intent to cause youth to become interested in the purchase or consumption of marijuana products; or

(c) Use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business. A "commercial mascot" means live human being, animal, or mechanical device used for attracting the attention of motorists and passersby so as to make them aware of marijuana products or the presence of a marijuana business. Commercial mascots include, but are not limited to, inflatable tube displays, persons in costume, or wearing, holding, or spinning a sign with a marijuana-related commercial message or image, where the intent is to draw attention to a marijuana business or its products.

(7) A marijuana licensee that engages in outdoor advertising is subject to the advertising requirements and restrictions set forth in this subsection (7) and elsewhere in this chapter.

(a) All outdoor advertising signs, including billboards, are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and

identifies the type or nature of the business. Such signs may not contain any depictions of marijuana plants, marijuana products, or images that might be appealing to children. The state liquor and cannabis board is granted rule-making authority to regulate the text and images that are permissible on outdoor advertising. Such rule making must be consistent with other administrative rules generally applicable to the advertising of marijuana businesses and products.

(b) Outdoor advertising is prohibited:

(i) On signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located in an adult only facility; and

(ii) Billboards that are visible from any street, road, highway, right-of-way, or public parking area are prohibited, except as provided in (c) of this subsection.

(c) Licensed retail outlets may use a billboard or outdoor sign solely for the purpose of identifying the name of the business, the nature of the business, and providing the public with directional information to the licensed retail outlet. Billboard advertising is subject to the same requirements and restrictions as set forth in (a) of this subsection.

(d) Advertising signs within the premises of a retail marijuana business outlet that are visible to the public from outside the premises must meet the signage regulations and requirements applicable to outdoor signs as set forth in this section.

(e) The restrictions and regulations applicable to outdoor advertising under this section are not applicable to:

(i) An advertisement inside a licensed retail establishment that sells marijuana products that is not placed on the inside surface of a window facing outward; or

(ii) An outdoor advertisement at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but in no event more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name to identify the event.

(8) Merchandising within a retail outlet is not advertising for the purposes of this section.

(9) This section does not apply to a noncommercial message.

(10)(a) The state liquor and cannabis board must:

(i) Adopt rules implementing this section and specifically including provisions regulating the billboards and outdoor signs authorized under this section; and

(ii) Fine a licensee one thousand dollars for each violation of this section until the state liquor and cannabis board adopts rules prescribing penalties for violations of this section. The rules must establish escalating penalties including fines and up to suspension or revocation of a marijuana license for subsequent violations.

(b) Fines collected under this subsection must be deposited into the dedicated marijuana account created under RCW [69.50.530](#).

(11) A city, town, or county may adopt rules of outdoor advertising by licensed marijuana retailers that are more restrictive than the advertising restrictions imposed under this chapter. Enforcement of restrictions to advertising by a city, town, or county is the responsibility of the city, town, or county.

[[2017 c 317 § 14](#); [2015 2nd sp.s. c 4 § 204](#); 2013 c 3 § 18 (Initiative Measure No. 502, approved November 6, 2012).]

NOTES:

Findings—Application—2017 c 317: See notes following RCW [69.50.325](#).

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW [69.50.334](#).

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW [69.50.101](#).

WAC 314-55-155 Advertising. ~~((1) Advertising by retail licensees.~~ The WSLCB limits each retail licensed premises to a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.

~~(2) General.~~) The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) Advertising generally. The following requirements apply to all advertising by marijuana licensees in Washington state.

(a) All marijuana advertising and labels of usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington must not contain any statement, or illustration that:

~~((a))~~ (i) Is false or misleading;

~~((b))~~ (ii) Promotes over consumption;

~~((c))~~ (iii) Represents the use of marijuana has curative or therapeutic effects;

~~((d))~~ (iv) Depicts a child or other person under legal age to consume marijuana, or includes:

~~((i))~~ (A) The use of objects, such as toys, inflatables, movie characters, ~~((e))~~ cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume marijuana; or

~~((ii))~~ (B) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

~~((3))~~ (b) No ~~((licensed))~~ marijuana ~~((producer, processor, or retailer))~~ licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a marijuana business or marijuana product, including marijuana concentrates, usable marijuana, or ~~((a))~~ marijuana-infused product:

(i) In any form or through any medium whatsoever~~((+~~

~~(a))~~ within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older unless the one thousand minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed retailer is located within one thousand feet of a restricted location listed in this paragraph;

~~((b))~~ (ii) On or in a private vehicle, public transit vehicle ~~((e))~~, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location; ~~((e)~~

~~(c) On or in a publicly owned or operated property.)~~

(c) All advertising for marijuana businesses or marijuana products, regardless of what medium is used, must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A marijuana licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by marijuana licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed marijuana retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to sixteen hundred square inches.

(i) All outdoor signs, including billboards, are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products.

(A) A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, web site address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No marijuana licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name, such as the business or trade name or the product brand, to identify the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, or that the licensed location

has an ATM inside is not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising or signs within the premises of a licensed marijuana retail store that may be visible from outside the premises must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age twenty-one and older by the WSLCB or classified by the WSLCB as off limits to persons under twenty-one years of age; or

(ii) A venue restricted to persons age twenty-one and older and where persons under twenty-one years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ten feet in height by twenty feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.



**Washington State
Liquor and Cannabis Board**

Date: November 15, 2017

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

From: Joanna Eide, Policy and Rules Coordinator

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

Subject: **Approval for filing proposed rules (CR 102) related to marijuana advertising rules.**

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 with the passage of ESSB 5131, which became effective on July 23, 2017. While rulemaking did not delay the effective date of the new changes to advertising restrictions and requirements, rule changes in Chapter 314-55 WAC are needed to provide further clarification to the new requirements and to adhere to legislative direction included in ESSB 5131. The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on July 12, 2017. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and the escalating penalty provisions related to advertising violations required under ESSB 5131 will be handled in that separate rulemaking.

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 15, 2017, and is attached to this order.

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

July 12, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
November 15, 2017	Board is asked to approve filing the proposed rules (CR 102 filing)
December 6, 2017	Code Reviser publishes notice, LCB sends notice to rules distribution list
January 10, 2018	Public Hearing



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January 10, 2018	End of written comment period
January 24, 2018	Board is asked to adopt rules
January 24, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
January 24, 2018	Agency files adopted rules with the Code Reviser (CR 103)
February 25, 2018	Rules are effective (31 days after filing)

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: Issue Paper