

## **Issue Paper**

# **Marijuana Packaging and Labeling Rules**

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

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## **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 packaging and labeling rules in Chapter 314-55 WAC.

## **Why is rule making necessary?**

The WSLCB has received a lot of feedback from industry members, the public, staff, and other agency members regarding concerns or changes needed with packaging, labeling, warning statements, and other related rules. Industry members and others have stated that labeling requirements are too onerous, while others have stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, we recognize that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure, packaging, labeling, and warning statement rules are effective.

The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

## **What changes are being proposed?**

### **Amendatory Section. WAC 314-55-105, Packaging and labeling requirements.**

Adjustments to packaging requirements include:

- Allowing certain infused solid edible products such as lozenges and capsules and other similar products on a case by case basis to be packaged loosely (not individually wrapped) in a resealable child resistant exterior package.

- Requiring that infused liquid edible products in packages with more than one serving be resealable, though do not have to be child resistant due to challenges with packaging carbonated liquids.
- Only infused liquid edibles in packages containing a single serving may be packaged with a non-resealable closure, such as a crown-style cap.

Streamlining and paring down of warning statements to ensure critical information is communicated effectively while reducing pressure on label “real estate.”

Removal of harvest date, manufactured date, and best by date from required information on labels. This information may still be placed on the label as an option, but is proposed to be removed as a requirement.

Removal of the retailer business/trade name and UBI on label requirements in anticipation of the passage of legislation that will remove it from required information on labels in statute. Producers and processors business/trade names and UBI numbers must still be listed on the label.

Changing the UBI requirement to the nine-digit number rather than the sixteen-digit UBI number.

Removal of all accompanying material requirements except for pesticides information to reduce label crowding issues seen by licensees putting it on the label. Accompanying materials may be given to consumers via electronic format, including using a url or QR code on the label. The WSLCB is working with DOH to explore potential signage requirements for other warning statements not on the label at retail locations separately, similar to requirements for liquor licensees.

Enhanced definition providing additional clarity for what is considered “especially appealing to children.” Creation of a new definition for the term “cartoon.”

General improvements to organization of the rule to enhance clarity.

### **Amendatory Section. WAC 314-55-106, Marijuana warning symbol requirement.**

New provisions are added to propose the adoption of a universal symbol for marijuana and marijuana products, similar to the universal symbol requirements in Colorado and Oregon. The universal symbol is proposed to be required on all products on the front or principal display panel to ensure that a person viewing a package is notified that the product is or contains marijuana. Minimum size requirements similar to the size requirements for the “Not for Kids” warning symbol are included.



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: February 07, 2018

TIME: 10:56 AM

WSR 18-04-113

**Agency:** Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR** \_\_\_\_\_

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR** 17-03-072 on January 11, 2017 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Proposed changes to rules related to marijuana packaging and labeling rules.

WAC 314-55-105, Packaging and labeling requirements; and

WAC 314-55-106, Marijuana warning symbol requirement.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
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March 21, 2018	10:00 a.m.	Board Room, 3000 Pacific Ave SE, Olympia, WA 98504	
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**Date of intended adoption:** On or after April 4, 2018 (Note: This is **NOT** the effective date)

### Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator

Address: 3000 Pacific Ave SE, Olympia, WA 98504

Email: [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)

Fax: 360-664-9689

Other:

By (date) March 21, 2018

### Assistance for persons with disabilities:

Contact Clariss Nnanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax:

TTY: 7-1-1 or 1-800-833-6388

Email: [Clariss.Nnanabu@lcb.wa.gov](mailto:Clariss.Nnanabu@lcb.wa.gov)

Other:

By (date) March 16, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This proposal makes adjustments to packaging and labeling requirements to marijuana and marijuana products. Updates and clarifications were needed for the rules involved, and adjustments to requirements were needed due to concerns raised by the industry and stakeholders, and to continue to develop the regulatory landscape in this emerging industry. Most of the changes in this proposal were made to streamline labeling requirements and to reduce pressure on the "real estate" on labels to ensure information is readable and effective for consumers and the public. Accompanying materials are proposed to be virtually eliminated except for pesticides information and clarification is included that they may be provided in an electronic format via url or QR code. Adjustments to packaging requirements were made to provide flexibility for certain edible products packaging, and to further prevention of the promotion of over consumption. An enhanced definition providing additional clarity for what is considered "especially appealing to children" is included and a new definition for the term "cartoon" is proposed. A delayed effective date will be included should these rule proposals be adopted to ensure licensees have adequate time to cycle through existing inventory and make changes to adapt to new packaging and labeling requirements.

<b>Reasons supporting proposal:</b> The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.			
<b>Statutory authority for adoption:</b> RCW 69.50.342, and 69.50.345			
<b>Statute being implemented:</b>			
<b>Is rule necessary because of a:</b>			
Federal Law?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b>			
<b>Name of proponent:</b> (person or organization) Washington State Liquor and Cannabis Board		<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental	
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting: Coordinator	Joanna Eide, Policy and Rules	3000 Pacific Ave SE, Olympia, WA 98504	360-664-1622
Implementation: Director	Becky Smith, Licensing	3000 Pacific Ave SE, Olympia, WA 98504	360-664-1615
Enforcement:	Chief Justin Nordhorn	30000 Pacific Ave SE, Olympia, WA 98504	360-664-1726
<b>Is a school district fiscal impact statement required under RCW 28A.305.135?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
The public may obtain a copy of the school district fiscal impact statement by contacting: Name: Address: Phone: Fax: TTY: Email: Other:			
<b>Is a cost-benefit analysis required under RCW 34.05.328?</b>			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Address: Phone: Fax: TTY: Email: Other:			
<input checked="" type="checkbox"/> No: Please explain: A cost benefit analysis was not required under RCW 34.05.325 because the subject of proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5).			

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)  
(Internal government operations)

☐ RCW 34.05.310 (4)(e)  
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)  
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)  
(Set or adjust fees)

☐ RCW 34.05.310 (4)(d)  
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

☒ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

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

The WSLCB has received a lot of feedback from industry members, the public, staff, and other agency members regarding concerns or changes needed with packaging, labeling, warning statements, and other related rules. Industry members and others have stated that labeling requirements are too onerous, while others have stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, we recognize that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure, packaging, labeling, and warning statement rules are effective.

The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

**Adjustments to packaging requirements include:**

- Allowing certain infused solid edible products such as lozenges and capsules and other similar products on a case by case basis to be packaged loosely (not individually wrapped) in a resealable child resistant exterior package.
- Requiring that infused liquid edible products in packages with more than one serving be resealable, though do not have to be child resistant due to challenges with packaging carbonated liquids.
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**Adjustments to labeling requirements include:**

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Enhanced definition providing additional clarity for what is considered “especially appealing to children.” Creation of a new definition for the term “cartoon.”

General improvements to organization of the rule to enhance clarity.

### **Universal Symbol requirements:**

Proposed amendments to WAC 314-55-106, Marijuana warning symbol requirement, add a requirement for a universal symbol for use on marijuana and marijuana products. This universal symbol will alert consumers and the public that the product is clearly marijuana or a marijuana product.

Similar to the “Not for Kids” warning symbol, marijuana licensees will be required to place the universal symbol on packaging of marijuana and marijuana products. The universal symbol developed and made available in digital form to licensees without cost by the WSLCB must be placed on the principal display panel or front of the product package. The universal symbol will be available on the WSLCB’s website if adopted. The universal 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 or contains marijuana, but must not be smaller than three-quarters (3/4) of an inch in height by three-quarters (3/4) of an inch in width. The universal 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 print and use a sticker of the universal symbol in lieu of digital image placement of the universal symbol on labels of marijuana and marijuana products 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 placed on or near the principal display panel or on the front of the package; and
- (b) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

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

Licensees develop and print labels in a multitude of ways. Some licensees choose to create and print labels for products independently, while others may choose to hire professional designers and printers to develop or print labels or product packaging. Costs of professional designing and printing vary depending on the label or packaging design, size, and other aesthetic considerations the licensee chooses to make. The packaging and labeling requirements and new universal symbol requirement will not require the use of professional services, but a licensee may choose to engage professional services if they wish.

Additionally, the digital image of the symbol is provided by the WSLCB free of charge to licensees and is available for immediate download from the WSLCB’s website. This means that no professional services are required should the licensee choose to download and place the digital image on products or labels independently.

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

All licensees are required to have a computer and internet access to acquire and maintain a marijuana license. For this reason, licensees already have the necessary equipment required to obtain the universal symbol from the WSLCB’s website at no charge, so there are no costs of compliance that are necessary to obtain the new symbol.

Whether a licensee will incur costs due to the adjustments to packaging and labeling rules and new warning symbol labeling requirement depends on the products the licensee produces and individual business decisions the licensee makes. Each licensee is different as far as the number of products they produce, types of packaging and labeling, and size of products, so costs associated with the proposed changes may vary. If the licensee chooses to acquire the digital image and incorporate the universal symbol on product labels or packaging independently (without the use of professional services), administrative costs should be minimal. If a licensee instead chooses to use professional design services to

change labels and print them for the licensee, the costs will be higher. Again, these choices are voluntary on the part of the licensee and not necessary to comply with the adjustments to packaging and labeling rules and the new universal symbol requirement.

Licensees that create products in smaller packages may have the most costs associated with the new universal symbol requirement due to the minimum sizing provisions in the new rule. The minimum size requirement of no smaller than three-quarters (3/4) of an inch in height by three-quarters (3/4) of an inch in width are needed to ensure the symbol is of a size so as to be immediately recognizable and legible to alert consumers and the public that the product is or contains marijuana. However, the size of the symbol may pose some challenges for those licensees with small packaging/products, which may result in higher costs associated with compliance with the new requirement. This may result in some licensees having to re-conceptualize packaging of products, increasing the costs of initial compliance. These costs will vary depending on packaging type and product size, as well as by business decisions made by licensees, and cannot be predicted on a general level. The delayed effective date for the proposed changes to packaging and labeling rules and the new symbol requirement explained below is aimed at reducing these impacts. Licensees are also welcome to suggest ways to address these issues through the rulemaking process.

The WSLCB also plans on a delayed effective date so the proposed changes to packaging and labeling rules and the new universal symbol requirement may be essentially “phased in,” further minimizing any costs licensees may incur in complying with the new labeling requirement. The WSLCB received input from marijuana licensees that indicated that a delayed effective date ranging from 6 to 18 months prior to implementation would reduce administrative costs for changing packaging and labels and phasing out product to comply with the new requirements. A delayed effective date will also allow licensees to move through product existing inventory and adjust new labeling to comply with the changes to rules in this proposal.

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

This new requirement is unlikely to cause the loss of sales or revenue by marijuana businesses. This is due to the plan for delayed effective dates to allow licensees to cycle through existing product and prepare for the proposed changes to packaging and labeling requirements.

#### **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

Most marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on the value of marijuana at retail and wholesale. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales.

The additional costs associated with complying with the proposed packaging and labeling requirements should be minimal compared to sales revenue. The costs associated with complying with the new universal symbol requirement are further mitigated by the WSLCB's efforts to ensure that a digital image of the universal symbol be available to licensees at no cost. Additionally, a delayed effective date will further mitigate costs to licensees in making adjustments to packaging and labeling if the proposed changes are adopted.

The costs of complying with the proposed adjustments to the packaging and labeling rules and new universal symbol labeling requirement is indeterminate as it will vary depending on the circumstances (types of products, size of products, labels, etc.) and business decisions made by licensees, i.e. whether the licensee chooses to engage the services of a professional designer or printer rather than making changes to packaging and labeling independently. These factors will depend on the individual business decisions of licensees..

#### **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 ensuring that the digital image of the universal symbol would be available to licensees at no cost. Additionally, the WSLCB plans to have a delayed effective date after adoption of the new requirement (CR-103P), to allow licensees adequate time to cycle through product and adopt the changes to packaging and labeling requirements contained in this proposal. The WSLCB will also use the time between adoption and the effective date to supply licensees with resources to comply with the new requirements, and to work on the packaging and labeling review and approval process for marijuana-infused edible products. These efforts will ease the transition and should mitigate much of the costs associated with adjusting to the new packaging and labeling requirements.

Though there are costs associated with complying with the adjustments to packaging and labeling requirements in this proposal, those costs are justified. The proposed packaging and labeling changes are intended to promote consumer safety and information through clear warning statements, discourage over consumption, and to reduce public health and safety risks through the clear identification of marijuana and marijuana products on labels.

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

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process. The WSLCB also performed outreach with several licensed processors to gather information related to timelines for the new requirement and costs associated with compliance. The WSLCB used the feedback received through these efforts to develop the timeline for the proposed effective date for the changes to packaging and labeling rules to reduce costs to licensees and ensure adequate time for licensees to cycle through product and adjust to the new requirements.

**8. A list of industries that will be required to comply with the rule:**

All licensed marijuana businesses will be required to comply with these rules. Primarily, these changes will impact processors and retailers.

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

Because the WSLCB considered feedback from licensees to develop a delayed effective date for rule changes, and worked to reduce the amount of information on labels and accompanying materials in this proposal to offset changes and address industry concerns, costs associated with adjusting to the proposed packaging and labeling requirements will be mitigated. The WSLCB does not anticipate that jobs will be lost or created as a result of compliance with the proposed rule.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Joanna Eide, Policy and Rules Coordinator  
Address: 3000 Pacific Ave SE, Olympia, WA 98504  
Phone: 360-664-1622  
Fax: 360-664-9689  
TTY: 7-1-1 or 1-800-833-6388  
Email: [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)  
Other:

**Date:** February 7, 2018

**Name:** Jane Rushford

**Title:** Chair

**Signature:**



**WAC 314-55-105 Packaging and labeling requirements.** (1) ~~((All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.~~

~~(2))~~ **Packaging requirements.**

**(a) General packaging requirements applying to all marijuana products.** Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

~~((3) Upon the request of a retail customer, a retailer must disclose the name of the certified third party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or marijuana-infused product the customer is considering purchasing.~~

~~(4) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.~~

~~(5) The certified third party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.~~

~~(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:~~

~~(a) Lot number;~~

~~(b) UBI number of the producer; and~~

~~(c) Weight of the product.~~

~~(7) Marijuana infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in))~~ **(b) Additional product-specific packaging requirements.** The following product-specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:

**(i) Marijuana-infused products general requirements.**

**(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:**

**(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or ((use standards specified in this subsection. Marijuana infused product in solid or liquid form may be packaged in))**

**(II) Plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b)(i)(A)(III) and (B) of this subsection.**

**(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may ((also)) be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.**

**(B) Marijuana-infused solid edible products.**

(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in ~~((childproof))~~ child resistant packaging ~~((see WAC 314-55-105(7)))~~ as provided in (b)(i) of this subsection and placed in the outer package except as provided below.

(II) Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(C) Marijuana-infused liquid edible products. ~~((If there is))~~ Packages containing more than one serving ~~((in the package,))~~ of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ~~((must be included in))~~ such as a measuring cap or dropper with the package ~~((with))~~ containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device. ~~((A measuring cap or dropper must be included in the package with the marijuana infused liquid edible product.~~

~~(8)~~

~~(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.~~

~~(10))~~ (ii) **Marijuana concentrates.** Marijuana concentrates must be packaged:

(A) In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or

(B) Plastic four mil or greater in thickness, heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.

## (2) **Labeling requirements.**

(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:

(i) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(ii) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

~~((11) All marijuana and marijuana products when sold at retail must include accompanying material that is attached to the package or is given separately to the consumer containing the following warnings:~~

~~(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";~~

~~(b) "There may be health risks associated with consumption of this product";~~

~~(c) "Should not be used by women that are pregnant or breast feeding";~~

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

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

~~(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.~~

~~(12))~~ (iii) All information, warning statements, and language required in this section must not be covered or obscured in any way.

(iv) Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:

~~((a))~~ (A) The business or trade name and the ~~((sixteen))~~ nine digit Washington state unified business identifier (UBI) number of the licensees that produced ~~((,))~~ and processed ~~((and sold))~~ the marijuana or marijuana products ~~((. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label))~~;

~~((b) Sixteen digit inventory ID number assigned))~~ (B) The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;

~~((e))~~ (C) If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;

(D) Net weight in ounces and grams or volume as ~~((appropriate;~~

~~(d) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to infused products; and~~

~~(e) If solvents were used, statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.~~

~~(f) Warnings that state: "This product has intoxicating effects and may be habit forming";~~

~~(g) Statement that "This product may be unlawful outside of Washington state";~~

~~(h) The WSLCB may create a logo that must be placed on all usable marijuana and marijuana infused products.~~

**(13) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing usable marijuana, or packaged marijuana mix sold at retail must include:**

~~(a) Concentration of THC ~~(( ))~~ applicable;~~

(E) THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A ~~((+))~~ and CBD ~~((+))~~ concentration (cannabidiol) listed as total CBD and activated CBD-A ~~((+))~~;

(v) Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:

(A) Is false or misleading;

(B) Promotes over consumption;

(C) Represents the use of marijuana has curative or therapeutic effects;

(D) Depicts a child or other person under legal age consuming marijuana, or includes:

(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or

(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.

~~(b) ~~((Date of harvest.~~~~

**(14)) Standard warnings required on all labels.** The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way.

(i) "Warning - May be habit forming";  
(ii) "Unlawful outside Washington State";  
(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and  
(iv) The marijuana universal symbol as provided in WAC 314-55-106.

(c) **Additional product-specific labeling requirements.** In addition to the labeling requirements in subsection ~~((10))~~ (3)(a) and (b) of this section, ~~((labels affixed to the container or package containing marijuana-infused products meant to be eaten or swallowed sold at retail must include:~~

~~(a) Date manufactured;~~

~~(b) Best by date;~~

~~(e)) the following product-specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:~~

(i) **Usable marijuana, including marijuana mix.** The statement "Smoking is hazardous to your health."

(ii) **Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.**

(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and

(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(iii) **Marijuana-infused products** (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).

(A) Serving size and the number of servings contained within the unit;

~~((d) Total milligrams of active THC, or Delta 9 and total milligrams of active CBD;~~

~~(e)) (B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;~~

~~((f) "Caution: When eaten or swallowed, the)) (C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and~~

(D) The following sentence: "CAUTION: Intoxicating effects ((of this drug)) may be delayed by ((two or more)) 2+ hours."

~~((15) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused extract for inhalation, or infused marijuana mix sold at retail must include:~~

~~(a) Date manufactured;~~

~~(b) Best by date;~~

~~(c) Concentration of THC (total Delta 9 and Delta 9 THC A) and CBD (total CBD and activated CBD A).~~

~~(16) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana topicals sold at retail must include:~~

~~(a) Date manufactured;~~

~~(b) Best by date;~~

~~(c) Total milligrams of active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.~~

~~(17))~~ (iv) **Marijuana-infused products for topical application.**

(A) The statement "DO NOT EAT" in bold, capital letters; and

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(d) **Permitted optional information that may be included on labels.**

(i) Harvest date, "best by" date, and manufactured dates are optional information that may be placed on labels.

(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:

((a)) (A) The producer or processor has test results from a certified third-party lab to support the claim; and

((b)) (B) The lab results are made available to the consumer upon request.

(3) **Accompanying materials.** The following accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products at retail. A producer or processor may provide this information through an internet link, web address, or QR code on the product label so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.

A statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the usable marijuana or the base marijuana used to create the concentrate or the extract added to infused products.

(4) **Upon request materials.** Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.

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

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like or action font;

(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;

(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;

(v) Symbols or celebrities that are commonly used to market products to minors;

(vi) Images of minors; or

(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.

**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))~~ for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("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+))~~ (c) 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+))~~ the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

~~((+a+))~~ (i) Must meet all requirements of ~~((subsection (1)))~~ subsection (a) and (b) of this ((section)) subsection; and

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

(2) All marijuana products sold at retail must be labeled on the principal display panel or front of the product package with the marijuana universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the WSLCB. The digital file for the universal symbol is available on the WSLCB's web site.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains marijuana, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal 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; and

(c) Licensees may download the digital universal symbol from the WSLCB's web site and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

(i) Must meet all requirements of this section; and

(ii) 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**

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**Date:** February 7, 2018

**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 packaging and labeling.

The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group as well as through consumer surveys.

### **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 February 7, 2018, and is attached to this order.

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

January 11, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
February 7, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
March 21, 2018	Public Hearing
March 21, 2018	End of written comment period
April 4, 2018	Board is asked to adopt rules

April 4, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
April 4, 2018	Agency files adopted rules with the Code Reviser (CR 103)
April 4, 2019	Rules are effective. The WSLCB is proposing a delayed effective date for these rules

X Approve

\_\_\_\_\_ Disapprove

Jane Rushford  
Jane Rushford, Chair

2-7-18  
Date

X Approve

\_\_\_\_\_ Disapprove

Ollie Garrett  
Ollie Garrett, Board Member

2-7-18  
Date

\_\_\_\_\_ Approve

\_\_\_\_\_ Disapprove

NOT PRESENT  
Russ Hauge, Board Member

\_\_\_\_\_  
Date

Attachment: Issue Paper

## **Issue Paper**

# **Marijuana Retail License Forfeiture Rules**

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

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## **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) for a new section in Chapter 314-55 WAC for marijuana retail license forfeitures as required by the passage of ESSB 5131 during the 2017 Legislative Session.

## **Why is rule making necessary?**

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- The WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

Rulemaking is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process the WSLCB will use for retail license forfeitures.

This proposed rulemaking is part of a larger rulemaking effort to create and amend rules as needed for 2017 marijuana legislation. A separate CR-102 filing will propose other rule changes needed resulting from 2017 marijuana legislation.

## **What changes are being proposed?**

### **New Section. WAC 314-55-055, Marijuana retailer license forfeiture.**

This new section in chapter 314-55 WAC details the process that the WSLCB will use in carrying out marijuana retail license forfeitures as directed by ESSB 5131 and codified in RCW 69.50.325. A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after nine months of issuance of the license or April 23, 2018, whichever is later. The

following criteria is included in the proposed rule to determine whether a marijuana retail license is fully operational:

- The business must be open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;
- Posts business hours outside of the premise in the public view; and
- Reports monthly sales from the sale of marijuana products and pays applicable taxes.

The above criteria must be met for a minimum of 20 consecutive weeks within a nine month period for the business to be considered fully operational and open to the public.

A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

- The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or
- The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW.



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: February 07, 2018

TIME: 11:23 AM

WSR 18-04-114

**Agency:** Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR** \_\_\_\_\_

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR** 17-15-121 on July 19, 2017 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Proposed new section in chapter 314-55 WAC: WAC 314-55-055, Marijuana retail license forfeiture.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
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March 21, 2018	10:00 a.m.	Washington State Liquor and Cannabis Board, Board Room 3000 Pacific Ave SE Olympia, WA 98504	
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**Date of intended adoption:** On or after April 4, 2018 (Note: This is **NOT** the **effective** date)

### Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator  
Address: 3000 Pacific Ave SE, Olympia, WA 98504  
Email: [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)  
Fax: 360-664-9689  
Other:  
By (date) March 21, 2018

### Assistance for persons with disabilities:

Contact Clariss Nnanabu, ADA Coordinator, Human Resources  
Phone: 360-664-1642  
Fax: 360-664-9689  
TTY: 7-1-1 or 1-800-833-6388  
Email: [Clariss.Nnanabu@lcb.wa.gov](mailto:Clariss.Nnanabu@lcb.wa.gov)  
Other:  
By (date) March 16, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This proposed new WAC section in chapter 314-55 WAC details the process and criteria that the WSLBC will use to carry out retail license forfeitures as required under RCW 69.50.325. This rulemaking is part of a larger rulemaking effort to implement changes to rules needed due to changes made by the 2017 Legislature. Other rule changes needed due to 2017 changes in statute will be handled under a separate CR-102 filing.

<b>Reasons supporting proposal:</b> The Legislature passed ESSB 5131 during the 2017 legislative session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions: <ul style="list-style-type: none"> <li>No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and</li> <li>The WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.</li> </ul> Rulemaking is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process the WSLCB will use for retail license forfeitures.			
<b>Statutory authority for adoption:</b> RCW 69.50.325, 69.50.342, and 69.50.345			
<b>Statute being implemented:</b>			
<b>Is rule necessary because of a:</b> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>           Federal Law?            Federal Court Decision?            State Court Decision?         </div> <div style="text-align: right;"> <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No         </div> </div> If yes, CITATION:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b>			
<b>Name of proponent:</b> (person or organization) Washington State Liquor and Cannabis Board			<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting: Coordinator	Joanna Eide, Policy and Rules	3000 Pacific Ave SE, Olympia, WA 98504	360-664-1622
Implementation: Director	Rebecca Smith, Licensing	3000 Pacific Ave SE, Olympia, WA 98504	360-664-1615
Enforcement:	Chief Justin Nordhorn	30000 Pacific Ave SE, Olympia, WA 98504	360-664-1726
<b>Is a school district fiscal impact statement required under RCW 28A.305.135?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here: <div style="margin-top: 20px;">           The public may obtain a copy of the school district fiscal impact statement by contacting:           <div style="margin-left: 20px;">             Name:              Address:              Phone:              Fax:              TTY:              Email:              Other:           </div> </div>			
<b>Is a cost-benefit analysis required under RCW 34.05.328?</b>			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: <div style="margin-left: 20px;">           Name:            Address:            Phone:            Fax:            TTY:         </div>			

Email:

Other:

☒ No: Please explain: A cost benefit analysis was not required under RCW 34.05.325 because the subject of proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)  
(Internal government operations)

☒ RCW 34.05.310 (4)(e)  
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)  
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)  
(Set or adjust fees)

☐ RCW 34.05.310 (4)(d)  
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Date:** February 7, 2018

**Name:** Jane Rushford

**Title:** Chair

**Signature:**



## NEW SECTION

### **WAC 314-55-055 Marijuana retailer license forfeiture.**

(1) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after nine months of issuance of the license or April 23, 2018, whichever is later. Fully operational means the business meets the following criteria for at least 20 consecutive weeks within a nine month period:

(a) Is open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;

(b) Posts business hours outside of the premise in the public view; and

(c) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2)(a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

(i) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(ii) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(b) The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under 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 service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501,

or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.



## Washington State Liquor and Cannabis Board

---

**Date:** February 7, 2018

**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 retail license forfeitures.

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance. These requirements were codified in RCW 69.50.325. The Board approved the filing of a CR 101 to initiate permanent rulemaking for 2017 marijuana legislation 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 will be handled under a separate CR-102.

### 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 February 7, 2018, 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)
February 7, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
March 21, 2018	Public Hearing
March 21, 2018	End of written comment period

April 4, 2018	Board is asked to adopt rules
April 4, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
April 4, 2018	Agency files adopted rules with the Code Reviser (CR 103)
May 5, 2018	Rules are effective (31 days after filing)

X Approve

\_\_\_\_\_ Disapprove

  
Jane Rushford, Chair

2-7-18  
Date

X Approve

\_\_\_\_\_ Disapprove

  
Ollie Garrett, Board Member

2-7-2018  
Date

\_\_\_\_\_ Approve

\_\_\_\_\_ Disapprove

NOT PRESENT  
Russ Hauge, Board Member

\_\_\_\_\_  
Date

Attachment: Issue Paper



## Washington State Liquor and Cannabis Board

**Date:** March 21, 2018

**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 supplemental proposed rules (Supplemental CR 102) related to marijuana retail license forfeitures.**

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance. These requirements were codified in RCW 69.50.325. The Board approved the filing of a CR 101 to initiate permanent rulemaking for 2017 marijuana legislation on July 12, 2017. The original CR-102 was filed on February 7, 2018. This supplemental CR-102 filing makes adjustments to the original proposed rules.

### Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on March 21, 2018, 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)
February 7, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
March 21, 2018	Public Hearing
March 21, 2018	End of written comment period
March 21, 2018	Board is asked to approve filing supplemental proposed rules (Supplemental CR-102 filing)



## Washington State Liquor and Cannabis Board

April 4, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
May 2, 2018	Public Hearing
May 2, 2018	End of written comment period
May 16, 2018	Board is asked to adopt rules
May 16, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
April 4, 2018	Agency files adopted rules with the Code Reviser (CR 103)
May 5, 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**

# **Marijuana Retail License Forfeiture Rules**

Date: March 21, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

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## **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file supplemental proposed rules (Supplemental CR 102) for a new section in Chapter 314-55 WAC for marijuana retail license forfeitures as required by the passage of ESSB 5131 during the 2017 Legislative Session.

## **Why is rule making necessary?**

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- The WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

Rulemaking is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process the WSLCB will use for retail license forfeitures.

This proposed rulemaking is part of a larger rulemaking effort to create and amend rules as needed for 2017 marijuana legislation. A separate CR-102 filing will propose other rule changes needed resulting from 2017 marijuana legislation. This supplemental CR-102 makes adjustments to the original proposed rules in the original CR-102 filed on February 7, 2018.

## **What changes are being proposed?**

### **New Section. WAC 314-55-055, Marijuana retailer license forfeiture.**

This new section in chapter 314-55 WAC details the process that the WSLCB will use in carrying out marijuana retail license forfeitures as directed by ESSB 5131 and codified in RCW 69.50.325. A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after 12 months of issuance of the license or November 1, 2018, whichever is longer. The

following criteria is included in the proposed rule to determine whether a marijuana retail license is fully operational:

- The business must be open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;
- Posts business hours outside of the premise in the public view; and
- Reports monthly sales from the sale of marijuana products and pays applicable taxes.

The above criteria must be met for a minimum of 12 consecutive weeks within a 12 month period for the business to be considered fully operational and open to the public.

A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

- The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or
- The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW.

## NEW SECTION

### **WAC 314-55-055 Marijuana retailer license forfeiture.**

(1)(a) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after twelve months of issuance of the license or November 1, 2018, whichever is later. No marijuana retailer's license is subject to forfeiture within the first nine months of issuance.

(b) Fully operational means the business meets the following criteria for at least 12 consecutive weeks within a twelve month period after issuance of the license before or after the effective date of this section:

(i) Is open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;

(ii) Posts business hours outside of the premise in the public view; and

(iii) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2)(a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

(i) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(ii) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(b) The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under 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 service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.



## Liquor and Cannabis Board Revised Interim Policy BIP-03-2018

**Subject:** Temporary suspension of 24-hour “quarantine” for marijuana licensees prior to transferring product

**Effective Date:** March 21, 2018

**Ending Date:** Until Board rescission or upon adoption of rules to implement this policy.

**Approved:**

\_\_\_\_\_  
Jane Rushford, Chair

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Ollie Garrett, Board Member

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Russ Hauge, Board Member

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### Purpose:

This Interim Policy temporarily lifts the requirement that marijuana licensees observe a 24-hour “quarantine” period prior to transfers of products to other licensees. This change is to alleviate difficulties experienced by licensees in transferring product as we continue to implement the new state traceability system. The WSLCB will continue to assess the necessity or advisability of the 24-hour “quarantine” prior to transferring product in the coming months as we adjust to the new traceability system, and will continue looking into the potential removal of this requirement in current rulemaking activities. This adjustment to the original Board Interim Policy clarifies that the removal of the 24-hour mandatory waiting period or “quarantine” prior to transferring product between licensees applies to all transfers. Previously, the Board Interim Policy only made reference to subsection (4)(g) in WAC 314-55-083, when both subsections (4)(g) and (h) were intended to be affected by the Policy.

### Policy Statement

The 24-hour mandatory waiting period or “quarantine” prior to transferring product required under WAC 314-55-083(4)(g) and (h) is hereby suspended until further notice or until rules to implement this change are adopted. Marijuana licensees may transfer product to other licensees while this Interim Policy remains in effect without observing the 24-hour waiting period prior to transfer. All other rules relating to transfers, manifests, and transportation remain in effect and it is the licensee’s responsibility to ensure complete and accurate recordkeeping, including traceability requirements, is maintained.



Washington State  
**Liquor and Cannabis Board**

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**Date:** March 21, 2018

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

**From:** Karen McCall, Agency Rules Coordinator

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

**Subject:** **Approval of final rule (CR 103) to allow private label spirits – WAC 314-12-146**

At the Board meeting on March 21, 2018, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for WAC 314-12-146.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper 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

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

Washington State Liquor and Cannabis Board

## **Issue Paper**

### **Private Label Spirits (WAC 314-12-146)**

Date: March 21, 2018

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to recommend that the Washington State Liquor and Cannabis Board proceed with final rulemaking for private label spirits: WAC 314-12-146.

#### **Why is rule making necessary?**

Rules are needed to clarify the requirements for private label spirits between a distiller, craft distiller, spirit certificate of approval holder, and manufacturer and an on-premises or off-premises spirits retailer.

#### **Public Comment**

One comment was received at the public hearing held on November 29, 2017. Seven written comments were received.

Two comments were received at the public hearing held on March 7, 2018. Four written comments were received.

#### **What changes are being made?**

**New Section. WAC 314-12-146 Private Label Spirits.** Includes the requirements for private label spirits.

NEW SECTION

**WAC 314-12-146 Private label spirits.** Distillers, crafter distillers, spirit certificate of approval holders, and manufacturers of spirits may produce private label spirits for on-premises and off-premises spirits retailers under the following conditions:

(1) There may be no exclusivity between the producer and the retailer for the private label spirit product. The spirit product must be reasonably available to all spirits retailers licensed to sell spirits;

(2) A copy of the contract between the producer and the spirits retailer for all private label spirits products must be available to the board for inspection; and

(3) The distiller, craft distiller, spirit certificate of approval holder, or manufacturer of spirits must submit a TTB certificate of label approval for each private label produced to the board for review.



Washington State  
**Liquor and Cannabis Board**

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**Date:** March 21, 2018

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

**From:** Karen McCall, Agency Rules Coordinator

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

**Subject:** **Approval of final rules (CR 103) to revise WAC 314-11-025 What are the forms of acceptable identification?**

At the board meeting on March 21, 2018, the rules coordinator requests that the Liquor and Cannabis Board approve the final rule (CR 103) to revise WAC 314-11-025.

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

If approved, the rules coordinator will send an explanation of the rulemaking 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
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: Issue Paper

## **Issue Paper**

### **Acceptable forms of ID**

Date: March 21, 2018

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to request the Board to adopt the final rule (CR 103) to revise WAC 314-11-025 What are the forms of acceptable identification?

#### **Why is rule making necessary?**

A petition for rulemaking was submitted by a private citizen requesting the board revise WAC 314-11-025 to allow NEXUS cards and passport cards to be acceptable forms of identification for purchasing alcohol.

#### **Public Comment**

No comments were received at the public hearing held March 7, 2018. No written comments were received.

#### **What changes are being made?**

**Amended Section. WAC 314-11-025 What are the forms of acceptable identification?** Added the NEXUS card and passport card to the list of acceptable forms of identification to verify a person's age.

**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, passport card, NEXUS card;

(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.