

Issue Paper

Marijuana Retail License Forfeiture Rules

Date: April 4, 2018

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 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.

If the underlying condition exempting a marijuana retail license from forfeiture under the rule is removed, then the twelve month timeframe to become fully operational and open to the public requirement under the rule will begin from the time the condition exempting the retail license from forfeiture is removed. This language is added to ensure even application of the license forfeiture provisions.

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: April 04, 2018

TIME: 11:14 AM

WSR 18-08-093

Agency: Washington State Liquor and Cannabis Board

☐ Original Notice

☒ Supplemental Notice to WSR 18-04-114

☐ 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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May 16, 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 May 30, 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
Fax: 360-664-9689
Other:
By (date) May 16, 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
Other:
By (date) May 11, 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. This supplemental CR-102 makes adjustments to the original proposed rules and are summarized as follows:

- A retail licensee must be open and operational within 12 months of license issuance or November 1, 2018, whichever is longer.

- Fully operational means the business must be open a minimum of 5 hours per day between 8:00 a.m. and 12:00 midnight, 3 days per week, post business hours outside the premises, and report monthly sales and pay applicable taxes for at least 12 consecutive weeks.

Exceptions for forfeiture are included for businesses that are unable to open due city, town, or county actions, including ordinances, zoning, permitting, or bans/moratoria, or for other reasons outside the licensee's control on a case by case basis determined by the Board. If the condition providing an exemption to forfeiture is removed, a retail licensee has 12 months from the date of its removal to become fully open and operational. Other provisions relating to documentation and hearing rights remain unchanged from the original proposal.

Reasons supporting proposal: 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.

Statutory authority for adoption: RCW 69.50.325, 69.50.342, and 69.50.345

Statute being implemented: RCW 69.50.325

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

	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

Is a school district fiscal impact statement required under RCW 28A.305.135?

☐ Yes ☒ 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:

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

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: April 4, 2018	Signature: 
Name: Jane Rushford	
Title: Chair	

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 twelve 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 a.m. 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. If the underlying condition exempting a marijuana retail license from forfeiture under subsection (2)(a) or (b) of this section is removed, then the twelve-month time frame to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(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.

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 twelve 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 a.m. 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. If the

underlying condition exempting a marijuana retail license from forfeiture under subsection (2)(a) or (b) of this section is removed, then the twelve month timeframe to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(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.

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Washington State
Liquor and Cannabis Board

Date: April 4, 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 approved filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser published notice, LCB sent 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 approve filing supplemental proposed rules (Supplemental CR-102 filing)
April 18, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list



Washington State
Liquor and Cannabis Board

May 16, 2018	Public Hearing
May 16, 2018	End of written comment period
May 30, 2018	Board is asked to adopt rules
May 30, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
May 30, 2018	Agency files adopted rules with the Code Reviser (CR 103)
July 1, 2018	Rules are effective (31 days after filing)

X Approve

_____ Disapprove


Jane Rushford, Chair

4-4-18
Date

X Approve

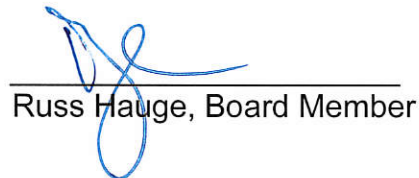
_____ Disapprove


Ollie Garrett, Board Member

4-4-18
Date

X Approve

_____ Disapprove


Russ Hauge, Board Member

4/4/18
Date

Attachment: Issue Paper

Issue Paper

Mini Spirit Bottles

Date: April 4, 2018

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to address the placement and storage of mini spirit bottles in stores frequented by minors.

Why is rule making necessary?

The board has received concerns regarding the placement of mini spirits bottles in stores that minors frequent. This rulemaking will address those concerns.

What changes are being made?

Amended Section. WAC 314-02-107 What are the requirements for a spirits retail license? Added language to clarify the placement and storage of mini spirit bottles in stores frequented by minors.

WAC 314-02-107 What are the requirements for a spirits retail license? (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2)(a) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(b) A grocery store or a specialty shop licensee that adds a spirits retail liquor license must display bottled spirits fifty milliliters or less in size offered to customers for off-premises consumption in a secure manner so a licensee or employee of the licensee must unlock or otherwise access the spirits for a customer before the customer purchases the spirits.

(i) The display of bottled spirits fifty milliliters or less in size applies whether a bottle is displayed or sold individually or in a package with other bottled spirits fifty milliliters or less in size.

(ii) Former state or contract stores, or other spirit retail stores with more than fifty percent of their sales in alcohol do not need to secure bottled spirits fifty milliliters or less.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.