



Washington State  
**Liquor and Cannabis Board**

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**Date:** August 8, 2018

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

**From:** Janette Benham, Policy and Rules Coordinator

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

**Subject:** **Approval for filing a pre-proposal statement of inquiry (CR 101) to revise chapter 314-02 WAC and chapter 314-03 WAC to address barriers and designation of areas of liquor licensed establishments where minors are not allowed**

This rulemaking is the result of a petition for rulemaking submitted by Benjamin Humphrey, Heliotrope Architects. Mr. Humphrey requested the Board revise rules to remove the 42 inch barrier requirement in spirits, beer, and wine restaurants.

**Process**

The Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rule was presented at the Board meeting on August 8, 2018, and is attached to this order.

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

August 8, 2018	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
September 5, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
October 17, 2018	End of written comment period
October 31, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
November 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
December 12, 2018	Public Hearing held
December 12, 2018	End of written comment period
December 26, 2018	Board is asked to adopt rules

December 26, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
December 26, 2018	Agency files adopted rules with the Code Reviser (CR 103)
January 26, 2019	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

Washington State Liquor and Cannabis Board

## **Issue Paper**

# **Barrier Requirements for Liquor Licensed Establishments**

Date: August 8, 2018

Presented by: Janette Benham, 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 the first stage of rulemaking (CR 101) to revise rules regarding barriers in liquor licensed establishments. The rules will also address designation of areas where minors are not allowed.

### **Why is rulemaking necessary?**

A petition for rulemaking was submitted by Benjamin Humphrey, Heliotrope Architects, requesting the Board revise rules to remove the 42 inch barrier requirement. After discussion, the Board approved rulemaking to revise barrier requirements.

### **Background**

Licensees have expressed concerns regarding barrier requirements for liquor licensed establishments. The topic of barriers and how to clarify ways in which licensees can prevent minors from consuming alcohol or entering restricted areas has historically been a high profile issue. The requirements cause confusion among applicants and licensees. Many industry members support removing the 42 inch barrier requirement and exploring different options.

### **Process**

The rulemaking process begins by announcing LCB's intent to add and make changes to existing rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary rule changes. At the CR 101 stage of the process, no proposed language is offered. The public may comment on the subject of this rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rulemaking process.



Washington State  
**Liquor and Cannabis Board**

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**Date:** August 8, 2018

**To:** Jane Rushford, Board Chair  
 Ollie Garrett, Board Member  
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**From:** Janette Benham, Policy and Rules Coordinator

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

**Subject:** **Approval for filing proposed rules (CR 102) to implement HB 2517 which passed during the 2018 legislative session**

The proposed rules implement House Bill 2517, which passed during the 2018 legislative session. The bill requires WSLCB to adopt rules to implement a schedule of penalties for a licensed alcohol manufacturer who has committed a violation as part of the licensee’s ancillary activities.

**Process**

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on August 8, 2018, and is attached to this order.

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

August 8, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
September 5, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
October 3, 2018	Public Hearing held
October 3, 2018	End of written comment period
October 17, 2018	Board is asked to adopt rules
October 17, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
October 17, 2018	Agency files adopted rules with the Code Reviser (CR 103)
November 10, 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**

# **2018 Liquor Legislation – House Bill 2517**

Date: August 8, 2018

Presented by: Janette Benham, 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) to implement HB 2517 which passed during the 2018 legislative session. The rules revisions also provide clarifying and technical updates. The rules provide direction regarding schedules of penalties for licensees who have manufacturing licenses and participate in ancillary activities. Ancillary activities are defined as activities involving the public, and could include other retail licenses, permits, privileges, endorsements, and serving samples. The schedules of penalties for ancillary violations must ensure that licensees will not have their manufacturing license suspended for ancillary activity violations.

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

Implementation of HB 2517 needs to be done through rulemaking. Additional changes were made to the rules to correct references to the WSLCB and provide clarification.

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

**WAC 314-29-003, WAC 314-29-010, WAC 314-29-020, and WAC 314-29-040:** These sections were amended to correct references to the WSLCB and make technical changes to update and clarify rules language.

**WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule?** This section was amended to add the definition of ancillary activities and correct references to the WSLCB. The amendment clarifies that the schedules of penalties already established in rule for ancillary activity violations will apply, but will not affect a licensee's underlying manufacturing license. The amendment also clarifies that if violations are not part of ancillary activities, the schedules of penalties already established in rule will apply to the manufacturing license violations and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

**WAC 314-29-003 Purpose.** The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or permit holder receives an administrative violation notice alleging a violation of a liquor (~~control~~) and cannabis board statute or regulation.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?**

(1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

**(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect. After twenty days and up to thirty days from the date of the administrative violation notice, and if the violation includes a monetary penalty, the licensee may pay a twenty-five percent fee in addition to the recommended penalty in lieu of suspension.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

**(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

**WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule?** (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline what penalty a liquor licensee can expect if a licensee or employee violates a liquor (~~control~~) and cannabis board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive. For purposes of this section, ancillary activities are defined as activities an alcohol manufacturer participates in and include all activities, licenses, and privileges involving the public, such as serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license, or serving alcohol with a special occasion license.

(2) Penalties for violations by liquor licensees or employees are broken down into (~~four~~) five categories:

(a) Group One—Public safety violations, WAC 314-29-020.

(b) Group Two—Regulatory violations, WAC 314-29-025.

(c) Group Three—License violations, WAC 314-29-030.

(d) Group Four—Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(e) Group Five—Public safety violations for sports entertainment facility licenses, WAC 314-29-038.



(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor (~~(control)~~) and cannabis board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension during a settlement conference as outlined in WAC 314-29-010(3).

<b>(a) Mitigating circumstances</b>	<b>(b) Aggravating circumstances</b>
<p>Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>• Having a signed acknowledgment of the business' alcohol policy on file for each employee;</li> <li>• Having an employee training plan that includes annual training on liquor laws.</li> </ul>	<p>Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of a liquor license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>• Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor (<del>(control)</del>) and cannabis board officer, or when people have sustained injuries;</li> <li>• Not checking to ensure employees are of legal age or have appropriate work permits.</li> </ul>
<p>(c) In addition to the examples in (a) and (b) of this subsection, the liquor (<del>(control)</del>) and cannabis board will provide and maintain a list of business practices for reference as examples where business policies and/or practices may influence mitigating and/or aggravating circumstances. The established list will not be all inclusive for determining mitigating and/or aggravating circumstances, and may be modified by the liquor (<del>(control)</del>) and cannabis board. The list shall be accessible to all stakeholders and the general public via the internet.</p>	

(5) Ancillary activity violations:

(a) When a violation or violations are part of ancillary activities, all ancillary activities including those at the manufacturing facility or associated locations involving the public will be subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038. When violations are part of ancillary activities, the manufacturing license will not be suspended, revoked, or canceled.

(b) When a violation or violations are not part of ancillary activities, the manufacturing license is subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038 and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

**WAC 314-29-020 Group 1 violations against public safety.** (1) Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor (~~(control)~~) and cannabis board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a

week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<p><b>Violations involving minors:</b></p> <p><b>Sale or service to minor:</b> Sale or service of alcohol to a person under 21 years of age.</p> <p><b>Minor frequenting</b> a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150</p>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<p><b>Sale or service to apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150</p>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<p><b>Conduct violations:</b></p> <p><b>Disorderly conduct</b> by licensee or employee, or permitting on premises.</p> <p><b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty.</p> <p><b>Criminal conduct:</b> Permitting or engaging in criminal conduct. WAC 314-11-015</p>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<p><b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.</p>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<p><b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090</p>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<p><b>Condition of suspension violation:</b> Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040</p>	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

**WAC 314-29-040 Information about liquor license suspensions.**

(1) On the date a liquor license suspension goes into effect, a liquor (~~control agent~~) and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed

premises. This notice will state that the license has been suspended by order of the liquor (~~control~~) and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable liquor laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor (~~control~~) and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

(a) A retail liquor licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.

(b) A nonretail licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.

(c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.



**Date:** August 8, 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  
Pat Kohler, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Kendra Hodgson, Marijuana Examiners Unit

**Subject:** **Approval for filing a pre-proposal statement of inquiry (CR 101) for Quality Assurance Testing and Products Requirements.**

In this rulemaking, the WSLCB will consider the following topics for potential rulemaking changes in chapter 314-55 WAC:

- Lot and batch sizes;
- Fields of testing and pass/fail level adjustments;
- Potency testing requirements;
- Pesticide testing requirements for all cannabis products;
- Heavy metals testing requirements;
- Sample deduction requirements;
- General testing rule adjustments;
- Product, THC serving limits, and packaging requirements; and
- Other related rule changes that may be necessary or advisable.

**Process**

The Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rule was presented at the Board meeting on August 8, 2018, and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process, subject to change, is outlined below:

August 8, 2018	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
October 24, 2018	End of initial written comment period
October 31, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)

November 28, 2018	Public Hearing held
November 28, 2018	End of written comment period
December 12, 2018	Board is asked to adopt rules
December 12, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
December 12, 2018	Agency files adopted rules with the Code Reviser (CR 103)
January 13, 2019	Rules are effective (31 days after filing)*

\*Unless otherwise provided by the Board.

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Jane Rushford, Chair      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Ollie Garrett, Board Member      Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Russ Hauge, Board Member      Date

Attachment: Issue Paper

## **Issue Paper**

# **Quality Assurance Testing and Products Requirements.**

Date: August 8, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

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## **Description of the Issue**

This Issue Paper requests approval from the Board to file the first stage of rulemaking (CR 101) for changes to rules in chapter 314-55 WAC regarding quality assurance testing and products requirements.

In this rulemaking, the WSLCB will consider the following topics for potential rulemaking changes:

- Lot and batch sizes;
- Fields of testing and pass/fail level adjustments;
- Potency testing requirements;
- Pesticide testing requirements for all cannabis products;
- Heavy metals testing requirements;
- Sample deduction requirements;
- General testing rule adjustments;
- Product, THC serving limits, and packaging requirements; and
- Other related rule changes that may be necessary or advisable.

The WSLCB has been in discussions with the Washington Department of Health (DOH) regarding ways in which our respective rules can be better synced to encourage testing efficiencies and remove existing barriers that may exist to the availability of compliant products. The WSLCB has also been in discussions with members of the industry and medical marijuana patients about testing requirements and general product availability. Additionally, a review of testing requirements is consistent with the previous rule changes the WSLCB made in August 2017 regarding quality assurance testing and lab rules. During that rulemaking project and the work group that preceded it, the WSLCB stated that it would review testing and lab rules over the next year to determine whether additional changes may be necessary or advisable.

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

Rulemaking is necessary to make further adjustments to rules in an effort to seek more alignment with DOH's Compliant Products Rules (chapter 246-70 WAC) and to take the next incremental step in testing requirements for cannabis in Washington. These changes will seek to increase efficiencies in testing adult-use and compliant products, as well as increase the availability of compliant products or products of a similar nature and quality of testing. Requests from the

industry have also been received regarding testing requirements, and changes in testing requirements in other states have prompted further review of WSLCB rules for potential adjustment. Additionally, the WSLCB has heard from the medical marijuana patient community that they would like to see additional product types or levels of potency that are not currently supported by the regulatory structure. For these reasons, changes to products, serving amounts in packaging, and other related requirements may be considered as part of this rulemaking.

## **Process**

The rule making process begins by announcing WSLCB's intent to add and make changes to existing rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary rule changes. At the CR 101 stage of the rulemaking process, no proposed language is offered. The public may comment on the subject of this rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process.