



Washington State  
**Liquor and Cannabis Board**

---

**Date:** July 7, 2021

**To:** David Postman, Board Chair  
Ollie Garrett, Board Member  
Russ Hauge, Board Member

**From:** Kathy Hoffman, Policy and Rules Manager

**Copy:** Rick Garza, Agency Director  
Toni Hood, Deputy Director  
Justin Nordhorn, Director of Policy and External Affairs  
Becky Smith, Licensing Director  
Chandra Brady, Director of Education and Enforcement

**Subject:** Request for approval of final rules (CR 103) regarding amendment to WAC 314-55-075 – Marijuana producer license – Privileges, requirements and fees.

The Policy and Rules Manager requests that the Board adopt the final rules, and approve the CR 103 to expand licensed Tier 1 plant canopy by amending WAC 314-55-075.

The Board has been briefed on the rule development background and public comment received for this rule making project. A CR 103 memorandum, CR 103 form, and rule text are attached.

If approved, the Policy and Rules Manager will send the concise explanatory statement concerning this rulemaking to all persons who provided comments. The Policy and Rules Manager will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, or August 7, 2021

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

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

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

Attachments: CR 103 Memorandum  
Concise Explanatory Statement



## CR 103 Memorandum

### Regarding Amendment to WAC 314-55-075 – Marijuana producer license – Privileges, requirements and fees.

Date: June 23, 2021  
Presented by: Kathy Hoffman, Policy and Rules Manager

---

#### Background

RCW 69.50.345(3) directed the Washington State Liquor and Cannabis Board (WSLCB) to adopt rules establishing the “maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law.” WSLCB implemented this directive in rule as WAC 314-55-075(6), establishing a three-tier system based on the amount of actual square footage designated as plant canopy. Within that system, the Tier 1 category authorizes a producer licensee to designate up to two thousand square feet of their premises as plant canopy.

Rules related to canopy assure that a single business is prohibited from producing beyond a certain point within set boundaries for the three tiers of production. The number of production licenses for an individual business is limited to maintain production boundaries for individual businesses. Thus, the three tiers of production provide defined spaces for businesses of different sizes.

The complete background, including market analysis, for this project is extensive, and explained more fully Attachment A, CR 102 Memorandum.

#### Rule Necessity

These rules are needed because Tier 1 licensees have experienced business sustainability and viability challenges based on canopy space restrictions. The option to expand production capacity is anticipated to support Tier 1 producer viability and sustainability in the competitive Washington State cannabis market.

#### Description of Rule Changes

**Amended Subsection. WAC 314-55-075(6)(a):** Increases Tier 1 square footage designated as canopy from up to two thousand square feet to up to four thousand square feet.

**Amended Subsection. WAC 314-55-075(6)(b):** Modifies Tier 2 square footage designated as canopy from two thousand square feet up to ten thousand square feet, to four thousand square feet up to ten thousand square feet.

**Variance between proposed rule (CR102) and final rule:**

There is no variance between the proposed rule and the final rule.

**Rule Implementation**

Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide information and training on request.

Promoting and Assisting Voluntary Compliance

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions, and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule have will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing WSLCB Staff

Several WSLCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate;

- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

### **Rule Effectiveness Evaluation**

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.

### **Attachments:**

Attachment A: CR 102 Memorandum

Attachment B: Final Rules

Attachment C: Concise Explanatory Statement



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

### CR-103P (December 2017) (Implements RCW 34.05.360)

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

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** WAC 314-55-075 – Marijuana [Cannabis] producer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted rule amendments to expand the plant canopy square footage allowed for licensed Tier 1 marijuana [cannabis] producers.

**Citation of rules affected by this order:**

New: \_\_\_\_\_  
 Repealed: \_\_\_\_\_  
 Amended: WAC 314-55-075  
 Suspended: \_\_\_\_\_

**Statutory authority for adoption:** RCW 69.50.342; RCW 69.50.345.

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 21-10-040 on April 28, 2021 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Katherine Hoffman  
 Address: 1025 Union Avenue SE, Olympia WA 98501  
 Phone: 360-664-1622  
 Fax: 360-664-3208  
 TTY:  
 Email: rules@lcb.wa.gov  
 Web site: www.lcb.wa.gov  
 Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

**The number of sections adopted on the agency's own initiative:**

New	___	Amended	<u>1</u>	Repealed	___
-----	-----	---------	----------	----------	-----

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	1	Repealed	___

**Date Adopted:** July 7, 2021

**Name:** David Postman

**Title:** Chair

**Signature:**

Place signature here

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-075 Marijuana producer license—Privileges, requirements, and fees.** (1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer may also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees;

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in this chapter; and

(iii) Immature marijuana plants or clones and marijuana seeds to a licensed marijuana researcher under the conditions provided in this chapter.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and



doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. In addition, outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for criminal history checks.

(4) The application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035, in no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than (~~two~~) four thousand square feet;

(b) Tier 2 - (~~Two~~) Four thousand square feet up to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet up to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

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

(11) 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.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-075, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-075, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-075, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-075, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-075, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-075, filed 10/21/13, effective 11/21/13.]



## CR 102 Memorandum

### Regarding Amendment to WAC 314-55-075 – Marijuana producer license – Privileges, requirements and fees.

Date: April 28, 2021  
Presented by: Kathy Hoffman, Policy and Rules Manager

---

#### Background

RCW 69.50.345(3) directed the Washington State Liquor and Cannabis Board (WSLCB) to adopt rules establishing the “maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law.” WSLCB implemented this directive in rule as WAC 314-55-075(6), establishing a three-tier system based on the amount of actual square footage designated as plant canopy. Within that system, the Tier 1 category authorizes a producer licensee to designate up to two thousand square feet of their premises as plant canopy.

Rules related to canopy assure that a single business is prohibited from producing beyond a certain point within set boundaries for the three tiers of production. The number of production licenses for an individual business is limited to maintain production boundaries for individual businesses. Thus, the three tiers of production provide defined spaces for businesses of different sizes.

#### CR 101

In the time since tier limits were established, WSLCB has received requests from medical cannabis patients and segments of the industry to increase the availability of Department of Health (DOH) compliant cannabis product in licensed retail stores. WSLCB also learned that Tier 1 licensees were concerned about business viability based on canopy space restrictions. Recognizing this, WSLCB opted to begin exploring how it could support Tier 1 producers. Initial ideas included, but were not limited to incentivizing the production of DOH compliant product. On December 18, 2019, the Board approved a [Preproposal Statement of Inquiry](#) (CR 101) to open discussion around revisions and new rule sections that would incrementally expand the plant canopy square footage allowed for licensed Tier 1 producers. This approach supported patient access to safe cannabis products in alignment with the stated priorities of [Second Substitute Senate Bill 5052](#) (2015 legislative session), and was aligned with the goals of improving medically-compliant cannabis availability and identifying barriers to small business success described in WSLCB’s [2019 – 2024 Strategic Plan](#).

After the CR101 was filed, and during the 2020 legislative session, [House Bill \(HB\) 2871](#) and its companion [Senate Bill \(SB\) 6603](#) were introduced. The agency request proposals would have granted the smallest producers additional privileges to help them

compete in the highly competitive marketplace as well as create additional access to medical cannabis products. These bills did not progress.

History of Washington State Cannabis Canopy

Early thinking around cannabis production estimated that demand in Washington State could be served by approximately 100 large producers, 100 processors and 350 retailers. After Initiative 502 passed, the Board conducted listening/town hall sessions across the state. One of the prominent themes emerging from these sessions was the request to consider including small businesses in the market to discourage participation in the illicit market. In response, WSLCB made the policy decision to shift focus from larger grows with economy of scale to smaller grows as a way to encourage more participation in the regulated market as a way to curb continued grey and illicit market activity.

Unlike cannabis retailer licenses, there was not a pre-determined cap on producer licenses. Instead, a window for accepting applications was opened, and all applications received during that time were processed. Applicants indicated a preference for one of three tiers that limited the size of their operations. Rules that govern canopy, specifically WAC 314-55-075, were initially promulgated in October 2013, and have been amended several times since then as follows:

WSR	EFFECTIVE DATE	AMENDMENT
<a href="#">14-10-044</a>	May 31, 2014	Expanded production and wholesale activity between licensed producers to include harvest, trim, drying, curing and packaging; expanded sales between licensed producers to include plants, seeds and plant tissues.
<a href="#">15-11-107</a>	June 20, 2015	Expanded the maximum amount of space for cannabis production from two million square feet to eight and one-half million square feet based on marketplace demand and Board approval. (Originally proposed as emergency rule on February 25, 2015 as WSR <a href="#">15-06-029</a> )
<a href="#">15-19-165</a>	September 23, 2015	Emergency rule: Struck language regarding total maximum amount of space for cannabis production; reserved determination for a later date. (Refiled on January 6, 2016 as WSR <a href="#">16-03-001</a> , and on April 6, 2016 as WSR <a href="#">16-08-123</a> )
<a href="#">16-11-110</a>	June 18, 2016	Added requirement that outdoor grow must be physically separated by at least twenty feet from another licensed outdoor grows, and that grows may not share common walls or fences. Permanently struck language regarding total maximum amount of space for cannabis production; reserved determination for a later date (consistent with previous emergency rules).
<a href="#">16-19-102</a>	October 22, 2016	Added allowance for licensed cannabis producers to sell cannabis plants to members of a registered cooperative under the conditions of WAC 314-55-410.
<a href="#">18-22-055</a>	December 1, 2018	Added several allowances, including the sale of immature plants or clones and cannabis seeds to qualifying patients or designated providers, and to licensed cannabis researchers; updated annual license fee; indicated that application window for cannabis producer licenses is closed; added provisions regarding adulteration of usable cannabis; added requirement that cannabis producers must make quality assurance tests available to and processor purchasing product and must label with lot number, UBI number, and product weight.

While rule language concerning the total maximum amount of space for cannabis production was ultimately reserved for a later date, the rules concerning production capacity for each tier have not changed since 2013. Since current rule does not identify

the total maximum amount of space for cannabis production,<sup>1</sup> total licensed canopy is the sum of allowable canopies for all producer licenses issued. This is contrary to the popular belief that total canopy was calculated based on the projected demand with a corresponding number of licenses issued to meet that demand. As a result, WSLCB find that total licensed cannabis canopy and demand are unrelated.

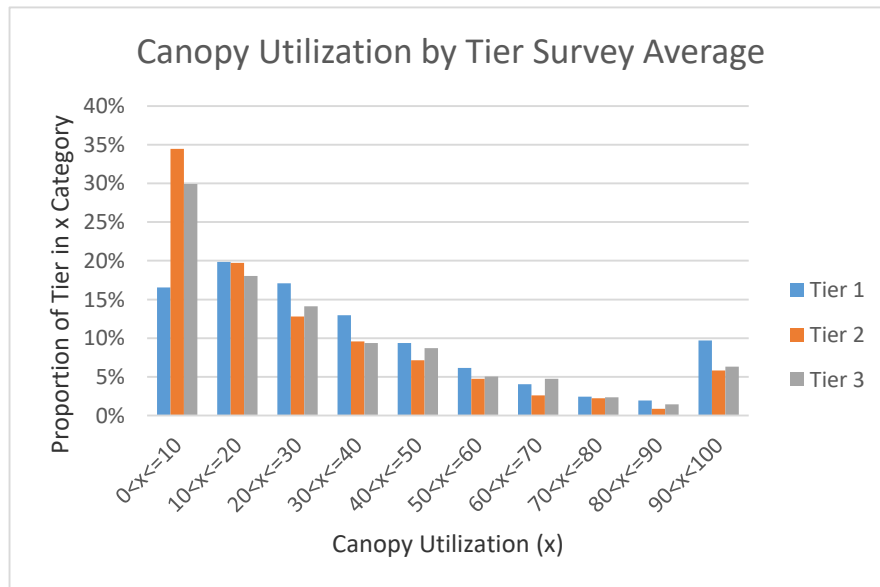
Current Washington State Cannabis Canopy

To better understand current space utilization of the total licensed canopy, a team of analysts was assembled to conduct field assessments of cannabis licensee production operations. Licensed production operations were evaluated twice each from 2017 to 2019 resulting in [two reports](#)<sup>2</sup> on canopy utilization. Data from the field assessments indicated that most licensees had less square footage in cultivation than their maximum allowance.

For the first report, 792 producers were surveyed. The report concluded that approximately 59% of the total licensed canopy was being utilized for production.

For the follow up report, 773 producers were surveyed. This survey found that approximately 52% of licensed canopy was in production.

Combined data from both reports provides a visualization of average canopy utilization by tier:



Source: [https://lcb.wa.gov/marij/canopy\\_report](https://lcb.wa.gov/marij/canopy_report); WAC 314-55-075(6)-tier designation

The drop in production from the first report to the second report suggests alignment with the end of declining prices as supply and demand adjusted to market dynamics. From the inception of the industry in 2014 through the fall of 2019 there was a steady decline in the price of cannabis as the supply chain completely filled out with producers.

<sup>1</sup> WAC 314-55-075(6): The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy.

<sup>2</sup> [https://lcb.wa.gov/marij/canopy\\_report](https://lcb.wa.gov/marij/canopy_report)

Prices found their low point in the fall of 2019. At that time, feedback from producers indicated that some were not able to sell all of their product at any price. However, since that time prices seem to be stabilizing and have risen slightly.

This suggests that total licensed canopy is not a constraining factor in overall production, and existing producers have sufficient unused capacity to meet current and future demand for cannabis.

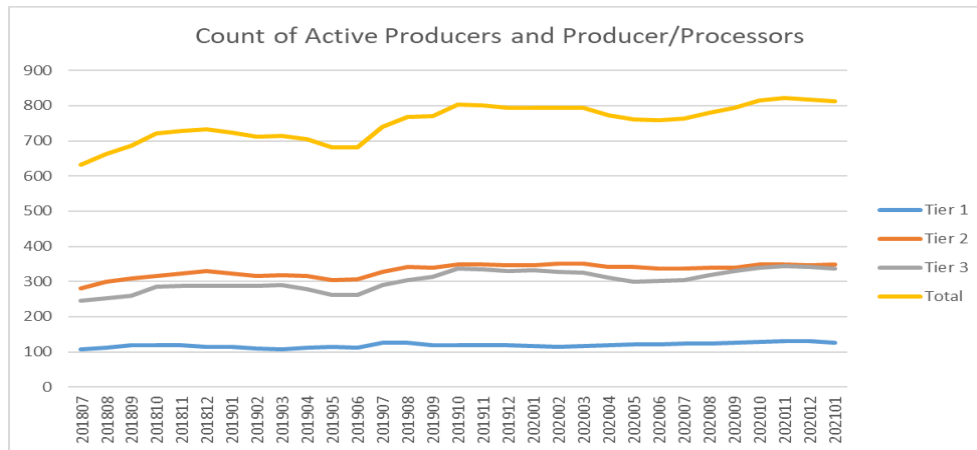
Projected Impact

As of February 2021, the current 1,074 licenses issued for producing cannabis totals 18,040,000 square feet of licensed canopy.

	Total Licensed	Licensed Canopy Min. (Sq. Ft)	Licensed Canopy Max. (Sq. Ft)	Min. Total	Max. Total
Tier 1	175	0	2,000	-	350,000
Tier 2	464	2,000	10,000	928,000	4,640,000
Tier 3	435	10,000	30,000	4,350,000	13,050,000
			<b>Total</b>	<b>5,278,000</b>	<b>18,040,000</b>

Source: WSLCB Licensing Database; WAC 314-55-075(6)-tier designation

Based on current rule,<sup>3</sup> the canopy cap is equivalent to what is currently licensed. WSLCB staff review of data indicated 812 producer licenses are active, suggesting that slightly less than 76% of issued producer licenses are active. For purposes of this analysis, “active” means a producer transferred product by manifest in the previous six months.<sup>4</sup> The chart below provides a visualization of active producers and producer/processors over time.



Source: WSLCB Licensing Database; WSLCB Traceability System; WAC 314-55-075(6)-tier designation

<sup>3</sup> WAC 314-55-075

<sup>4</sup> An “active” license as defined here is an assumption made to allow for meaningful description of reported behavior of marijuana businesses. Since it is an assumption I think it should be stated clearly in anything that makes reference of those charts in order to make them more robust. While the WSLCB licensing system generally identifies an “active” license as an issued and not suspended license, the definition used in association with the data presented in this document is applied solely to narrow down the population of cannabis business holding a valid license to those that were actively using that license.



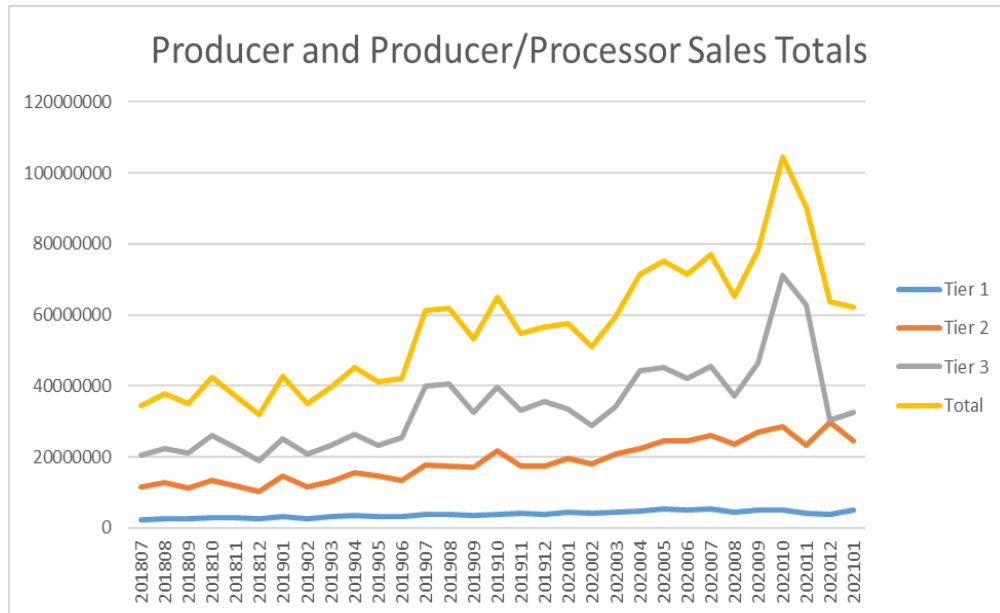
Canopy totals for the 812 licensed, active producers:

	Total Licensed	Licensed Canopy Min. (Sq. Ft)	Licensed Canopy Max. (Sq. Ft)	Min. Total	Max. Total
Tier 1	125	0	2,000	-	250,000
Tier 2	349	2,000	10,000	698,000	3,490,000
Tier 3	338	10,000	30,000	3,380,000	10,140,000
			<b>Total</b>	<b>4,078,000</b>	<b>13,880,000</b>

Source: WSLCB Licensing Database; WAC 314-55-075(6)-tier designation

Tier 1 production canopy represents 1.94% of the total licensed canopy. Active Tier 1 production canopy represents 1.8% of the total licensed active canopy. Even if every active Tier 1 licensed producer added an additional 2,000 square feet of production capacity, Tier 1 licensed canopy would represent only 3.6% of the total active licensed plant canopy. This is the equivalent of adding less than 9 Tier 3 licenses in terms of total additional canopy, although that equivalency would be spread out among 125 businesses, and that is assuming that all active Tier 1 licensees double their current production space. The agency does not expect that this will occur.

Additionally, WSLCB anticipates very little overall market impact as a result of allowing Tier 1 production space expansion. Since 2017, Tier 1 producer and producer/processor sales have remained fairly static. In the table below, it is important to note that association between sales and tier is not an indicator of profit, success, or both. The wholesale relationship presented below reflects volume and wholesale totals by month of producer and producer/processor licensees broken out by producer.



Source: WSLCB Licensing Database; WSLCB Traceability System; WAC 314-55-075(6)-tier designation

For these reasons, WSLCB anticipates that providing licensed Tier 1 cannabis producers with the option to expand growing capacity from 2,000 square feet to 4,000 square feet will have little, if any, impact on the current market. At the same time, doing so will add value to the Tier 1 producer license type, support business viability, creating an opportunity and pathway for Tier 1 licensees to become more competitive in an already competitive market.

## **WSLCB Stakeholder Engagement**

As part of the rule development process, two Listen and Learn sessions were held on June 23, 2020 and June 30, 2020 respectively. The first session was virtually attended by approximately 70 unique users, and the second by over 50 unique users. Consistent with the purpose of statement in the CR 101, these two sessions were designed to engage with the industry and other interested parties to review current rule section WAC 314-55-075, pertaining to marijuana producer license – privileges, requirements, and fees. Very few Tier 1 licensees attended or participated in either discussion. Some Tier 1 licensees communicated to rules staff that it was difficult to attend the sessions because they are small businesses and unable to spare personnel during normal business hours, while others indicated a fear of speaking honestly for fear of reprisal from other licensees.

Common themes that emerged from the Listen and Learn sessions:

- Direct sale of cannabis product to the public, possibly limited exclusively to medically compliant product or limited to sale of product only to medical card holders (requires statute change)
- Expanding canopy could support business viability for smaller producers and processors
- Allowance for licensees to move to Tier 2 or Tier 3 depending on maximum state canopy capacity; some suggesting to removal of tiers altogether
- Base licensing fees upon tier level (requires tiers to be established under statute and related statute change to licensing fees)
- Increase allowable licenses held from three to five, in line with total retail licenses allowed – as proposed by participants, would not necessarily be exclusive to Tier 1 licensees
- Canopy square footage requirements are difficult to uniformly measure and infrequently enforced.

The Policy and Rules unit determined that to best elicit feedback directly from Tier 1 licensees, a targeted survey of those licensees would be necessary. The results of that survey were released on April 2, 2021, and posted to the WSLCB rules website.<sup>5</sup>

## **Rule Necessity**

Tier 1 licensees have experienced business sustainability and viability challenges based on canopy space restrictions. The option to expand production capacity is anticipated to

---

<sup>5</sup> [Tier1\\_Report\\_FINAL\\_Rev 3 Data Attached.pdf \(wa.gov\)](#)

support Tier 1 producer viability and sustainability in the competitive Washington State cannabis market.

**Description of Rule Changes**

**Amended Subsection. WAC 314-55-075(6)(a):** Increases Tier 1 square footage designated as canopy from up to two thousand square feet to up to four thousand square feet.

**Amended Subsection. WAC 314-55-075(6)(b):** Modifies Tier 2 square footage designated as canopy from two thousand square feet up to ten thousand square feet, to four thousand square feet up to ten thousand square feet.

**Attachment:**

Listen and Learn Comment Matrix (June 23, 2020 and June 30, 2020 sessions combined)



## **Notice of Permanent Rules**

**Regarding Amendment to WAC 314-55-075 – Marijuana producer license – Privileges, requirements and fees.**

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to WAC 314-55-075 expanding the plant canopy square footage for licensed Tier 1 marijuana producers.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Kathy Hoffman, Policy and Rules Manager, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

---

### **Background and reasons for adopting these rules:**

RCW 69.50.345(3) directed the Washington State Liquor and Cannabis Board (WSLCB) to adopt rules establishing the “maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law.” WSLCB implemented this directive in rule as WAC 314-55-075(6), establishing a three-tier system based on the amount of actual square footage designated as plant canopy. Within that system, the Tier 1 category authorizes a producer licensee to designate up to two thousand square feet of their premises as plant canopy.

Rules related to canopy assure that a single business is prohibited from producing beyond a certain point within set boundaries for the three tiers of production. The number of production licenses for an individual business is limited to maintain production boundaries for individual businesses. Thus, the three tiers of production provide defined spaces for businesses of different sizes.

The complete background, including market analysis, for this project is extensive, and explained more fully Attachment A, CR 102 Memorandum.

These rules are needed because Tier 1 licensees have experienced business sustainability and viability challenges based on canopy space restrictions. The option to expand production capacity is anticipated to support Tier 1 producer viability and sustainability in the competitive Washington State cannabis market.

## Rulemaking history for this adopted rule:

CR 101 – filed December 18, 2019 as WSR #20-01-171.

CR 102 – filed April 28, 2021 as WSR #21-01-040.

Public hearing held June 9, 2021.

The effective date of these rules is August 7, 2021.

---

## Public comment received on the rule proposal:

There were five written comments received on the rule proposal filed April 28, 2021.

### 1. Email received from Kenny Hubbard, May 11, 2021:

Hopefully you are doing well and staying safe. I just wanted to let you know that I really appreciate how you and your team are helping in addressing the concerns of the tier 1s. The expansion of canopy maybe a lifeline for some of the struggling little farmers. And for that I thank you!!

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

### 2. Email received from Danielle Rosellison, May 25, 2021:

My name is Danielle Rosellison and I am the CEO and Co-Founder of Trail Blazin' Productions, a licensed Tier 2 in Bellingham WA. We have been licensed and active since 2014 and are a majority woman owned company.

I am writing to express my intense disapproval for Tier 1 expansion without more information.

It feels like the WSLCB is moving the goalpost in the middle of the game for one Team but not the other.

The WSR 21-10-040 Memo states `` Unlike cannabis retailer licenses, there was not a predetermined cap on producer licenses.". While this is technically accurate, there was a 2million square feet of canopy limit written into the WAC. However, the LCB blew past that, licensing almost 20million square feet of canopy instead. Those of us (like myself) who rushed to get a location and a license in order to not be shut out of the 2 million square feet of canopy, were ultimately hindered by the LCB's decision to not adhere to their own WAC. And now the LCB is looking to increase that canopy even more.

Those who applied for a Tier 1 or purchased a Tier 1, and are having a difficult time making ends meet, have made a poor business decision. It is not the LCB's job to fix it through policy changes at the expense of those of us who have made better business decisions.

As I said in my email on June 11, 2017, "If a Tier 1 wants to increase their canopy because they are doing so well, the new rules allow them to own up to 3 licenses. This is a better solution than increased canopy for expansion of Tier 1's."

I have included my email from January 21, 2020 (below) to remind you of all the data that suggests that Tier 1 expansion is NOT a good idea. If the goal is to increase Tier 1 profits, they can do that within the existing rules. It is the processing license, not the producing license, that has the potential for exponential income. Furthermore, it's imperative that we separate "Tier 1 canopy expansion" from "DOH product accessibility". As one of a couple farms that have produced DOH certified product for years, I have a lot of expertise in why and why not producers are growing DOH product. In my email below, I go over all those reasons.

Anecdotally, I have spoken to Tier 1 farmers and I always ask the same question, "why don't you utilize your processing license if you want to make more money?" "I don't want to", they say. That's just being bullheaded, in my opinion. Entrepreneurs need to pivot as the market changes, and thus our business plans need to change in order to stay viable. I also ask "have you done your numbers with increased canopy?" and to this day I have never seen any numbers nor have I been convinced that anyone actually did them.

If a tier 1 farmer wants to make more money, they need to factor processing into their business plan, just like the successful Tier 1's, 2's and 3's.

And...just asking...I see two main scenarios that cause me to pause:

1. A tier 1 is growing all they can grow and are successful. Then use that profit to purchase another license or two. No rule change for canopy expansion is necessary.
2. A tier 1 is growing all they can grow and they are not successful. **How, then, if they aren't making ends meet, are they going to afford to expand the canopy?** Doubling canopy means twice as much room (increased rent if not moving altogether), twice as many lights, twice as many environmental controls...that all takes a LOT of money, and with a lack of access to traditional capital this seems like a huge undertaking. Will the LCB pay close attention to all the Tier 1 expansion financials to make sure the money is coming from legitimate sources?

I believe that growing cannabis should be an open market, but that's not the system WA currently has in place. And I understand that increasing Tier 1 production is a "little" thing compared to the overall market. However, I believe it is incredibly unfair to those of us who made good business decisions, and pivoted within the regulatory framework, and ultimately a Tier 1 expansion doesn't fix company profits or the other issues around increasing accessibility to DOH products.

Thank you for your time and I appreciate all that you do to regulate this industry!

(Copy of email from Danielle Rosellison, dated January 21, 2020, copied into email dated May 25, 2021):

Thank you for having the CR101 open to discuss expansion of Tier 1 canopy and increasing the availability of DOH product. Below are my comments on the topic.

**TIER ONE CANOPY EXPANSION**

- There are tier 1’s that do a million dollars a month in sales.
  - T1 P/P sales have risen from a low in Nov 2016 of \$1,967,270 to a high in May 2019 of \$5,086,823 (250% increase in sales) indicating the processing side of that license has exploded up (since canopy is limited)
    - The number of T1 P/P have remained stable at around 80
  - T2 P/P monthly sales have remained under \$20mil/mo. With June 2019 being the high at \$19mil
    - The number of T2 P/P were a high of 277 in June 2017 to low of 212 in June 2018 (24% decrease in producing Tier 2 between 2017 and 2018)
  - T3 P/P monthly sales have widely fluctuated from a high of \$34.7mil in May '19 to a low of \$15.1 in Nov 2016 (June '19 shows an anomaly of \$90.8mil so was not used to average sales)
- Tier 1’s have a processor license. I realize they want to grow more, but growing more does not = more profit. **The processing license is how any/all of us can increase our profit margin.** Think about it...in what agricultural industry do the farmers make the money? They don't. It's always the processors or manufacturers.
  - Buy a license if you want to grow more. Tier 1 = \$10000, Tier 2 = \$65000
  - What do the actual numbers look like if you’re trying to grow canopy? How much for lights, dehu, more square footage, more cameras, etc? Probably close to \$10,000 minimum.... at that price, why not just buy another license and not actually change the rules?
  - If they don’t have money to buy a license, what makes them think they will have the money to expand canopy?
- It is not the LCB’s job to keep businesses afloat. I would argue it is the LCB’s job to make sure that small businesses (once defined) have an opportunity to be successful since the voters voted to approve a system that encouraged small businesses.
- NUMBERS (source topshelfdata):

July 2019	Tier 1 (104)	Tier 2 (275)	Tier 3 (244)
Over \$500,000	2/104 (1.9%)	10/275 (3.6%)	31/244 (12.7%)
Over \$100,000*	16/104 (15.4%)	81/275 (29.5%)	92/244 (37.7%)
Over \$50,000	28/104 (26.9%)	131/275 (47.6%)	131/244 (53.7%)
Over \$20,000	53/104 (51%)	171/275 (62.2%)	168/244 (68.9%)
Over \$10,000	64/104 (61.5%)	202/275 (73.5%)	188/244 (77%)
Under \$10,000	40/104 (38.5%)	73/275 (26.5%)	56/244 (30%)

\*more than TBP’s average

- You can see from the numbers above, even though Tier 1’s have 1/5 the canopy as Tier 2’s, percentage wise, they make about 1/2 as much money. Based on these sales numbers, Tier 1’s are doing better (proportionately) than most Tier 2’s.
- Trail Blazin’ is a T2 license that only has +/-5000 square feet of canopy. We averaged about \$65,000/month in 2018.
- Fairwinds is a T2. I’ve been to their facility. They can’t have more than 3000 of canopy. And they do about \$500000 a month.
- More canopy does not = more profits.



- It is common knowledge that big companies went and bought up all the tier one's a few years ago with the intent of increasing canopy. If they can buy a tier 1 for \$10,000 instead of a Tier 2 for \$60,000 and then just use their lobbyist (who they are already pay) to increase the canopy, They just made \$50,000 and 5x their canopy and earning potential.
- **Tier 1's need to change their business model, not the rules, if they want to increase profit.**

### Medical Product:

- I've heard the LCB make claims that there is no medical product on the market and that's due to testing costs. That is true for some, but it's a very small part of it.
  - WA Bud Co grows 8 strains per harvest so they would have 8 P/HM tests per harvest. That was too expensive for them.
  - Trail Blazin' grow one strain per harvest, so there is only 1 P/HM test per harvest.
    - Most companies DOH costs = \$400
    - Others=\$70
    - Point – DOH testing can be incredibly affordable if you structure your business correctly
- Why does everyone get to call it “medical marijuana” except the people growing and packaging it?
  - The DOH has a website page dedicated to “medical marijuana”
    - <https://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana>
  - The LCB has a website page dedicated to “medical marijuana”
    - <https://lcb.wa.gov/mj2015/medical-mj-faqs>
    - <https://lcb.wa.gov/mmj/med-mj-transition>
    - <http://wslcb.maps.arcgis.com/apps/View/index.html?appid=a84ba123b8d94a65aa03ae573a65c1aa>
  - Retailers get signs that say “medical marijuana”
    - <https://lcb.wa.gov/mjlicense/add-medical-mj-endorsement-to-an-existing-retail-license>
  - P/P can't use the word medical, medical marijuana, mmj, or a green cross. **Why, when we (p/p) do ALL the hard work to make clean product, can't we use the terminology that consumers and patients understand?**
    - I've asked the LCB if I can use the “medical marijuana” logo that the endorsed stores get to (on top of the DOH logo) and I was told no, I would be too confusing to patients. I still do not understand the logic behind the statement.
    - Consumers and budtenders don't know our product is medical cuz we can't say it.
  - DOH logo is ambiguous; no one knows what it means.
    - We are working with the DOH to try and address this, but it takes rule making and thus a solution is at least a year out.
  - People/budtenders think that all product is pesticide tested.
    - Rick was on stage during the EO and made the following statement:  
"Although products are tested, they are only tested for those elements required by the Liquor & Cannabis Board ....and the Department of Health....potency, moisture, pesticides, heavy metals..."

- I understand why he said it, to ease consumer fears. But it adds to consumer and budtender confusion when the LCB is making statements that sound like all regulated product is pesticide tested.
- A better statement may have been “Although regulated products are tested, they are only tested for those elements required. Adult use product is tested for potency and moisture among other things. DOH products, with the DOH logo on them, are additionally tested for pesticides and heavy metals.”
- Medical endorsed stores don’t have to carry medical product.
  - **The EASIEST thing the LCB could do to increase medical product is to require medically endorsed stores to carry medical product.** The LCB has told me that this is already the case. However, without enforcing this, there is no incentive for p/p to grow medical product. Send a memo out to all licensees stating that Medical Endorsed stores are required to carry DOH product and that if they are found at any point to not have DOH product, their medical endorsement will be revoked. We should see an increase in supply as soon as the demand goes up!
- LEAF
  - Medical was an afterthought. We do more testing than anyone else, to ensure consumer safety, and LEAF does NOT understand the process and flow. We spend time with GrowFlow almost every day trying to sort out test results, when we have all the COA’s that say we passed. We just need LEAF to understand!
- Budtender turnover-
  - The last data I saw from Headset stated that the average budtender is employed at a store for 3 months. That’s a lot of turnover. Therefore, if it’s not perfectly clear on the package, that it’s medical and tested for pesticides while nothing else is required to be tested for pesticides, then it’s an uphill battle getting budtenders to know. This is one of the reasons the Alliance has advocated for “NOT TESTED FOR PESTICIDES” to be identified on all products unless pesticide tests for that lot/harvest can be produced.
- Retailers tell us ALL THE TIME that all product is tested for pesticides.
  - So if retailers and consumers think that all product is pesticide tested, then they don’t know or understand the value (increase the demand) for DOH product
- Only giving patients sales tax off isn’t enough. They need the 37% excise tax off (legislative).
  - Help with legislation to remove the excise tax for DOH product for registered patients.
  - It would get more people on the registry and get more p/p to grow medical product
- 30-40% of regulated product has illegal amounts of pesticides.
  - Use the current contract to test concentrate companies.
  - Confidence Analytics experience that more than 50% of concentrates fail pesticide testing.
  - Use the WSDA contract to strategically pesticide test concentrates that are most pervasive on the market. The industry will self-correct...
- None of these by themselves is the straw that will break the camel's back, but all of them together makes ZERO incentive to create DOH product.

**ACTION STEPS:**

- **ACTION STEP: Look at the canopy teams report. Review tier 2's and 3's and see how much canopy they are ACTUALLY using and what their sales are.**
  - Does this proposed rule allow Tier 1's to be larger than current Tier 2 and 3? If so, is that actually helping small, craft cannabis? Or just the people who bought Tier 1's for pennies on the dollar?
  - I would use sales from DOR, NOT LEAF.
- **ACTION STEP: How many licenses aren't active or reporting sales?**
- Can Tier 1's partner up with those licenses to grow more? Seems like a viable solution instead of changing the rules
- **ACTION STEP: What kind of risk is the LCB opening themselves up to if they change the rules now, (moving the goal posts in the middle of the game for a few players) to help some Tier's and not others?**
  - Changing the rules in the middle of the game for participants but not others is unfair and will likely be met with litigation.
  - If you move Tier 1's to the upper end of Tier 2 PLUS direct sales, that disadvantages the Tier 2's and Tier 3's who thought ahead and applied (or purchased) the correct license from the beginning.
  - Logistics of increasing canopy. Most Tier 1's didn't rent/buy a place that accommodated 8,000 of canopy. So they would have to move. And buy more equipment. And pay for a larger space while waiting to be approved for more canopy. By the time they do all that, they could have just bought a different license.
  - The LCB cancelled anyone who applied for more than one license in 2013. But now they are considering allowing those that applied (or bought) the smallest license to grow more? How is that fair? Is the LCB opening themselves up to litigation?
- **ACTION STEP: Allow DOH product to use the word medical marijuana, mmj, green cross, the WSLCB "medcial marijuana" logo.**
- This will increase DOH product sales.
- **ACTION STEP: Send out a memo to all licensees stating that all medically endorsed stores need to carry DOH product and that enforcement will be cracking down on this. If you don't carry DOH product, you will lost your endorsement.**
  - Increase demand, and the supply will increase.

Thank you for your time. I appreciate you and am always available for comments, questions or concerns.

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

The agency notes that the highlighting and bolding of text are original. The agency also notes that Top Shelf data referred to in the email attachment dated January 21, 2020 is more than 18 months old. Updated data was not offered for consideration. With respect to suggestions regarding canopy reports, the agency relied on the canopy reports referenced in these comments to complete the analysis on which these adopted rules are based. Further, the agency did not move forward with concepts connecting Tier 1 canopy with the production of medically compliant product.

While the agency appreciates and honors the strongly held position these comments represent, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**3. Email received from Juddy Rosellison, June 8, 2021:**

To whom it may concern,

I am writing to let you know that I don't think that it is a good idea to expand Tier 1 licenses. I feel this way primarily because it seems like it would be 'moving the goalposts' in the middle of a game, and because I believe it would only really affect very few license holders.

- 1) How many Tier 1 license holders are using their full canopy allotment? It looks like only 10% are using their full allotment according to the chart in the memo. So 10% of 175 Tier 1 license holders amounts to only 17 license holders that *could possibly* benefit from this change?
- 2) How many have the space where they're at to increase to the proposed allotment, and how many would have to find a new location in order to increase their canopy?
- 3) How many have the money to be able to increase their canopy?
- 4) Why don't they buy a Tier 2 or 3 license if they want to increase their canopy? According to the numbers in the memo, there's about 200 licenses that are not 'active'.

Even if they are allowed to grow more cannabis, that doesn't guarantee that they are going to be able to sell it to retailers, which could lead to more diversion from the 502 market.

I can tell you that as I have been 1 of 3 (that I know of) producers that have been providing DOH compliant products (me since March 2017), retailers don't care *at all* about DOH products. So if you think that allowing Tier 1's to sell DOH compliant products is going to help anything, you're sorely mistaken, because I've been trying to get my DOH product onto the shelves for 4 years with very disappointing results. I'd be glad to share my experiences with you if you are interested, as I feel that there's not many people that have my perspective of DOH products.

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

This comment consists largely of questions answered in both the Tier 1 survey and the CR 102 memo. Additionally, the agency did not move forward with concepts connecting Tier 1 canopy with the production of medically compliant product. While the agency appreciates and honors the strongly held position these comments represent, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**4. Email received from Mark Ambler, TiPA, June 8, 2021:**



Tier 1 Producer Association (TiPA)  
4833 Guide Meridian  
Bellingham, Washington 98226  
t1producerassociation@gmail.com

June 8, 2021

Dustin Dickson  
Executive Assistant to the Board  
Washington State Liquor and Cannabis Board (WSLCB)  
dustin.dickson@lcb.wa.gov

**Subject:** Comments for Meeting Scheduled for June 9, 2021 (6/9)

Mr. Dickson,

We have reviewed the agenda<sup>1</sup>. We believe there are a few small typos in some important areas. On pages 4 and 5, the Tables showing Tier levels and data related to canopy, it lists Tier 1s as having a "Max." of 2,000 ft<sup>2</sup>. Tier 1s have a non-inclusive "limit" of 2,000 ft<sup>2</sup>. We recommend an asterisk [2,000\*] with a footnote [\* - limit, not Max.] Here's how the WAC 314-55-075 (6)(a) currently reads (underline added):

*"(a) Tier 1 – Less than two thousand square feet;"*

Also, on page 7, we recommend the following:

*"Amended Subsection. WAC 314-55-075(6)(a): Increases Tier 1 square footage designated as canopy from ~~up to~~ [less than] two thousand square feet to up to four thousand square feet."*

Thank you for the opportunity. I look forward to the meeting to talk more about the potential of this canopy action to support sustainable and steady acceleration of value for licensees, regulators, and the community as a whole.

Regards,

Mark Ambler

TiPA

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

This comment concerns the CR 102 memorandum, and language used in reports that is accurate as to the reports and analysis (referred to in the comment as to pages 4 and 5 of the memorandum). Additionally, a *description* of the rule amendments appears on page 7 of the CR 102 memorandum, rather than the actual, proposed rule text. The relevant proposed rule text reads as follows:

(6) The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 – Less than (~~two~~) four thousand square feet;
- (b) Tier 2 – (~~Two~~) Four thousand square feet up to ten thousand square feet; and

The agency does not intend to amend the CR 102 memorandum because it is a supporting document providing background and support for the rule proposal, rather than the actual, proposed rule text.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**5. Email received from Vicki Christophersen, Washington Cannabusiness Association, June 9, 2021:**

June 9th, 2021

To:  
Kathy Hoffman  
Policy and Rules Manager  
Washington State Liquor and Cannabis Board

From:  
Vicki Christophersen  
Executive Director  
Washington CannaBusiness Association

The Washington CannaBusiness Association (WACA) represents Washington's licensed and regulated cannabis and hemp businesses. As the oldest trade association for cannabis and hemp businesses in the state we are committed to establishing a safe, fully-regulated system that works to keep cannabis out of the hands of children. We appreciate the opportunity to provide written comments on the CR-102 related to Tier One Expansion.

Since 2015 WACA has advocated to allow Tier One farms to expand their canopy beyond the current 2000 square feet limit. Unfortunately, in recent years several Tier One farms have gone out of business, including some of WACA's founding members. We respect the challenges of standing up a regulated system in Washington and remain ready to provide information in any way that will support the WSLCB across the myriad of issues that face the industry.

Today, as expressed in 2015, WACA strongly supports the proposed language in the CR-102 that allows Tier One cannabis producers to expand their canopy from a maximum of 2000 square feet to 4000 square feet. We believe the adjustment will help strengthen opportunities for smaller growers in a very competitive marketplace. We urge the WSLCB to not make further changes and adopt the proposed language as soon as possible.

Respectfully submitted,

*Vicki Christophersen*

Vicki Christophersen  
Executive Director

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**6. Email received from Bethany McMartin, June 9, 2021:**

To Whom It May Concern:

I am submitting my comment on the proposed rule to make amendments to expand the plant canopy square footage allowed for licensed Tier 1 cannabis producers. I would like to provide some insight through my experience in operating a cannabis business over the years as to why I believe the LCB gifting an additional 2,000 sq ft will not solve Tier 1 license holders complaints on being a profitable operation.

My husband and I started in the medical cannabis market and have been in the cannabis industry for 13 years. Market stability has always been difficult as the large amounts of product from outdoor that hits the market every October introduces instability yearly. This is something that experienced growers come to expect and adjust their sales and savings accordingly. There is an additional issue to market stability in I502 and it is an overabundance of canopy available. The only solution I see to addressing the issue of profitability that Tier 1s say they are facing is to have pricing stabilize. In my opinion the only way to stabilize the market is for LCB to start retiring inactive licenses. What I have seen happen to the I502 market is it starts to stabilize, and pricing starts to creep up and then new to the industry people go and buy an inactive license, set up cheap greenhouses or outdoor and over saturate the market and then the price comes back down.

Until inactive licenses of all sizes that are cheap to purchase at \$10k-\$100k are no longer available, we will always see the market bottoming out every two to three years. We bought a Tier 2 for \$60k for reference in 2019. We hold two additional licenses, another Tier 2 and a Tier 3, which we acquired through partnerships over the years that we have since bought our partners out of. That being said, we started out with and indoor 710 sq ft of canopy in 2015 and have organically grown our company through the revenue of sales to the size it is today. Growing 2,000 sq ft and having enough profit to purchase an additional license is eminently doable, even to this day, if you are creative in your branding and work diligently to grow your company.

I do not believe the government should be in the business of being charitable to some licenses and not others, instead I believe the government should manage the entire industry for all participants to thrive. All Tier sizes believe the price is low, all Tier sizes believe that the overabundance of canopy isn't good for stability in the market. By adding additional canopy to the market by gifting Tier 1s 2,000 sq ft of canopy the LCB will only make the market condition worse for everyone. It will only lower the price as the problem with the market is the pricing is too low for 2,000 sq ft to be profitable. The only thing that will now change is that over time 4,000 sq ft will not be enough canopy to be profitable if inactive canopy continues to be available every time the price starts to increase in the market.

By the LCB requiring that inactive licenses be retired or sold in a certain time frame of 1 year(?) it will decrease the value of licenses and give Tier 1s an opportunity to buy a license at a discounted rate. There are so many licenses that are inactive that can easily be referenced through DOR showing no sales activity for years. By retiring inactive licenses the LCB will start to establish market stability and as demand continues to grow the price will increase providing Tier 1 licenses the

ability to be more profitable. Please consider the actual market impact LCB will introduce by increasing canopy for some in an already excessive canopy market.

Kind Regards,  
Bethany McMartin  
BC Labs, Olympus Horticulture

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

## Public Hearing, June 9, 2021:

### Micah Sherman

“For the record my name is Micah Sherman and I am one of the co-owners of Raven, a Tier 2 producer processor in Olympia, and just for context we may have about 4,500 feet of canopy under production at our facility so we’re kind of operating at what would be a similar size, to this, uh, new proposed Tier 1. Uh, the, my initial response to hearing this proposal as the solution for Tier 1’s is there’s an old joke that says, you know, we lose money on every sale but we’re going to make up for it with volume. Um, and that is a little bit like what this solution feels like, um, is that it’s not necessarily a bad thing and I’m not opposed to adding this canopy for Tier 1 licensees, but, um, I would strongly encourage the board to not look at this as a solution to the problems that exist with the Tier 1 license, uh, I don’t think that this is gonna do, um, a lot for very many people, I think it’ll do some small measure of good for a small group of Tier 1 producers, but I think overall the problems that Tier 1 producers are having surviving in this marketplace are, are the same problems that all small cannabis farmers are having and that’s related to market structure, and our opportunities to get our product to market in only one particular way and we’ve all seen the direction that that’s brought the industry overall of a lot of conglomeration, a lot of consolidation, a lot of failed Tier 2 farms, a lot of failed Tier 3 farms, so again, I’m not at all opposed to this, it’s good to bring those farms up to more parity with other operators, but this would be a very small gesture towards a solution that, um, is much bigger and broader than is gonna be able to be dealt with by canopy space alone so I would, um, encourage all to continue to look at that larger situation of how it is the market is structured and continue to look for solutions that are gonna help small farmers, that you know, are gonna basically join me in bein’ um a small farmer that’s strugglin to make it at the same size and I just really don’t think that this is, um, gonna gonna solve it for a lot of people and I would keep workin on this problem in the broader context of where we are. Thanks.”

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.



While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

### **Jim MacCrae**

“Chair Postman, Board, staff, thank you very much for the opportunity to address you. Uh, my name is Jim McCrae, uh, I run a consulting company called Straight Line Analytics, fairly centric on the data produced largely by this agency. Uh, on the Tier 1 expansion, first of all I want to commend staff on a very focused and brief and extremely understandable set of rules changes. It’s so rare, that you know, there’s no cross-referencing or anything like that, you know it’s really elegant, it gets to the point, and it addresses the expansion of the Tier 1s. I think that’s a good thing. I do regret, I think it’s unfortunate, that any reference to the medical, production of medical, that was part of the original discussions about the need for this are not here. I think I understand it, it’s unfortunate, um, you know, if the department of health were more engaged in things we might be able to make more progress along that line. However, it’s a good thing.

I do want to make a couple of comments about the history that’s in the document that was done to prep for this, very good document, very good history, again, thumbs up. Um, some of the wording and some of the subtleties, this often defines history in the future, but I wanted to emphasize that, you know, being there and being part of the process from day one as were many of staff, but the ones that were writing this perhaps were not, the emphasis on having Tier 1s and keeping things fairly small, was not just to keep down the large, organized crime gray market illegal suppliers, it was to give an opportunity, not only for the people who were underground and growing at a small scale, but more to the point, it was to put in place an opportunity for small mom and pop-type businesses to do their thing. Basically, what I think most of us would consider to be craft, you know, somebody who doesn’t have a huge production line producing their goat cheese as craft, that type of thing. So this certainly helps those folks. I do think that there’s a couple of things in the rules, after having commended on simplicity, that maybe should be discussed at least, so that we know what the long-term ramifications might be, if any. And those are looking at the same 314-55-075, you know, (7)(a) and (8) in there still make reference to the Board’s, the agency’s ability to decrease the canopy of licensees under a few conditions, such as them not using 50% of their space, blah blah blah, it’s optional but it’s a power that the Board has. Given the data, I wonder if those are even needed anymore given that by rule the maximum canopy is defined as that which is licensed. It’s kind of an insane back and forth, it’s circular, but that’s, I think (7)(a) and (8) aren’t necessary given that other rule position that what is licensed is what is needed or is allowed.

Um (7)(b), the ability to decrease, to basically force a decrease in canopy, it was interpreted if somebody is not at 50% of their canopy at a tier, that was often interpreted as down-tiering someone if they didn’t hit the minimum threshold. Given some of the data that was shared in that wonderful summary document, you know you’re looking basically at, I’ll just cut to the chase, you know, today Tier 1s represent 179 out of about 1,088 licensees, um that’s as of June 1, 16.5% of the licensees. If the Board were to take a position, using the data that are in this document about how many farms are underutilizing their canopy, you would take, it’s conceivable that if this rule were adopted, the Board could shift it to that there were a total of 702 licenses that are forced into Tier 1 because they are currently, years after being licensed,

not even doing 4,000 feet of canopy. So I just, and if anything else, the rules force a bunch of Tier 2s into Tier 1. Thank you very much, appreciate it.”

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

While the agency appreciates and honors the strongly held position this comment represents, as well as the spirit in which they are offered, the agency does not agree with some of the assumptions on which they are based or the conclusions offered based on those assumptions.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

### **Mark Ambler**

“Mark Ambler, Tier 1 Producers Association. And, um, I’m also a Tier 1 producer for Breeze Trees (unintelligible) owner with my wife for that, um, and what I wanted to say was pretty brief. I feel like this action is going to get us closer to an industry where licensure is available to all people, regardless of physical, societal, or economic status, um, so if you think about it, you know, if you are in a wheelchair, you know, or if society has placed you in a position, uh, maybe together with your economic status, you can’t break into the cannabis industry, um, this gets us closer. And, it, so I think anyone should be able to acquire a license, build their brand, and either pass that on to their children or sell it. You know, that should be across the board. Um, so with this new canopy, what I think we should do is focus on brand value and profit versus revenue. Uh, so everybody’s talking about revenue and, when all these IPOs go it’s all going to be about revenue. But if you talk to a real, non-speculative investment, uh, group or person, they’re gonna wanna know more than just revenue, uh, they wanna know is it profitable, and how valuable is your brand, uh, when we go IPO. So this canopy helps us move on new areas as they open up as well, like non-psychoactive cannabis products, you know, if we want to create something as simple that is, like, clothing, you know, or rope, um, we’re gonna need more canopy for stuff like that. Um, and for example, like last month I was talking to Western Washington, I was talking to them about their research, and their like, okay, we can’t do research with your facility yet, um, but if somebody flips the switch in the federal government it’s going to be a huge little thing, you know, that we need to start developing business models for, things like that. So I talked to the guy and I told him, you’re gonna be one of my first calls, he reciprocated, uh, and so I’m really excited for this moment, you know, this moment in time, now until whenever fed legalization happens, if it happens, I don’t know if anyone’s stiling if it happens, um, and so I’m really, I hope that everybody is as excited for this, I hope you vote yes today, and that’s it, you know, I yield my time, that’s the thought I wanted to get across.”

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

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

There were no changes to the proposed rules.