



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Open Cannabis Processor License Application Window to Allow Existing Licensed Cannabis Producers Apply for a Cannabis Processor License.

Date: January 17, 2023

Presented by: Cassidy West, Policy and Rules Coordinator

Background

On December 2, 2022, Eugene DeMesa, on behalf of Cloud 9 Good Budz, submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests the agency to consider adopting a new rule to open the cannabis processor license application window to allow existing licensed cannabis producers apply to add a cannabis processor license.

In the rule petition, Eugene DeMesa stated:

1. NEW RULE - I am requesting the agency to adopt a new rule.

Open application to all existing I502 producers to apply to add processor license

The subject (or purpose) of this rule is: _____

The rule is needed because: _____
Need to allow existing all I-502 producers to apply to add processor license so I-502 licensees are supported to grow their business. Preserve and support I 502 Licensees that need it.

The new rule would affect the following people or groups: _____
all I-502 producers without processor license, retailers, consumers,

Issue

Whether the Board should initiate the rulemaking process to consider adopting a new rule to open the cannabis processor license application window to existing licensed cannabis producers for the purpose of allowing an existing licensed cannabis producer apply to add a cannabis processor license.

Authority

Laws

RCW 69.50.325(1) establishes a cannabis producer license and gives the board authority to regulate the license, in part, as follows:

“There shall be a cannabis producer’s license regulated by the board and subject to annual renewal. The licensee is authorized to produce: (a) Cannabis for sale at wholesale to cannabis processors and other cannabis producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310.”

RCW 69.50.325(2) establishes a cannabis processor license and gives the board authority to regulate the license, in part, as follows:

“There shall be a cannabis processor’s license to process, package, and label cannabis concentrates, useable cannabis, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers, regulated by the board and subject to annual renewal.”

RCW 69.50.325(3)(a) establishes a cannabis retailer license and gives the board authority to regulate the license, in part, as follows:

“There shall be a cannabis retailer’s license to sell cannabis concentrates, useable cannabis, and cannabis-infused products at retail in retail outlets, regulated by the board and subject to annual renewal.”

RCW 69.50.328 prohibits a licensed cannabis producer and/or a licensed cannabis processor from holding a retailer’s license, as follows:

“Neither a licensed cannabis producer nor a licensed cannabis processor shall have a direct or indirect financial interest in licensed cannabis retailer.”

RCW 69.50.342(1) grants the Board authority to adopt rules that are consistent with statute to implement Washington Initiative 502 (I-502), as follows:

“For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable.”

RCW 69.50.345 directs the Board to adopt rules that establish the procedures and criteria necessary to implement agency functions, including, the licensing of cannabis producers, processors, and retailers, in part, as follows:

“The board, subject to the provisions in the chapter, must adopt rules that establish procedures and criteria necessary to implement the following:

(1) Licensing of cannabis producers, cannabis processors, and cannabis retailers, including prescribing forms and establishing application, reinstatement, and renewal fees.”

...

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(c) The provision of adequate access to licensed sources of cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and ... ”

Rules

Consistent with RCW 69.50.345, WAC 315-55-077(2)(c) states the cannabis processor license application window is currently closed, and the board has the discretion to open the application window when the board deems it necessary, as follows:

“The application window for cannabis processor licenses is closed. The board may reopen the cannabis processor application window at subsequent times when the board deems necessary.”

Analysis

RCW 69.50.325 establishes a cannabis producer license, a cannabis processor license, and a cannabis retailer license, and directs the board to regulate cannabis licenses. Each license type has separate and distinct privileges:

RCW 69.50.325(1)

A **licensed cannabis producer** may cultivate, harvest, trim, dry, cure, and package cannabis for sale at wholesale to other licensed cannabis producers and cannabis processors; and produce and sell immature plants (clones) or seeds to cooperatives, qualifying patients, and designated providers.

RCW 69.50.325(2)

A **licensed cannabis processor** may process, package, and label concentrates, useable cannabis, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers.

RCW 69.50.325(3)

A **licensed cannabis retailer** may sell cannabis concentrates, useable cannabis, and cannabis-infused products at retail outlets.

Eugene DeMesa submitted a rule petition to the board on December 2, 2022 requesting that the board consider adopting a new rule to open the cannabis processor license application window and allow existing licensed cannabis producers, like DeMesa, apply to add a cannabis processor’s license. Under current Washington law, a single entity may simultaneously hold a cannabis producer license and a cannabis processor license. A validly licensed producer/processor may exercise the privileges of both license types. However, RCW 69.50.328 expressly prohibits a licensed cannabis producer and/or licensed cannabis processor from operating or having a financial interest in a cannabis retailer’s license. Pursuant to RCW 69.50.342(1), the board may not adopt rules that conflict with statute.

RCW 69.50.345(1) grants the board statutory authority to adopt rules that establish the procedures and criteria necessary to implement licensing of producers, processors, and retailers. Consistent with RCW 69.50.345(1), WAC 314-55-077(2)(c) provides that the board may open the license application window when deemed necessary. Therefore, although the application window is currently closed, a rule adoption is not required for the board to open the processor license application window, should the board determine it is necessary.

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

The Licensing division did not identify any impacts.

Enforcement & Education

The Enforcement & Education division did not identify any impacts.

Finance

The Finance division did not identify any impacts.

Information Technology/Infrastructure

The IT division did not identify any impacts.

Public Health/Prevention

The Public Health/Prevention division did not identify any impacts.

Interagency

Department of Health

This request does not appear to have any direct impact on programs or services offered by the Department of Health.

Labor & Industries

This request does not appear to have any direct impact on programs or services offered by the Department of Labor and Industries.

Intergovernmental

Tribes

This request does not appear to have any direct impact on Tribes.

DEIB, Social Equity

Social equity was not a component of Initiative 502 that framed the regulatory system for the commercial manufacture, cultivation, and sale of cannabis. To begin the path towards an equitable cannabis industry, the State Legislature adopted legislation to create the Social Equity Retail Cannabis Program, the Social Equity Technical Assistance Grant Program, and the Social Equity in Cannabis Task Force (Task Force). The Task Force's legislative mandate was to make recommendations to the Legislature and appropriate state agencies to establish a social equity program for the issuance and reissuance of existing retail cannabis licenses.

Issuing social equity licenses is critical for creating a more equitable system. With the cannabis processor licenses application window currently closed, there continues to be limited opportunities for social equity applicants to participate in the cannabis industry. However, in the Final Report to the legislature and governor on December 9, 2022, the Task Force recommended focusing on policies to expand cannabis licensure opportunities for social equity applicants, and that the legislature reserve any new licenses for social equity applicants through 2029. Although this request does not have any direct impact on social equity, if the board were to deem that it is necessary to open the processor application window to issue new or reissue existing licenses, the licenses would likely be reserved for social equity applicants. Additional licenses should be allocated at a time when all licensees are able to operate successfully.

Conclusion

In the petition submitted to the board on December 02, 2022, Eugene DeMesa requested that the board consider adopting a new rule to open the cannabis processor license application window to allow existing licensed cannabis producers apply to add a processor’s license. A rule adoption is not required to open the application window. The board may open the processor license application window should the board determine that it is necessary to do so, as provided in WAC 314-55-077(2)(c).

To clarify the rule, the board may wish to consider amending WAC 315-55-077(2)(c) which says, “the processor window is now closed,” to “the Board shall have discretion to open and close the application window for processor licenses as the Board deems necessary.”

Recommendation

Consistent with RCW 34.05.330(1)(a)(i), for the reasons described above, the Director’s Office staff recommends the board deny Eugene DeMesa’s rule petition request, received on December 2, 2022, that requests the board to consider adopting a new rule to open the cannabis processor license application window to allow existing licensed cannabis producers apply to add a cannabis processor license.

Board Action

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Eugene DeMesa on December 2, 2022.

_____ Accept _____ Deny _____
David Postman, Chair Date

_____ Accept _____ Deny _____
Ollie Garrett, Board Member Date

_____ Accept _____ Deny _____
Jim Vollendroff, Board Member Date

Attachments

- 1. Email from Eugene DeMesa received on December 2, 2022, containing the rule petition.
- 2. Laws and Rules cited under the “Authority” section above.



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Eugene DeMesa

Name of Organization Cloud 9 Good Budz

Mailing Address 2325 Rolling Hills Ct.

City Clarkston State WA Zip Code 99403

Telephone 253-906-7670 Email demesae@yahoo.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClst.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Liquor Cannibas Board

1. NEW RULE - I am requesting the agency to adopt a new rule.

Open application to all existing I502 producers to apply to add processor license

The subject (or purpose) of this rule is: _____

Need to allow existing all I-502 producers to apply to add processor license so I-502 licensees are are supported to grow their business. Preserve and support I 502 Licensees that need it.

The rule is needed because: _____

all I-502 prodcuers without processor license, retailars, consumers,

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: _____

This change is needed because: _____

The effect of this rule change will be: _____

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

RCW 69.50.325 Cannabis producer's license, cannabis processor's license, cannabis retailer's license. (1) There shall be a cannabis producer's license regulated by the board and subject to annual renewal. The licensee is authorized to produce: (a) Cannabis for sale at wholesale to cannabis processors and other cannabis producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of cannabis in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed cannabis producer, shall not be a criminal or civil offense under Washington state law. Every cannabis producer's license shall be issued in the name of the applicant, shall specify the location at which the cannabis producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a cannabis producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a cannabis producer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a cannabis producer intends to produce cannabis.

(2) There shall be a cannabis processor's license to process, package, and label cannabis concentrates, useable cannabis, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers, regulated by the board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of cannabis, useable cannabis, cannabis-infused products, and cannabis concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed cannabis processor, shall not be a criminal or civil offense under Washington state law. Every cannabis processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a cannabis processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a cannabis processor's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a cannabis processor intends to process cannabis.

(3) (a) There shall be a cannabis retailer's license to sell cannabis concentrates, useable cannabis, and cannabis-infused products at retail in retail outlets, regulated by the board and subject to annual renewal. The possession, delivery, distribution, and sale of cannabis concentrates, useable cannabis, and cannabis-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed cannabis retailer, shall not be a criminal or civil offense under Washington state law. Every cannabis retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a cannabis retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a cannabis retailer's license shall be one thousand three

hundred eighty-one dollars. A separate license shall be required for each location at which a cannabis retailer intends to sell cannabis concentrates, useable cannabis, and cannabis-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail cannabis licenses.

(c) (i) A cannabis retailer's license is subject to forfeiture in accordance with rules adopted by the board pursuant to this section.

(ii) The board shall adopt rules to establish a license forfeiture process for a licensed cannabis retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the board, subject to the following restrictions:

(A) No cannabis retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The board must require license forfeiture on or before twenty-four calendar months of license issuance if a cannabis retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The board has discretion in adopting rules under this subsection (3) (c).

(iv) This subsection (3) (c) applies to cannabis retailer's licenses issued before and after July 23, 2017. However, no license of a cannabis retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3) (c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail cannabis business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

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

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

(d) The board may issue cannabis retailer licenses pursuant to this chapter and RCW 69.50.335. [2022 c 16 § 54; 2020 c 236 § 6; 2018 c 132 § 3. Prior: 2017 c 317 § 1; 2017 c 316 § 2; 2016 c 170 § 1; 2015 c 70 § 5; 2014 c 192 § 2; 2013 c 3 § 4 (Initiative Measure No. 502, approved November 6, 2012).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Findings—Intent—2020 c 236: See note following RCW 69.50.335.

Effective date—2018 c 132 § 3: "Section 3 of this act takes effect July 1, 2018." [2018 c 132 § 4.]

Findings—2017 c 317: "The legislature finds that protecting the state's children, youth, and young adults under the legal age to purchase and consume marijuana [cannabis], by establishing limited restrictions on the advertising of marijuana [cannabis] and marijuana [cannabis] products, is necessary to assist the state's efforts to discourage and prevent underage consumption and the potential risks associated with underage consumption. The legislature finds that these restrictions assist the state in maintaining a strong and effective regulatory and enforcement system as specified by the federal government. The legislature finds this act leaves ample opportunities for licensed marijuana [cannabis] businesses to market their products to those who are of legal age to purchase them, without infringing on the free speech rights of business owners. Finally, the legislature finds that the state has a substantial and compelling interest in enacting this act aimed at protecting Washington's children, youth, and young adults." [2017 c 317 § 12.]

Application—2017 c 317: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after July 23, 2017." [2017 c 317 § 25.]

Effective date—2017 c 316 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2018." [2017 c 316 § 4.]

Effective date—2016 c 170: "This act takes effect July 1, 2016." [2016 c 170 § 3.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

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

RCW 69.50.328 Cannabis producers, processors—No direct or indirect financial interest in licensed cannabis retailers. Neither a licensed cannabis producer nor a licensed cannabis processor shall have a direct or indirect financial interest in a licensed cannabis retailer. [2022 c 16 § 57; 2013 c 3 § 5 (Initiative Measure No. 502, approved November 6, 2012).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

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

RCW 69.50.342 State liquor and cannabis board—Rules. (1) For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the board is empowered to adopt rules regarding the following:

(a) The equipment and management of retail outlets and premises where cannabis is produced or processed, and inspection of the retail outlets and premises where cannabis is produced or processed;

(b) The books and records to be created and maintained by licensees, the reports to be made thereon to the board, and inspection of the books and records;

(c) Methods of producing, processing, and packaging cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products; conditions of sanitation; safe handling requirements; approved pesticides and pesticide testing requirements; and standards of ingredients, quality, and identity of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products produced, processed, packaged, or sold by licensees;

(d) Security requirements for retail outlets and premises where cannabis is produced or processed, and safety protocols for licensees and their employees;

(e) Screening, hiring, training, and supervising employees of licensees;

(f) Retail outlet locations and hours of operation;

(g) Labeling requirements and restrictions on advertisement of cannabis, useable cannabis, cannabis concentrates, cannabis health and beauty aids, and cannabis-infused products for sale in retail outlets;

(h) Forms to be used for purposes of this chapter and chapter 69.51A RCW or the rules adopted to implement and enforce these chapters, the terms and conditions to be contained in licenses issued under this chapter and chapter 69.51A RCW, and the qualifications for receiving a license issued under this chapter and chapter 69.51A RCW, including a criminal history record information check. The board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(i) Application, reinstatement, and renewal fees for licenses issued under this chapter and chapter 69.51A RCW, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this chapter and chapter 69.51A RCW;

(j) The manner of giving and serving notices required by this chapter and chapter 69.51A RCW or rules adopted to implement or enforce these chapters;

(k) Times and periods when, and the manner, methods, and means by which, licensees transport and deliver cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products within the state;

(l) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products

produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this chapter or chapter 69.51A RCW or the rules adopted to implement and enforce these chapters;

(m) The prohibition of any type of device used in conjunction with a cannabis vapor product and the prohibition of the use of any type of additive, solvent, ingredient, or compound in the production and processing of cannabis products, including cannabis vapor products, when the board determines, following consultation with the department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access; and

(n) Requirements for processors to submit under oath to the department of health a complete list of all constituent substances and the amount and sources thereof in each cannabis vapor product, including all additives, thickening agents, preservatives, compounds, and any other substance used in the production and processing of each cannabis vapor product.

(2) Rules adopted on retail outlets holding medical cannabis endorsements must be adopted in coordination and consultation with the department.

(3) The board must adopt rules to perfect and expand existing programs for compliance education for licensed cannabis businesses and their employees. The rules must include a voluntary compliance program created in consultation with licensed cannabis businesses and their employees. The voluntary compliance program must include recommendations on abating violations of this chapter and rules adopted under this chapter. [2022 c 16 § 63; 2020 c 133 § 3; 2019 c 394 § 4; 2015 2nd sp.s. c 4 § 1601; 2015 c 70 § 7; 2013 c 3 § 9 (Initiative Measure No. 502, approved November 6, 2012).]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Findings—2020 c 133: "The legislature finds that recent reports of lung illnesses associated with vapor products demand serious attention by the state in the interest of protecting public health and preventing youth access. While state law grants the liquor and cannabis board broad authority to regulate vapor products containing marijuana [cannabis], the legislature finds that risks to public health and youth access can be mitigated by clarifying that the board is granted specific authority to prohibit the use of any additive, solvent, ingredient, or compound in marijuana [cannabis] vapor product production and processing and to prohibit any device used in conjunction with a marijuana [cannabis] vapor product." [2020 c 133 § 1.]

Effective date—2020 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2020]." [2020 c 133 § 5.]

Findings—2019 c 394: See note following RCW 69.50.563.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

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

RCW 69.50.345 State liquor and cannabis board—Rules—Procedures and criteria. (Effective until July 1, 2024.) The board, subject to the provisions of this chapter, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of cannabis producers, cannabis processors, and cannabis retailers, including prescribing forms and establishing application, reinstatement, and renewal fees.

(a) Application forms for cannabis producers must request the applicant to state whether the applicant intends to produce cannabis for sale by cannabis retailers holding medical cannabis endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for cannabis concentrates, useable cannabis, or cannabis-infused products sold to qualifying patients.

(b) The board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those cannabis producers who intend to grow plants for cannabis retailers holding medical cannabis endorsements if the cannabis producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for cannabis concentrates, useable cannabis, or cannabis-infused products to be sold to qualifying patients. If current cannabis producers do not use all the increased production space, the board may reopen the license period for new cannabis producer license applicants but only to those cannabis producers who agree to grow plants for cannabis retailers holding medical cannabis endorsements. Priority in licensing must be given to cannabis producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new cannabis producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical cannabis authorization database established in RCW 69.51A.230;

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(a) Population distribution;

(b) Security and safety issues;

(c) The provision of adequate access to licensed sources of cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and

(d) The number of retail outlets holding medical cannabis endorsements necessary to meet the medical needs of qualifying patients. The board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical cannabis authorization database established in RCW 69.51A.230;

(3) Determining the maximum quantity of cannabis a cannabis producer may have on the premises of a licensed location at any time without violating Washington state law;

(4) Determining the maximum quantities of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products a cannabis processor may have on the premises of a licensed location at any time without violating Washington state law;

(5) Determining the maximum quantities of cannabis concentrates, useable cannabis, and cannabis-infused products a cannabis retailer may have on the premises of a retail outlet at any time without violating Washington state law;

(6) In making the determinations required by this section, the board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products, and their labeling requirements;

(8) In consultation with the department of agriculture and the department, establishing classes of cannabis, cannabis concentrates, useable cannabis, and cannabis infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to cannabis that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by cannabis use in the advertising; and

(d) Ensuring that retail outlets with medical cannabis endorsements may advertise themselves as medical retail outlets;

(10) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products within the state;

(11) In consultation with the department and the department of agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with standards adopted by the board, and prescribing methods of producing, processing, and packaging cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products produced, processed, packaged, or sold by licensees;

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the board. [2022 c 16 § 64; 2019 c 393 § 2; 2018 c 43 § 2; 2015 c 70 § 8; 2013 c 3 § 10 (Initiative Measure No. 502, approved November 6, 2012).]

Expiration date—2022 c 16 §§ 64 and 67: "Sections 64 and 67 of this act expire July 1, 2024." [2022 c 16 § 173.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2019 c 393: "This act takes effect January 1, 2020." [2019 c 393 § 6.]

Intent—2019 c 393: See note following RCW 69.50.346.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

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

RCW 69.50.345 State liquor and cannabis board—Rules—Procedures and criteria. (Effective July 1, 2024.) The board, subject to the provisions of this chapter, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of cannabis producers, cannabis processors, and cannabis retailers, including prescribing forms and establishing application, reinstatement, and renewal fees.

(a) Application forms for cannabis producers must request the applicant to state whether the applicant intends to produce cannabis for sale by cannabis retailers holding medical cannabis endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for cannabis concentrates, useable cannabis, or cannabis-infused products sold to qualifying patients.

(b) The board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those cannabis producers who intend to grow plants for cannabis retailers holding medical cannabis endorsements if the cannabis producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for cannabis concentrates, useable cannabis, or cannabis-infused products to be sold to qualifying patients. If current cannabis producers do not use all the increased production space, the board may reopen the license period for new cannabis producer license applicants but only to those cannabis producers who agree to grow plants for cannabis retailers holding medical cannabis endorsements. Priority in licensing must be given to

cannabis producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new cannabis producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical cannabis authorization database established in RCW 69.51A.230;

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(a) Population distribution;

(b) Security and safety issues;

(c) The provision of adequate access to licensed sources of cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and

(d) The number of retail outlets holding medical cannabis endorsements necessary to meet the medical needs of qualifying patients. The board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical cannabis authorization database established in RCW 69.51A.230;

(3) Determining the maximum quantity of cannabis a cannabis producer may have on the premises of a licensed location at any time without violating Washington state law;

(4) Determining the maximum quantities of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products a cannabis processor may have on the premises of a licensed location at any time without violating Washington state law;

(5) Determining the maximum quantities of cannabis concentrates, useable cannabis, and cannabis-infused products a cannabis retailer may have on the premises of a retail outlet at any time without violating Washington state law;

(6) In making the determinations required by this section, the board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products, and their labeling requirements;

(8) In consultation with the department of agriculture and the department, establishing classes of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of cannabis, cannabis

concentrates, useable cannabis, and cannabis-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to cannabis that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by cannabis use in the advertising; and

(d) Ensuring that retail outlets with medical cannabis endorsements may advertise themselves as medical retail outlets;

(10) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products within the state;

(11) In consultation with the department and the department of agriculture, prescribing methods of producing, processing, and packaging cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products produced, processed, packaged, or sold by licensees;

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the board. [2022 c 16 § 65. Prior: 2019 c 393 § 2; 2019 c 277 § 6; 2018 c 43 § 2; 2015 c 70 § 8; 2013 c 3 § 10 (Initiative Measure No. 502, approved November 6, 2012).]

Effective date—2022 c 16 §§ 65 and 68: "Sections 65 and 68 of this act take effect July 1, 2024." [2022 c 16 § 174.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Effective date—2019 c 393: "This act takes effect January 1, 2020." [2019 c 393 § 6.]

Intent—2019 c 393: See note following RCW 69.50.346.

Effective date—2019 c 277 §§ 2 and 6: See note following RCW 69.50.348.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

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

WAC 314-55-077 Cannabis processor license—Privileges, requirements, and fees. (1) A cannabis processor license allows the licensee to process, dry, cure, package, and label useable cannabis, cannabis concentrates, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers.

(2) **Application and license fees.**

(a) The application fee for a cannabis processor license is \$250. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a cannabis processor license is \$1,381. The board 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 the criminal history checks.

(c) The application window for cannabis processor licenses is closed. The board may reopen the cannabis processor application window at subsequent times when the board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three cannabis processor licenses.

(4) (a) A cannabis processor that makes cannabis-infused solid or liquid product meant to be ingested orally (cannabis edibles) must obtain a cannabis-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A cannabis processor licensed by the board must ensure cannabis-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5) (a) A cannabis processor may blend tested useable cannabis from multiple lots into a single package for sale to a cannabis retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

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

(6) **Recipes, product, packaging, and labeling approval.**

(a) A cannabis processor licensee must obtain label and packaging approval from the board for all cannabis-infused products meant for oral ingestion prior to offering these items for sale to a cannabis retailer. The cannabis processor licensee must submit a picture of the product, labeling, and packaging to the board for approval. More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for cannabis-infused products meant for oral ingestion (cannabis edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any

cannabis edible products, packages, and labels for review and approval by the board. The recipe for any cannabis-infused solid or liquid products meant to be ingested orally must be kept on file at the cannabis processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a cannabis-infused product for sale in cannabis retail outlets, the cannabis processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the cannabis, all ingredients used in making cannabis-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Cannabis-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A cannabis processor may infuse food or drinks with cannabis, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under 21 years of age, as defined by WAC 314.55.105 (1) (c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with cannabis. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with cannabis.

(11) Other food items that may not be infused with cannabis to be sold in a retail store include:

(a) Any food that has to be acidified to make it shelf stable;

(b) Food items made shelf stable by canning or retorting;

(c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(d) Fruit or vegetable butters;

(e) Pumpkin pies, custard pies, or any pies that contain egg;

(f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried cannabis if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Cannabis-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a cannabis processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable cannabis-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with cannabis.

(13) Cannabis processor licensees are allowed to have a maximum of six months of their average useable cannabis and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable cannabis or an altered form of useable cannabis (cannabis product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess cannabis or cannabis products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within 30 calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any cannabis or cannabis product involved in the transaction will be subject to seizure and destruction. Payment with any cannabis products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Cannabis may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of cannabis and cannabis products returned to the processor by any retail licensee.

(b) Cannabis may be returned by a retail licensee in the event a retailer goes out of the business of selling cannabis at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the cannabis or cannabis products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Cannabis products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with cannabis products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A cannabis processor may accept returns of products and sample jars from cannabis retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any cannabis processor that fails to comply with the provisions of WAC 246-80-021.

[Statutory Authority: RCW 69.50.342 and 2022 c 16 § 168. WSR 22-14-111, § 314-55-077, filed 7/6/22, effective 8/6/22. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 21-15-124, § 314-55-077, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 69.50.342, 69.50.345 and 2019 c 393. WSR 20-01-172, § 314-55-077, filed 12/18/19, effective 1/1/20. Statutory Authority: RCW 69.50.325, 69.50.342,

69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-077, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-077, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-077, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-077, 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, § 314-55-077, filed 10/21/13, effective 11/21/13.]