



## **Notice of Permanent Rules for Marijuana Recalls**

**This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules for Marijuana Recalls.**

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. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### **What are the agency's reasons for adopting this rule?**

New rules are needed to establish a marijuana and marijuana product recall process and requirement. In the event that product posing a risk to consumers is discovered, regulations and a process need to be in place to allow for affected product to be identified and removed from the marketplace in a fast and efficient manner. This rule establishes a recall process similar to food recall processes of other state and federal agencies. These rules will protect the health and welfare of marijuana consumers in the state of Washington.

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### **Summary of public comments received on this rule proposal.**

**CR-101** – filed March 23, 2016, as WSR 16-07-156.

**CR 102** – filed May 18, 2016, as WSR 16-11-113.

Public Hearing held July 13, 2016.

### **Written Comments Received:**

- 1. Two (2) Comments were received supporting the adoption of the proposed rules as filed in the CR-102.**

**WSLCB response:** The final rules were not changed from proposed rule to adopted rule.

- 2. One (1) comment was received expressing concern about costs to the retailer as a result of recalled product. The commenter wanted reimbursement to the**



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**retailer for the recalled product to be mandatory, and there was a discussion of warranties.**

**WSLCB response:** Thank you for your comments and taking the time to contact the WSLCB. What you are discussing is something that licensees will have to negotiate amongst themselves and not something regulated through rule. It is not prohibited though. We do not require refunds in rule because it is a civil matter. The WSLCB is not going to regulate business contracts or these type of market-driven decisions. This has always been in rule. WAC 314-55-077 (14): A marijuana processor must accept returns of products and sample jars from marijuana 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.

**Was this comment reflected in the final rule?** No, the final rules did not accommodate this comment. It is more appropriate for these decisions to be dealt with by the business on a case by case basis. WSLCB will not interfere in civil matters and such business decisions between licensees.

**3. Comment Summary (single comment): The WSLCB should create an emergency fund for recall efforts. Recalls will be especially difficult in the cannabis industry. The proposed rule does not include either a financial requirement placed on licensees to ensure that all licensees have the cash on hand to buy the product back or an alternative mechanism that would enable licensees to finance the cost of a recall.**

**WSLCB response:** The proposed rules mirror those recall provisions in other industries that also do not provide what you suggest. It is up to industry members to ensure they are adequately prepared for a potential recall and whether they will refund money for product. That is a civil matter between those impacted by a recall event. Many of the items mentioned in the comment are risk-based decisions that each licensee will have to make on its own.

**Was this comment reflected in the final rule?** No, the final rules did not accommodate this comment. It is more appropriate for these decisions to be dealt with by the business on a case by case basis. WSLCB will not interfere in civil matters and such business decisions between licensees.

**4. One (1) comment was received with less of a comment about the proposed rules and more on the logistical process of dealing with a recall event within the traceability system. Suggestions were made on changes to the traceability system that could make responding to a recall event easier for a licensee.**

**WSLCB response:** The WSLCB will look into whether the change suggested can be accomplished in the traceability system.



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**Was this comment reflected in the final rule?** No, as this comment was not directed at the rules but at the traceability system and how it could be changed to help licensees comply with rule requirements more easily. The WSLCB will look into the feasibility of making the changes requested to the traceability system.

### **5. One (1) comment was received asking for clarification in rules for how consumers may return recalled product.**

**WSLCB response:** The rule changes that were recently adopted by the Board on May 18th and will be effective on June 18th include new provisions that will allow the customer to return products along with the original packaging. So, that will be in place very soon. You can find a copy of the recently adopted rules at the following link listed under "2015 Marijuana Legislation Implementation": <http://lcb.wa.gov/rules/recently-adopted-rules>. There was also a bill that passed this last legislative session that will allow retailers to open marijuana for the purposes of disposal. You can view a copy of that bill here: <http://app.leg.wa.gov/billinfo/summary.aspx?bill=2521&year=2015>. We are currently working on rules to implement this as the new provision in the bill states "as authorized by the board," since we don't have anything stating how to do that or what is authorized. The same disposal requirements for producers and processors will apply to disposals, and we will be looking to make some improvements to those rules in an upcoming rulemaking.

**Was this comment reflected in the final rule?** No. No changes to rule language were needed to accommodate this comment.

### **Public Hearing Comments:**

No public testimony was offered at the public hearing.

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

None. The rule was adopted without any changes to the proposed rules from the CR-102 filing.