

Issue Paper

2017 Cannabis Legislation Rules

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Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) for changes to cannabis rules in Chapter 314-55 WAC as a result of legislation passed during the 2017 legislative session, as well as a number of clarifying and other needed changes identified by stakeholders and WSLCB staff.

Why is rule making necessary?

Rulemaking is necessary to ensure that rules are consistent with changes to laws made by the Legislature during the 2017 Legislative Session in ESSB 5131, SB 5130, and HB 1250. Other technical, clarifying, and needed changes to rules identified by staff and stakeholders will be addressed, incorporating the CR-101 filed as WSR 16-15-035 into this rulemaking. Other changes to cannabis rules needed as a result of changes to laws made in the 2017 legislative session (retail license forfeitures) is underway under a separate CR-102.

What changes are being proposed?

Amendatory section. WAC 314-55-010 Definitions.

- Technical changes to definitions of “elementary school” and “secondary school”
- Clarifying changes to definition of “financier” to make clearer and consistent with clarifying edits to the term in WAC 314-55-035
- Definitions added for the following terms:
 - o End product
 - o Harvest – new definition consistent with DOH rules for compliant products in chapter 246-70 WAC
 - o Immature plant or clone
 - o Intermediate product
 - o Marijuana mix
 - o Marijuana mix packaged / mix packaged
 - o Marijuana mix infused / mix infused
 - o Product(s) otherwise taken into the body – clarify other products not ingested orally but taken into the body through absorption, etc., fall within the definition of marijuana-infused products
- Various other technical changes throughout to ensure consistency and clarity in use of terms, including adding metropolitan park districts as

“owners” of playgrounds and recreation centers/facilities, correcting “usable marijuana” to “useable marijuana” to make consistent with statutory definitions in chapter 69.50 RCW, etc.

Amendatory section. WAC 314-55-015 General information about marijuana licenses.

- Added language stating that the WSLCB will not issue a marijuana license within the exterior boundaries of a reservation of a federally recognized Indian tribe without express consent of the tribe, as required by changes to RCW 69.50.331.
- Technical changes regarding the co-location of licenses to reflect actual practices and allowances in co-location of licenses for research licenses and producers who also hold a processor license.
- Removed language regarding requirements that processors must construct and keep facilities for marijuana-infused edibles in a clean and sanitary condition as those requirements are being covered in WAC 314-55-077.

Amendatory section. WAC 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc.

- Technical changes to add exceptions for “free products” or “treats or services” as allowed under WAC 314-55-096 (samples) and RCW 69.50.585 (Branded promotional items—Nominal value—Personal services).
- Added marijuana transportation licenses and marijuana research licenses to the definition of “industry member” to ensure all license types are captured.
- Added language reiterating prohibition of contingency sales consistent with WAC 314-55-017.
- Added language to allow for volume discounts – exception to prohibition on use of discounts. Volume discounts must be solely based on the volume of the product purchased, must be made on a single purchase, and must be made available to all licensees. Purchases made by multiple licensees or “co-op” purchases are not eligible for a volume discount, except where the purchase is being made by a business that holds multiple licenses so long as the UBI is the same for each licensed business involved in the purchase for a volume discount.

Amendatory section. WAC 314-55-020 Marijuana license qualifications and application process.

- Technical changes to rule language relating to notices of local jurisdictions, port authorities, and tribal governments consistent with changes made by the Legislature in RCW 69.50.331.

- Addition of language relating to the statutory change to prohibit the WSLCB from issuing a marijuana license within the exterior boundaries of a reservation of a federally recognized Indian tribe without express consent of the tribe, as required by changes to RCW 69.50.331. Additional language included outlining the process for an applicant to find another location if the tribe does not consent to the licensee being located within the boundaries of the reservation.
- Technical changes to add all existing marijuana license types.
- Removal of language relating to prioritization of marijuana retail licenses due to the removal of prioritization requirements in statute by the 2017 Legislature.
- Clarifying and technical adjustments to language for inspections of locations and ensuring rule language more clearly reflects WSLCB practice for residency requirements for individuals and entities that must be qualified/listed on a marijuana license.
- Changes to operating plan requirements to move the requirements to a more flexible operating plan form that can be tailored to the needs for each unique license type. This is partially necessary due to the addition of transportation and research licenses.

Amendatory section. WAC 314-55-035 Persons or entities that must qualify for a marijuana license.

- Clarifying changes to the definitions for “true party(ies) of interest” and “financiers” to clearly differentiate the two.
- New language detailing that employees of producers or processors that receive commission-based compensation are not considered true parties of interest so long as the following conditions are met:
 - o The commission-based compensation arrangement does not create a default true party of interest relationship.
 - o The commission-based compensation arrangement between a licensee and employee is in writing, no more than 5% of the gross profits may be given to any one employee under such an arrangement, and an employee receiving commission-based compensation is listed as an employee of the licensee with the Washington State Employment Security Department.
 - o Commission-based compensation arrangements are not permissible for employees of retailers due to concerns about sales-incentive based compensation and promoting over consumption, etc.
- New language clarifying that a consultant that receives a flat or hourly rate compensation under a written contractual agreement is not a true party of interest so long as the consultant does not receive any percentage of profits or interest in the licensed business or management or control of the licensed business such that would indicate or create a true party of interest relationship.

- Clarification that all funds must be approved by the WSLCB prior to their transfer, consistent with WSLCB rules and current practice. This addition is to reinforce this requirement since some licensees have not done so and have run into issues.
- Added references to changes in ownership requirements in WAC 314-55-120 to ensure clarity of requirements and avoid confusion.

Amendatory section. WAC 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license.

- Technical changes to ensure all marijuana license types correctly fall under rule requirements.
- Technical changes to ensure exceptions to buffer zone requirements function correctly if a local jurisdiction reduces the 1,000 foot distance requirement for restricted entities by local ordinance.

Amendatory section. WAC 314-55-073 Marijuana research license.

- Increases to project plan page length from 4 to 8 pages, not including references or citations, to allow for greater explanation of project plans and supportive documentation of evidence and data.
- Additional provisions allowing the scientific reviewer to inquire into the cost of the proposed project as well as financial support and viability of an applicant for a research license.
- New language allowing for the scientific reviewer to request additional information if necessary to complete the review of the research license application.
- New language allowing the scientific reviewer to conduct a site visit if needed to assess location, facilities, or equipment for the proposed project.

Amendatory section. WAC 314-55-075 Marijuana producer license — Privileges, requirements, and fees.

- Adjustments to reflect statutory changes allowing licensed producers to sell immature plants or clones and seeds members of a registered cooperative, qualifying patients, or designated providers. Detailed requirements for these sales appear in a new section later in chapter 314-55 WAC, also part of this rulemaking.
- Adjustments to reflect statutory changes to allow licensed producers to sell immature plants or clones and seeds to licensed marijuana researchers.
- Changes to the fees for a producer license to reflect changes to state law increasing license fees to \$1300 effective July 1, 2018.

- Technical changes detailing that the window to apply for a producer license is closed. The WSLCB may reopen the producer license application window at subsequent times when deemed necessary.
- Technical changes to language to reflect that overall canopy cannot exceed the amount licensed by the WSLCB.
- Addition of language being moved from other sections regarding treating or adulterating useable marijuana and the requirement that QA test results must be made available to any processor purchasing product, as well as lot labeling requirements. These provisions appeared elsewhere in the chapter but made more sense to be included in this rule.

Amendatory section. WAC 314-55-077 Marijuana processor license – Privileges, requirements, and fees.

- Technical changes to rework the organization of the overall rule.
- Changes to the fees for a processor license to reflect changes to state law increasing license fees to \$1300 effective July 1, 2018.
- Technical changes detailing that the window to apply for a processor license is closed. The WSLCB may reopen the producer license application window at subsequent times when deemed necessary.
- Adjustments to phase out the addition of a processor license for an existing producer license that has not also been issued a processor license. These provisions have served their purpose and are no longer needed.
- Adjustments to rule language to reflect the new requirements for processors that make marijuana-infused edible products to obtain a marijuana edible endorsement from the WSDA effective April 1, 2018.
- Moved language from WAC 314-55-015 regarding requirements that processors must construct and keep facilities for marijuana-infused edibles in a clean and sanitary condition as it is more appropriate in this rule.
- Addition of language being moved from WAC 314-55-105 regarding treating or adulterating useable marijuana as it is more appropriate to appear in this rule and WAC 314-55-075.
- Removal of language regarding the requirement that servings of marijuana-infused edibles must be individually wrapped and other packaging and labeling provisions as they are covered in packaging and labeling rules (WAC 314-55-105).
- Language allowing the removal of the statement “this product contains marijuana” only if a universal symbol is adopted by the Board and upon the effective date of that change.
- Language allowing processing service arrangements between licensed processors to process intermediate products for a fee rather than purchasing the marijuana and selling it back plus the costs of extraction services. Additional provisions are included providing parameters on how such arrangements may operate.

- Additional provisions relating to returns of product, including recordkeeping requirements.
- Clarifying technical and organizational changes throughout.

Amendatory section. WAC 314-55-079 Marijuana retailer license – Privileges, requirements, and fees.

- Changes to incorporate the allowance for sale or donation of lockable drug boxes due to changes to law. A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.
- Increase of maximum retail license interests from 3 to 5 total due to changes in law.
- Clarifying technical and organizational changes throughout.
- Changes to the fees for a retailer license to reflect changes to state law increasing license fees to \$1300 effective July 1, 2018.
- Language regarding requirements that products be stored behind a counter or other barrier moved from WAC 314-55-105 to this rule as the provisions are more appropriate in the retailer rule rather than packaging and labeling rules.
- Removal of 72-hour notification requirement prior to disposal of marijuana products consistent with removal for waste requirements proposed in this rulemaking.

Amendatory section. WAC 314-55-080 Medical marijuana endorsement.

- Clarifying changes to incorporate provisions in law allowing qualifying patients between 18 and 21 years old with a recognition card to enter and remain on the premises of a retail store with a medical marijuana endorsement. Additional provisions for qualifying patients with recognition cards under the age of 18 are also included. Changes are consistent with allowances in statute and will ensure licensees have proper information regarding the privileges of qualifying patients under age 21.
- Adjustments to require records be kept for 5 years, consistent with Dept. of Revenue recordkeeping requirements.

Amendatory section. WAC 314-55-082 Insurance requirements.

- Clarifying edits to ensure better understanding of rule requirements.

Amendatory section. WAC 314-55-083 Security and traceability requirements for marijuana licensees.

- Adjustment to rule title to ensure understanding that traceability system requirements are included in the rule.

- Proposed removal of 24-hour quarantine requirement prior to transfers of product.
- Proposed removal of 72-hour notification and waiting period prior to destroying waste.
- Change from the 16-digit identification number to the “unique identifier generated by the state traceability system” due to the transition to a new traceability system.
- Removal of the 15-day window for start-up inventory for producers. Since the industry has been up and running for years now, this allowance has served its purpose. Producers may purchase plants/clones/seeds, etc., from other licenses producers.

Amendatory section. WAC 314-55-084 Marijuana plant production.

- Minor changes to ensure the rule functions properly, including technical changes due to WAC 314-55-108, Pesticide action levels, becoming effective in August 2017.

Amendatory section. WAC 314-55-087 What are the recordkeeping requirements for marijuana licensees?

- Adjustment to require records be kept for 5 years, consistent with Dept. of Revenue recordkeeping requirements.

Amendatory section. WAC 314-55-089 Tax and reporting requirements for marijuana licensees.

- Change to provide that monthly reporting requirements for purchases and sales by producers and processors is accomplished by keeping data completely up to date in the state traceability system.
- Edits to clarify that inventory reductions that are not adequately documented will be deemed to be sales and will be assessed the excise tax.
- Additional language to clarify that excise tax collected in error must either be returned to the customer(s) or remitted to the WSLCB if returning to the customer(s) is not possible.
- If a licensee uses a money transmitter service, the licensee must remit payments in US dollars.

Amendatory section. WAC 314-55-092 Failure to pay excise taxes and late payment of excise taxes.

- Clarifying adjustment that the 2% penalty per month applies to outstanding balance for late excise tax payments.

Amendatory section. WAC 314-55-095 Marijuana servings and transaction limitations.

- Changes to clarify the servings and transaction limits for products, including marijuana-infused products otherwise taken into the body and topicals. These changes were a direct result of many questions received on servings and transactions requirements from the industry.
- Limits were needed for products that are otherwise taken into the body to ensure uniformity in servings and transaction requirements for all marijuana-infused products that are eaten or absorbed into the body through a method other than oral ingestion. These proposed changes will serve to avoid similar concerns for overconsumption and THC limits for these products as exist with marijuana edible products.
- Added language that states a licensee or employee of a licensee is prohibited from conducting a sale that facilitates an individual in obtaining more than the personal possession amount.

Amendatory section. WAC 314-55-096 Vendor, educational, and internal quality control samples.

- Clarifying changes to ensure sampling rules are clear and understandable due to licensees expressing confusion with requirements.
- Clarification that vendor samples may only be given to and used by licensees or employees of licensees who have product ordering authority. This change is proposed to avoid potential compensation through marijuana products and to ensure that vendor samples function as they should in only being used to negotiate a sale for a product that the licensee does not already carry.
- Added allowances specifically for products that are otherwise taken into the body consistent with definitions and servings and transaction limitations, as well as treating such products similar to marijuana edible products.
- Added language regarding the amounts of topical products that may be sampled under vendor and education sampling rules as the rules were silent. This is in response to industry questions on the subject.
- Change from the 16-digit identification number to the "unique identifier generated by the state traceability system" in labeling requirements for samples due to the transition to a new traceability system.

Amendatory section. WAC 314-55-097 Marijuana waste disposal—Liquids and solids.

- Changes to remove the 72-hour notification requirement prior to disposal of waste. Traceability requirements must still be maintained by licensees for waste disposal, but the 72-hour waiting period is proposed to be removed.
- Additional changes to waste requirements are expected later this year. The WSLCB is currently discussing potential changes with the Dept. of

Ecology, waste management companies, and local jurisdictions.

Amendatory section. WAC 314-55-102 Quality assurance testing.

- Changes to language surrounding elective compliant products testing under DOH rules (chapter 246-70 WAC) to eliminate confusion around optional quality assurance tests.
- Technical change to add provisions that the QA tests and third party testing lab name must be included with each lot and disclosed to the customer buying the lot. This requirement is elsewhere in the chapter, but important to reiterate here to ensure the ultimate consumer has access to lab results (also required under current rules).
- Technical change incorporating requirements in RCW 69.50.345 that any remaining sample after testing must be returned to the licensee or disposed as provided in WAC 314-55-097.

Amendatory section. WAC 314-55-104 Marijuana processor license extraction requirements.

- Various changes to make clarifying edits due to other rule changes to Lab QA rules during 2017.
- Removal of the requirement to send certificates for extractors to the WSLCB, but licensees must meet with requirements of the State Building Code Council in WAC 51-54A-3800, as well as other legal and regulatory requirements to ensure the safe construction and operation of extractor machines.

New section. WAC 314-55-117 Use of payment services by retailers.

- Proposed new section to provide guidance to retail licensees that use money transmitter services.
- Changes were developed in partnership with the Dept. of Financial Institutions.

Amendatory section. WAC 314-55-120 Ownership changes.

- Added language (consistent with WAC 314-55-035) that licensees must notify the WSLCB if there are any changes to marital status of any true party of interest in the license. This is due to the fact that such changes have ownership change impacts.

Amendatory section. WAC 314-55-125 Change of location.

- Clarifying edits to ensure licensees understand that any change of location requires an application and approval by the WSLCB prior to any change of location of the licensed business.

New Section. WAC 314-55-137, Receiverships.

- New section proposed to detail requirements for receiverships involving marijuana licenses. This section defines notice requirements for receiverships, the requirements to be eligible to be a receiver, the role and responsibility of receivers, and qualifications to be placed on the WSLCB's pre-approved receiver list.
- This new section is needed due to a rise of licenses going into receivership and to address issues and potential concerns with receivership scenarios.

Amendatory section. WAC 314-55-140 Death or incapacity of a marijuana licensee.

- Removal of receivership references due to the proposed new section regarding receiverships, WAC 314-55-137.

Amendatory section. WAC 314-55-185 WSLCB right to inspect premises or vehicles associated with a license to produce, process, sell, research, or transport marijuana.

- Technical changes to ensure proper reference to all marijuana license types.

Amendatory section. WAC 314-55-410 Cooperatives.

- Changes proposed to address cooperative renewals. The WSLCB will contact the primary contact listed for each registered cooperative on an annual basis to ensure validity of recognition cards and to confirm the status, whether active or inactive, of the cooperative. If the WSLCB finds that the cooperative no longer meets the criteria required under this section, the WSLCB may not renew the cooperative registration.
- Technical changes due to proposed new section regarding purchases of immature plants/clones and seeds from licensed producers by members of registered cooperatives, patients with recognition cards, and designated providers.

New section. WAC 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers.

- Proposed new section to address changes to law allowing patients with recognition cards and designated providers to purchase immature plants/clones and seeds from licensed producers.
- Moved provisions for members of registered cooperatives making purchases of immature plants/clones and seeds from licensed producers.
- Proposed new rule largely tracks the provisions or the Board Interim Policy on this issue, but makes slight adjustments due to the proposed removal of the 24-hour quarantine requirement prior to transfers of plants/products by licensed producers.

Amendatory section. WAC 314-55-525 Group 2 regulatory violations.

- Advertising penalty adjustments due to the removal of default \$1,000 penalties per advertising offense and direction in statute from Legislature to create a graduated penalty structure for repeat violations of advertising regulations. A graduated penalty structure for these violations already existed in current rule. Simply removing the blanket \$1,000 penalty provisions allows the graduated penalty to function as directed.
- Changes to penalties for monthly tax payments to reflect changes to reporting requirements made in WAC 314-55-089, as well as the removal of the reference to transportation licensees as they do not collect taxes.
- Creation of a penalty for the use of an unauthorized money transmitter for retail sales consistent with the proposed new rule regarding use of payment services by retailers (WAC 314-55-117).

Amendatory section. WAC 314-55-530 Group 3 license violations.

- Technical changes to penalty structure to avoid redundancies and confusion.

Repealer. WAC 314-55-081, Who can apply for a marijuana retailer license?

- This rule is being repealed as the relevant contents of the rule that are still needed are being incorporated into WAC 314-55-079.