



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 04, 2018

TIME: 11:14 AM

WSR 18-08-093

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR 18-04-114

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-15-121 on July 19, 2017 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Proposed new section in chapter 314-55 WAC: WAC 314-55-055, Marijuana retail license forfeiture.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

| | | | |
|--------------|------------|--|--|
| May 16, 2018 | 10:00 a.m. | Washington State Liquor and Cannabis Board, Board Room 3000 Pacific Ave SE Olympia, WA 98504 | |
|--------------|------------|--|--|

Date of intended adoption: On or after May 30, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator
Address: 3000 Pacific Ave SE, Olympia, WA 98504
Email: rules@lcb.wa.gov
Fax: 360-664-9689
Other:
By (date) May 16, 2018

Assistance for persons with disabilities:

Contact Claris Nnanabu, ADA Coordinator, Human Resources
Phone: 360-664-1642
Fax: 360-664-9689
TTY: 7-1-1 or 1-800-833-6388
Email: Claris.Nnanabu@lcb.wa.gov
Other:
By (date) May 11, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed new WAC section in chapter 314-55 WAC details the process and criteria that the WSLBC will use to carry out retail license forfeitures as required under RCW 69.50.325. This rulemaking is part of a larger rulemaking effort to implement changes to rules needed due to changes made by the 2017 Legislature. Other rule changes needed due to 2017 changes in statute will be handled under a separate CR-102 filing. This supplemental CR-102 makes adjustments to the original proposed rules and are summarized as follows:

- A retail licensee must be open and operational within 12 months of license issuance or November 1, 2018, whichever is longer.

- Fully operational means the business must be open a minimum of 5 hours per day between 8:00 a.m. and 12:00 midnight, 3 days per week, post business hours outside the premises, and report monthly sales and pay applicable taxes for at least 12 consecutive weeks.

Exceptions for forfeiture are included for businesses that are unable to open due city, town, or county actions, including ordinances, zoning, permitting, or bans/moratoria, or for other reasons outside the licensee's control on a case by case basis determined by the Board. If the condition providing an exemption to forfeiture is removed, a retail licensee has 12 months from the date of its removal to become fully open and operational. Other provisions relating to documentation and hearing rights remain unchanged from the original proposal.

Reasons supporting proposal: The Legislature passed ESSB 5131 during the 2017 legislative session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- The WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana 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.

Rulemaking is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process the WSLCB will use for retail license forfeitures.

Statutory authority for adoption: RCW 69.50.325, 69.50.342, and 69.50.345

Statute being implemented: RCW 69.50.325

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

| |
|--|
| <input type="checkbox"/> Private |
| <input type="checkbox"/> Public |
| <input checked="" type="checkbox"/> Governmental |

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------------------|-------------------------------|---|--------------|
| Drafting: Coordinator | Joanna Eide, Policy and Rules | 3000 Pacific Ave SE, Olympia, WA 98504 | 360-664-1622 |
| Implementation: Director | Rebecca Smith, Licensing | 3000 Pacific Ave SE, Olympia, WA 98504 | 360-664-1615 |
| Enforcement: | Chief Justin Nordhorn | 30000 Pacific Ave SE, Olympia, WA 98504 | 360-664-1726 |

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: A cost benefit analysis was not required under RCW 34.05.325 because the subject of proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: April 4, 2018

Name: Jane Rushford

Title: Chair

Signature:

A handwritten signature in cursive script, appearing to read "Jane Rushford", written in black ink.

NEW SECTION

WAC 314-55-055 Marijuana retailer license forfeiture. (1)(a) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after twelve months of issuance of the license or November 1, 2018, whichever is later. No marijuana retailer's license is subject to forfeiture within the first nine months of issuance.

(b) Fully operational means the business meets the following criteria for at least twelve consecutive weeks within a twelve-month period after issuance of the license before or after the effective date of this section:

(i) Is open to the public for a minimum of five hours a day between the hours of 8:00 a.m. and 12:00 midnight, three days a week;

(ii) Posts business hours outside of the premise in the public view; and

(iii) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2)(a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

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

(ii) 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 marijuana retailer from becoming operational.

(b) The board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate. If the underlying condition exempting a marijuana retail license from forfeiture under subsection (2)(a) or (b) of this section is removed, then the twelve-month time frame to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.