



Notice of Permanent Rules for changes to Public Records Rules

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rule changes for Public Records Rules.

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 and Cannabis Board appreciates your involvement in the rule making process. If you have questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule.

Rule changes are needed to implement changes in law due to the passage of EHB 1595 by the 2017 Legislature. The new provisions in law require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate as the Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule. This rulemaking incorporates the default amounts as provided in section 3 of EHB 1595. A chapter review for Chapter 314-60 was done in conjunction with the changes needed as a result of the passage of EHB 1595 to ensure public records rules are current and well organized. A review of Chapter 314-60 WAC has not occurred since 2009.

CR-101 – filed July 19, 2017, as WSR 17-15-119.

CR 102 – filed December 6, 2017, as WSR 17-24-120.

Public Hearing held January 10, 2018.



Summary of public comments received on this rule proposal.

Written Comments Received:

Only one written public comment was received related to this rulemaking. The comment was received by attorneys on behalf of Costco that proposed expanding subsection (1)(i) in the proposed rules to encompass all licensees or entities that submit protected materials to the Board:

On behalf of Costco Wholesale Corp., please accept these comments to the Board's proposed Public Records Rules, CR102 # 17-26. Specifically, we propose expanding subsection (i) of WAC 314-60-100 to encompass all of the licensees or entities that submit protected materials to the Board.

In relevant part, the proposed rule currently reads:

Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

- ...
- (i) Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)*

As drafted, this language addresses submissions of protected material for only some licensees (wineries, breweries, microbreweries, or COAs). However, a number of other licensees furnish similar reports to the Board. For example, spirits retailers must furnish similar information to the Board. See RCW 66.24.630(2)(b) (reporting requirement for spirits retailers on quantity of spirits sold and identity of customers). There appears to be no reason to limit the exemption to only the currently identified license types.

To avoid needing to revise this subsection to reflect every new requirement to furnish protected information to the Board, we propose the following revision:

- (i) Financial or proprietary information supplied to the board by any entity or licensee pursuant to a request from the Board or a requirement to submit such information, such as information about a domestic winery, brewery, or microbrewery, distillery, or craft distillery acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, or a spirits retailers, containing the identity and amount of spirits,*



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beer or wine sold directly to licensed Washington retailers. (See RCW ~~66.24.206 (1)(a)~~, ~~66.24.270 (2)(a)~~, and 42.56.270.)

WSLCB response: The information the comment asks to be listed as exempt in the rule is disclosable, although the WSLCB would likely redact account numbers from those documents if they were included. The statutes cited in the comment require reporting and that information be provided, but there is not a statement in the cited statutes that the information is exempt from disclosure. RCW 42.56.270(10)(a) is in the public records laws, but refers to financial info provided by applicants for licenses, not reports they file afterwards. All of the other exemptions in RCW 42.56.270 are specific to the type of license being applied for, such as subsections (24), (25) (27) and (28) which relate to marijuana. Because no exemption applies to the disclosure of the records that the commenter is referring to, the WSLCB would be obligated to disclose this information and the rules should be consistent with that.

Was the comment reflected in the final rule? No, though minor changes were made to remove subsections that contained language relating to exemptions that already exist in the Public Records Act, which were not needed to be included in WAC 314-60-100(1) since the rule is intended to detail exemptions from disclosure that appear outside the Public Records Act.

Public Hearing Comments:

No public testimony was offered at the public hearing.

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

Minor adjustments were made to the proposed rules prior to requesting adoption. Technical changes were made to remove exemptions to disclosure that no longer apply or are already covered by exemptions included in the Public Records Act (PRA). Subsection (1) of WAC 314-60-100 states that "requesters should be aware of" other exemptions outside the PRA that restrict availability of records. After reviewing the laws cited in proposed new language of subsections (1)(j) and (k) as filed with the CR-102, the cited sections of the liquor act provided for record-keeping but did not provide an exemption from disclosure of those records that differs from what is provided in the PRA or other subsections of the proposed rule. For this reason, these subsections were not needed and were removed from the proposed rules prior to adoption.