



# 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: December 09, 2020

TIME: 10:40 AM

WSR 21-01-058

**Agency:** Washington State Liquor and Cannabis Board

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 20-15-041 ; 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) The Washington State Liquor and Cannabis Board (Board) proposes to amend WAC 314-55-010 and proposes new sections WAC 314-55-550 and WAC 314-55-1055 to implement the directives and requirements of House Bill (HB) 2826 (Chapter 133, Laws of 2020) concerning marijuana vapor products, now codified in RCW 69.50.101, RCW 69,50.327, RCW 69.50.342.

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
February 3, 2021	10:00AM	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments	For more information about board meetings, please visit <a href="https://lcb.wa.gov/boardmeetings/board_meetings">https://lcb.wa.gov/boardmeetings/board_meetings</a> .

**Date of intended adoption:** Not earlier than February 17, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Casey Schaufler  
Address: 1025 Union Avenue SE, Olympia WA 98504  
Email: rules@lcb.wa.gov  
Fax:  
Other:  
By (date) February 3, 2021

**Assistance for persons with disabilities:**

Contact Claris Nhanabu, ADA Coordinator, Human Resources  
Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) January 27, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

HB 2826 provides that the Board may adopt rules prohibiting any type of marijuana vapor product device, or prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products. Proposed new rule section, WAC 314-55-550, establishes a procedure for the Board to monitor, evaluate and prohibit devices or additives used in conjunction with marijuana vapor products, consistent with HB 2826 and codified in RCW 69.50.342(1)(m). The proposed rule also amends WAC 314-55-010(4) and (40), adding definitions for "characterizing flavor" and "terpenes." Proposed new rule section, WAC 314-55-1055, makes current emergency rules, originally adopted on October 16, 2019, under WSR 19-21-100 and most recently re-adopted September 16, 2020, under WSR 20-19-083 permanent. The proposed new rule section requires marijuana processors and producers to disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, consistent with HB 2826 and codified in RCW 69.50.342(1)(n).

**Reasons supporting proposal:** New rule sections and amendment to existing rule is necessary to allow the WSLCB to implement marijuana vapor product regulation consistent with HB 2826, and to establish definitions for terms including, but not limited to "characterizing flavor," botanical terpenes," and others.

**Statutory authority for adoption:** RCW 69.50.342; RCW 69.50.345

**Statute being implemented:** HB 2826 (Chapter 133, Laws of 2020), now codified in RCW 69.50.101, RCW 69,50.327, RCW 69.50.342

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

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

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

Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Rules Coordinator	Casey Schaufler, Policy and	1025 Union Avenue SE, Olympia WA 98502	360-664-1760
Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue SE, Olympia WA 98502	360-664-1753
Enforcement: Chief	Justin Nordhorn, Enforcement	1025 Union Avenue SE, Olympia WA 98502	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 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:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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 34.05.310(4)(e).

Explanation of exemptions, if necessary: WAC 314-55-010(4) and (40), WAC 314-55-550 and WAC 314-55-1055 adopts, incorporates and implements the requirements of HB 2826, codified in RCW 69.50.327 and RCW 69.50.342(1)(m) and (n).

**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.

Licensing Costs: There are no licensing costs associated with this rule. The rule does not impose any additional regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. Thus, licensing costs were not included in this calculation.

Administrative Costs: WSLCB estimates it will take a producer or processor licensee around one hour for each submitted ingredient disclosure form and any related phone calls or communications with agency staff. It will not be necessary for a retail licensee to submit a disclosure form. Producer and processor licensees must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation, and forms must be updated whenever there is any change in product composition. If a producer or processor submits an ingredient disclosure

form up to two times a month, they could spend up to 24 hours per year on product disclosure forms. [1 hour per form x 24 forms per year = 24 hours per year]

According to the 2019 OES Databook (<https://esd.wa.gov/labormarketinfo/report-library>), the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$21.31. The estimated annual cost for these administrative activities is up to \$511.44 [ $\$21.31 \text{ avg. hourly wage} \times 24 \text{ hours} = \$511.44$ ].

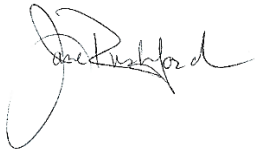
Below are calculations for minor cost thresholds across all impacted license types based on the best analogous NAICS types. The minor cost does not exceed any of the thresholds for any of the license types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$ 511.44	Marijuana Processors	All Other Food Manufacturing	\$27,271.78	\$9,424.11 2018 Dataset pulled from USBLS	\$27,271.78 2018 Dataset pulled from DOR
111	\$ 511.44	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from USBLS	\$2,998.38 2018 Dataset pulled from DOR

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:

<b>Date:</b> December 9, 2020	<b>Signature:</b> 
<b>Name:</b> Jane Rushford	
<b>Title:</b> Board Chair	