



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: October 28, 2020

TIME: 11:44 AM

WSR 20-22-042

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-15-043 ; 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) WAC 314-55-020 – Marijuana license qualifications and application process—Licensing change requests. The Washington State Liquor and Cannabis Board (Board) is proposing a rule amendment to establish a certificate of compliance for marijuana business premises consistent with Substitute Senate Bill (SSB) 6206, (Chapter 154, Laws of 2020), now codified as RCW 69.50.331(8)(e).

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 9, 2020	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 https://lcb.wa.gov/boardmeetings/board_meetings .

Date of intended adoption: Not earlier than December 16, 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) December 9, 2020

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) December 2, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: SSB 6206 was designed to prevent a competitor from opening a business that would disqualify another marijuana entity's license application. During legislative testimony, it was noted that this situation has occurred with some frequency, after an applicant had spent the money to secure a lease, and a competitor moved a business (such as an arcade business) next door, violating the zoning restrictions for the new applicant. The legislation provides certainty for applicants with considerable investment in their businesses who are waiting for completion of the Board's license approval process. The proposed new rule section implements this by amending WAC 314-55-020(6) for issuance of certificate of compliance by the WSLCB to the applicant if proposed business premises meets the minimum distance requirement as of the date the application was received by the WSLCB. Amended WAC 314-55-020(6), consistent with SSB 6206, also allows applicants granted licenses prior to adoption of this rule to operate notwithstanding a later occurring, otherwise disqualifying minimum distance factor.

Reasons supporting proposal: Amendment to existing rule is necessary to allow the WSLCB to issue a certificate of compliance consistent with the mandates of SSB 6206, now codified as RCW 69.50.331(8).

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345

Statute being implemented: RCW 69.50.331(8)(e), SSB 6206 (Chapter 154, Laws of 2020)

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:

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 34.05.310(4)(e).

Explanation of exemptions, if necessary: WAC 314-55-020(6) adopts and incorporates the requirements of SSB 6206, codified in RCW 69.50.331(8)(e).

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?

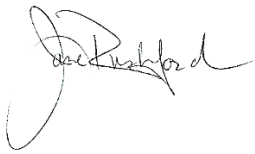
No Briefly summarize the agency's analysis showing how costs were calculated. There are no costs associated with this rule. The rule does not impose any additional regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. The WSLCB applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the license types. Therefore, implementation of these rules will not result in any administrative, intrinsic or actual costs to the regulated community. 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	\$ 100.00	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	\$ 100.00	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from USBLS	\$2,998.38 2018 Dataset pulled from DOR
453	\$ 100.00	Marijuana Retailers	Miscellaneous Store Retailers	\$2,799.83	\$2,591.39 2018 Dataset pulled from USBLS	\$2,799.83 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:

Date: October 28, 2020	Signature: 
Name: Jane Rushford	
Title: Board Chair	

WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests. Each marijuana license application is unique and investigated individually. The WSLCB may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not limited to, the following:

(1) Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, tribal governments, and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(2) Consistent with RCW 69.50.331 (8) ~~((e))~~ (f), the WSLCB shall send a notice to tribal governments when an applicant or licensee is proposed to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government will have twenty days to respond with an approval to the application. If written approval is not received within thirty days, the WSLCB will assume the tribe does not consent to the applicant's location and the applicant must find a new location.

(3) Applicants for a new marijuana producer, processor, retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB; and

(e) The notice must be posted for fourteen consecutive days.

(4) All marijuana license applicants must meet the qualifications required by the WSLCB before they will be granted a license.

(5) The WSLCB will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(6) Consistent with RCW 69.50.331 (8) (e), the WSLCB will issue a certificate of compliance if the proposed business premises meets the minimum distance requirements as of the date the application was received by the WSLCB. If the physical location changes during the application process, the certificate of compliance will be issued for the date that the premises change was received by the WSLCB. Applicants who were granted licenses prior to adoption of this rule are al-

lowed to operate the business at the location notwithstanding a later occurring, otherwise disqualifying minimum distance factor.

(7) The WSLCB will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check.

~~((7))~~ (8) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((8))~~ (9) The WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((9))~~ (10) The WSLCB may conduct an inspection of the proposed or currently licensed business location, to determine if the applicant has complied with all the requirements of the license or change to the license or premises requested.

~~((10))~~ (11) Under RCW 69.50.331 (1)(c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

~~((11))~~ (12)(a) As part of the application process, each applicant must submit an operating plan outlining required elements for the location as provided in this chapter pertaining to the license type being sought. The operating plan must be submitted using an operating plan format supplied by the WSLCB. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed.

(b) After obtaining a license, the license holder must notify the WSLCB in advance of any change in their operating plan. Prior approval is required before the change may be implemented.

~~((12))~~ (13) The WSLCB may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The WSLCB may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of chapter 314-55 WAC. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

- (i) Application for additional funding;
- (ii) Application for added medical marijuana endorsement;
- (iii) Assumption of a license;
- (iv) Change in governing people, percentage owned, or stock/unit ownership;
- (v) Change of location;
- (vi) Expanding plant canopy to maximum allotted;
- (vii) Request to alter marijuana site or operating plan;
- (viii) Request to add a processor license; and
- (ix) Splitting a producer and processor license.

~~((13))~~ (14) (a) To aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all applicants and licensees seeking renewal provide the following information:

(b) **Employees compensation and benefits data.**

- (i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?
- (ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?
- (iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?
- (iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?
- (v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

~~((14))~~ (15) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((15))~~ (16) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

~~((16))~~ (17) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.