



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: April 28, 2021

TIME: 1:07 PM

WSR 21-10-040

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-01-171 ; 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 314-55-075 – Marijuana [Cannabis] producer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) is proposing rule amendments to expand the plant canopy square footage allowed for licensed Tier 1 marijuana [cannabis] producers.

Hearing location(s):

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

Date of intended adoption: Not earlier than June 16, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Policy and Rules Coordinator

Address: 1025 Union Avenue SE, Olympia WA 98504

Email: rules@lcb.wa.gov

Fax:

Other:

By (date) June 9, 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) June 2, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Currently, Tier 1 cannabis producer licensees are limited to two-thousand square feet of production canopy. Some of these Tier 1 businesses find it difficult to operate a successful business under the current square footage limit. The proposed rules would expand current Tier 1 canopy from two-thousand to four-thousand square feet of production canopy. It would also align the Tier 2 canopy from two-thousand square feet up to ten-thousand square feet to four-thousand square feet to ten-thousand square feet of production canopy.

Reasons supporting proposal: Tier 1 licensees experience business sustainability and viability challenges based on canopy space restrictions. Following two stakeholder engagement sessions, the agency conducted a follow up targeted survey of Tier 1 licensees. One of the most common responses was a request to expand canopy to allow Tier 1 licensees to be competitive in the current market. As of 2019, Tier 1 licensed canopy represents the fewest cannabis production licenses (less than 200) and the smallest amount of overall canopy – approximately 350,000 square feet, or 1.9% of the 18,040,000 square feet of licensed canopy in Washington State. The option to expand growth capacity will add value to the Tier 1 producer license type, support business viability and sustainability, and create an opportunity for Tier 1 producer licensees to become more competitive in the competitive Washington State cannabis market.

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345

Statute being implemented: RCW 69.50.345

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:	Policy and Rules Coordinator	1025 Union Avenue SE, Olympia WA 98502	360-664-1760
Implementation:	Becky Smith, Director of Licensing	1025 Union Avenue SE, Olympia WA 98502	360-664-1753
Enforcement:	Chandra Brady, Director of Education and 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: Policy and Rules Coordinator

Address: 1025 Union Avenue SE, Olympia WA 98502

Phone: 360-664-1622

Fax:

TTY:

Email:

Other:

No: Please explain:

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. The rule does not impose any additional mandatory regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. The option to expand Tier 1 growing capacity is voluntary, and not required.

However, to make that determination, WSLCB applied a default cost of compliance (\$300) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This represents the following:

- A \$75 fee for an alteration request application;
- \$75 for one and half hours of licensee time to complete forms and communicate with WSLCB regarding expansion;
- \$50 for one hour of licensee time to be present for final inspection;
- \$100 for two hours of work to expand security and video system.
- Estimated total: \$300

Below are calculations for minor cost thresholds for the appropriate NAICS industry codes. While these estimates are largely based on broad application, rather than the three-tiered system in Washington State, even if scaled, it is unlikely that the cost of compliance would exceed 0.3% of average annual gross business income. The estimated minor cost is not anticipated to exceed any of the thresholds for cannabis grown under cover or in an open field. Since this rule provides an *option* to expand capacity to one tier with the smallest number of licensees, and that expansion is not required to remain in compliance, these costs are not mandated but optional. Other costs incurred are also voluntary, such as expanding fence lines and working with


local authorities. For these reasons, the proposed rules are not anticipated to 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	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
111419	\$300	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR
111998	\$300	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 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: April 28, 2021	Signature: 
Name: David Postman	
Title: Board Chair	

WAC 314-55-075 Marijuana producer license—Privileges, requirements, and fees. (1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer may also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees;

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in this chapter; and

(iii) Immature marijuana plants or clones and marijuana seeds to a licensed marijuana researcher under the conditions provided in this chapter.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. In addition, outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for criminal history checks.

(4) The application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035, in no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than (~~two~~) four thousand square feet;

(b) Tier 2 - (~~Two~~) Four thousand square feet up to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet up to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

(10) A producer may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(11) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

(a) Lot number;

(b) UBI number of the producer; and

(c) Weight of the product.