



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: October 13, 2021

TIME: 10:58 AM

WSR 21-21-041

Agency: Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 21-14-117 ; 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) New rule section, WAC 314-55-560 – Evaluation of Additives, Solvents, Ingredients, or Compounds Used in the Production of Marijuana Products. The Washington State Liquor and Cannabis Board (WSLCB) proposes a new rule section that would allow the WSLCB to evaluate additives, solvents, ingredients or compounds used in the production and processing of marijuana products other than delta-9 tetrahydrocannabinol (THC), as well as CBD, hemp, or both converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both, to determine whether such substances pose a risk to public health or youth access.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 8, 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 December 22, 2021 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Katherine Hoffman, Policy and Rules Manager

Address: 1025 Union Avenue SE, Olympia WA 98504

Email: rules@lcb.wa.gov

Fax:

Other:

By (date) December 8, 2021

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources

Phone: 360-664-1739]
Fax: 360-664-9689
TTY: 7-1-1 or 1-800-833-6388
Email: Anita.Bingham@lcb.wa.gov
Other:
By (date) December 1, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: RCW 69.50.326(1)(m) provides, among other things, that the Board may adopt rules prohibiting the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products. Proposed new rule section, WAC 314-55-560, establishes a procedure for the Board to prohibit the use of any type of additive, solvent, ingredient, or compound used in the production and processing of marijuana products, and defines these terms in a way that will assist the Board in determining whether an additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

Reasons supporting proposal: In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 tetrahydrocannabinol (THC). In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in the Revised Code of Washington (RCW), the Washington State Administrative Code (WAC), or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

Currently, the only products that may be produced, processed, and sold in the I-502 system are products defined as “marijuana” in statute. RCW 69.50.101(y) defines “marijuana” as all parts of the plant Cannabis with a THC concentration greater than 0.3 percent. RCW 69.50.101(uu) provides that “THC concentration” means percent of delta-9 THC content of any part of the plant Cannabis. The production and processing of marijuana products may involve the use of potentially harmful additives, solvents, ingredients or compounds. For example, the chemicals used to create the concentration of delta-8 THC claimed in the current market place may be harmful, and may pose a risk to public health and safety. The proposed rules provide a framework for the Board to evaluate whether additives, solvents, ingredients or compounds used in the production of marijuana products pose or may pose, a risk to public health or youth access.

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345

Statute being implemented: RCW 69.50.342(1)(m)

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: N/A

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: Rules Manager	Katherine Hoffman, Policy and	1025 Union Avenue SE, Olympia WA 98502	360-664-1664
Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue SE, Olympia WA 98502	360-664-1753
Enforcement: Education and Enforcement	Chandra Brady, Director or	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 .

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.

Agencies are required under chapter 19.85 RCW to consider costs imposed on businesses and costs associated with proposed rule compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs unassociated with compliance. Fines, penalties, or defense costs associated with enforcement actions for failure to comply with proposed rules are considered to be indirect costs that are not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur if an additive, solvent, ingredient, or compound used in the

production and processing of marijuana products is determined to pose a risk to public health or youth access, and the Board prohibits its presence in the I-502 market.

LCB applied the North American Industry Classification System (NAICS) codes 111419 for marijuana grown under cover, 111998 for marijuana grown in an open field, and 424590 for marijuana processors. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects 4 hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

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)
111419	\$ 200.00	Marijuana Producers	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from USBLS	\$2,324.68 2018 Dataset pulled from DOR
111998	\$ 200.00	Marijuana Producers	All Other Miscellaneous Crop Farming	\$9,125.03	\$9,125.03 2018 Dataset pulled from USBLS	\$2,834.77 2018 Dataset pulled from DOR
424590	\$200.00	Marijuana Processors	Marijuana merchant wholesalers	\$6,733.79	\$3,864.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR

These calculations indicate that estimated administrative costs do not exceed minor cost thresholds, and will not impose more than minor costs on those who must comply with the rules.

☐ 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 13, 2021

Name: David Postman

Title: Board Chair

Signature:



NEW SECTION

WAC 314-55-560 Evaluation of additives, solvents, ingredients or compounds used in the production of marijuana products. (1) **Purpose and scope.** The purpose of this section is to establish a procedure for the board to evaluate additives, solvents, ingredients or compounds used in the production of marijuana products, as those products are defined in chapter 69.50 RCW.

(2) **Definitions.** For purposes of this chapter, the following definitions apply unless the context clearly states otherwise:

(a) "Additive" means any substance the use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any marijuana product;

(b) "Compound" means a chemical substance composed from more than one separate chemical element;

(c) "Ingredient" means something that enters into a mixture or is a component part of any combination or mixture;

(d) "Nonmarijuana additive" means a substance or a group of substances that are derived from a source other than marijuana.

(i) "Nonmarijuana additive" includes, but is not limited to, purified compounds, essential oils, oleoresins, essences, or extractions, protein hydrolysates, distillates, or isolates;

(ii) "Nonmarijuana additive" does not include plant material that is in the whole, broken, or ground form.

(e) "Solvent" means a substance capable of being used in dissolving a solute with the exception of water.

(3) **Procedure.**

(a) The board may prohibit the use of any additive, solvent, ingredient or compound in the production of marijuana products that may pose a risk to public health or youth access including, but not limited to:

(i) Verifiable case report data;

(ii) Other local, state and federal agency findings, reports, etc.;

(iii) A product or substance that is the subject of a recall under WAC 314-55-225;

(iv) Any other information sourced and confirmed from reliable entities.

(b) The board may prohibit the use of a product or substance by adoption of emergency or permanent rules. The board will provide notices of rule making consistent with the requirements of chapter 34.05 RCW.

(c) The board will maintain a list of prohibited substances prohibited by emergency or permanent rules on its website.

(d) The list of prohibited substances will be reviewed on at least an annual basis.

(e) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (a)(i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.