



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-075 - Cannabis producer license—Privileges, requirements, and fees; WAC 314-55-083 - Security and traceability requirements for cannabis licensees).

Date: January 31, 2024

Presented by: Jeff Kildahl, Policy and Rules Coordinator

Background

On December 15, 2023, Ezra Eickmeyer, on behalf of Producers NW, submitted a petition for adoption, amendment, or repeal of a state administrative rule to the Washington State Liquor & Cannabis Board (Board). The petition requests that the agency amend [WAC 314-55-075\(1\)\(b\)](#) and [WAC 314-55-083\(2\) and \(3\)](#) to: exempt outdoor producers that own multiple licenses with adjacent premises from certain regulatory requirements regarding barriers separating premises; repeal the requirements that surveillance cameras and system storage devices be internet protocol (IP) compatible; and add rules allowing for shared spaces to use a single storage device or online cloud storage.

The petition form submitted by Mr. Eickmeyer included the following:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: [314-55-075, 314-55-083](#)

I am requesting the following change: [Modifications to camera rules and video storage rules, changes to visual barrier & other site rules for outdoor producers, allow for streamlined use of shared space between multiple producers \(see attachments for details\)](#)

This change is needed because: [The current rules in these sections as written contain provisions that are consuming WSLCB enforcement resources, causing industry expense and hardship & environmental harm without providing any perceived public benefit.](#)

The effect of this rule change will be: [Save WSLCB enforcement resources, reduce industry operational costs & environmental impact, maintain protections for public health, safety and relations](#)

The rule is not clearly or simply stated: [\[Redacted\]](#)

Mr. Eickmeyer also included a letter with the petition form with additional information to support the request and proposed rule language (*see attachments*).

Issues

Whether the Board should initiate the rulemaking process to consider amending WAC 314-55-075(1)(b) to exempt outdoor producers that own multiple licenses with adjacent premises from the following:

1. Requirement that a 20-foot buffer must be between each licensed premise;
2. Prohibition on outdoor grows sharing common walls and fences; and
3. Requirement that outdoor grows must have a physical barrier between licensed premises and provide an exception to allow a visual barrier to be used instead.

Whether the Board should initiate rulemaking to consider amending WAC 314-55-083(2) and (3) to:

1. Allow licensees that own multiple licenses with adjacent premises to use a shared alarm system;
2. Repeal the requirement that the surveillance system storage device and/or cameras be IP compatible;
3. Add language to permit surveillance system storage to be held within an on-site storage device or cloud storage service; and
4. Add an exception for outdoor producers that own multiple licenses with adjacent premises to share a single storage device, shared online cloud storage and shared cameras.

Analysis

When making a recommendation to the Board regarding a petition for rulemaking submitted, the Director's Office Staff considers the following factors to the extent practicable:

- LCB's statutory authority and obligations;
- Alignment with the Agency's policy goals and priorities;
- The immediacy of the safety, environmental, or security concern raised;
- Potential impact to public health outcomes;
- The potential impact on criminal activity;
- Level of public interest;
- Whether the problems or issues are already under consideration by the LCB in other rulemaking issues;
- Merits of the petition; and
- Equity impacts.

Accepting the rule petition does not mean the Agency would begin developing rules, but rather provides an opportunity for the Agency to solicit and gather feedback from the public to assess whether and how a regulation should be revised to ensure the most favorable outcomes. If the Board accepts a petition, the collaborative rulemaking process will be initiated, consistent with the [Administrative Procedures Act \(APA\)](#).

Request to Amend WAC 314-55-075(1)(b) – Barriers Separating Licensed Premises

WAC 314-55-075(1)(b) requires outdoor production to be enclosed by a sight obscured wall or fence at least 8 feet high and that the licensed premises be physically separated at least 20-feet from the premises of another licensed outdoor grow. The rules prohibit outdoor grows from sharing common walls and fences. The petitioner requests amendments to the rules that would exempt outdoor producers that own multiple licenses with adjacent premises from the requirements requiring a 20-foot physical separation between licensed premises and allow the sharing of common walls and fences. In addition, the petitioner requests adding rule language to allow visual barriers to demarcate the boundaries of each premises rather than a sight obscured wall or fence at least 8 feet high.

WAC 314-55-083(3) requires camera coverage capable of surveilling 20 feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation to be able to monitor activity going into and out of the production operation. The petitioner's request is inconsistent with the security requirement. Although the petitioner is requesting an amendment to WAC 314-55-083, the requested amendments are related to the alarm systems and surveillance system and does not include amendments to the 20-foot camera coverage requirement which is necessary for the petitioner's request to be feasible. Removing the 20-foot physical separation between licensed premises and allowing a visual barrier effectively means that the production areas are combined into one large production area which may make it more difficult for monitoring whether product is being inverted or diverted from one premises to another.

Request to Amend WAC 314-55-083(2) – Alarm Systems

The petitioner requests amending WAC 314-55-083(2) to allow licensed producers that own multiple grows that have contiguous licensed premises to share an alarm system. The current rules do not prevent licensed producers from using a shared alarm system regardless of whether the production occurs indoors or outdoors, or whether the multiple grows share production space or are physically separated. To ensure alarm system requirements in rule are met, an alarm partitioning system could be used. Partitions are independent areas of detection/protection. Each partition contains a group of zones that can be armed/disarmed without affecting other zones and users in the overall system. Partition security systems are commonly used for places like office buildings and shopping malls.

Request to Amend WAC 314-55-083(2) – Surveillance System

The petitioner requests repealing the requirement that surveillance system storage devices and/or cameras must be IP compatible, add language to explicitly state that surveillance system storage may be maintained on an on-site storage device or maintained using a cloud storage service, and add language allowing only licensed producers that own multiple grows with contiguous production areas to share cameras and cloud-storage systems.

Internet Protocol (IP) cameras refer to all the digital video cameras that can send and receive data via an IP network. They are widely used as video surveillance cameras, and they come in varying designs and capabilities. Some IP cameras need the support of a network video recorder (NVR) for recording and video/alarm management. However, others operate without an NVR, meaning they can record directly to a remote or local storage media. IP cameras connect to a network video recorder (NVR) via Wi-Fi, an Ethernet cable, or USB.

Analog cameras capture images, record and send them as analog signals over a coaxial cable to a digital video recorder (DVR). The latter then converts the analog signals to digital signals, compressing the file and storing it on a hard drive. Although analog cameras do not by themselves feature IP addresses due to having no network interface, analog cameras can be converted into an IP camera, so although the rules explicitly state an analog system may be used, the requirement that the system must be IP compatible does not mean an analog system cannot be used, although modifications would be necessary to meet the IP compatible system requirement. Although analog cameras may be cheaper, they cover less space, so more analog cameras will be needed than if IP cameras are used. In addition, analog security cameras are not ideal for areas with a lot of motion due to low frame rate and image quality, and analog cameras lack data encryption technology and may pose a greater security risk.

With regards to the petitioner's request to explicitly allow cloud storage, the current rules do not prevent a licensee from using a cloud storage system regardless of whether it is shared with another licensed premises or used for a single premises. The Board [accepted](#) a petition to consider amending WAC 314-55-083 in August 2022. The CR 101 to initiate the rulemaking process was filed in January 2023. Following the filing of the CR 101, [public comment was open](#) until February 27, 2023. During that time, no comments were received that supported formal rulemaking on this topic. After several months of deliberative discussion on the topic, a survey was sent to a representative selection of agency licensees, and following feedback that a clarifying statement would be beneficial and desired by licensees, the agency [withdrew the CR 101](#) on June 21, 2023. See [June 21, 2023 Board Meeting Recording](#) beginning at 00:45. On August 15, 2023, the Board issued [clarifying guidance](#) on the use of cloud storage to store required records.

Providing exemptions to a limited number of rules implicating license consolidation without providing additional considerations related to broader policy impacts of license location mergers could contribute to risk in regulation inconsistency and provide inequitable advantages to those owning more than one license.

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

No identified impact.

Enforcement & Education

No identified impact.

Finance

No identified impact.

Information Technology/Infrastructure

No identified impact.

Public Health/Prevention

No identified impact.

Interagency

Department of Health

No identified impact.

Labor & Industries

No identified impact.

Intergovernmental

Tribes

No identified impact.

DEIB, Social Equity

The petitioner indicated that the requested rule change would benefit social equity licenses. However, based on our analysis, if the request were granted it will likely have disproportionate negative impacts on these licenses, contrary to the goals of the social equity program. The requested rule change would only benefit licensees that own more than one outdoor production facility with adjacent premises and provide an opportunity




for business expansion while making it more difficult for smaller producers and new producers.

Recommendation

For the reasons described above, Director's Office staff recommend that consistent with RCW 34.05.330(1)(b), the Board reject Ezra Eickmeyer's petition for amending of rules submitted on December 15, 2023.

Board Action

After considering the recommendation of Director's Office staff, the Board rejects the petition for rulemaking received from Ezra Eickmeyer on December 15, 2023.

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|--|---|--------------------------|
| <input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny |  David Postman, Chair | <u>1.31.2024</u> Date |
| <input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny |  Ollie Garrett, Board Member | <u>1.31.2024</u> Date |
| <input type="checkbox"/> Accept <input checked="" type="checkbox"/> Deny |  Jim Vollendroff, Board Member | <u>1.31.2024</u> Date |

Appendix A: Authority

Laws

[RCW 69.50.342](#) identifies the Board's authority to engage in rulemaking regarding a variety of matters related to cannabis, including, but not limited to "the books and records to be created and maintained by licensees, and security requirements for premises where cannabis is produced or processed.

Rules

[WAC 314-55-075\(1\)\(b\)](#) states that cannabis 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 20 feet from another licensed outdoor grow. In addition, outdoor grows cannot share common walls or fences.

[WAC 314-55-083\(2\)](#) states that [a]t a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

[WAC 314-55-083\(3\)](#) states that [a]t a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously 24 hours per day and at a minimum of 10 frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device. All videos are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. [Proceeds to define "controlled areas."]

Attachments

1. Email from Ezra Eickmeyer received December 15, 2023, containing rule petition request.
2. Rule petition form.