



## Washington State Liquor and Cannabis Board

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**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Request an exemption to the prohibition of employees of contractors under 21 on the premises of licensed cannabis producers and processors as required by WAC 314-55-015.

**Date:** August 31, 2022

**Presented by:** Robert DeSpain, Policy and Rules Coordinator

### Background

On July 6, 2022, Crystal Oliver submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-55-015 to allow for an exemption to the prohibition of employees or contractors under twenty-one years of age on the premises of licensed cannabis producers and processors, provided the person is at least sixteen years of age, is an employee of a contractor engaged in construction, electrical, plumbing, HVAC, etc., and is not engaging in work directly related to the production, processing, or sales of cannabis.

In the rule petition, Crystal Oliver states:

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

**List rule number (WAC), if known:**  
WAC 314-55-015

#### **I am requesting the following change:**

Create an exemption to the prohibition of minors being present on premises of licensed cannabis producers/processors for employees of contractors engaged in construction, electrical, plumbing, HVAC, work etc. provided the person is over the age of 16 and not engaging in any work related directly to the production, processing, or sales of cannabis.

#### **This change is needed because:**

1. RCW does not prohibit persons under twenty-one to enter or remain on the licensed premises of a producer or processor.
2. Most crews engaged in construction related activities employ one or more young persons to support and learn from more experienced trades persons.
3. The prohibition on all minors presence on premises creates additional, unnecessary hardship for small independent businesses and family owned contractors and construction companies.

## **The effect of this rule change will be:**

To allow employees under the age of 21 of contractors engaged in construction, electrical, plumbing, HVAC, work etc. the ability to be present on the premises of licensed cannabis producers and processors provided the person is over the age of 16 and not engaging in any work related directly to the production, processing, or sales of cannabis.

Ms. Oliver submitted two rule petitions with similar characteristics. The first petition has been analyzed under separate cover. With respect to the petition analyzed here, Ms. Oliver writes:

“...I have attached another petition that addresses the need for an additional exemption to the minor on site prohibition for employees of contractors engaged in construction, electrical, plumbing, HVAC work, etc. Over the years I have heard complaints from many farmers and construction companies who have been negatively impacted by this. Most crews engaged in construction related activities employ young people to support and learn from more experienced trades persons. Provided the employee is over the age of 16 and not engaging in any work related directly to the production, processing, or sales of cannabis it seems reasonable to allow these workers the ability to earn income and learn from more experienced trades persons.”

## **Issue**

Whether the Board should initiate rulemaking to consider an exemption to the prohibition of employees of independent contractors on the premises of licensed cannabis producers and processors, as required by WAC 314-55-015, provided the person is at least sixteen years of age, is an employee of an independent contractor engaged in construction, electrical, plumbing, HVAC, etc., and is not engaging in work directly related to the production, processing, or sales of cannabis.

## **Authority**

### *Laws*

RCW 69.50.325 establishes three types of cannabis licenses and describes how each will be regulated.

RCW 69.50.325(1) establishes “a cannabis producer’s license **regulated by the board** and subject to annual renewal.” (emphasis added)

RCW 69.50.325(2) establishes “a cannabis processor's license to process, package, and label cannabis concentrates, useable cannabis, and cannabis-infused products for

sale at wholesale to cannabis processors and cannabis retailers, **regulated by the board** and subject to annual renewal.” (emphasis added)

RCW 69.50.342 grants the Board authority to adopt rules to put Initiative 502 into effect. The Board is authorized, among other things, to **“adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013** as are deemed necessary or advisable.” (emphasis added)

RCW 69.50.345 directs the Board to adopt rules that establish the procedures and criteria necessary to implement agency functions.

RCW 69.50.345(6)(a) advises that the Board shall take into consideration **“Security and safety issues.”** (emphasis added)

RCW 69.50.345(9)(b) directs the Board to **minimize “exposure of people under twenty-one years of age” to cannabis** or anything that would encourage or normalize cannabis use. (emphasis added)

### *Rules*

WAC 314-55-015 contains the general information about cannabis licenses.

WAC 314-55-015(2) states:

“(2) All applicants, licensees, and **employees** working in each licensed establishment **must be at least twenty-one years of age. No one under twenty-one years of age is allowed to enter or remain on a cannabis licensed premises** except as provided in RCW 69.50.357.” (emphasis added)

WAC 314-55-015(3) states:

“(3) **Minors restricted signs must be posted at all cannabis licensed premises** consistent with the requirements in WAC 314-55-086.” (emphasis added)

WAC 314-55-086(1) states:

“(1) All licensed cannabis processors, producers, and retailers, with the exception of licensed retailers with a medical cannabis endorsement, must conspicuously post a notice provided by the board about persons under 21 years of age at each entry to all licensed premises. The notice must contain all of the following language: **“Persons under 21 years of age not permitted on these premises.”**” (emphasis added)

WAC 314-55-010(10) states:

“(10) “Employee” means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.”

## Analysis

Initiative 502 legalized cannabis for recreational use under certain conditions. I-502 also created three new license types and requirements for each license type. Requirements were also created for the producing, processing, and retail sales of cannabis. Using authority from RCW 69.50.325, RCW 69.50.331, RCW 69.50.342, and RCW 69.50.345, the Board filed the first permanent rules to implement I-502 on October 21, 2013, as WSR 13-21-104<sup>1</sup>, with an effective date of November 21, 2013.

WAC 314-55-015, titled “General information about marijuana licenses,” was among the first permanent rules adopted to implement I-502. When first adopted WAC 314-55-015 established rules prohibiting minors on the premises of cannabis licensees. When first adopted WAC 314-55-015(2) stated: “All applicants and employees working in each licensed establishment must be at least twenty-one years of age.”<sup>2</sup> WAC 314-55-015(3) stated: “Minors restricted signs must be posted at all marijuana licensed premises.”<sup>3</sup> No exceptions to the prohibition of persons under twenty-one years of age being allowed to enter or remain on cannabis licensed premises were provided in the initial rules.

In order to implement legislation that passed in the 2015 legislative session (SB 5052 and HB 2136, known as the Cannabis Patient Protection Act) and align the medical marijuana market with the existing recreational market, the Board filed a permanent rule change on May 18, 2016, as WSR 16-11-110<sup>4</sup>, with an effective date of June 18, 2016. Based on the legislative change, WAC 314-55-015(2) was amended to allow for an exception to the prohibition of minors on licensed premises:

“(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age. No one under twenty-one years of age is allowed to enter or remain on a marijuana licensed premises except as provided in RCW 69.50.357.”

The exception contained in RCW 69.50.357 is specific to licensed cannabis retailers, not licensed cannabis producers or processors. The exception is only for qualifying patients under twenty-one years of age with a medical cannabis recognition card.<sup>5</sup>

There are several statutes currently applicable to minors and cannabis<sup>6</sup>, with the focus on the creation of an access barrier. These statutes pertain to prohibition of the delivery, sale, or possession of controlled substances – here, usable cannabis, cannabis concentrates, or cannabis-infused products to persons under twenty-one years of age. The sole exception to the age restriction in these statutes is the same as the exception contained in WAC 314-55-015(2).

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<sup>1</sup> <https://lawfilesexternal.wa.gov/law/wsr/2013/21/13-21-104.htm>, accessed on 8/4/2022.

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> <https://lawfilesexternal.wa.gov/law/wsr/2016/11/16-11-110.htm>, accessed on 8/4/2022.

<sup>5</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=69.50.357>, accessed on 8/8/2022.

<sup>6</sup> RCW 69.50.4012, RCW 69.50.4015, RCW 69.50.406, RCW 69.50.414

### *Current petition*

In this petition, Crystal Oliver requests that the Board initiate rulemaking to consider an exemption to the prohibition of employees of contractors under 21 years of age on the premises of licensed cannabis producers and processors, as required by WAC 314-55-015, provided the person is at least sixteen years of age, is an employee of a contractor engaged in construction, electrical, plumbing, HVAC, etc., and is not engaging in work directly related to the production, processing, or sales of cannabis.

Agency staff identified several key issues to consider when evaluating the risks and benefits of creating an exemption to the prohibition of minors under 21 years of age on the premises of licensed cannabis producers and processors:

- Youth access and safety risks
- Enforcement
- Meaning of “employee” in 314-55 WAC

### *Youth access and safety risks*

Allowing children and grandchildren of cannabis producer/processor licensees on premises, under specific conditions, allows access to a product, cannabis, that is otherwise age restricted for all persons under twenty-one years of age. There are risks associated with, expanding access that could lead to accidental or intentional consumption of cannabis. There is risk of increased exposure to cannabis creating a normalizing effect. Additional risks include supervision and safety of the minors under sixteen years of age, particularly while the licensee is working and otherwise unable to monitor the minors, and being exposed to industry machinery, equipment, and products that may pose a safety risk to children. For these reasons, if an exemption to the prohibition of minors on cannabis licensed producer/processor premises is considered, agency staff suggests that determining an appropriate age range for this exemption should be considered. These access and safety risks should also be further explored in the context of federal guidance. Additional safeguards need to be explored with stakeholders to ensure youth access and safety risks are discussed.

### *Enforcement*

Compared to a prohibition of all minors under twenty-one years of age being allowed to enter or remain on the premises of licensed cannabis premises, there are risks related to potential enforcement of such a rule revision. One condition of the exception is that persons be employed by contractors and not engaged in work directly related to the production, processing, or sale of cannabis. This exemption may present enforcement challenges without additional procedures in place, such as requiring employees of contractors maintain proper identification, maintenance of a list of all contractors that work on-site, or both, including duration, frequency, and a full list of all employees that are at least sixteen and under twenty-one years of age. Currently there is only one permanent exemption to the prohibition of minors under twenty-one years of age being allowed on cannabis licensed premises, but it is for retail cannabis and requires person(s) maintain a medical cannabis recognition card. For these reasons, if this exception is considered

agency staff find that it will be important to develop procedures, records, and or processes that identify the person(s) to whom this exemption will apply. Additional stakeholder engagement is suggested to further explore this issue.

### *Meaning of “employee” in 314-55 WAC*

If this exemption is considered the definition of “employee”, as defined in Chapter 314-55 WAC may need to be reconsidered. WAC 314-55-010(10) defines “Employee” as “any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.” WAC 314-55-015(2) states that all employees working in each licensed establishment must be twenty-one years of age or older. This exemption is sought for employees of an independent contractor.<sup>7</sup> Determining whether a contractor is independent or is acting as an employee of the cannabis producer/processor can be fact-driven, but this exemption would only apply to employees of independent contractors. For this reason, if this exemption is considered, agency staff find that it would be helpful to engage with stakeholders to determine if any additional procedures need to be implemented to ensure that this exemption only applies to employees of independent contractors not engaging in work directly related to the production, processing, or sales of cannabis.

### *Conclusion*

The Board has the statutory authority to amend WAC 314-55-015 regarding the prohibition of persons under twenty-one years of age being allowed to enter or remain on a cannabis licensed premises. Considering the issues related to the prohibition of minors under 21 years of age on the premises of licensed cannabis producers and processors, agency staff find that considering this subject for further public discussion would be beneficial. Initiating the rulemaking process as requested in the petition would allow the agency to begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of creating an exemption to the prohibition of minors under 21 years of age on the premises of licensed cannabis producers and processors for employees of independent contractors.

### **Recommendation**

For the reasons described above, Director’s Office staff recommends that consistent with RCW 34.05.330(1)(b), the Board accept Crystal Oliver’s rule petition request, received on July 6, 2022, and initiate rulemaking proceedings in accordance with RCW 34.05.310 and



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<sup>7</sup> “Independent contractor” is defined as “a person hired to do work who controls how the work is done.” Independent contractor, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/independent%20contractor>, last accessed August 11, 2022; The IRS website provides: “The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.” They also advise that “whether these people are independent contractors or employees depends on the facts in each case.” <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined#:~:text=The%20general%20rule%20is%20that,then%20you%20are%20self%20employed>, last accessed August 11, 2022.

34.05.320 to consider an exemption to the prohibition of employees of independent contractors on the premises of licensed cannabis producers and processors, as required by WAC 314-55-015, provided the person is at least sixteen years of age, is an employee of an independent contractor engaged in construction, electrical, plumbing, HVAC, etc., and is not engaging in work directly related to the production, processing, or sales of cannabis.

**Board Action**

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Crystal Oliver on July 6, 2022.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 David Postman, Chair	<u>8.31.2022</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Ollie Garrett, Board Member	<u>8.31.2022</u> Date
<input type="checkbox"/> Accept <input type="checkbox"/> Deny	<i>Not Present</i> Jim Vollendroff, Board Member	<u>8.31.2022</u> Date

**Attachments**

1. Rule petition from Crystal Oliver received July 6, 2022.
2. Letter from Crystal Oliver received July 6, 2022, with agency reply sent July 6, 2022.
3. Laws and Rules cited under the “Authority” section above.