



NOTICE OF ADOPTION OF POLICY STATEMENT

Title of Policy Statement: Giveaways as Licensed Cannabis Retail Stores – Policy Statement Number PS21-02.

Issuing Entity: Washington State Liquor and Cannabis Board

Subject Matter: This policy statement offers the Washington State Liquor and Cannabis Board's position on allowing cannabis [marijuana] retailer giveaways to customers of an incidental nature.

Effective Date: June 18, 2021

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 18, 2021

TIME: 10:35 AM

WSR 21-13-093



Policy Statement

Title: Giveaways at Licensed Cannabis Retail Stores **Number:** PS21-02

References: [WAC 314-55-155](#)
[RCW 69.50.102](#)
[RCW 69.50.357](#)
[RCW 69.50.369](#)
[RCW 69.50.570](#)
[RCW 69.50.585](#)

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Effective Date: June 18, 2021

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[RCW 34.05.230 – Interpretive and policy statements](#)

- (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

INTRODUCTION

Throughout this document, the term “cannabis” is used in the context of the statutory meaning of “marijuana” as defined in chapter 69.50 RCW.

This policy statement is offered in response to stakeholder requests for consideration regarding:

- Allowing cannabis retailer giveaways to customers of an incidental nature.

Cannabis retailers are prohibited from providing free items, such as matches, to customers based on current administrative rule. This provision creates a unique business prohibition negatively impacting and restraining customer service at cannabis retail businesses. These prohibitions are not statutorily mandated, nor are applied equally in alcohol and tobacco regulated markets. In addition, reports of inconsistent approaches by the LCB in this area allegedly are creating inequity among licensees.

BACKGROUND

In 2013 WAC 314-55-155 was initially created as part of the rule package regulating the cannabis retail industry. Rules were designed and created to ensure a strictly controlled and regulated marketplace for cannabis, as Washington was one of the first states in the nation to legalize cannabis for production, processing, and retail sales. The interest in strict regulations was to mitigate risk of federal intervention, and to provide a clear understanding to licensees of allowable and prohibited practices in the newly regulated marketplace.

Over the past 6 years, licensees have requested to provide incidental giveaways to customers in the interest of providing a higher level of customer service. To date, the LCB has not modified the initial rule prohibiting the practice of giveaways of any kind.

In the fall of 2020, a written request from a licensee was received by the LCB, asking for the allowance of giving away free matches to be considered. The licensee indicated this rule is not actively enforced, as he has observed other stores engage in this activity of an incidental nature without correction. This licensee wishes to comply with all laws as written, and would like formal consideration of this allowance. In addition to the written correspondence, many informal requests have been made by other licensees, requesting opportunities of a similar nature, during the past several years.

ANALYSIS

[RCW 69.50.357](#) identifies that a cannabis retailer may not sell products or services other than cannabis or paraphernalia.

(1)(a) Retail outlets may not sell products or services other than marijuana concentrates, useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of marijuana concentrates, useable marijuana, or marijuana-infused products.

If matches were to be sold by a cannabis retailer, would this be allowable? As matches may be considered paraphernalia under [RCW 69.50.102](#), this would be an allowable product for sale.

(a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in ... ingesting, inhaling, or otherwise introducing into the human body a controlled substance

Could matches be provided as part of prepackaged merchandise? This would be allowable under RCW 69.50.570, as the cannabis product and paraphernalia would be distinct and identifiable; so long as they are sold for one non-itemized price and the appropriate tax is paid subject to [RCW 69.50.535](#). As discounts on cannabis are allowable, the inclusion of matches, estimated by one licensee to be \$0.23 cents, would be incidental to the overall price and would not necessarily need to increase the total price of the bundled package. Although allowable, this approach creates barriers for the desired customer service, as the packaging will need to be completed at the licensed processor, who may not have an interest in the approach. As not all customers use matches, preferring lighters, this also creates potential unnecessary waste.

Assessing the state's interest of providing giveaways of an incidental nature primarily falls into two areas of advertising, that of youth access prevention and ensuring the marketing practice does not target out of state residents. [RCW 69.50.369](#) identifies this by the follow language:

(4) A marijuana licensee may not engage in advertising or other marketing practice that specifically targets persons residing outside of the state of Washington.

(6) A marijuana licensee may not:

(a) Take any action, directly or indirectly, to target youth in the advertising, promotion, or marketing of marijuana and marijuana products, or take any action the primary purpose of which is to initiate, maintain, or increase the incidence of youth use of marijuana or marijuana products;

The requested allowance and concept is to have a free access to the incidental giveaway on the counter or near the point of sale, such as a bowl of matchbooks for a customer to take one if they want one. If the matchbooks were branded with the retail establishment's name or logo, this would not fall under the aforementioned provisions of RCW 69.50.369, as in-store merchandising is not considered advertising.

(8) Merchandising within a retail outlet is not advertising for the purposes of this section.

The prohibition for giveaways and distribution of branded and unbranded merchandise resides in Washington Administrative Code [\(WAC\) 314-55-155](#).

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

As there is not an RCW mandating the direct prohibition of giveaways, the LCB does have the authority to modify provisions of WAC 314-55-155(4). However, based on statutory provisions related to branded merchandise from producers and processors, the LCB is obligated to ensure continued adherence to [RCW 69.50.585](#), by not allowing branded promotional items of producers and processors to be given to retail customers.

(1)(a) Nothing in this chapter prohibits a producer or processor from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Lighters, postcards, pencils, matches, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the producer or processor only;

(iii) May be provided by a producer or processor only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers;...

Conclusion:

Incidental giveaways, such as matches, are only prohibited by LCB administrative rule. As the cannabis retail stores are age restricted to minors, the giving away of such items would not compromise the

integrity of preventing youth access. Providing an incidental item at the point of sale which is not utilized in advertising as a draw to the retail location, does not appear to conflict with other provisions prohibiting advertising to out of state residents. So long as any incidental item provided to a retail customer is paid for by the retailer and not paid for by a producer or processor, a conflict with RCW 69.50.585 does not appear to be present. So long as the incidental item is paraphernalia related, there does not appear to be a conflict with product limitations within the provisions of RCW 69.50.357.

Policy Statement:

Until such time as permanent rule making modifying WAC 314-55-155 is next completed, it will be the policy of the LCB to allow cannabis retailers the opportunity to provide, free of charge, incidental items, such as matches, so long as compliance with the following conditions occur:

- The incidental item qualifies as paraphernalia as defined in RCW 69.50.102
- The incidental item is not advertised by any means other than in-store merchandising as allowed in RCW 69.50.369
- The retailer must have purchased any incidental item provided to customers
- Any branding on the item must be only that of the licensed retailer, and may not have any brand, logo, or images of product representing a producer or processor
- The value of an incidental item must be less than one US dollar
- Incidental items provided must not be subject or conditional to other purchases