

## Issue Paper

### Outside Liquor Service Requirements

Date: July 13, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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#### Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file the proposed rule (CR 102) to revise **WAC 314-02-130 What types of changes to a licensed premises require board approval?**

#### Why is rule making necessary?

The outside service requirements in the current rule need to be revised for clarity. Some stakeholders have commented that the outside service rules need to allow for different types of businesses and business locations an exception to current requirements on a case by case basis.

#### What changes are being proposed?

**Amended Section. WAC 314-02-130 What types of changes to a licensed premises require board approval?** Added language that the board may grant limited exceptions under certain conditions to the required 42 inch high barrier for outside alcohol service areas.

**WAC 314-02-130 What types of changes to a licensed premises require board approval?** The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
<p>(1)</p> <ul style="list-style-type: none"> <li>• Excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub;</li> <li>• Excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant;</li> <li>• Reclassifying a lounge as open to persons under twenty-one years of age;</li> <li>• Extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height);</li> <li>• Initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel;</li> </ul>	<p>(a) The board's licensing and regulation division will make initial contact on the request for alteration within five business days.</p> <p>(b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.</p> <p>(c) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>
<p>(2)</p> <ul style="list-style-type: none"> <li>• Any alteration that affects the size of a premises' customer service area.</li> </ul>	<p>(a) The board's licensing and regulation division will make an initial response on the licensee's request for alteration within five business days.</p> <p>(b) The licensee must contact their local liquor control agent when the alteration is completed.</p> <p>(c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.</p> <p>(d) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>

(3) For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the des-

ignated alcohol serving areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed at a minimum of ten feet apart.

(4) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(5) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point.

(6) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

## **Issue Paper**

### **2016 Liquor Legislation Implementation**

Date: July 13, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to revise the following:

- **WAC 314-02-103 What is a wine retailer reseller endorsement?**
- **Chapter 314-05 WAC Special Occasion licenses**
- **Chapter 314-38 WAC Permits**
- **Chapter 314-24 WAC Domestic Wineries and Domestic Wine Distributors**

#### **Why is rule making necessary?**

New rules and revisions to current rules are needed to implement the following legislation that passed during the 2016 legislative session:

- **SHB 2831 Creates a wine retailer reseller endorsement for qualifying beer and/or wine specialty shop licenses**
- **HB 2605 Creates a special permit for breweries to conduct 12 private tasting and sales events per year**
- **ESSB 6470 Allows domestic wineries to sell their own product at Special Occasion licensed events; Creates a special permit to allow an individual or business to sell a private collection of wine or spirits to another individual or business**

#### **What changes are being made?**

**Amended Section. WAC 314-02-103 What is a wine retailer reseller endorsement? Added beer and/or wine specialty shop license to this rule.**

**Amended Section. WAC 314-05-020 What is a special occasion license? Added language that allows a special occasion licensee to sell wine in original, unopened containers for on-premises consumption at a special occasion event. Prior board approval is required.**

**New Section. WAC 314-24-240 Domestic wineries at special occasion licensed events. Created a new rule to outline the requirements a winery must meet to sell wine of their own production for off-premises consumption at special occasion licensed events.**

**Amended section. WAC 314-38-020 Permits—Fees established. Added the permits established in the 2014 and 2015 legislative session:**

- Alcohol tasting by students;
- Winery special permit;
- Distillery special permit;
- Brewery special permit.

**Amended Section. WAC 314-38-080 Class 18 special winery permit. Made a correction to this rule.**

**Amended Section. WAC 314-38-090 Class 19 special distillery permit. Made a correction to this rule.**

**New Section. WAC 314-38-095 Class 20 special brewery permit. Clarified the requirements the brewery must meet for this permit.**

**New Section. WAC 314-38-100 Accommodation sale permit. Clarified the requirements and process for an accommodation sale permit.**

AMENDATORY SECTION (Amending WSR 84-14-028, filed 6/27/84)

**WAC 314-38-020 Permits—Fees established.** The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(12).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(15).

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

**WAC 314-38-080 Class 18 special winery permit.** (1) The special winery permit is for domestic wineries.

(2) A special winery permit allows a manufacturer of wine to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for off-premises consumption.

(3) ~~((The activities at the event are limited to the activities allowed on the winery premises.~~

~~(4))~~ The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.

- (a) The application must be submitted to the board at least ten days prior to the event.
- (b) The special permit must be posted at the event.
- ~~((+5))~~ (4) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

**WAC 314-38-090 Class 19 special distillery permit.** (1) A special distillery/craft distillery permit is for Washington distillers only.

(2) A special distillery/craft distillery permit allows a manufacturer of spirits to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery/craft distillery premises.

(4) The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The licensee is limited to twelve events per calendar year.

NEW SECTION

**WAC 314-38-095 Class 20 special brewery permit.** (1) A special brewery/microbrewery permit is for Washington brewers only.

(2) A special brewery/microbrewery permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for off-premises consumption.

(3) The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(4) The licensee is limited to twelve events per calendar year.

NEW SECTION

**WAC 314-38-100 Accommodation sale permit.** (1) An accommodation sale permit is for an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must complete an application for accommodation sale permit and submit with a fee of twenty-five dollars to the WSLCB.

(3) Once the WSLCB verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release the wine and/or spirits to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the WSLCB.

(6) The following are definitions for the purpose of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.



**WAC 314-02-103 What is a wine retailer reseller endorsement?**

(1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license or the holder of a beer and/or wine specialty shop license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

~~((4))~~ (5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

~~((5))~~ (6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

**WAC 314-05-020 What is a special occasion license?** (1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; (~~and~~)

(b) Spirits, beer, and wine in original, unopened containers for off-premises consumption; and

(c) Wine in original, unopened containers for on-premises consumption if permission is obtained from the WSLCB prior to the event.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is \$60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.

NEW SECTION

**WAC 314-24-245 Domestic wineries at special occasion licensed events.** (1) A domestic winery may take orders and accept payment for product of its own production from consumers at a special occasion event, to be delivered at a later date from one of its authorized locations.

(2) A domestic winery must be invited and/or authorized by the special occasion licensee in order to attend the special occasion event in this capacity.

(3) In order for the winery to exercise this privilege, the special occasion licensee must be providing the winery's product at the event for on-premises consumption.

(4) The special occasion licensee is the only licensee allowed to sell wine to be consumed on the premises.

(5) The winery is not allowed to give free tastings of wine of their own production to consumers.

(6) The winery shall notify the board or its designee of the name of the special occasion licensee, date, time, place, and location of the event.

Washington State Liquor and Cannabis Board

## **Issue Paper**

### **Rule Making on WAC 314-23-085 What type of discounts are not allowed?**

Date: July 13, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file the proposed rule (CR 102) to revise **WAC 314-23-085 What type of discounts are not allowed?**

#### **Why is rule making necessary?**

On September 9, 2015, the board adopted new rules around fair trade practices. WAC 314-23-085 in particular addresses what type of discounts are not allowed between a distributor and retailer. An exception was written into the rule that allows a distributor to combine orders for multiple locations when determining a volume discount and deliver the product to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

The exception is strongly opposed by the distributors because it would essentially require them to completely change the way they do business.

The board notified stakeholders after the rule was adopted that the board would not be enforcing this rule until the board could re-evaluate the circumstances surrounding the rule and the effect on our stakeholders.

#### **What changes are being proposed?**

**Amended section. WAC 314-23-085 What type of discounts are not allowed?** Removed language that allowed a distributor to combine orders for multiple locations when determining a volume discount and deliver the product to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

**WAC 314-23-085 What type of discounts are not allowed?** The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

- (1) **Volume discounts that violate local, state, or federal laws.**
- (2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment (~~(or single invoice)~~).
- (3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. (~~(The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.)~~)

## **Issue Paper**

# **Alcohol Impact Area Rules – Supplemental CR 102**

Date: July 13, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (Supplemental CR 102) to revise WAC 314-12-215 Alcohol Impact Areas.

### **Why is rule making necessary?**

The Washington Beer & Wine Distributors Association (WBWDA) submitted a petition for rulemaking to revise WAC 314-12-215 Alcohol Impact Areas.

### **Background**

The board filed proposed rules on March 23, 2016, to revise the Alcohol Impact Area rules found in WAC 314-12-215. At the public hearing held on May 4, 2016, 2016, the board heard comments from stakeholders on the proposed rules. Based on the comments received staff is recommending changes to the proposed rules.

### **What changes are being propose?**

#### **WAC 314-12-155 Alcohol impact areas-Definitions-Guidelines.**

- Clarification of minimum requirements for an alcohol impact area recognition packet;
- Clarification on conditions or restrictions the board may recognize for an alcohol impact area;
- Removal of a minimum alcohol content on restricted products;
- Addition of a list of products the board will ban in all alcohol impact areas and the requirement that must be met to add additional products to the banned products list;
- Revisions to the reporting requirements for a local jurisdiction on recognized alcohol impact areas; and
- Clarification of information required in reports to the board from local authorities on recognized alcohol impact areas.

**WAC 314-12-215 Alcohol impact areas—Definition—Guidelines. (1) What is an alcohol impact area(~~, and how is it different~~)?)**

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire (~~territory~~) geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, (~~other similar records,~~) community group petitions, public testimony or testimony by current or former chronic public (~~inebriants;~~

~~(iii)~~) inebriates.

**(d) Minimum requirements for an alcohol impact area petition packet:**

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section)(

~~(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and~~

~~(v))~~. The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

**(3) What conditions or restrictions may the board recognize for an alcohol impact area?**

(a) Restrictions may include, but are not limited to:



(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; ~~((e))~~ and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a list of products that will be banned in alcohol impact areas. The list can be found on the WSLCB web site. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. ~~((e))~~ Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public ~~((inebriants))~~ inebriates; litter pickup; or other statistically documented evidence ~~((that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.~~

~~(d) Restricted beer and wine products must have minimum alcohol content of five and seven tenths percent by volume and twelve percent by volume, respectively.~~

~~(e) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category such as alcoholic energy drinks) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board, in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (e) of this subsection).~~

~~((f)) (c) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.~~

**(4) What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?**

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily ((discontinuing to sell a)) discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

**(5) What will the board do once it recognizes an alcohol impact area?**

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

~~(b) ((No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.~~

~~(c))~~ The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

**(6) What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?**

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a sixty-day comment period.

(b) For renewals, the board will notify a local authority at least ninety calendar days before a current license expires. The same requirements in (a)(i) and (ii) of this subsection apply to the ninety-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

**(7) When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?**

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than thirty calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation ~~((+see))~~ as contained in subsections (2) and (3) of this section(+).

(d) Prohibition of a new product added to an existing prohibited products list takes effect no ~~((less))~~ sooner than thirty calendar days following the board's recognition of a modified prohibited products list.

**(8) Reporting requirements and five-year assessments.**

(a) A year after the implementation of the alcohol impact area a local authority shall submit ~~((annual))~~ a report~~((s))~~ to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report~~((s-are))~~ is due no later than sixty calendar days following ~~((each anniversary of the board's recognition of an))~~ the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, tenth, fifteenth, et cetera, anniversary of the board's recognition of ~~((an))~~ the alcohol impact area. The five-year assessment process is as follows:

(i) Within ~~((ten))~~ twenty calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, ~~((annual))~~ report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one twenty calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial twenty-day deadline.

(iii) The board will complete an assessment within sixty calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties~~((; and~~

~~((ii) Each annual report submitted during a five-year period)).~~

An assessment ~~((shall))~~ may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation((7)) or illegal activity associated with liquor sales or consumption((7)) within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will ((~~reduce~~)) affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one twenty-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the twenty-day deadline.

Washington State Liquor and Cannabis Board

## Issue Paper

# Rule Making on Chapter 314-29 WAC Penalty Guidelines

Date: July 27, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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## Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file revised proposed rules (Supplemental CR 102) to revise Chapter 314-29 WAC Penalty guidelines.

## Why is rule making necessary?

As part of the Liquor Control Board's on-going rules review process, rules regarding how to apply for a liquor license are being reviewed for relevance, clarity, and accuracy. At the public hearing on June 15, 2016, stakeholders provided comment on the proposed rules. Based on those comments revisions have been made to the original proposed rules.

## What changes are being proposed?

**Amended Section. WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?** Explained actions the board may take if a monetary penalty is not paid by the due date.

**Amended Section. WAC 314-29-020 Group 1 violations against public safety.** Added language that group 1 violations will be counted sequentially rather than independently by group.

**New Section. WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses.** Created a new section for sports entertainment facility license public safety violations. Since this license type is unique from all other on-premises licenses, the penalties should be different.

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?**

(1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

**(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

**(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

**WAC 314-29-020 Group 1 violations against public safety. (1)** Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Violations involving minors:</b> <b>Sale or service to minor:</b> Sale or service of alcohol to a person under 21 years of age. <b>Minor frequenting</b> a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Sale or service to apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Conduct violations:</b> <b>Disorderly conduct</b> by licensee or employee, or permitting on premises. <b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty. <b>Criminal conduct:</b> Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Condition of suspension violation:</b> Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

NEW SECTION

**WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses.** Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

(1) General public safety violation penalties.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th and Subsequent violation in a two-year window</b>
<b>Violations involving minors:</b> <b>Sale or service to minors outside of WAC 314-29-038(c):</b> Sale or service of alcohol to a person under 21 years of age. <b>Minor frequenting</b> a restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
<b>Sale or service to an apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license



<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th and Subsequent violation in a two-year window</b>
<b>Conduct violations:</b> <b>Disorderly conduct</b> by licensee or employee, or permitting on premises. <b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty. <b>Criminal conduct:</b> Permitting or engaging in criminal conduct. WAC 314-11-015	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
<b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license
<b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine	Penalty to be determined by the board, including possible cancellation of license

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) WSLCB youth access compliance checks, in accordance with chapter 314-31 WAC.

<b>License Class</b>	<b>Compliance Threshold</b>	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd Violation</b>	<b>4th Violation</b>
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license

<b>License Class</b>	<b>Compliance Threshold</b>	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd Violation</b>	<b>4th Violation</b>
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.					

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.



## Washington State Liquor and Cannabis Board

**Date:** July 27, 2015

**To:** Jane Rushford, Board Chair  
Ruthann Kurose, Board Member

**From:** Joanna Eide, Policy and Rules Coordinator

**Copy:** Rick Garza, Agency Director  
Peter Antolin, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

**Subject:** **Approval for filing proposed rules (CR 102) to amend rules in chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation.**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) amending rules in Chapter 314-55 WAC, marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation and make other needed technical changes. These rule changes will implement changes made to law in the following bills:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives
- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet

### Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on July 27, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 27, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 102)
August 17, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
September 7, 2016	End of written comment period
September 7, 2016	Public Hearing held
September 21, 2016	Board is asked to adopt rules
September 21, 2016	Agency sends notice to those who commented both at the public hearing and in writing.

September 21, 2016	Agency files adopted rules with the Code Reviser (CR 103)
October 22, 2016	Rules are effective (31 days after filing)

Approve       Disapprove

J. Rushford  
Jane Rushford, Chairman

7-27-16  
Date

Approve       Disapprove

Ruthann Kurose  
Ruthann Kurose, Board Member

7/27/16  
Date

Attachment: Issue Paper



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Washington State Liquor and Cannabis Board

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 16-09-116 ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

**Title of rule and other identifying information:** (Describe Subject)  
 WAC 314-55-075, What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?  
 WAC 314-55-079, What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?  
 WAC 314-55-410, Cooperatives.

**Hearing location(s):**

Washington State Liquor Control Board  
 Board Room  
 3000 Pacific Ave SE  
 Olympia, WA 98504

Date: September 7, 2016 Time: 10:00 am

**Submit written comments to:**

Name: Joanna Eide, Policy and Rules Coordinator  
 Address: PO Box 43080  
 Olympia, WA 98504  
 e-mail [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)  
 fax (360) 664-9689 by (date) September 7, 2016

**Assistance for persons with disabilities:** Contact

Joanna Eide by August 31, 2016

TTY ( ) \_\_\_\_\_ or (360) 664-1622

**Date of intended adoption:** On or after September 21, 2016

(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The purpose of this rule making is to amend rules to adhere to changes made to state law by the 2016 Legislature. Changes include adjustments to accommodate and provide requirements and direction for cooperative members purchasing plants from licensed producers and to allow licensed retailers to dispose of marijuana products so long as retailers follow the disposal requirements for other marijuana licensees.

**Reasons supporting proposal:** Rule changes are needed to implement changes to marijuana laws passed during the 2016 Legislative Session. Specifically, the WSLCB is proposing rule changes relating to the following measures passed by the Legislature:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives (SL 2016 c 170)
- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet (SL 2016 c 171)

**Statutory authority for adoption:** RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

**Statute being implemented:** RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

**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:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**DATE**  
July 27, 2016

**NAME** (type or print)  
Jane Rushford

**SIGNATURE**

**TITLE**  
Chair

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

**DATE: July 27, 2016**

**TIME: 10:39 AM**

**WSR 16-16-051**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**  
**None.**

**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..... Joanna Eide, Rules Coordinator	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1622
Implementation....Becky Smith, Licensing Director	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1615
Enforcement..... Justin Nordhorn, Chief Enforcement	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1726

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide, Policy and Rules Coordinator  
Address: Washington State Liquor and Cannabis Board  
3000 Pacific Ave. SE  
Olympia, WA 98504  
phone (360) 664-1622  
fax (360)664-9689  
e-mail [Joanna.Eide@lcb.wa.gov](mailto:Joanna.Eide@lcb.wa.gov)

No. Explain why no statement was prepared.

**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 ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

No: Please explain: A cost-benefit analysis was not required under RCW 34.05.328.



**Date:** July 27, 2015

**To:** Jane Rushford, Board Chair  
Ruthann Kurose, Board Member

**From:** Joanna Eide, Policy and Rules Coordinator

**Copy:** Rick Garza, Agency Director  
Peter Antolin, Agency Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Karen McCall, Agency Rules Coordinator

**Subject: Small Business Economic Impact Statement  
2016 Marijuana Legislation Implementation**

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed amendments to WAC 314-55-079 and 314-55-410. The changes to WAC 314-55-075 are technical in nature and simply align the provisions of that rule with statutory changes, meaning they do not impose any new requirements on small businesses, so those changes are not included in this analysis.

**1. Description of reporting, record keeping and other compliance requirements of the proposed rule:**

WAC 314-55-079

The proposed amendments to WAC 314-55-079 are in response to the statutory changes made by the 2016 Legislature that allow licensed retailers to open marijuana packaging for purposes of disposal as authorized by the board. The rule change directs retailers who choose to dispose of marijuana products to comply with the same provisions (WAC 314-55-097) for disposal under WSLCB rule and state law that licensed producers and processors must follow when disposing marijuana products. This is an optional requirement as retailers can still choose to send products back to processors for disposal as they already do. However, this change was needed as some processors that retailers originally purchased product from have since gone out of business, leaving some retailers with marijuana products on hand that they cannot sell nor dispose of. The WSLCB will continue to look at waste disposal options and requirements for licensees along with the Dept. of Ecology and local waste management organizations to see where improvements may be made.





WAC 314-55-410

Rule amendments are proposed to provide guidance and requirements for producers and members of registered cooperatives purchasing plants from licensed producers. Added language includes proof of membership in a cooperative and identification requirements, provisions related to the 24 hour hold prior to transferring plants, requirements that the transfer of plants be performed at the producer's licensed premises, and prohibiting deliveries of plants. Producers are not required to sell plants to members of registered cooperatives, so they will only need to comply with these new requirements if they choose to sell to members of a cooperative.

**2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:**

WAC 314-55-079

Retailers may choose to use professional services for disposal purposes, but they will not be required to comply with the requirements of this rule change.

WAC 314-55-410

Producers will not need any professional services to comply with the new requirements. Producers will be able to engage

**3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:**

WAC 314-55-079

The costs of compliance will depend on decisions made by retailers. If retailers choose to obtain dispose of marijuana products themselves, costs may or may not be higher than those retailers who choose to send products back to processors for disposal. No additional equipment or supplies are required by the proposed new rule language if a retailer does not choose to dispose of marijuana products itself. If they do choose to, they may need to purchase or create equipment or supplies. These may vary depending on the amount of disposal a retailer chooses to engage in or may need to engage in, and the products they may be disposing of may vary as well necessitating different disposal methods. The costs for disposal for certain products may also vary based upon the retailer's location as local waste authorities and such have different requirements and costs. Because the costs may vary quite widely depending on choices made by the individual retailer, it is difficult to estimate costs. However, the WSLCB does not anticipate that the costs for equipment, supplies, labor and increased administrative costs will be more than minor.





WAC 314-55-410

There should be little to no costs associated with complying with the proposed requirements in this rulemaking. Sales of plants by producers to members of regulated cooperatives will be voluntary on the part of producers, and should not take more than a calculator to achieve. The only costs a producer may incur as part of choosing to engage in such sales would be to increase in employee workload. Again, this is not a requirement. It is optional.

**4. Will compliance with the rules cause businesses to lose sales or revenue?**

WAC 314-55-079

The new requirements are to allow for disposal of marijuana products that are already not going to be sold and only apply to those who choose to engage in the disposal of marijuana products, so they do not impact sales or revenue.

WAC 314-55-410

The new requirements will not impact sales or revenue generated from those sales. The new requirements may actually serve to facilitate sales between producers and members of a registered cooperative.

**5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:**

- a. **Cost per employee;**
- b. **Cost per hour of labor; or**
- c. **Cost per one hundred dollars of sales**

Many marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on collection on the value of marijuana at retail and wholesale and sales information. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. Sales and excise tax payments data can assist with estimating profits, however, each business is different and costs are not known so there is not enough information for the WSLCB to determine profit margins.

For both of these rule changes, the requirements will only apply if the businesses choose to engage in the activities that include the requirements. Additionally, costs will vary depending on the level of activity the licensee engages in, the location they are



situated in, and other related factors. The costs for compliance, though they will vary, will be minor.

**6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:**

Since the proposed changes to requirements in this rulemaking will only need to be adhered to should the respective licensee choose to engage in the activity, the WSLCB has reduced the amount of costs on small businesses as much as possible. No new costs will be incurred for those who do not choose to engage in the activities to which they apply. Even if a licensee chooses to engage in the activities the requirements apply to, costs of compliance will be minor.

**7. A description of how the agency will involve small businesses in the development of the rule:**

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process.

**8. A list of industries that will be required to comply with the rule:**

Licensed marijuana retailers will be required to comply with these rules if they choose to dispose of marijuana products.

Licensed producers will be required to comply with the changes to rules if they choose to engage in sales of plants to members of registered cooperatives.

**9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:**

The changes in these proposals will not result in the loss of jobs. It is unclear whether the new requirements would create jobs, though the changes in law may enable that. Whether this occurs is dependent on many factors, including internal decisions made by businesses which cannot be foreseen by the WSLCB.

**WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?**

(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 can also produce and sell:

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

(ii) Marijuana plants to members of a registered cooperative under the conditions provided in WAC 314-55-410.

(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. 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 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 will be responsible for all fees required for the criminal history checks.

(4) The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB. The WSLCB may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production will be imposed at a later date. 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 thousand square feet;

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

(c) Tier 3 - Ten thousand square feet 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.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?**

(1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

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

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand 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 will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(10) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.

**WAC 314-55-410 Cooperatives.** (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four (~~members are allowed in~~) qualifying patients or designated providers may become members of a cooperative;

(d) (~~A member can only belong to~~) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. (~~A monetary contribution or donation is not considered assistance.~~) Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on (~~their~~) his or her recognition card(~~s~~). At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable marijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located in the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. The following is required to register a cooperative (~~a registered member must~~):

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each (~~member's~~) person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement (~~of~~) from the property owner granting permission to engage in a cooperative must also be submitted (~~and must~~) that includes a tele-

phone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the ~~((medical))~~ marijuana is planned to be grown.

(3) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and WSLCB staff.

(4) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

(5) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

(6) A person may request an administrative hearing to contest a denial of registration or a revocation of a cooperative's registration under subsections (4) and (5) of this section as provided in chapter 34.05 RCW.

(7) Cooperative members purchasing plants from licensed producers.

(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.

(b) Members of a cooperative who wish to purchase plants from a licensed producer must:

(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;

(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and

(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.

(c) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.



## A RESOLUTION OF THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD RECOGNIZING THE CITY OF EVERETT'S CORE COMMERCIAL AREA ALCOHOL IMPACT AREA

**Whereas**, the Board recognizes its statutory mandate to protect the public's welfare, health, peace, and safety and its responsibility to work with communities to help mitigate negative impacts of chronic public inebriation associated with the sale of alcohol by the businesses it regulates.

**Whereas**, in recognition of this mandate, in 1999, the Liquor Control Board adopted the Alcohol Impact Area rules, Washington Administrative Code (WAC) 314-12-210 through WAC 314-12-225. These rules establish a framework for the Liquor and Cannabis Board, working in partnership with local government and community organizations, to mitigate the negative impacts that result from the presence of chronic public inebriation. Preventing and reducing the harm caused by untenable alcohol consumption requires a comprehensive, multi-dimensional response by neighborhood residents, businesses, and government agencies, including coordinated treatment services, health care, housing services and vocational training. Mandatory restrictions on alcohol sales imposed by the Board are a key element in the effort to mitigate the negative impacts of chronic public inebriation.

**Whereas**, WAC 314-12-215 sets forth the requirements that the government subdivision must satisfy in order for the Liquor and Cannabis Board to recognize the proposed Alcohol Impact Area.

**Whereas**, the city of Everett's request meets the requirements for Board recognition, as outlined in WAC 314-12-215, includes findings of fact pertaining to the presence of chronic public inebriation. Data submitted by the city of Everett finds that concentrations of alcohol related incidents in the Core Commercial Areas requiring emergency responses was 72% higher than in other areas of the city. Additionally, repeat calls for alcohol related incidents occurred almost entirely within the Core commercial Areas. The data submitted demonstrate that chronic public inebriation associated with alcohol sales and consumption within the Commercial Core Area continue to contribute to the deterioration of the general quality of life within this area.

**Whereas**, the city of Everett as designated by Ordinance No. 3430-15 the proposed Alcohol Impact Area. The boundaries of the proposed Alcohol Impact Area are understandable to the public, and liquor licensees within the area are determinable, per the requirements of WAC 314-12-215.

### **Commercial Core Area Boundaries**

The geographical areas in the city of Everett described below are declared to be an Alcohol Impact Area:

South on North Broadway Avenue to 23<sup>rd</sup> Street. Virginia Avenue from 22<sup>nd</sup> Street to 23<sup>rd</sup> Street. Colby Avenue from 22<sup>nd</sup> Street to 23<sup>rd</sup> Street.

The area bounded by 23<sup>rd</sup> Street beginning at Broadway Avenue, west to Grand Avenue, South To Pacific Avenue, west to Kromer Avenue, south to Laurel Drive, west to Tulalip Avenue, south to 35<sup>th</sup> Street, east to Norton Avenue, south to Grand Avenue, continue south to 46<sup>th</sup> Street and Evergreen Way, north to Rucker Avenue, continue north to 41<sup>st</sup> Street, east to S. 3<sup>rd</sup> Avenue, northeast to Smith Avenue, north to Pacific Avenue, east to Pine Street, west to Cedar Street, north to 23<sup>rd</sup> Street, west to Broadway Avenue to the point of origin.

The area bounded by Wilmington Avenue south to Evergreen Way south to 52<sup>nd</sup> Street, east to Claremont Way, north to 50<sup>th</sup> Street, east to Wilmington Avenue, northwest to Evergreen Way to point of origin.

46<sup>th</sup> Street at Evergreen Way, south on Evergreen Way to Airport Road. Pecks Drive from Evergreen Way, east to Cady Road. Madison Street from Evergreen Way, east to Beverly Boulevard. Evergreen Way at East Casino Road, west to West Casino Road, continue west to 5<sup>th</sup> Avenue West, south to Corbin Drive, southeast to Holly Drive, northeast to East Casino Road. SW Everett Mall Way at Evergreen Way, northeast on SW Everett Mall Way to SE Everett Mall Way, continue northeast to East Mall Drive. 7<sup>th</sup> Avenue SE at SE Everett Mall Way, south on 7<sup>th</sup> Avenue SE to 112<sup>th</sup> Street SE, east to 19<sup>th</sup> Avenue SE, north to El Capitan Way.

The area bounded by Evergreen Way at 108<sup>th</sup> Street SW, west to Hollow Dale Place, west to Paine Field Way, southeast to 112<sup>th</sup> Street SW, west to Airport Road, southeast to Evergreen Way, northeast to 108<sup>th</sup> Street SW



the point of origin. The sections of 11200 Evergreen Way to Airport Road and northwest on Airport Road are the Everett City limits and therefore will only include the Everett sides of the roadway.

**Whereas**, the city of Everett requests that the Liquor and Cannabis Board impose mandatory restriction on the off-premises sale of alcohol by the licensees in the Commercial Core Area Alcohol Impact Area. Specifically, the city requests no sales of certain low cost/high alcohol content beer and wine products identified by a banned products list.

**Whereas**, in reaching our decision, the Board has duly considered the city of Everett's May 10, 2016, letter requesting the Board establish a mandatory Alcohol Impact Area in the Commercial Core Area, written comments from stakeholders and the public regarding Everett's request, the Liquor and Cannabis Board staff presentation, and the public hearing held on August 24, 2016.

**Now therefore, be it resolved,**

The Board resolves to impose the following mandatory restrictions requested by the city of Everett, to take effect on October 22, 2016.

**No sales of the following beer products listed.** All flavors, alcohol content, and container sizes of the following named products are hereby banned from off-premises sale by licensees in the Commercial Core Area Alcohol Impact Area.

## **Banned Product List**

### **Beer/Malt Liquor**

- Bud Ice
- Busch Ice
- Colt 45 Malt Liquor
- Colt 45 High Gravity
- Four Loko
- HG 800
- Hurricane Ice Malt Liquor
- High Gravity Hurricane

- Ice House
- Joose
- Keystone Ice
- High Gravity Earthquake
- Mickey's Iced Brewed Ale
- Mickey's Malt Liquor
- Mike's Harder Lemonade
- Milwaukee Best Premium Ice
- Natural Ice
- Olde English 800
- Pabst Ice
- Steel Reserve

The Board resolves that these restrictions are reasonably related to addressing the problem of chronic public inebriation demonstrated to exist in the Commercial Core Area Alcohol Impact Area.

The Board further resolves that such restrictions are reasonable control measures aimed at mitigating the negative effects of chronic public inebriation and are necessary to augment the city of Everett's efforts to address such problems within the defied Alcohol Impact Area.

Signed and Dated: September 7, 2016

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Jane Rushford

Chair

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Ruthann Kurose

Board Member

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Ollie Garrett

Board Member



**Washington State  
Liquor and Cannabis Board**

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Date: September 7, 2016

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Ollie Garrett, Board Member

From: Joanna Eide, Rules and Policy Coordinator

Copy: Rick Garza, Agency Director  
Peter Antolin, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Karen McCall, Agency Rules Coordinator

Subject: **Approval of final rules (CR 103) to amend rules in chapter 314-55 and 314-42 WAC relating to marijuana excise tax electronic payment requirements.**

At the Board meeting on September 7, 2016, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) to amend to following rules related to implementing an electronic payment requirement for the marijuana excise tax: WAC 314-42-110, Brief adjudicative proceedings; and WAC 314-55-089, What are the tax and reporting requirements for marijuana licensees?

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules is attached. If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ruthann Kurose, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

## **Issue Paper**

# **Marijuana Excise Tax Electronic Payments Budget Proviso Implementation**

Date: September 7, 2016

Presented by: Joanna Eide, Rules and Policy Coordinator

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## **Description of the Issue**

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt amendments to the following rules related to an electronic payment requirement for the marijuana excise tax:

WAC 314-42-110, Brief adjudicative proceedings; and  
WAC 314-55-089, What are the tax and reporting requirements for marijuana licensees?

## **Why is rule making necessary?**

Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the Legislature in the 2016 Supplemental Budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. The WSLCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedures Act (Chapter 34.05 RCW). The board adopted an emergency rule to establish the electronic payment requirement effective July 1, 2016, and approved the filing of a CR 101 to initiate permanent rulemaking on the same subject on April 20, 2016. The proposed permanent rules were filed as a CR 102 on July 13, 2016. The emergency rule and proposed permanent rules were developed based on similar requirements in the Washington State Dept. of Revenue's laws and rules.

## **Public Comment**

No public comment was received at the public hearing held on August 24, 2016. 9 written comments were received over the course of this rulemaking.

## **What changes are being proposed?**

### **Amendatory Section. WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees?**

Amendments are proposed to WAC 314-55-089 to add provisions to require marijuana excise tax payments by electronic payment, check, cashier's check, or money order. The changes also provide provisions on when payments are

deemed received. A waiver process is also established to allow those to apply for a waiver from the payment requirements based on good cause. "Good cause" means the inability of a licensee to comply with the payment requirements of this section because:

- The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the electronic payment requirement and cannot obtain a cashier's check or money order; or
- Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the payment mechanism requirements.

If a licensee fails to apply for a waiver or is denied a waiver, they may be assessed a ten percent penalty should the licensee continue to tender marijuana excise tax payments in cash. If a licensee is denied a waiver, they have the right to appeal the decision under the Administrative Procedures Act, chapter 34.05 RCW.

**Amendatory Section. WAC 314-42-110 Brief adjudicative proceedings.**

WAC 314-55-110 is amended to allow appeals of waiver denials to proceed as brief adjudicative proceedings as allowed under RCW 34.05.482 through 34.05.494. This will ensure an expedited process for such appeals that may be more suited to handle under such proceedings rather than under formal administrative appeals under chapter 34.05 RCW.

Attachment: Proposed Rules



## Notice of Permanent Rules for Marijuana Excise Tax Electronic Payments Budget Proviso Implementation

**This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules for an electronic payment requirement for the marijuana excise tax.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor and Cannabis Board appreciates your involvement in this rule making process. If you have any questions, please contact Joanna Eide, Rules and Policy Coordinator, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### What are the agency's reasons for adopting this rule?

Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the Legislature in the 2016 Supplemental Budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. The WSLCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedures Act (Chapter 34.05 RCW).

The emergency rule and proposed permanent rules were developed based on similar requirements in the Washington State Dept. of Revenue's laws and rules.

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### Summary of public comments received on this rule proposal.

**CR-101** – filed April 20, 2016, as WSR 16-09-120.  
**CR 102** – filed July 13, 2016, as WSR 16-15-036.  
Public Hearing held August 24, 2016.



## **Written Comments Received:**

- 1. Two (2) comments were received supporting the adoption of the proposed rules as filed in the CR-102.**

**WSLCB response:** Thank you for your comments.

**Was the comment reflected in the final rule?** Yes. The final rules were not changed from proposed rule to adopted rule.

- 2. Four (4) comments were received expressing concern about costs to the retailer to maintain a bank account with a financial institution and having to comply with additional requirements.**

**WSLCB response:** The WSLCB understands that the new requirements proposed in these rules will impose new costs to retailers who do not already engage in banking services with a financial institution. The Small Business Economic Impact Statement prepared for and filed with the CR-102 discusses these costs. However, there are alternatives to the electronic payment requirement included in the proposed rules and the possibility of a retailer to apply for and receive a waiver to continue paying the excise tax in cash for good cause shown, as defined in the rule language. Additionally, the costs associated with the new requirements are justifiable due to public safety concerns and to encourage licensees to move away from a cash-based business, which carries inherent public safety risks and concerns about accurate detailing of financial records by licensees.

**Was this comment reflected in the final rule?** No changes to the final rules were made a result of comments related to costs associated with maintaining an account with a financial institution.

- 3. One (1) comment was received as follows: I would like to suggest using security companies to make the payments in cash. Would this be an acceptable alternative to this rule?**

**WSLCB response:** Licensees may choose to engage in armored car or security companies to transport deposits to financial institutions or other payments.

**Was this comment reflected in the final rule?** No, no changes were made to the final rule related to this comment.

- 4. One (1) comment was received as follows: Hello LCB, US Bank will not let me have a business account, in fact they closed my personal account! I want the LCB to drop US Bank, and get a bank that is on our list of banks we can use for our business. It is a huge slap in the face that they will take [our] money if it is from the WSLCB. If they cannot take marijuana money, they need to be [consistent] about it, and drop your bank account, too. I would like this to show up as a public comment.**



**WSLCB response:** We are aware that US Bank has closed some accounts, and the WSLCB has had to find alternative banking services as well. However, there are other financial institutions that are available for licensees. At this time there are 3 banks and 3 credit unions offering services.

**Was this comment reflected in the final rule?** Not applicable.

- 5. One (1) comment was received offering services to assist in electronic payments.**

**WSLCB response:** Thank you for your interest. We hope that you will be able to offer services directly to licensees.

**Was this comment reflected in the final rule?** Not applicable.

**Public Hearing Comments:**

No public testimony was offered at the public hearing on August 24, 2016.

**WAC Changes from Proposed Rules (CR-102) to the Rules as Adopted:**

None. The rule was adopted without any changes to the proposed rules from the CR-102 filing.



**WAC 314-42-110 Brief adjudicative proceedings.** The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

- (1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;
- (2) Liquor license denials per WAC 314-07-065(2);
- (3) Liquor license denials per WAC 314-07-040;
- (4) Special occasion license application denials per WAC 314-07-040;
- (5) Special occasion license application denials per WAC 314-07-065(7);
- (6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;
- (7) MAST provider denials or revocations per WAC 314-17-070;
- (8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;
- (9) One-time event denials for private clubs per WAC 314-40-080;
- (10) Banquet permit denials per WAC 314-18-030;
- (11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);
- (12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);
- (13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;
- (14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;
- (15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;
- (16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055;
- (17) Tobacco license denials per WAC 314-33-005;
- (18) Marijuana license denials per WAC 314-55-050(2);
- (19) Marijuana license denials per WAC 314-55-050(4);
- (20) Marijuana license denials per WAC 314-55-050(8);
- (21) Marijuana license denials per WAC 314-55-050(10);
- (22) Marijuana license suspensions per WAC 314-55-050(11);
- (23) Marijuana license denials per WAC 314-55-050(12); ((and))
- (24) Marijuana license denials per WAC 314-55-050(13); and
- (25) Marijuana excise tax payment waiver denials per WAC 314-55-089.

**WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees?** (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

- (a) On a form or electronic system designated by the WSLCB;
- (b) Filed every month, including months with no activity or payment due;
- (c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;
- (d) Filed separately for each marijuana license held; and
- (e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

(5) Payment methods: Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).



Washington State  
**Liquor and Cannabis Board**

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Date: September 7, 2016

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Ollie Garrett, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Karen McCall, Agency Rules Coordinator

Subject: **Approval to refile Emergency Rules regarding an electronic payment requirement and waiver of the requirement for the marijuana excise tax.**

Refiling of emergency rules regarding guidelines and requirements for electronic payment of the marijuana excise tax and a process to apply for a waiver of that requirement are needed to implement a 2016 Supplemental Budget proviso until permanent rules can take effect. The electronic payment requirement is in addition to other payment options, such as payment by check, cashier's check, or money order, and is necessary to reduce public safety risks associated with cash payments of the marijuana excise tax.

Due to challenges for some licensees obtaining banking accommodations and that some licensees are in areas where there are no options available, the rule includes options for payments other than cash that may be accomplished without a bank account, and an option for a licensee to apply for and receive a waiver if they are able to demonstrate good cause for an exception to the payment requirements. If a licensee fails to apply for or is denied a waiver and tenders cash to pay the marijuana excise tax payment due, they may be assessed a 10% penalty. If a licensee wishes to contest WSLCB's denial of a waiver, the matter will be conducted under a brief adjudicative proceeding. WSLCB used the similar requirements in Washington State Department of Revenue's statutes, policy and procedures in developing the rule and waiver requirements.

The emergency rule is necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rule making would be contrary to the public interest. This emergency rule is a continuation of a previously filed emergency rule with the same provisions that became effective on July 1, 2016. After filing with the Code Reviser's Office, the rule will become effective immediately and will expire when permanent rules take effect (staff will request the Board repeal the emergency rule once the permanent rules become effective).

The WSLCB filed a CR 101 to initiate permanent rulemaking to implement the marijuana excise tax electronic payments budget proviso on April 20, 2016. A CR-102 was filed on July 13, 2016, and a public hearing was held on August 24, 2016.

Process

The Rules Coordinator requests approval to file the Emergency Rules described above. An issue paper on this rule was presented at the Board meeting on September 7, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

September 7, 2016	Board is asked to approve filing the Emergency Rules
September 7, 2016	The Emergency Rules become effective
January 4, 2017	The Emergency Rules expire.*

\*Staff will request the Board repeal the emergency rule once the permanent rules become effective.

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_ Jane Rushford, Chairman      \_\_\_\_\_ Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_ Ruthann Kurose, Board Member      \_\_\_\_\_ Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_ Ollie Garrett, Board Member      \_\_\_\_\_ Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

## **Issue Paper**

# **Emergency Rules for Electronic Marijuana Excise Tax Payments – 2016 Supplemental Budget Proviso**

Date: September 7, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

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## **Description of the Issue**

The purpose of this Issue Paper is to request approval from the board to refile emergency rules regarding an electronic payment requirement and waiver of the requirement for the marijuana excise tax.

## **Why is rule making necessary?**

Emergency rules are needed to continue guidelines and requirements for electronic payment of the marijuana excise tax and a process to apply for a waiver of that requirement to implement a 2016 Supplemental Budget proviso until permanent rules take effect. The electronic payment requirement is in addition to other payment options, such as payment by check, cashier's check, or money order, and is necessary to reduce public safety risks associated with cash payments of the marijuana excise tax. Currently, some licensees are traveling to WSLCB in Olympia with cash to pay the monthly marijuana excise tax due. This creates a large risk to licensees that transport large sums of cash. In addition to alternatives to cash payment being safer than transporting cash to the WSLCB on a monthly basis, these requirements will also promote efficiency in general. As more marijuana businesses become licensed prior to the absorption of medical marijuana into the regulated retail market, the risks of cash transport and payment will only increase. For this reason, the board is requested to adopt the emergency rule as proposed.

WSLCB understands that it is still challenging for some licensees to obtain banking accommodations and that some licensees are in areas where there are no options available. For this reason, the rule includes options for payments other than cash that may be accomplished without a bank account, and an option for a licensee to apply for and receive a waiver if they are able to demonstrate good cause for an exception to the payment requirements. WSLCB used the similar requirements in Washington State Department of Revenue's statutes, policy and procedures in developing the rule and waiver requirements.

If a licensee fails to apply for or is denied a waiver and tenders cash to pay the marijuana excise tax payment due, they may be assessed a 10% penalty. This requirement is modeled after DOR's policy/procedures.

## Process

The emergency rules are necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rule making would be contrary to the public interest. The initial emergency rule filed became effective on July 1, 2016, to allow licensees time to make arrangements for the new requirements or prepare to apply for a waiver. If the board readopts this emergency rule today, September 7, 2016, and it is filed with the Code Reviser's Office, the rule will expire when permanent rules take effect.

The WSLCB is engaged in permanent rulemaking to implement the marijuana excise tax electronic payments budget proviso. A CR 101 was filed on April 20, 2016, a CR 102 filed on July 13, 2016, and a public hearing was held on the proposed rules on August 24, 2016.

## What are the changes?

### **New Section. WAC 314-55-090 Marijuana excise tax payments - Waiver**

The emergency rule creates new requirements for electronic payment of the marijuana excise tax in addition to those requirements in WAC 314-55-089. It provides that excise tax payments may only be made by check, cashier's check, money order, or electronic payment or electronic funds transfer, unless a licensee applies for a waiver to continue to pay in cash which will only be granted for good cause. For the purposes of this section "good cause" means the licensee is unable to comply with the payment requirements because:

- The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the electronic payment requirement and cannot obtain a cashier's check or money order; or
- Some other circumstance or condition exists that, in the board's judgment, prevents the licensee from complying with the payment requirements.

If a licensee fails to apply for or is denied a waiver and tenders cash to pay the marijuana excise tax payment due, they may be assessed a 10% penalty.

If a licensee wishes to contest WSLCB's denial of a waiver, the matter will be conducted under a brief adjudicative proceeding.

N E W S E C T I O N

**WAC 314-55-090 Marijuana excise tax payments - Waiver.**

The following provisions apply to marijuana excise tax payments in addition to the requirements in WAC 314-55-089.

(1) Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, PO Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB Traceability System; or

(c) By paying using a money transmitter licensed pursuant to Title 19.230 RCW.

(2) Payments transmitted to the Board electronically under this section will be deemed received when received by the agency's receiving account. All other payments transmitted to the board under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(3) The board may waive the means of payment requirements as provided in subsection (1) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (1) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the board's judgment, prevents the licensee from complying with the requirements of subsection (1) of this section.

(4) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, they may be assessed a ten percent penalty.

(5) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(6) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic



instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).



Washington State  
**Liquor and Cannabis Board**

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Date: September 7, 2016

To: Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Ollie Garrett, Board Member

From: Joanna Eide, Rules and Policy Coordinator

Copy: Rick Garza, Agency Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Karen McCall, Agency Rules Coordinator  
Tim Gates, Marijuana Examiners Unit Interim Supervisor

Subject: **Approval to readopt Emergency Rules to create pesticide action levels.**

Refiling of emergency rules is needed for pesticide action levels for pesticides not allowable for use in the production of marijuana. Currently, disallowed pesticides have a zero tolerance in permanent rule, which is unworkable and virtually untestable. The WSLCB needs an action level for pesticides to determine when a sample should fail quality assurance testing and when a recall should be initiated.

Staff drafted this rule to mirror the action levels established by Oregon and to provide action levels for those disallowed pesticides beyond those that appear on the list. These action levels are supported by a report issued by the Oregon Health Authority. The rule outlines:

- Action levels for disallowed pesticides for a specific list of pesticides;
- Action level of 0.1 ppm for disallowed pesticides that do not appear on the list;
- Marijuana and marijuana products that test above the action levels provided will be considered to have failed quality assurance testing for the lot the sample was procured from and may be subject to a recall;
- Allowable re-testing of failed marijuana and marijuana products to verify results; and
- Disclosure of test and retest results to a licensee or retail customer considering purchase of the marijuana or marijuana products.

The emergency rules are necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rule making would be contrary to the public interest. The rule becomes effective upon filing with the Code Reviser's Office and will expire January 4, 2017, 120 days after filing, or when permanent rules on this topic become effective, whichever is sooner.

The WSLCB has already filed a CR 101 to initiate permanent rulemaking for Lab Testing and Quality Assurance Rules Review, which will address pesticide action levels in permanent rules among other topics. This emergency rule is another step in this incremental process. The WSLCB may make adjustments to these action levels through the permanent rules process. The WSLCB may request that the emergency rule be refilled should the emergency rule expire prior to the effective date of permanent rules.

### Process

The Rules Coordinator requests approval to file the Emergency Rules described above. An issue paper on this rule was presented at the Board meeting on September 7, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

September 7, 2016	Board is asked to approve filing the Emergency Rules
September 7, 2016	The Emergency Rules become effective
January 4, 2017	The Emergency Rules expire.*

\*Staff may request the Board readopt emergency rules should they expire prior to the effective date of permanent rulemaking.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chairman	Date
_____ Approve	_____ Disapprove	_____	_____
		Ruthann Kurose, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date

Attachment: Issue Paper

## **Issue Paper**

### **Emergency Rules for Pesticide Action Levels**

Date: September 7, 2016

Presented by: Joanna Eide, Rules and Policy Coordinator

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#### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the board to refile emergency rules for action levels for pesticides that would trigger a lab test fail result and may trigger a recall.

#### **Why is rule making necessary?**

Refiling of emergency rules is needed for pesticide action levels for pesticides not allowable for use in the production of marijuana. Currently, permanent rules contain a zero tolerance for disallowed pesticides, which is unworkable and virtually untestable. The WSLCB needs action levels for pesticides to determine when a sample should fail quality assurance testing and when a recall should be initiated.

#### **Process**

The emergency rules are necessary for the preservation of the public health, safety, and general welfare, and observing the time requirements for permanent rulemaking would be contrary to the public interest. The rule becomes effective upon filing with the Code Reviser's Office and will expire January 4, 2016, 120 days after filing, or once permanent rules on this subject take effect, whichever comes first.

The WSLCB has already filed a CR 101 to initiate permanent rulemaking for Lab Testing and Quality Assurance Rules Review, which will address pesticide action levels among other topics. The LCB has convened a working group consisting of laboratories, industry representatives (licensees), the Department of Agriculture, Department of Health, and the Department of Ecology. This working group will review existing rules relating to marijuana production and testing requirements, and laboratory testing and standardization to identify recommended changes to improve, expand, refine and create rules. The LCB will consider these recommendations as it proceeds in permanent rulemaking.

This emergency rule is another step in this incremental process. The WSLCB may make adjustments to these action levels through the permanent rules process if necessary. The WSLCB may request that the emergency rule be refiled should the emergency rule expire prior to the effective date of permanent rules.

## **What are the changes?**

### **New Section. WAC 314-55-108 Pesticide action levels.**

The emergency rule creates action levels for pesticides not allowed for use in marijuana production by the board. Staff drafted this rule to mirror the action levels established by Oregon and to provide action levels for those disallowed pesticides beyond those that appear on the list. These action levels are supported by a report issued by the Oregon Health Authority. The rule outlines:

- Action levels for disallowed pesticides for a specific list of pesticides;
- Action level of 0.1 ppm for disallowed pesticides that do not appear on the list;
- Marijuana and marijuana products that test above the action levels provided will be considered to have failed quality assurance testing for the lot the sample was procured from and may be subject to a recall;
- Allowable re-testing of failed marijuana and marijuana products to verify results; and
- Disclosure of test and retest results to a licensee or retail customer considering purchase of the marijuana or marijuana products.

N E W   S E C T I O N

**WAC 314-55-108 Pesticide action levels.**

(1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington State department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if a certified independent testing laboratory or state agency or other designee of the WSLCB identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsections (3) or (4) of this section, that lot or batch from which the sample was deducted has failed quality assurance testing and may be subject to a recall as provided in WAC 314-55-225.

(3) Pesticide action levels:

<b>Analyte</b>	<b>Chemical Abstract Services (CAS) Registry number</b>	<b>Action level ppm</b>
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprol	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1

Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins*	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl_butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrinst	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4

Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

(4) The action level for all other pesticides that are not allowed under subsection (1) of this section is 0.1 ppm.

(5) A licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and record keeping requirements in WAC 314-55-087.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(7) Pursuant to WAC 314-55-105, upon request a marijuana licensee must disclose and make available all quality assurance tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.