



Washington State
Liquor and Cannabis Board

Date: September 21, 2016

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

From: Karen McCall, Sr. Agency Rules Coordinator

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

Subject: **Approval of final rulemaking (CR 103) for revisions to WAC 314-02-130 What types of changes to a licensed premises require board approval?**

At the Board meeting on September 21, 2016, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for revisions to **WAC 314-02-130**.

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 Garret, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Outside Liquor Service Requirements

Date: September 21, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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 the revised rule **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.

Public Comment

No written comments were received on this rulemaking. One stakeholder commented in support of this rule change at the public hearing on September 7, 2016.

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"> • Excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • Excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • Reclassifying a lounge as open to persons under twenty-one years of age; • 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); • Initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; 	<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"> • Any alteration that affects the size of a premises' customer service area. 	<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.



Washington State
Liquor and Cannabis Board

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To: Jane Rushford, Board Chair
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From: Karen McCall, Sr. Agency Rules Coordinator

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

Subject: **Approval of final rulemaking (CR 103) for revision to WAC 314-23-085
What type of discounts are not allowed?**

At the Board meeting on September 21, 2016, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for revisions to **WAC 314-23-085 What type of discounts are not allowed?**

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 Garret, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

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

Date: September 21, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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 the revised rule **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.

Public comment.

Four written comments were received on this proposed rules. One stakeholder commented at the public hearing held September 7, 2016.

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.)~~)



**Washington State
Liquor and Cannabis Board**

Date: September, 2016

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

From: Karen McCall, Sr. Agency Rules Coordinator

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

Subject: **Approval for filing revised proposed rules (2nd Supplemental CR 102) to revise WAC 314-12-215 Alcohol Impact Areas.**

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

Process

The Rules Coordinator requests approval to file the revised proposed rules (2nd Supplemental CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on September 21, 2016, and is attached to this order.

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

September 21, 2016	Board is asked to approve filing the revised proposed rules (2 nd Supplemental CR 102)
October 5, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 2, 2016	End of written comment period
November 2, 2016	Public Hearing held
November 16, 2016	Board is asked to adopt rules
November 16, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
November 16, 2016	Agency files adopted rules with the Code Reviser (CR 103)
December 16, 2016	Rules are effective (31 days after filing)

_____ 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

Alcohol Impact Area Rules – 2nd Supplemental CR 102

Date: September 21, 2016

Presented by: Karen McCall, Sr. Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (2nd 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 revised proposed rules on July 13, 2016, to revise the Alcohol Impact Area rules found in WAC 314-12-215. At the public hearing held on September 7, 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 standardized list of products that will be banned in alcohol impact areas. The list can be found on the WSLCB web site. The list contains products that are banned in the majority of current alcohol impact areas. 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) After the board has recognized an alcohol impact area the local authority may request the board approve additional products to their banned products list provided that the products are reasonably linked to the 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 inebriates; litter pickup; or other statistically documented evidence.

(d) 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

Date: September 21, 2016

To: Jane Rushford, Board Chair
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Ollie Garret, Board Member

From: Karen McCall, Sr. Agency Rules Coordinator

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

Subject: **Approval of final rulemaking (CR 103) for rules to revise Chapter 314-29 Penalty guidelines**

At the Board meeting on September 21, 2016, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for rules to revise **Chapter 314-29 Penalty Guidelines**.

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 Garret, Board Member Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

Rulemaking on Penalty Guidelines

Date: September 21, 2016

Presented by: Karen McCall, Agency Rules Coordinator

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 the revised rules in **Chapter 314-29 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.

Public comment.

One written comments was received on these proposed rules. Two stakeholders commented at the public hearing held September 7, 2016.

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.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: Sale or service to minor: Sale or service of alcohol to a person under 21 years of age. Minor frequenting 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
Sale or service to apparently intoxicated person: 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
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: 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
Lewd conduct: 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

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Refusal 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
Condition of suspension violation: 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.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Violations involving minors: Sale or service to minors outside of WAC 314-29-038(c): Sale or service of alcohol to a person under 21 years of age. Minor frequenting 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
Sale or service to an apparently intoxicated person: 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

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty. Criminal conduct: 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
Lewd conduct: 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
Refusal 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.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
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

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
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.



**SPOKANE POLICE DIVISION
CHIEF OF POLICE
CRAIG N. MEIDL**

Subject: AIA Banned Product List

Please see the attached petition to add product to the existing banned product list for Spokane's Downtown and East Sprague Alcohol Impact areas.

Sincerely,

A handwritten signature in black ink, appearing to read "M.D. Roberge" with the number "1531" written to the right.

Sr. Police Officer M.D. Roberge
Special Police Problems
Spokane Police Department
1100 W. Mallon, Spokane, WA 99260
(509) 625-4003

RECEIVED

AUG 16 2016

WSLCB DIRECTOR'S OFFICE





SPOKANE POLICE DIVISION

CHIEF OF POLICE

CRAIG N. MEIDL

Date: August 3, 2016

PETITION TO ADD RESTRICTED PRODUCTS

On May 15th, 2010 the Washington State Liquor and Cannabis Board (WSLCB) recognized the City of Spokane's request for a mandatory Downtown Alcohol Impact Area, the City's first AIA. On September 15th, 2012 the WSLCB recognized the East Sprague AIA, Spokane's second Alcohol Impact Area. The requested banned product list for each AIA was compiled by observation of product being sold by licensees within the respective AIA's and of which the empty containers of fortified beer products were found cluttering the streets, sidewalks, and business entryways demonstrating product use by the local chronic inebriate.

Since implementation of these Alcohol Impact Areas, beer manufacturers have created new labels and are encouraging our local distributors to push these products on licensees located within the AIA's. We have received complaints from businesses and patrol officers who are seeing an increase in the use of these new labels by the chronic inebriates. The City of Spokane has not updated this banned product list since May of 2013 and wishes to do so at this time.

In accordance with WAC 314-12-215 (3)(e) and WSR 10-19-065 which went into effect on October 16th, 2010, the City of Spokane and the Spokane Police Department request the Washington State Liquor and Cannabis Board recognize the following products as significantly and materially the same in size, content, alcohol percent and price as those products currently listed on our banned product list. The following products are materially similar to other products on the banned product list, are sold in similar container sizes and have a most have a minimum alcohol content of 5.7 percent by volume.

The following products are currently being distributed to licensees within the Spokane Downtown Alcohol Impact Area and the East Sprague Alcohol Impact Area and are being purchased by our local chronic public inebriates.



Bud Ice all products

5.5%ABV; Tacoma AIA Banned Product List, similar





SPOKANE POLICE DIVISION

CHIEF OF POLICE

CRAIG N. MEIDL

Bud Light Ritass all products



8.0% ABV;

Bud Light Mixtails all products



6.0%-8.0% ABV;

Bud Light Platinum



6.0% ABV

Oculto



6.0% ABV

Redds Wicked all products



8.0% ABV

Smirnoff Spiked all products



8.0% ABV











SPOKANE POLICE DIVISION

CHIEF OF POLICE

CRAIG N. MEIDL

Miller Fortune		6.9% ABV
Cayman Jack all products		5.9% ABV
Parrot Bay all products		5.8% ABV
Boss all products		8.1% ABV
Smith and Forge Cider		6.0% ABV
Genesee Ice		5.5% ABV





**SPOKANE POLICE DIVISION
CHIEF OF POLICE
CRAIG N. MEIDL**

The City of Spokane hereby request the above listed products be added to the current banned product list for the Downtown and East Sprague Alcohol Impact Area.

Sincerely,

Handwritten signature of Craig N. Meidl dated 8/3/16.

Craig N. Meidl
Chief of Police

Prepared by:

Sr. Police Officer M.D. Roberge
Special Police Problems
Spokane Police Department
1100 W. Mallon, Spokane, WA 99260
(509) 625-4003





Washington State Liquor and Cannabis Board

Issue Paper

Petition for Revision of Banned Products List in the city of Spokane's East Central and Downtown Core Alcohol Impact Areas

Date: September 21, 2016

Presented by: Karen McCall, Rules Coordinator & Senior Policy Analyst

Background

On August 16, 2016, a letter from the Spokane Police Department was received requesting revisions to the banned products lists in the East Central Alcohol Impact Area and the downtown core Alcohol Impact Area. The revision includes twelve beer and malt beverage products identified as problematic by business and law enforcement.

On April 7, 2010, the board granted recognition of the Downtown Core Alcohol Impact Area. On August 1, 2012, the board granted recognition of the East Central Alcohol Impact Area. The resolutions included a listing of low-cost/high alcohol content beverages that would no longer be available for sale within the geographical boundaries of the alcohol impact areas. Banned products are an essential aspect of the mandatory alcohol impact recognition, having identified alcoholic beverages that contribute to problematic public safety concerns. The city has requested an expansion of their existing banned products list in accordance with current rule WAC 314-12-215 (3)(e).

This rule provides local authorities with the ability to ascertain the impact of certain low-price high-alcohol products. The local authority may request the addition of products; *“a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. 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....”*

Additional Products to the Proposed Banned Products Lists

The city of Spokane has requested the WSLCB ban the products listed below in all container sizes and flavors in the East Central and Downtown Core Alcohol Impact Areas since they have been identified as problematic by businesses and law enforcement:



Beer/Malt Liquor

Bud Light Ritas	8.0% ACV
Bud Light Mixtails	6.0% ACV
Bud Light Platinum	6.0% ACV
Oculto	6.0% ACV
Redds Wickeds	8.0% ACV
Smirnoff Spiked	8.0% ACV
Miller Fortune	6.9% ACV
Cayman Jack	5.9% ACV
Parrot Bay	5.8% ACV
Boss	8.1% ACV
Smith and Forge Cider	6.0% ACV
Genesee Ice	5.5% ACV

Staff Recommendation

The city of Spokane has requested the expansion of their existing banned products list in accordance with current rule. Staff recommends:

- The board authorize the public comment period until October 21, 2016. Staff will collect data and report to the board on November 2, 2016, at the board meeting.



Liquor and Cannabis Board Revised Interim Policy BIP-03-2016

Subject: ESSB 6328 Vapor Products Implementation

Effective Date: September 21, 2016

Ending Date: Upon adoption of rules to implement this policy.

Approved:

Jane Rushford, Chair

Ruthann Kurose, Board Member

Ollie Garrett, Board Member

Purpose:

This Interim Policy is to make adjustments to a previous Interim Policy adopted by the Board to address needed details and requirements to implement new vapor products licenses and provisions related to mail and internet sales of vapor products. The 2016 Legislature passed ESSB 6328 (Laws of 2016 ch. 38, codified mostly in Chapter 70.345 RCW) that established a new licensing and regulatory framework for vapor products. Vapor products were previously unregulated.

The WSLCB is currently engaged in permanent rulemaking to establish rules as provided under the authority conveyed within ESSB 6328. Though many of the provisions of ESSB 6328 became effective on June 28, 2016, other provisions of the bill in sections 5 through 10 and 28 do not become effective until 30 days after the license application is made available by the WSLCB. The WSLCB made the license applications as required by the bill available on July 1, 2016, making the remaining provisions of the bill effective on August 1, 2016. This Interim Policy is to ensure the WSLCB can implement the necessary components of the bill for licensing provisions and provide additional guidance and requirements for mail and internet delivery sales until permanent rules become effective.

ESSB 6328 defined vapor products as “any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.” The term also includes “any electronic cigarette, electronic, cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic, cigar, electronic cigarillo, electronic pipe, or similar product or

device.” Vapor products do not include any products that meet the definition of marijuana or marijuana products, cigarette, or tobacco products.

This Interim Policy is adjusted to remove certain requirements related to mail and internet delivery sales, which are not needed as they are covered by federal law.

A copy of ESSB 6328 (Laws of 2016 ch. 38) accompanies this Interim Policy.

Policy Statement

In addition to the provisions of ESSB 6328 (Laws of 2016 ch. 38), the following provisions apply to applicants for vapor products licenses, vapor products license holders, and those vapor products licensees who engage in mail and internet delivery sales of vapor products.

Licensing and Records-keeping

(1) A vapor product retailer’s license, vapor products distributor’s license, or a vapor products delivery sale license is required to perform the functions of a vapor products retailer, vapor products distributor, or a vapor products delivery seller whether or not the vapor products the licensee deals in contain nicotine.

(2) A vapor product retailer license, vapor products distributor license, or a vapor products delivery sale license cannot be issued to a location that is a domicile.

(3) No more than one license of each vapor products license type may be issued at a single location.

(4) For the purpose of reviewing an application for a license and considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the 5 years prior to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person’s qualification for a license. The WSLCB will not normally issue a vapor products license to a person or entity that has accumulated eight (8) or more points as determined by the below subsections. If a case is pending for an alleged offense that would earn eight (8) or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety (90) days of application, the WSLCB may administratively close the application.

(a) Felony conviction within the 5 years prior to application: 12 points.

(b) Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW within the 5 years prior to application: 12 points.

(c) Other gross misdemeanor conviction within 3 years prior to application: 5 points.

(d) Misdemeanor conviction within 3 years prior to application: 4 points.

(e) Nondisclosure of any of the above: 4 points each in addition to underlying points.

(5) For the purpose of reviewing an application for a license and considering the denial of a vapor products license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor products license to a person or entity that has four (4) or more violations within the two (2) years prior to the date the application is received by the WSLCB.



**Washington State
Liquor and Cannabis Board**

Date: September 21, 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 of final rules (CR 103) to amend rules in chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation.**

At the Board meeting on September 21, 2016, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) to amend rules in chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper, concise explanatory statement, 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.

<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Jane Rushford, Chair	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Ruthann Kurose, Board Member	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Ollie Garrett, Board Member	Date

Attachment: Issue Paper

Issue Paper

Rules to Implement 2016 Marijuana Legislation

Date: September 21, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

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 rules in Chapter 314-55 WAC, marijuana licenses, application process, requirements, and reporting, to implement 2016 Marijuana Legislation and make other needed technical changes.

Why is rule making necessary?

Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session and to make 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

Public Comment

The WSLCB received several phone call and email inquiries seeking clarification on the contents of this rulemaking. The comments received are included as part of this Concise Explanatory Statement. No other written comments were received as part of this rulemaking. There were no public comments received at the September 7, 2016, public hearing.

What changes are being proposed?

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

Minor changes to rule language to clarify that producers may sell plants to members of a registered cooperative.

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

Minor changes to rule language to allow retailers to dispose of marijuana (as allowed by HB 2521 listed above) so long as they follow the disposal requirements provided in WAC 314-55-097.

Amendatory section. WAC 314-55-410 Cooperatives.

HB 2520 changed state law to allow members of a cooperative to purchase plants from producers. 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.

Attachment: Proposed Rules



Notice of Permanent Rules for 2016 Marijuana Legislation Implementation

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules to implement legislation related to marijuana during the 2016 Legislative Session.

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.

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

This rulemaking amends 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 implement changes made to law in the following bills:

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

The following changes to rules were made in this rulemaking:

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

Minor changes to rule language to clarify that producers may sell plants to members of a registered cooperative.

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

Minor changes to rule language to allow retailers to dispose of marijuana (as allowed by HB 2521 listed above) so long as they follow the disposal requirements provided in WAC 314-55-097.



Amendatory section. WAC 314-55-410 Cooperatives.

HB 2520 changed state law to allow members of a cooperative to purchase plants from producers. 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.

Summary of public comments received on this rule proposal.

CR-101 – filed April 20, 2016, as WSR 16-09-116.

CR 102 – filed July 27, 2016, as WSR 16-16-051.

Public Hearing held September 7, 2016.

Written Comments Received:

The WSLCB received several phone call and email inquiries seeking clarification on the contents of this rulemaking. The comments received are enclosed as part of this Concise Explanatory Statement. No other written comments were received as part of this rulemaking.

WSLCB response: See enclosed.

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

Public Hearing Comments:

No public testimony was offered at the public hearing on September 7, 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.



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
 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:

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

DATE
 July 27, 2016

NAME (type or print)
 Jane Rushford

SIGNATURE

TITLE
 Chair

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

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.

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

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.



**Washington State
Liquor and Cannabis Board**

Date: September 21, 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
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator

Subject: **Approval for filing proposed rules (CR 102) to create a new Chapter in Title 314 WAC (Chapter 314-35 WAC) to implement ESSB 6328 relating to vapor products.**

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to create a new Chapter in Title 314 WAC, Chapter 314-35 WAC, to implement ESSB 6328 relating to vapor products regulation passed during the 2016 Legislative Session.

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 September 21, 2016, and is attached to this order.

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

September 21, 2016	Board is asked to approve filing the pre-proposal statement of inquiry (CR 102)
October 5, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 2, 2016	End of written comment period
November 2, 2016	Public Hearing held
November 16, 2016	Board is asked to adopt rules
November 16, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
November 16, 2016	Agency files adopted rules with the Code Reviser (CR 103)
December 17, 2016	Rules are effective (31 days after filing)

_____ 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

Rules Relating to Vapor Products and Tobacco Regulation to Implement ESSB 6328.

Date: September 21, 2016

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to create a new Chapter in Title 314 WAC, Chapter 314-35 WAC, to implement ESSB 6328 relating to vapor products and tobacco regulation passed during the 2016 Legislative Session.

Why is rule making necessary?

Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session creating a new regulatory scheme for vapor products. The new rules proposed as part of this rulemaking supplement the laws created by the legislature, mostly found in Chapter 70.345 RCW.

What changes are being proposed?

New Section. WAC 314-35-010 Vapor products – Introduction.

This new rule informs the reader that chapter provides rules that apply in addition to those requirements included in Chapter 70.345 RCW regarding manufacturers, distributors, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

New Section. WAC 314-35-020 Vapor product licenses required – Licensing requirements, denials, suspensions, and revocations.

This new rule details additional requirements for vapor product license applications, how the WSLCB will assess applications for vapor product licenses, and information regarding the suspension, denial, nonrenewal, etc. of vapor product licenses. The rule also states that an appeal for the WSLCB denial, suspension, revocation, or nonrenewal of a vapor product license will be conducted under a brief adjudicative proceeding.

New Section. WAC 314-35-030 Vapor product licensee recordkeeping requirements. This new rule details the records keeping and records creation

requirements for each vapor product license type to ensure compliance with sales between vapor products licensees as they may not do business with an unlicensed entity. Records must be kept for a period of 5 years.

New Section. WAC 314-35-040 Age-restricted vapor products retailer licensed locations. This new rule details notification requirements for those vapor products retailer licensed locations that choose to operate age-restricted (no entrance for person under eighteen) locations. Age-restricted locations must notify the WSLCB that they intend to be age-restricted either at the time of application for a license, or ten days prior to becoming an age-restricted location on a form provided by the WSLCB. The rule also requires the posting of signs provided by the WSLCB at an age-restricted vapor product retailer licensed location which must not be removed at any time during opening hours.

Attachment: Proposed Rules

N E W C H A P T E R (Chapter 314-35 WAC, Vapor Products)

WAC 314-35-010 Vapor products - Introduction.

This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

WAC 314-35-020 Vapor product licenses required - Licensing requirements, denials, suspensions, and revocations.

(1) The vapor product license types are: vapor product retailer's license, vapor product distributor's license, and vapor product delivery sale license. A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is required to perform the functions of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not the vapor product contains nicotine.

(2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot be issued to a location that is a domicile.

(3) A person or entity must meet certain qualifications to receive a vapor products license, and must continue to meet those qualifications to maintain the license.

(4) No more than one license of each vapor product license type may be issued at a single location.

(5) A licensed location must be separated from other vapor product businesses and not accessible through neighboring businesses.

(6) For the purpose of reviewing an initial or renewal application for a vapor product license or considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the five years prior to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person's qualification for a license. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined by the below subsections. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.

(a) Felony conviction within the 5 years immediately prior to application: 12 points.

(b) Gross misdemeanor conviction for violation of chapters 82.24 or 82.26 within the 5 years immediately prior to application: 12 points.

(c) Other gross misdemeanor conviction within 3 years immediately prior to application: 5 points.

(d) Misdemeanor conviction within 3 years immediately prior to application: 4 points.

(e) Nondisclosure of any of the above: 4 points each in addition to underlying points.

(7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.

(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

WAC 314-35-030 Vapor product licensee recordkeeping requirements.

(1) Vapor product distributors and manufacturers must keep complete and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of vapor products made. These records must show the names and addresses of purchasers, the inventory of all vapor products, and other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. Vapor

product licensees must preserve legible copies of all such invoices for five years from the date of sale.

(4) Every licensed vapor product retailer must procure itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, and all prices and discounts.

(5) The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.

WAC 314-35-040 Age-restricted vapor products retailer licensed locations.

(1) Age-restricted vapor products retailer licensed locations must register as such with the WSLCB by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the WSLCB in writing ten business days prior to a change in the age-restriction status. The appropriate form is available on the WSLCB website.

(2) Holders of a vapor product retailer license where entry into the licensed premises is age-restricted to persons eighteen (18) years of age or older must post signs provided by the WSLCB at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time during opening hours of the licensed vapor products retail establishment.