

WSR 21-01-058
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 9, 2020, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-041.

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (WSLCB) proposes to amend WAC 314-55-010 and proposes new WAC 314-55-550 and 314-55-1055 to implement the directives and requirements of HB 2826 (chapter 133, Laws of 2020), concerning marijuana vapor products, now codified in RCW 69.50.101, 69.50.327, 69.50.342.

Hearing Location(s): On February 3, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit <https://lcb.wa.gov/boardmeetings/boardmeetings>.

Date of Intended Adoption: Not earlier than February 17, 2020 [2021].

Submit Written Comments to: Casey Schaufler, 1025 Union Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, by February 3, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by January 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2826 provides that the board may adopt rules prohibiting any type of marijuana vapor product device, or prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products. Proposed new rule section, WAC 314-55-550, establishes a procedure for the board to monitor, evaluate, and prohibit devices or additives used in conjunction with marijuana vapor products, consistent with HB 2826 and codified in RCW 69.50.342 (1)(m). The proposed rule also amends WAC 314-55-010 (4) and (40), adding definitions for "characterizing flavor" and "terpenes." Proposed new rule section, WAC 314-55-1055, makes current emergency rules, originally adopted on October 16, 2019, under WSR 19-21-100 and most recently readopted September 16, 2020, under WSR 20-19-083 permanent. The proposed new rule section requires marijuana processors and producers to disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, consistent with HB 2826 and codified in RCW 69.50.342 (1)(n).

Reasons Supporting Proposal: New rule sections and amendment to existing rule is necessary to allow WSLCB to implement marijuana vapor product regulation consistent with HB 2826, and to establish definitions for terms including, but not limited to "characterizing flavor," "botanical terpenes," and others.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: HB 2826 (chapter 133, Laws of 2020), now codified in RCW 69.50.101, 69.50.327, 69.50.342.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Casey Schauler, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1760; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1753; and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(e).

Explanation of exemptions: WAC 314-55-010 (4) and (40), 314-55-550 and 314-55-1055 adopts, incorporates and implements the requirements of HB 2826, codified in RCW 69.50.327 and 69.50.342 (1)(m) and (n).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Licensing costs: There are no licensing costs associated with this rule. The rule does not impose any additional regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. Thus, licensing costs were not included in this calculation.

Administrative costs: WSLCB estimates it will take a producer or processor licensee around one hour for each submitted ingredient disclosure form and any related phone calls or communications with agency staff. It will not be necessary for a retail licensee to submit a disclosure form. Producer and processor licensees must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation, and forms must be updated whenever there is any change in product composition. If a producer or processor submits an ingredient disclosure form up to two times a month, they could spend up to twenty-four hours per year on product disclosure forms (1 hour per form x 24 forms per year = 24 hours per year).

According to the 2019 Occupational Employment Statistics Databook (<https://esd.wa.gov/labormarketinfo/report-library>), the average hour-

ly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the SOC Code 43-6014) is \$21.31. The estimated annual cost for these administrative activities is up to \$511.44 (\$21.31 avg. hourly wage x 24 hours = \$511.44).

Below are calculations for minor cost thresholds across all impacted license types based on the best analogous NAICS types. The minor cost does not exceed any of the thresholds for any of the license types. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$511.44	Marijuana Processors	All Other Food Manufacturing	\$27,271.78	\$9,424.11 2018 Dataset pulled from USBLS	\$27,271.78 2018 Dataset pulled from DOR
111	\$511.44	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from USBLS	\$2,998.38 2018 Dataset pulled from DOR

December 9, 2020
Jane Rushford
Chair

OTS-2758.1

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-010 Definitions. The following definitions apply for the purpose of this chapter in addition to the definitions provided in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Characterizing flavor" means a noticeable taste, other than one of cannabis, resulting from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, or menthol, or that is noticeable before or during consumption of the cannabis product.

(5) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

~~((5))~~ (6) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A

consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

~~((6))~~ (7) "Cooperative" means a group of more than one, but no more than four qualified medical marijuana patients and/or designated providers who share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative.

~~((7))~~ (8) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

~~((8))~~ (9) "Elementary school" means a school with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

~~((9))~~ (10) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

~~((10))~~ (11) "End product" means a marijuana product that requires no further processing prior to retail sale.

~~((11))~~ (12) "Financier" means any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest.

~~((12))~~ (13) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

~~((13))~~ (14) "Harvest" means the marijuana plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

~~((14))~~ (15) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

~~((15))~~ (16) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana mix lot, marijuana concentrate or marijuana-infused product that must be or are intended to be converted further to an end product.

~~((16))~~ (17) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((17))~~ (18) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises.

~~((18))~~ (19) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

~~((19))~~ (20) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

~~((20))~~ (21) "Lozenge" means a marijuana-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

~~((21))~~ (22) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((22))~~ (23) "Marijuana mix" means an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm.

~~((23))~~ (24) "Marijuana mix infused" or "mix infused" means an end product that contains marijuana mix and may contain other intermediate products or useable marijuana.

~~((24))~~ (25) "Marijuana mix packaged" or "mix packaged" means an end product containing only marijuana mix and no other product types.

~~((25))~~ (26) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((26))~~ (27) "Paraphernalia" means items used for the storage or use of useable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongos, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((27))~~ (28) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((28))~~ (29) "Perimeter" means a property line that encloses an area.

~~((29))~~ (30) "Plant" means a marijuana plant.

~~((30))~~ (31) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((31))~~ (32) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

~~((32))~~ (33) "Product(s) otherwise taken into the body" means a marijuana-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

~~((33))~~ (34) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((34))~~ (35) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((35))~~ (36) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, federal government, or metropolitan park district.

~~((36))~~ (37) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((37))~~ (38) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((38))~~ (39) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((39))~~ (40) "Terpenes" means a class of compounds that impart smell, taste, or both occurring in the cannabis plant which consist of a carbon skeleton derived from isoprene units. The word "terpene" may include, but is not limited to, the following:

(a) "Botanical terpenes" means constituents derived from a spice, fruit, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, or leaf or similar plant material. Their significant function in cannabis products is flavoring. This includes:

(i) Essential oil, which is natural oil typically obtained by distillation and possessing the characteristic fragrance of the plant or other source from which it is extracted;

(ii) Oleoresin, which is a natural or artificial mixture of essential oils and a resin;

(iii) Distillate; or

(iv) Any product of roasting, heating, or enzymolysis which contains terpenes.

(b) "Synthetic terpenes" means any terpene that does not occur in the cannabis plant, or in other botanical sources, and is produced through chemical manipulation in a laboratory or similar facility.

(c) "Terpenoids" means the natural products and related compounds formally derived from isoprene units, or "isoprenoids," that have the same meaning as that found in the current version of the International Union of Pure and Applied Chemistry (IUPAC) and as hereafter amended.

(41) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

~~((40))~~ (42) "WSLCB" means the Washington state liquor and cannabis board.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-010, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-010, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-010, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-010, filed 10/21/13, effective 11/21/13.]

NEW SECTION

WAC 314-55-550 Marijuana vapor products. (1) The purpose of this section is to:

(a) Support and further the protection of public health and prevention of youth access consistent with RCW 69.50.101(xx).

(b) Mitigate the risks to public health and youth access by prohibiting the use of any additive, solvent, ingredient, or compound in marijuana vapor product production and processing when appropriate, consistent with RCW 69.50.342 (1)(m).

(c) Mitigate the risks to public health and youth access by prohibiting any device used in conjunction with a marijuana vapor product when appropriate, consistent with RCW 69.50.342 (1)(n).

(2) Procedure for prohibited substances.

(a) The board may prohibit any type of device used in conjunction with a marijuana vapor product, and may prohibit the use of any type of additive, solvent, ingredient, or compound in the production of marijuana vapor products that may pose a risk to public health or youth access.

(b) The board may consider, following consultation with the department of health or other authority the board deems appropriate, any relevant data when determining whether a device, additive, solvent, ingredient or compound may pose a risk to public health or youth access including, but not limited to:

(i) Case report data;

(ii) Other local, state and federal agency findings, reports, etc.;

(iii) A product or substance that is the subject of a recall under WAC 314-55-225;

(iv) Any other information sourced and confirmed from reliable entities.

(c) The board may prohibit the use of a product or substance by adoption of emergency or permanent rules. The board will provide notices of rule making consistent with the requirements of chapter 34.05 RCW.

(d) The board will maintain a list of prohibited substances prohibited by permanent or emergency rules on its website.

(e) The list of prohibited substances will be reviewed on an annual basis.

(f) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (b) (i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.

[]

OTS-1783.3

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

[]