

WSR 21-21-041
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 13, 2021, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-117.

Title of Rule and Other Identifying Information: New WAC

314-55-560 Evaluation of additives, solvents, ingredients, or compounds used in the production of marijuana products. The Washington state liquor and cannabis board (WSLCB) proposes a new rule section that would allow WSLCB to evaluate additives, solvents, ingredients, or compounds used in the production and processing of marijuana products other than delta-9 tetrahydrocannabinol (THC), as well as CBD, hemp, or both converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in RCW, WAC, or both, to determine whether such substances pose a risk to public health or youth access.

Hearing Location(s): On December 8, 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 December 22, 2021.

Submit Written Comments to: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, by December 8, 2021.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Anita.Bingham@lcb.wa.gov, by December 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 69.50.326 (1)(m) provides, among other things, that the board may adopt rules prohibiting the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products. Proposed new rule section WAC 314-55-560 establishes a procedure for the board to prohibit the use of any type of additive, solvent, ingredient, or compound used in the production and processing of marijuana products, and defines these terms in a way that will assist the board in determining whether an additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

Reasons Supporting Proposal: In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than THC. In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in RCW, WAC, or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB

also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

Currently, the only products that may be produced, processed, and sold in the I-502 system are products defined as "marijuana" in statute. RCW 69.50.101(y) defines "marijuana" as all parts of the plant cannabis with a THC concentration greater than 0.3 percent. RCW 69.50.101(uu) provides that "THC concentration" means percent of delta-9 THC content of any part of the plant cannabis. The production and processing of marijuana products may involve the use of potentially harmful additives, solvents, ingredients or compounds. For example, the chemicals used to create the concentration of delta-8 THC claimed in the current market place may be harmful, and may pose a risk to public health and safety. The proposed rules provide a framework for the board to evaluate whether additives, solvents, ingredients, or compounds used in the production of marijuana products pose or may pose, a risk to public health or youth access.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342 (1)(m).

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: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1664; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1753; and Enforcement: Chandra Brady, Director of Education and Enforcement, 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.

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. Agencies are required under chapter 19.85 RCW to consider costs imposed on businesses and costs associated with proposed rule compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs unassociated with compliance. Fines, penalties, or defense costs associated with enforcement actions for failure to comply with proposed rules are considered to be indirect costs that are not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur if an additive, solvent, ingredient, or compound used in the production and processing of marijuana products is determined to pose a risk to public health or youth access, and the board prohibits its presence in the I-502 market.

WSLCB applied the North American Industry Classification System (NAICS) codes 111419 for marijuana grown under cover, 111998 for mari-

juana grown in an open field, and 424590 for marijuana processors. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

WSLCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects four hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

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)
111419	\$200.00	Marijuana Producers	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from USBLS	\$2,324.68 2018 Dataset pulled from DOR
111998	\$200.00	Marijuana Producers	All Other Miscellaneous Crop Farming	\$9,125.03	\$9,125.03 2018 Dataset pulled from USBLS	\$2,834.77 2018 Dataset pulled from DOR
424590	\$200.00	Marijuana Processors	Marijuana Merchant Wholesalers	\$6,733.79	\$3,864.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR

These calculations indicate that estimated administrative costs do not exceed minor cost thresholds, and will not impose more-than-minor costs on those who must comply with the rules.

October 13, 2021
David Postman
Board Chair

OTS-3331.2

NEW SECTION

WAC 314-55-560 Evaluation of additives, solvents, ingredients or compounds used in the production of marijuana products. (1) **Purpose and scope.** The purpose of this section is to establish a procedure for the board to evaluate additives, solvents, ingredients or compounds used in the production of marijuana products, as those products are defined in chapter 69.50 RCW.

(2) **Definitions.** For purposes of this chapter, the following definitions apply unless the context clearly states otherwise:

(a) "Additive" means any substance the use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any marijuana product;

(b) "Compound" means a chemical substance composed from more than one separate chemical element;

(c) "Ingredient" means something that enters into a mixture or is a component part of any combination or mixture;

(d) "Nonmarijuana additive" means a substance or a group of substances that are derived from a source other than marijuana.

- (i) "Nonmarijuana additive" includes, but is not limited to, purified compounds, essential oils, oleoresins, essences, or extractives, protein hydrolysates, distillates, or isolates;
 - (ii) "Nonmarijuana additive" does not include plant material that is in the whole, broken, or ground form.
 - (e) "Solvent" means a substance capable of being used in dissolving a solute with the exception of water.
- (3) **Procedure.**
- (a) The board may prohibit the use of any additive, solvent, ingredient or compound in the production of marijuana products that may pose a risk to public health or youth access including, but not limited to:
 - (i) Verifiable 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.
 - (b) 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.
 - (c) The board will maintain a list of prohibited substances prohibited by emergency or permanent rules on its website.
 - (d) The list of prohibited substances will be reviewed on at least an annual basis.
 - (e) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (a)(i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.

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