

WSR 21-10-040
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 28, 2021, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-171.

Title of Rule and Other Identifying Information: WAC 314-55-075 Marijuana producer license—Privileges, requirements and fees. The Washington state liquor and cannabis board (board) is proposing rule amendments to expand the plant canopy square footage allowed for licensed Tier 1 marijuana (cannabis) producers.

Hearing Location(s): On June 9, 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 June 16, 2021.

Submit Written Comments to: Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, by June 9, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA 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 June 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, Tier 1 cannabis producer licenses are limited to two thousand square feet of production canopy. Some of these Tier 1 businesses find it difficult to operate a successful business under the current square footage limit. The proposed rules would expand current Tier 1 canopy from two thousand to four thousand square feet of production canopy. It would also align the Tier 2 canopy from two thousand square feet up to ten thousand square feet to four thousand square feet to ten thousand square feet of production canopy.

Reasons Supporting Proposal: Tier 1 licensees experience business sustainability and viability challenges based on canopy space restrictions. Following two stakeholder engagement sessions, the agency conducted a follow up targeted survey of Tier 1 licensees. One of the most common responses was a request to expand canopy to allow Tier 1 licensees to be competitive in the current market. As of 2019, Tier 1 licensed canopy represents the fewest cannabis production licenses (less than two hundred) and the smallest amount of overall canopy—approximately three hundred fifty thousand square feet, or 1.9 percent of the eighteen million forty thousand square feet of licensed canopy in Washington state. The option to expand growth capacity will add value to the Tier 1 producer license type, support business viability and sustainability, and create an opportunity for Tier 1 producer li-

censees to become more competitive [competitive] in the competitive Washington state cannabis market.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.345.

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: Washington state liquor and cannabis board (WSLCB), governmental.

Name of Agency Personnel Responsible for Drafting: 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: 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 required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98502, phone 360-664-1622.

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. The rule does not impose any additional mandatory regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. The option to expand Tier 1 growing capacity is voluntary, and not required.

However, to make that determination, WSLCB applied a default cost of compliance (\$300) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This represents the following:

- A \$75 fee for an alteration request application;
- \$75 for one and [one] half hours of licensee time to complete forms and communicate with WSLCB regarding expansion;
- \$50 for one hour of licensee time to be present for final inspection;
- \$100 for two hours of work to expand security and video system; and
- Estimated total: \$300.

Below are calculations for minor cost thresholds for the appropriate NAICS industry codes. While these estimates are largely based on broad application, rather than the three-tiered system in Washington state, even if scaled, it is unlikely that the cost of compliance would exceed 0.3 percent of average annual gross business income. The estimated minor cost is not anticipated to exceed any of the thresholds for cannabis grown under cover or in an open field. Since this rule provides an *option* to expand capacity to one tier with the smallest number of licensees, and that expansion is not required to remain in compliance, these costs are not mandated but optional. Other costs incurred are also voluntary, such as expanding fence lines and working with local authorities. For these reasons, the proposed rules are not anticipated to 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	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
111419	\$300	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR
111998	\$300	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 2018 Dataset pulled from DOR

April 28, 2021
David Postman
Board Chair

OTS-2995.1

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

WAC 314-55-075 Marijuana producer license—Privileges, requirements, and fees. (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 may also produce and sell:

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

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in this chapter; and

(iii) Immature marijuana plants or clones and marijuana seeds to a licensed marijuana researcher under the conditions provided in this chapter.

(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. In addition, 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 annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred eighty-one 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 is responsible for all fees required for criminal history checks.

(4) The application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035, in no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production cannot exceed the amount licensed. 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~~) four thousand square feet;

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

(c) Tier 3 - Ten thousand square feet up 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.

(10) A producer may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(11) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

(a) Lot number;

(b) UBI number of the producer; and

(c) Weight of the product.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-075, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-075, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-075, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-075, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-075, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-075, filed 10/21/13, effective 11/21/13.]