

WSR 25-03-080
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 15, 2025, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-158.

Title of Rule and Other Identifying Information: WAC 314-55-097 Cannabis waste disposal—Liquids and solids. The liquor and cannabis board (LCB) is proposing rule amendments to WAC 314-55-097 to implement SSB 5376 (chapter 243, Laws of 2024), regarding allowing sale of cannabis waste. These proposed rule amendments would allow licensed cannabis producer licensees and cannabis processor licensees to sell nonhazardous cannabis waste containing a THC concentration of 0.3 percent or less to persons who are not cannabis licensees under certain conditions.

Hearing Location(s): On February 26, 2025, at 10:00 a.m. All public LCB activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also log in using a computer or device or call in using a phone to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and LCB participants may continue to appear virtually. For more information about LCB meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: Not earlier than March 12, 2025.

Submit Written Comments to: Jeff Kildahl, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-704-5027, beginning January 15, 2025, 12:00 p.m., by February 26, 2025, 5:00 p.m.

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 February 19, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to make amendments to WAC 314-55-097 to implement SSB 5376 (chapter 243, Laws of 2024), regarding allowing sale of cannabis waste by licensed cannabis producers and processors to persons who are not cannabis licensees. The proposed amendments to the existing rule do the following in WAC 315-55-097:

- Update the title of the section to include cannabis waste sales.
- Define the term "sellable cannabis waste" for the purposes of WAC 314-55-097.
- Designate that "sellable cannabis waste" does not include "hemp" or "industrial hemp," as defined in RCW 15.140.020.
- Reiterate that cannabis plant material that has a THC concentration greater than 0.3 percent is considered cannabis under RCW 69.50.101 and is therefore not eligible for designation as "sellable cannabis waste."
- Require cannabis licensees and certified laboratories to evaluate cannabis waste consistent with both chapters 70A.300 RCW and

173-303 WAC to determine if cannabis waste is designated as dangerous or hazardous as defined in those chapters. If the waste is designated as dangerous or hazardous as defined in chapters 70A.300 RCW or 173-303 WAC, it must be stored, managed, and disposed of consistent with those chapters.

- Designate the required conditions under which a cannabis producer or processor licensee may sell the "sellable cannabis waste" to a person who is not a cannabis licensee, including the following reporting:
 - o Presale notice to the Washington state department of agriculture (WSDA) and LCB of "sellable cannabis waste";
 - o Reporting the quantity of sellable cannabis waste;
 - o Reporting the sale price of the cannabis waste; and
 - o The name and contact information of the buyer.
- Designate that the sale of sellable cannabis waste must be conducted in a manner that is open and accessible to all members of the public without discrimination.
- Designate that cannabis waste will not leave the state of Washington as part of the sale or delivery.
- Designate the required conditions under which a cannabis licensee may sell "sellable cannabis waste" to another cannabis licensee, including the following:
 - o Both the selling and purchasing licensees must notify LCB of the intended sale;
 - o The notice must identify:
 - The quantity of sellable cannabis waste;
 - The sale price; and
 - The intended use of the sellable cannabis waste.
 - o Both licensees must maintain accurate records of all sales of sellable cannabis waste;
 - o Such records shall be provided to LCB upon request.
- Reorganizes rule language concerning disposal guidelines and record keeping requirements for cannabis licensees.
- States that LCB can conduct inspections and audits to ensure compliance with the rule and provides that there may be penalties for noncompliance.
- Other minor edits for organization and rule clarity.

Reasons Supporting Proposal: Rules on this subject are needed to implement SSB 5376 (chapter 243, Laws of 2024), which passed the legislature on March 4, 2024.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.3255.

Statute Being Implemented: SSB 5376 (chapter 243, Laws of 2024); RCW 69.50.3255.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Kildahl, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, 360-480-7960; Implementation and Enforcement: Paul Magerl, Interim Chief of Enforcement and Education, P.O. Box 43080, Olympia, WA 98504, 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. The proposed amended rules do not qualify as a significant legislative rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit

analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

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 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

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 amendments do not impose any significant regulatory burden on licensees, nor does it change, modify, add cost, or otherwise alter the disposal requirements for other categories of cannabis waste. The new option for licensed cannabis producers and processors to sell qualifying cannabis waste is voluntary, and sales of cannabis waste are not required by the proposed rules. If the qualifying cannabis waste is not sold as allowed, the waste then must be mixed with other material and disposed of according to existing rules in WAC 314-55-097(4).

Although proposed rule amendments do not disproportionately affect small businesses, for transparency to determine if the proposed rules impose any significant regulatory burden on licensees, LCB applied an ample default cost of compliance estimate of \$200 to consider whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This amount represents the following:

- One hundred dollars for two hours of labor to prereport sales of cannabis waste to WSDA prior to sale.
- One hundred dollars for two hours of labor to prereport sales of cannabis waste to LCB prior to sale.

Below are calculations for minor cost thresholds for the appropriate North American Industry Classification System (NAICS) industry codes. It is extremely 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 the threshold levels for cannabis grown under cover or in an open field. Since sales of qualifying cannabis waste is optional for the licensee, these costs are not mandated. 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).

Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Average Annual Payroll	0.3% of Average Annual Gross Business Income
111419	\$200	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$2,387.54	Unavailable	\$2,387.54 2023 Dataset pulled from DOR
111998	\$200	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$2,284.65	Unavailable	\$2,284.65 2023 Dataset pulled from DOR

Department of revenue (DOR) data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Report.aspx>.

January 15, 2025
Jim Vollendroff

OTS-5839.4

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-097 Cannabis waste disposal and sales—Liquids and solids. (1) Solid and liquid wastes generated during cannabis production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

For purposes of this section, "sellable cannabis waste" means solid waste generated during cannabis production or processing that has a THC concentration of 0.3 percent or less and not designated dangerous or hazardous. Sellable cannabis waste does not include "hemp" or "industrial hemp," as defined in RCW 15.140.020. A portion of a cannabis plant that has a THC concentration greater than 0.3 percent is considered cannabis under RCW 69.50.101.

(2) Wastewater generated during cannabis production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) ~~((Wastes from the production and processing of cannabis plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC))~~ Cannabis licensees and certified laboratories must evaluate cannabis waste consistent with chapters 70A.300 RCW and 173-303 WAC to determine if ((those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it is designated as a dangerous waste)) the cannabis waste is designated as dangerous or hazardous as defined in those chapters.

(a) If a ((generator's)) licensee or certified laboratory generates waste ((does designate as a)) that is not designated as dangerous or hazardous waste, then that waste((s)) is subject to the ((applicable)) cannabis waste management standards ((found in chapter 173-303 WAC)) set forth in this section.

~~((a))~~ (i) Waste((s)) that must be evaluated ((against the dangerous waste regulations)) to determine if it is dangerous or hazardous includes, but ((are)) is not limited to, the following:

~~((i))~~ (A) Waste from cannabis flowers, trim and solid plant material used to create an extract (per WAC 314-55-104).

~~((ii))~~ (B) Waste solvents used in the cannabis process (per WAC 314-55-104).

~~((iii))~~ (C) Discarded plant waste, spent solvents and laboratory wastes from any cannabis processing or quality assurance testing.

~~((iv))~~ (D) Cannabis extract that fails to meet quality testing.

~~((b) Cannabis wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.~~

~~((e))~~ (ii) A cannabis plant, useable cannabis, cannabis plant roots, trim, and other plant material ((in itself)) is not considered dangerous or hazardous waste as defined under chapter 70A.300 RCW or 173-303 WAC unless it has been treated or contaminated with a solvent.

~~((4))~~ (b) Cannabis waste that is designated as dangerous or hazardous as defined in chapter 70A.300 RCW or 173-303 WAC must be stored, managed, and disposed of consistent with chapters 70A.300 RCW and 173-303 WAC.

(4) Cannabis waste that is not designated as dangerous or hazardous waste as defined in chapter 70A.300 RCW or 173-303 WAC and is not sold as provided in this section must be rendered unusable before leaving the licensed premises or certified laboratory.

(a) The process for rendering cannabis waste unusable must involve grinding the waste and mixing it with other ground materials so that the resulting mixture is at least 50 percent noncannabis waste by volume. Other methods to render cannabis waste unusable may be proposed but must receive prior approval from the LCB before implementation. Acceptable materials for mixing with cannabis waste include, but are not limited to, the following:

(i) Compostable mixed waste, such as food waste, yard waste, vegetable greases or oils, or other compostable materials approved by the LCB;

(ii) Noncompostable mixed waste, with materials such as paper waste, plastic waste, cardboard waste, or other noncompostable materials approved by the LCB.

(b) Once rendered unusable, cannabis waste may, subject to approval by the local authority, be disposed of at a permitted solid waste facility, including composting facilities, anaerobic digesters, landfills, or incinerators. Compliance with (b) of this subsection may be accomplished by managing cannabis waste rendered unusable on-site by the licensee or certified laboratory in accordance with the standards of chapter 173-350 WAC.

(c) Licensees must maintain records documenting the final destination and method of all cannabis waste rendered unusable in the required format.

~~(5) Sellable cannabis waste ((that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, or laboratory. Disposal of the cannabis waste rendered unusable must follow the methods under subsection (6) of this section.~~

~~Wastes that must be rendered unuseable prior to disposal include, but are not limited to, the following)) may be sold by the producer or processor to a person who is not a licensed cannabis business under the following conditions:~~

~~(a) ((Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."~~

~~(b) Cannabis plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.~~

~~(c) Solid cannabis sample plant waste possessed by third-party laboratories accredited by the WSLCB to test for quality assurance that must be disposed of.~~

~~(d) Other wastes as determined by the WSLCB.~~

~~(5) The allowable method to render cannabis plant waste unuseable is by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least 50 percent non-cannabis waste by volume. Other methods to render cannabis waste unuseable must be approved by the WSLCB before implementation.~~

~~Material used to grind with the cannabis falls into two categories: Compostable waste and noncompostable waste.~~

~~(a) Compostable mixed waste: Cannabis waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:~~

- ~~(i) Food waste;~~
- ~~(ii) Yard waste;~~
- ~~(iii) Vegetable based grease or oils; or~~
- ~~(iv) Other wastes as approved by the WSLCB.~~

~~(b) Noncompostable mixed waste: Cannabis waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:~~

- ~~(i) Paper waste;~~
- ~~(ii) Cardboard waste;~~
- ~~(iii) Plastic waste;~~
- ~~(iv) Soil; or~~
- ~~(v) Other wastes as approved by the WSLCB.~~

~~(6) Cannabis wastes rendered unuseable following the method described in subsection (4) of this section can be disposed.~~

~~(a) Disposal of the cannabis waste rendered unuseable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:~~

- ~~(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.~~
- ~~(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.~~

~~(b) Disposal of the cannabis waste rendered unuseable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.~~

~~(c) A record of the final destination of cannabis waste rendered unuseable.) The cannabis licensee must report the intended sale to the WSDA prior to completion of the sale;~~

(b) The cannabis licensee must notify the LCB of the intended sale prior to completion of the sale in the format specified by the board;

(c) The report includes at least the following information:

- (i) The quantity of sellable cannabis waste;
- (ii) The sale price; and
- (iii) The name and contact information of the buyer;

(d) The sale of sellable cannabis waste must be conducted in a manner that is open and accessible to all members of the public without discrimination; and

(e) The cannabis waste will not leave the state of Washington as part of the sale or delivery.

(6) Sellable cannabis waste may be sold by the producer or processor to another producer or processor under the following conditions:

(a) Both the purchasing and selling cannabis licensees must notify the LCB of the intended sale in the format specified by the board;

(b) The notice to the board must include the following:

- (i) The quantity of sellable cannabis waste;
- (ii) The sale price; and
- (iii) The intended use of the sellable cannabis waste.

(c) The sale must be conducted consistent with chapters 69.50 RCW and 314-55 WAC.

(7) (a) The LCB may conduct inspections and audits to ensure compliance with this section.

(b) Licensees found in violation of these rules may be subject to penalties.

(c) Licensees are responsible for keeping accurate and complete records of all sellable cannabis waste sales. Licensees and certified laboratories are responsible for keeping accurate and complete records of all evaluations, rendering, and disposal activities.

(d) All required records must be made available to the LCB upon request.

(e) All required records must be kept consistent with the requirements in WAC 314-55-087.

(8) Cannabis waste rendered unusable following the method described in this rule can be disposed of.

(a) Disposal of the cannabis waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the cannabis waste rendered unusable may be managed on-site by the licensee or certified laboratory in accordance with the standards of chapter 173-350 WAC.