

# PROPOSED RULE MAKING



## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

**Agency:** Washington State Liquor and Cannabis Board

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 23-22-063 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) WAC 314-55-080 – Medical cannabis endorsement

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
June 5, 2024	10:00 AM	All public Board 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 in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login 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 agency participants may continue to appear virtually	For more information about Board meetings, please visit <a href="https://lcb.wa.gov/Boardmeetings/Board_meetings">https://lcb.wa.gov/Boardmeetings/Board_meetings</a>

**Date of intended adoption:** No earlier than June 18, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Daniel Jacobs, Rules & Policy Coordinator

Address: PO Box 43080, Olympia WA 98504-3080

Email: [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)

Fax: 360 704 5027

Other:

By (date) May 29, 2024

**Assistance for persons with disabilities:**

Contact Anita Bingham, ADA Coordinator, Human Resources

Phone: 360 664 1739

Fax: 360 664 9689

TTY: 7-1-1 or 1-800-833-6388

Email: [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov)

Other:

By (date) May 29, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The changes below are meant to accomplish three main goals: 1) creating a requirement of posting cannabis consultant availability alongside

required store hours, 2) allow medical cannabis endorsement holders to have cannabis products that comply with WAC 246-70 “on order” to satisfy the “in stock” requirement, and 3) create a 30 day “cure period” to allow medical cannabis endorsement holders to correct regulatory noncompliance before an endorsement will be discontinued for noncompliance.

Language about medical cannabis endorsement holders being able to sell products below 0.3% THC is being removed from the rule to remove redundancy because it remains in statute at RCW 69.50.378.

Section	Current Rule Language	Proposed New Language	Rule Necessity
(3)	With addition of new requirement at (3)(c), existing (3)(d) – (3)(i) is renumbered as (3)(e) – (3)(j) accordingly		Necessary for numbering.
(3)(b)	Have a consultant on staff in accordance with department of health rules;	Have a consultant on staff in accordance with chapter 246-72 WAC;	Improving clarity without changing effect.
(3)(c)	<b>New Language</b>		New requirement to increase transparency of retailers regarding availability of medical cannabis consultant.
	(c)(i) Have consulting service hours for entering qualifying patients into the medical cannabis database posted alongside hours of operation as required in WAC 314-55-055; (ii) The requirement in (c)(i) of this subsection can be met by posting a window of time where appointments with cannabis consultants can be scheduled;		
(3)(d)	Maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers;	Have in stock at all times, or on order, cannabis products that comply with chapter 246-70 WAC;	Improving clarity and removing unnecessary additional wording that caused confusion and required regulatory guidance and interpretation.  Added language indicating that having compliant cannabis on order satisfies this requirement.
(3)(f)	Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;	Maintain the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;	Improving clarity without changing effect.
(4)	<b>A cannabis retailer holding a medical cannabis endorsement may sell products with a THC concentration of 0.3 percent or less.</b> The licensee may also provide these products at no charge to qualifying patients or designated providers.	The licensee may provide cannabis products complying with chapter 246-70 WAC at no charge to qualifying patients or designated providers.	Improving clarity without changing effect.  Medical cannabis endorsement holders remain able to sell products with THC less than 0.3 percent per RCW 69.50.378.
(6)	Failure to comply with subsections (3) and (5) of this section may result in suspension or revocation of the medical cannabis endorsement.	(a) Noncompliance with the requirements of subsection (3) of this section may result in the discontinuance of the medical cannabis endorsement. (b)(i) After being notified of noncompliance with the requirements of this section by the board, the endorsement holder shall have at least seven calendar days and no more than 30 calendar days to demonstrate compliance with this section. If noncompliance remains after the deadline identified by the board, the endorsement is discontinued. (ii) If a licensee applies for a medical cannabis endorsement after it has previously been discontinued pursuant to (b)(i) of this subsection,	Replacing words “suspension” and “revocation” with discontinuance.  Providing a cure period to address noncompliance with regulatory requirements. The length of the cure period will depend on the nature of the noncompliance. Continued noncompliance after the cure period results in discontinuance of the endorsement.  Subsequent application for an endorsement requires a demonstration of

		the application and documentation verifying compliance with the requirements of this section must be submitted to the board.	compliance with the regulatory requirements
(7)	Noncompliance with subsection (5) of this section may result in the discontinuance of the medical cannabis endorsement.		Creating a new subsection to separate language from old subsection (6).

**Reasons supporting proposal:** Creating the additional cannabis consultant hours posting requirement will help assist patients who currently must call multiple retailers to find available cannabis consultants. Allowing for consultants to be available “by appointment” within a specified timeframe allows for the consultants to still accomplish other business tasks while remaining available to serve patients as needed.

Adding the “or on order” wording to the “in stock” requirement currently at WAC 314-55-080(3)(d) will allow retailers who do not have any cannabis complying with Department of Health requirements in stock at a given time to remain compliant with this requirement by having an order in place for new product. This wording was suggested during a stakeholder engagement session by a member of the public.

Creating the variable cure period will allow for retailers who become noncompliant a window of time to address the noncompliance before the endorsement is discontinued. The amount of time needed may vary depending on the noncompliance at issue, as it may take more time to hire a new cannabis consultant than it would to fix a card machine or get more complaint cannabis in stock. This is broadly consistent with current internal agency procedures for addressing noncompliance by medical cannabis endorsement holders. This also balances flexibility and an opportunity to resume compliance without immediate discontinuance of an endorsement, while at the same time providing a structure for discontinuance for retailers who are unable to maintain regulatory compliance.

Lastly, while a retailer who has their medical cannabis endorsement discontinued for noncompliance remains able to apply for the endorsement again, an additional required showing must be submitted to the Board with the request to add the medical cannabis endorsement, as a measure intended to address what was previously a compliance issue.

<b>Statutory authority for adoption:</b> RCW 69.50.342, RCW 69.50.345			
<b>Statute being implemented:</b> RCW 69.50.375			
<b>Is rule necessary because of a:</b>			
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:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> None			
<b>Type of proponent:</b> <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental			
<b>Name of proponent:</b> (person or organization) Washington State Liquor and Cannabis Board			
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting: Coordinator	Daniel Jacobs, Rules & Policy	1025 Union Avenue, Olympia WA, 98504	360-480-1238
Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1753
Enforcement: Enforcement & Education	Chandra Wax, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1726
<b>Is a school district fiscal impact statement required under <a href="#">RCW 28A.305.135</a>?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
The public may obtain a copy of the school district fiscal impact statement by contacting: Name:			

Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**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:  
TTY:  
Email:  
Other:

No: Please explain: The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The 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).

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)  
(Internal government operations)

[RCW 34.05.310](#) (4)(e)  
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)  
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)  
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)  
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions: Check one.**

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement: Complete this section if any portion is not exempt.**

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) code 459991 for marijuana stores, recreational or medical. This is defined by the NAICS as follows: This U.S. industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/?input=marijuana&year=2022&details=459991>

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a conservative estimate of \$1,000.00 for every cannabis retailer with an existing medical cannabis endorsement to familiarize themselves with the amended rules and change the sign on the outside of the premises to comply with the new requirements in the proposed rule.

Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. According to Department of Revenue data from 2022, the total gross business income for NAICS code 459991 was \$583,645,979.00 for 521 businesses. That produces an average annual gross business income of \$1,120,241.8023. Three-tenths of one percent of \$1,120,241.8023 is \$3,360.725, rounding up to \$3,360.73.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
459991	\$1,000.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,360.73	Unavailable*	\$3,360.73 2022 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for tobacco, electronic cigarette, and other smoking supplies retailers, which according to the NAICS website above, includes cannabis retailers with medical cannabis endorsements. Therefore, implementation of this amended rule is not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

DOR – Washington State Department of Revenue. DOR data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2022AN,&Code1=450000&Code2=460000&Sumbly=n6&SicNaics=2&Format=HTML>

\* - Average annual payroll data was unavailable due to confidentiality with other state agency data.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Daniel Jacobs, Rules & Policy Coordinator  
 Address: PO Box 43080, Olympia WA 98504-3080  
 Phone: 360-480-1238  
 Fax: 360 704 5027  
 TTY:  
 Email: rules@lcb.wa.gov  
 Other:

<b>Date:</b> April 24, 2024	<b>Signature:</b>  Place signature here
<b>Name:</b> David Postman	
<b>Title:</b> Chair	