



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

- Preproposal Statement of Inquiry was filed as WSR 16-13-092 ; 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).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
WAC 314-55-106, Marijuana warning symbol requirement.

Hearing location(s):

Washington State Liquor and Cannabis Board
Board Room
3000 Pacific Ave SE
Olympia, WA 98504

Date: November 2, 2016 Time: 10:00 am

Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator
Address: PO Box 43080
Olympia, WA 98504
e-mail rules@lcb.wa.gov
fax (360)664-9689 by (date) November 2, 2016

Assistance for persons with disabilities: Contact

Joanna Eide by October 19, 2016

TTY () _____ or (360) 664-1622

Date of intended adoption: on or after November 16, 2016
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to establish a new warning symbol to be placed on marijuana products intended to be eaten or swallowed. This proposal creates a new WAC section in chapter 314-55 WAC to establish the new warning symbol requirement for placement of the "Not for Kids" symbol on the principal display panel or front of the product package. The new rule establishes minimum size requirements and options for marijuana licensees who wish to use a sticker bearing the symbol in lieu of the digital image developed and made available in digital form to licensees without cost by the Washington Poison Center. This labeling requirement is in addition to other labeling requirements established in WAC 314-55-105.

Reasons supporting proposal: Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption

Statutory authority for adoption: RCW 69.50.342 and 69.50.345

Statute being implemented: RCW 69.50.342 and 69.50.345

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
August 10, 2016

NAME (type or print)
Jane Rushford

SIGNATURE

TITLE
Chair

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: August 10, 2016

TIME: 10:22 AM

WSR 16-17-043

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Joanna Eide, Policy and Rules Coord	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1622
Implementation....Joanna Eide, Policy and Rules Coord	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1622
Enforcement..... Justin Nordhorn, Chief Enforcement	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1726

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide, Policy and Rules Coordinator

Address:

3000 Pacific Ave SE

Olympia, WA 98504

phone (360) 664-1622 _____

fax (360)664-9689 _____

e-mail Joanna.Eide@lcb.wa.gov _____

No. Explain why no statement was prepared.

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 () _____

e-mail _____

No: Please explain: A cost-benefit analysis was not required under RCW 34.05.328.



Washington State
Liquor and Cannabis Board

Date: August 10, 2016

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Joanna Eide, Policy and Rules Coordinator
Tim Gates, Marijuana Examiners Unit

**Subject: Small Business Economic Impact Statement
Marijuana Product Warning Symbol**

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement:

WAC 314-55-106 Marijuana warning symbol requirement.

1. Description of reporting, record keeping and other compliance requirements of the proposed rule:

WAC 314-55-106, Marijuana warning symbol requirement, is a proposed new WAC section that creates a warning symbol for use on marijuana products meant to be eaten or swallowed. This warning symbol will alert children and consumers that marijuana products meant to be eaten or swallowed are not for children. The symbol is intended to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Marijuana licensees will be required to place the warning symbol on packaging of marijuana products meant to be eaten or swallowed. The “Not for Kids” symbol developed and made available in digital form to licensees without cost by the Washington Poison Center must be placed on the principal display panel or front of the product package. The warning symbol may be found on the Washington Poison



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Center's website. The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width. The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

Licensees may use a sticker made available by the Washington Poison Center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

- (a) Must be obtained from the Washington Poison Center;
- (b) Must be placed on or near the principal display panel or on the front of the package; and
- (c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

The WSLCB used similar requirements found in the CFRs (Code of Federal Regulations) regarding poison labeling requirements and the Washington Department of Health's rules on labeling compliant marijuana products in developing the requirements in this proposed new section. See 16 C.F.R. 1500, available here: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title16/16cfr1500_main_02.tpl, and proposed new chapter 246-70 WAC, available here: <http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana/RulesinProgress/MarijuanaProductCompliance>.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

Licensees develop and print labels in a multitude of ways. Some licensees choose to create and print labels for products independently, while others may choose to hire professional designers and printers to develop or print labels or product packaging. Costs of professional designing and printing vary depending on the label or packaging design, size, and other aesthetic considerations the licensee chooses to make. The new warning symbol placement requirement will not require the use of professional services, but a licensee may choose to engage professional services if they wish.

Additionally, the digital image of the symbol is provided by the Washington Poison Center (WPC) free of charge to licensees and is available for immediate download from the WPC's website. This means that no professional services are required should the licensee choose to download and place the digital image on products or labels independently.



3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:

All licensees are required to have a computer and internet access to acquire and maintain a marijuana license. For this reason, licensees already have the necessary equipment required to obtain the warning symbol from the WPC's website at no charge, so there are no costs of compliance that are necessary to obtain the new warning symbol.

Whether a licensee will incur costs due to the new warning symbol labeling requirement depends on the products the licensee produces and individual business decisions the licensee makes. Each licensee is different as far as the number of products they produce, types of packaging and labeling, and size of products, so costs associated with the new requirement may vary. Licensees will only have to comply with the new warning symbol requirement if the licensee produces or sells marijuana products intended to be eaten or swallowed. If the licensee chooses to acquire the digital image and incorporate the warning symbol on product labels or packaging independently (without the use of professional services), administrative costs should be minimal. If a licensee instead chooses to use professional design services to change labels and print them for the licensee, the costs will be higher. Again, these choices are voluntary on the part of the licensee and not necessary to comply with the new warning symbol requirements.

Licensees that create products in smaller packages may have the most costs associated with the new warning symbol requirement due to the minimum sizing provisions in the new rule. The minimum size requirement of no smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width are needed to ensure the symbol is of a size so as to be immediately recognizable and legible. However, the size of the symbol may pose some challenges for those licensees with small packaging/products, which may result in higher costs associated with compliance with the new requirement. This may result in some licensees having to re-conceptualize packaging of products, increasing the costs of initial compliance. These costs will vary depending on packaging type and product size, as well as by business decisions made by licensees, and cannot be predicted on a general level. The delayed effective date for the new requirement explained below is aimed at reducing these impacts. Licensees are also welcome to suggest ways to address these issues through the rulemaking process. The WSLCB will consider alternative options for compliance for these smaller products if possible and as long as the desired effect of the symbol can be achieved.

The WSLCB also plans on a delayed effective date so the new warning symbol requirement may be essentially "phased in," further minimizing any costs licensees may



incur in complying with the new labeling requirement. The WSLCB received input from several marijuana licensees that indicated that a phased-in approach with around a 90-day implementation would reduce any administrative costs for changing labels and phasing out product to comply with the new requirements. A phased-in approach will also allow licensees to move through product without the new warning labels and adjust new labeling to comply with the new warning symbol requirement.

If a licensee chooses not to incorporate the digital image of the warning symbol on packaging or labels of marijuana products intended to be eaten or swallowed, the licensee may obtain stickers bearing the warning symbols from the WPC. There will be costs associated with the use of such stickers, but these costs are only applicable if the licensee actively chooses this route rather than incorporating the digital image of the warning symbol at no cost. The WPC estimates that a roll of 1000 stickers would be approximately \$12.00-\$13.00 per roll, with an estimated shipping cost of roughly \$5.00. It is possible that purchasing stickers at a higher volume (50 or 100 rolls, for example), could mean a high quantity discount. These figures are estimates at this time and final costs are yet to be determined as WPC selects a vendor to produce the stickers.

4. Will compliance with the rules cause businesses to lose sales or revenue?

This new requirement is unlikely to cause the loss of sales or revenue by marijuana businesses.

5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales

Most marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on the value of marijuana at retail and wholesale. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. The total amount of sales by retailers from July 1, 2014, through June 30, 2015, (fiscal year 2015) including excise taxes was \$44.9 million. The total amount of sales by retailers from July 1, 2015, to June 30, 2016, (fiscal year 2016) including excise taxes was \$972.7 million. As of July 5, 2016, 267 retail stores are reporting sales.



The additional costs associated with complying with the new warning symbol labeling requirement in the proposed rule should be minimal compared to sales revenue. The costs associated with complying with the new warning symbol requirement are further mitigated by the WSLCB's efforts to ensure that a digital image of the warning symbol be available to licensees at no cost.

The costs of complying with the new warning symbol labeling requirement as provided in the proposed rule is indeterminate as it will vary depending on the circumstances (types of products, size of products, labels, etc.) and business decisions made by licensees, i.e. whether the licensee chooses to engage the services of a professional designer or printer rather than incorporating the new warning symbol on products independently. These factors will depend on the individual business decisions of licensees who produce or sell marijuana products intended to be eaten or swallowed.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

The WSLCB sought to reduce costs on licensees through ensuring that the digital image of the warning symbol created by the WPC would be able to be provided to licensees at no cost. Additionally, the WSLCB plans to have a delayed effective date of 90 days after adoption of the new requirement (CR-103P), to allow licensees adequate time to cycle through product and adopt the new warning symbol on marijuana products meant to be eaten or swallowed.

Though the costs associated with complying with the new warning symbol labeling requirement should be minor, those costs are justified as the new warning symbol is intended to reduce public health and safety risks. The warning symbol will assist in deterring accidental consumption by minors by visually alerting children and consumers that the product is "not for kids." The warning symbol also provides a phone number to the WPC so consumers who may experience adverse reactions from ingesting a product containing THC can obtain emergency assistance.

7. A description of how the agency will involve small businesses in the development of the rule:

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process. The WSLCB also performed outreach with several licensed processors to gather information related to timelines for the new requirement and costs associated with compliance. The WSLCB used the feedback received through these efforts to develop the timeline for the effective date of the new warning symbol labeling requirement to reduce costs to licensees and ensure adequate time for licensees to comply.



8. A list of industries that will be required to comply with the rule:

All licensed marijuana licensees that create or sell marijuana products meant to be eaten or swallowed will be required to comply with these rules.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

Because the costs associated with adopting the new warning symbol will be minor, there will be no jobs lost or created as a result of compliance with the proposed rule.

NEW SECTION

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products meant to be eaten or swallowed sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol created and made available in digital form to licensees without cost by the Washington poison center. The warning symbol may be found on the Washington poison center's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

(2) Licensees may use a sticker made available by the Washington poison center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

(a) Must be obtained from the Washington poison center;

(b) Must be placed on or near the principal display panel or on the front of the package; and

(c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.