



## NOTICE OF ADOPTION OF A POLICY STATEMENT

**Title of Interpretive Statement:** Tetrahydrocannabinol (THC) compounds other than delta-9 and the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, or any other cannabis compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both. Policy Statement Number PS-21-01.

**Issuing Entity:** Washington State Liquor and Cannabis Board.

**Subject Matter:** This policy statement offers the Washington State Liquor and Cannabis Board's position on the regulation of tetrahydrocannabinols (THC), other than delta-9; and the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, or any other cannabis compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both. This policy statement also relates to cannabis packaging and label approval requests that are considered on a case-by-case basis, consistent with WAC 314-55-105.

**Effective Date:** April 28, 2021.

**Contact Person:** Katherine Hoffman, Policy and Rules Manager, 360-664-1622.

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## Policy Statement

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**Number:** PS21-01

**References:** [RCW 69.50.101](#)  
[RCW 69.50.201](#)  
[RCW 69.50.204](#)  
[RCW 69.50.325](#)  
[RCW 69.50.326](#)  
[RCW 69.50.401](#)  
[RCW 69.50.455](#)  
[RCW 19.86.020](#)  
[WAC 314-55-095](#)  
[WAC 314-55-105](#)  
[WAC 314-55-109](#)

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**Approved By:** Justin Nordhorn, Policy and External Affairs Director, WSLCB

### [RCW 34.05.230 – Interpretive and policy statements](#)

- (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

### Introduction

This policy statement is offered in response to multiple stakeholder requests and national concern for clarification regarding:

- The regulation of tetrahydrocannabinols (THC), other than delta-9; and
- The conversion of CBD, hemp, or both to delta- 8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both.

This policy statement also relates to marijuana packaging and label approval requests that are considered on a case-by-case basis, consistent with WAC 314-55-105.

## BACKGROUND

The Washington State Liquor and Cannabis Board (LCB) has become aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 THC and CBD additives. These products include, but are not limited to marijuana infused edibles and marijuana concentrates.

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

LCB reviews and pre-approves marijuana infused labeling for edible products that will be sold in licensed retail marijuana stores. LCB does not review or approve labeling for marijuana concentrates, usable marijuana, marijuana mix, or marijuana topical products that will be sold in licensed retail marijuana stores. LCB does not have statutory or regulatory authority for products containing cannabis compounds other than delta-9 THC sold outside the licensed marijuana system regulated by the WSLCB.

LCB has learned that CBD isolate from hemp or other sources is being genetically or chemically altered to result in potentially intoxicating, psychoactive compounds not derived from marijuana as defined in RCW 69.50.101(y), or synthetic equivalents of substances contained in the cannabis plant. LCB has learned that these compounds have appeared in the marijuana system regulated by the WSLCB. The agency has also learned that such compounds other than delta-9 THC have also appeared in the licensed marijuana system regulated by the WSLCB.

Washington State statute and the rules that implement those statutes provide a framework describing the types of activities that cannabis licensees may engage in. Initiative 502 (I-502) provided the backdrop to establish exceptions to illegal marijuana sales by affording allowances for licensees to produce, process, and sell marijuana products at retail within Washington State. The only products that can be sold in licensed marijuana retail stores are marijuana concentrates, usable marijuana, and marijuana infused products, and paraphernalia, consistent with RCW **69.50.325(3)(a)**.

## AUTHORITY AND ANALYSIS

RCW **69.50.204** identifies Schedule I controlled substances. Specifically, RCW 69.50.204(c)(30)(i) defines Schedule I tetrahydrocannabinols (THC), as follows:

Tetrahydrocannabinols meaning tetrahydrocannabinols naturally contained in a plant of the genera Cannabis, as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the genera Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(A) 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration; (**Note: this refers to Delta 9-THC**)

(B) 6 - cis - or trans tetrahydrocannabinol, and their optical isomers; (**Note: this refers to Delta 8 THC**).

RCW **69.50.455** describes synthetic cannabinoids in relation to unfair or deceptive practice under RCW **19.86.020** as follows:

(1) It is an unfair or deceptive practice under RCW 19.86.020 for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any *synthetic cannabinoid*. The legislature finds that practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business.

(2) "Synthetic cannabinoid" includes any chemical compound identified in RCW 69.50.204(c)(30) or by the pharmacy quality assurance commission under RCW 69.50.201.

Marijuana is defined in **RCW 69.50.101(y)** as all parts of the plant cannabis with a THC concentration of greater than 0.3 percent THC on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include: (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. This is similar to the Federal definition of marijuana (see 21 U.S.C. § 802(16)), and hemp, as described in RCW 15.140.020(5) is expressly excluded from this definition.

**RCW 69.50.101(z)** provides that "marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* having a THC concentration of greater than ten percent. This language is also reflected in WAC **314-55-105(1)(d)**.

**RCW 69.50.101(uu)** provides that "THC concentration" means the percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

Thus, for tetrahydrocannabinols that are naturally occurring constituents of the cannabis plant, any material that contains greater than 0.3% delta-9 THC by dry weight is a Schedule I controlled substance, by virtue of its containing tetrahydrocannabinol, but may be possessed in limited quantities by persons over 21, and produced, processed, and sold in the licensed marijuana system regulated by the WSLCB.

Further, delta-8 THC, as defined in RCW 69.50.204(c)(30)(i)(B), whether naturally occurring or synthetically derived, remains a Schedule 1 controlled substance.

**RCW 69.50.360** describes certain acts that are not considered criminal or civil offenses. Specifically, subsection (3) provides that delivery, distribution, and sale, on the premises of a licensed retail outlet, of any combination of the following amounts of marijuana concentrates, useable marijuana, or marijuana-infused product to any person twenty-one years of age or older do not constitute criminal or civil offenses under Washington law:

- (a) One ounce of useable marijuana;
- (b) Sixteen ounces of marijuana-infused product in solid form;

- (c) Seventy-two ounces of marijuana-infused product in liquid form; or
- (d) Seven grams of marijuana concentrate.

**RCW 69.50.4013(3)(a)** provides that the possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW [69.50.360\(3\)](#) is not a violation of this section, this chapter, or any other provision of Washington state law.

Finally, **RCW 69.50.326** provides that marijuana producers and processors may use a CBD product as an additive *only* for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing or sale under chapter 69.50 RCW, provided that the CBD product has a THC level of 0.3 or less on a dry weight basis. The agency interprets this to mean that CBD, regardless of origin, may *not* enter the I-502 system by any means other than as an additive to a product that is approved for sale within the system, meaning any marijuana product with a THC concentration of greater than 0.3 percent THC on a dry weight basis. This language is also reflected in **WAC 314-55-109**.

**Policy Statement:**

LCB is concerned that derivatives, extracts, cannabinoids, isomers, and CBD isolate from hemp or other sources that is genetically or chemically altered to result in potentially intoxicating or psychoactive compounds, or synthetic equivalents of substances contained in the cannabis plant, is being used or is being added to products, including marijuana infused edibles and marijuana concentrates that are entering the licensed marijuana system regulated by the LCB. The agency is also concerned about the health implications related to compounds other than delta-9 THC and CBD added to such products.

Delta-8 cultivated in licensed LCB facilities that is derived from marijuana and not otherwise synthesized may be added to marijuana products produced and processed in the licensed marijuana system. Delta-8 THC created by a process of genetic or chemical alteration of licensed marijuana may not be added to marijuana products produced and processed in the licensed marijuana system. However, derivatives, extracts, cannabinoids, isomers, and CBD isolate from hemp or other sources that is genetically or chemically altered into compounds would be considered synthetic equivalents of the substances contained in the plant under RCW 69.50.204, and may not be produced or processed in licensed LCB facilities, nor may they be sold in licensed marijuana retail stores consistent with RCW 69.50.325, RCW 69.50.401 and RCW 69.50.455. Statute prohibits the distribution, dispensing, manufacture, display for sale, offer for sale, attempt to sell, or sale to a purchaser any product that contains any amount of any synthetically derived delta-8 or delta-9 THC. Statute also provides that marijuana retailers may sell marijuana concentrates, usable marijuana paraphernalia or marijuana infused-products, within statutory limits.

Further, the process of genetic or chemical alteration of hemp or other sources to potentially intoxicating, psychoactive compounds may generate additional chemicals that are not naturally occurring in marijuana. Currently, there are no mandatory testing standards for these compounds, and no potency or concentration limits have been established in statute or regulation concerning these compounds in Washington State. The impact of those different chemicals on health are unknown and could be harmful.

LCB understands that some accredited/certified testing laboratories are able to test for the presence of delta-8 THC, but testing for THC isomers is evolving and not standardized. For example, Delta-8 THC as a stand-alone product is not currently being tested for contaminants, but only for cannabinoid testing. Thus, it is unclear whether delta-8 or CBD isolate from hemp or other sources that is genetically or chemically altered into compounds are safe for consumer use.

The role of LCB is to promote public safety and trust through fair administration and enforcement of applicable laws. To encourage and promote best practices, and until the agency has both authority *and* verifiable information on which to base its decision making regarding delta-8 THC, as well as derivatives, extracts, cannabinoids, isomers, or CBD isolate from hemp or other sources that are genetically or chemically altered into compounds other than delta-9 THC, regardless of the form of THC, total THC amount cannot exceed that allowed per serving as specified in WAC 314-55-095.

Since all compounds of THC are recognized as Schedule I substances under RCW 69.50.204(c)(30)(i), the ten milligram active THC limit per serving applies to all products identified within WAC 314-55-095. Delta-8 cultivated within LCB licensed facilities may be added to marijuana products produced and processed in the licensed marijuana system. Health implications related to compounds other than delta-9 THC and CBD added to marijuana products produced and processed in LCB licensed facilities and sold in the licensed marijuana system are unknown and could be harmful. For these reasons, delta-8 THC, as well as derivatives, extracts, cannabinoids, isomers, and CBD isolate from hemp or other sources that are genetically or chemically altered into compounds may not be produced or processed in LCB licensed facilities, and may not be sold in licensed marijuana retail stores.