



Notice of Permanent Rules for a Warning Symbol for Marijuana Edible Products

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rules for a warning symbol for marijuana edible products.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor and Cannabis Board appreciates your involvement in the rule making process. If you have questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule.

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. 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 adopting a warning symbol with the goal of deterring accidental consumption of marijuana products by children and to provide emergency services contact information for cases of accidental exposure or over consumption.

Early in 2016, Board considered requiring the placement of "Mr. Yuk" on edible marijuana products in one of the several versions of draft rules that were part of a larger rulemaking initiated in 2015. The Board removed the requirement prior to adopting the permanent rules for multiple reasons, including concern from the industry regarding the inclusion of the word "poison" on those stickers, concern about its effectiveness from the industry and the Washington Poison Center, and cost concerns related to royalties on the trademarked image. At the time the requirement was removed from the draft rules, the Board expressed its dedication to adopting a warning symbol for placement on marijuana edible products at a later date to address concerns about unintended ingestion of marijuana edibles by children and to provide a resource to the public should unintended exposure or adverse experiences after consuming marijuana edibles occur.

Around the same time, the Washington Poison Center (WPC) approached the Board offering to develop a different warning symbol as part of a rebranding project that the



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WPC was engaging in that the Board could consider moving forward. Working with a marketing firm, the WPC developed the "Not for Kids" warning symbol using a variety of resources, including industry input and members of the general public. The symbol was developed by the WPC and presented to the WSLCB as an option should the Board choose to adopt it. After reviewing the symbol and discussing issues related to trademarking the symbol and licensing, the Board chose to proceed with rulemaking to require the placement of the "Not for Kids" warning symbol on edible marijuana products.

The Board made certain that licensed marijuana businesses would be able to access the trademarked digital image at no cost, something that was not possible with the "Mr. Yuk" symbol, with the goal of reducing costs for compliance for licensees. It was also important to the Board that the symbol did not include the word "poison" or reference the Washington Poison Center by name due to the concerns raised by the industry when "Mr. Yuk" was being considered. Equally important to the Board, the symbol includes a phone number for consumers and parents to use in the event of a child accidentally ingesting the product and experiencing a negative response or for a consumer to call in the event of a negative or concerning reaction to a product.

The language of this draft rule was adjusted after the filing of the CR-102 prior to the public hearing to ensure that the intended flexibility for licensees being able to print their own stickers was clear in the rule requirements. The adjusted rule language makes it very clear that licensees may choose to incorporate the symbol on their labeling or packaging, print their own stickers for placement on packaging, or may choose to purchase stickers from the WPC to fulfill the requirement that the "Not for Kids" warning symbol be placed on all edible marijuana products. Licensees have expressed concerns about the limited "real estate" on labels and the WSLCB believes that this flexibility in complying with the new requirement will address that issue. Many licensees have already adopted the "Not for Kids" symbol on their labels and packaging in advance of any requirement to do so.

Summary of public comments received on this rule proposal.

CR-101 – filed June 15, 2016, as WSR 16-13-092.

CR 102 – filed August 10, 2016, as WSR 16-17-043.

Public Hearing held November 2, 2016.

Written Comments Received:

Below is a summary of the comments received as part of this rulemaking organized by category.



- 1. The language included in the symbol won't have the desired effect. Suggest changing "Not for Kids" to Adults Only, Kids Hands Off, Kids Stop or Bad for Kids.**

WSLCB response: Thank you for your comments.

Was the comment reflected in the final rule? The WSLCB did not change the symbol after the CR-102 filing.

- 2. Comments were received stating that the WSLCB should not "single out" marijuana edible products with this symbol and that alcohol should have a similar requirement. If you intend to require a warning symbol on cannabinoid-containing products (edibles, specifically), please also include the same label on all nicotine-containing products and ethanol-containing products that might reasonably be considered to be "appealing to children."**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? At this time, the Board is only applying the warning symbol requirement to marijuana edible products.

- 3. Labeling size restrictions make things difficult for licensees in complying with this requirement. There are a lot of different products with different sizing. This new labeling requirement is too much with everything else that is required on products. The current warnings and labeling requirements are more than enough. Comments were received expressing concern over the financial implications for having to redesign and resize packaging such a label would require.**

WSLCB response: The WSLCB is aware of the issues with limited "real estate" on product labels due to labeling requirements. The WSLCB is currently looking into ways to make improvements to product labeling requirements in general to facilitate clear understanding of requirements and product information while considering costs to licensees. Additionally, the WSLCB sought to reduce costs to licensees by ensuring that the digital image of the "Not for Kids" warning symbol is available to them free of charge and further sought to reduce costs to licensees by allowing flexibility in complying with the requirement.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 4. Don't lie to kids, don't confuse them by sending mixed message to them in the attempts to over regulate and control this industry just because of widespread fear.**



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WSLCB response: The WSLCB received similar comments when considering adopting the “Mr. Yuk” symbol as a labeling requirement earlier this year. The WSLCB believes that the “Not for Kids” symbol reduces potential confusion and will achieve the goal of deterring accidental consumption by children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 5. Keep the Washington Poison Center out of regulating marijuana. Marijuana is not poison and should not be labeled as such. Cannabis poses no serious (and certainly no fatal) health hazard due to accidental or even extreme use. Other truly toxic household substances are not subject to the Red Hand treatment.**

WSLCB response: The Washington Poison Center does not regulate marijuana. This requirement is being proposed by the WSLCB. The warning symbol does not include the word “poison,” something that the Board understands is an issue for licensees based on comments received when it was considering requiring “Mr. Yuk” stickers on marijuana edible products. Instead, just the phone number for the Washington Poison Center is included on the symbol. The “Not for Kids” symbol is a new symbol that may have additional uses beyond the requirements in this rulemaking.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 6. Licensees should be able to print their own stickers rather than be forced to purchase them from the Washington Poison Center. Allow for flexibility.**

WSLCB response: The language of this draft rule was adjusted after the filing of the CR-102 prior to the public hearing to ensure that the intended flexibility for licensees being able to print their own stickers was clear in the rule requirements. The adjusted rule language makes it very clear that licensees may choose to incorporate the symbol on their labeling or packaging, print their own stickers for placement on packaging, or may choose to purchase stickers from the WPC to fulfill the requirement that the “Not for Kids” warning symbol be placed on all edible marijuana products.

Was this comment reflected in the final rule? Yes. Rule language was adjusted prior to final adoption to ensure the language clearly allows licensees to print stickers rather than incorporate the symbol on package labels or purchase from the Washington Poison Center.

- 7. I applaud the LCCB for including the new “Not for Kids” label in its draft rules to prevent child access to marijuana-infused edible products.**



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WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 8. The Red Hand won't work; there is nothing that shows it would. This program is not justified from a public safety perspective. In fact it is damaging to the public because it provides the wrong impression and sends the wrong message for cannabis products, and will further villainize and make public acceptance more difficult for this new struggling industry.**

WSLCB response: Working with a marketing firm, the WPC developed the "Not for Kids" warning symbol using a variety of resources, including industry input and members of the general public. The symbol was developed by the WPC and presented to the WSLCB as an option should the Board choose to adopt it. Along with education and outreach, similar to what was done with "Mr. Yuk" when it was first developed, the WSLCB believes that the warning symbol will accomplish the goal of deterring accidental consumption by children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 9. There are at least circumstantial reasons to believe that the WPC may have ulterior motives in pushing this initiative, e.g., potential revenue streams from the licensing of its trademarked Red Hand, and self-aggrandizement by "going national" with this scheme.**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.

- 10. Recommend the warning label take up 25% of the surface area of a product's packaging or display area to insure visibility.**

WSLCB response: Thank you for your comments. The requirements in rule include a minimum sizing requirement along with a requirement that the symbol be clearly visible and legible on the package. Balancing the goals of the warning symbol requirement along with licensee concerns, the WSLCB feels the sizing requirements are appropriate at this time. The WSLCB may consider adjusting the requirement in the future if needed and issues arise.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing.



- 11. Disallow any marijuana edible or infused product that resembles any commercially available food or drink product. Create more firm regulations on THC concentrations in terms of allowable purchase/home grow amounts (future consideration as market matures).**

WSLCB response: Thank you for your comments. This topic falls outside the scope of this rulemaking. However, the WSLCB understands that other states have adopted similar prohibitions. Additionally, the WSLCB is looking into ways to further detail requirements relating to products that may be especially appealing to children.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

- 12. If accidental ingestion is happening, it is more likely that the products have been removed from their packaging and left unattended - a situation in which a warning symbol wouldn't help with. It would be much more beneficial to the public, and spare our already heavily regulated industry another burdensome expense, to have the Poison Control Center get their message across by producing posters, pamphlets, PSA's etc. that would not rely on the producers and processors of responsible cannabis products to disseminate.**

WSLCB response: Thank you for your comments. The WSLCB is aware of the issues surrounding products being taken out of packaging that includes the warning symbol. The WSLCB will continue to evaluate whether additional product requirements are appropriate. The warning symbol along with educational materials and outreach for the public will further the goals of the warning symbol requirement and the issues you raise.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

- 13. I disagree with the proposed rule of requiring warning labels placed on *all* ingestible products. It should not be required for capsules and tinctures.**

WSLCB response: Thank you for your comments.

Was this comment reflected in the final rule? The requirements were unchanged from the CR-102 filing. The WSLCB may consider these comments in future rulemaking.

Public Hearing Comments:

Two public comments were made during the public hearing. Commenters were members of the cannabis industry and expressed concerns with the warning symbol.



Specifically, commenters stressed that marijuana is not poison and that the new requirement to place the symbol on packaging for marijuana edible products will be costly to achieve. Commenters also expressed concerns with messaging and that this requirement furthers misinformation about marijuana and “reefer madness” ideas. The WSLCB is responsible for educating and informing the public. The same requirement should apply to alcohol and tobacco. Commenters maintained that there has never been an overdose from marijuana. People experiencing adverse effect should “sleep it off.” Packing issues were also raised. Commenters felt that it would impose too high of a cost on licensees and that small packaging would have to be redeveloped to accommodate the new warning symbol along with other existing labeling requirements.

WAC Changes from Proposed Rules (CR-102) to the Rules as Adopted:

Minor changes were made to language in the new rule as filed with the CR-102 to further clarify that licensees may print a sticker with the warning symbol on it themselves or purchase a sticker with the warning symbol from the Washington Poison Center for placement on packages of edible marijuana products in lieu of incorporating the warning symbol on the labels or packaging of products. This change is to ensure proper effect of the intent of the rule as we received comments that it was unclear as to whether this was permissible under the draft rule language filed with the CR-102. Language was also adjusted to require those that place the symbol on white packaging or labels to line the edges of the white background with a black border to ensure visibility of the symbol. Other minor changes for editing were made that do not impact the effect of the rule requirements.