



CR 102 Memorandum

Regarding chapter 314-55 WAC: Modifications to implement Engrossed Second Substitute Senate Bill 5367 (“THC Bill”) related to regulating products containing THC

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Background

Engrossed Second Substitute Senate Bill (E2SSB) 5367, chapter 365, Laws of 2023, enacted on July 23, 2023, was introduced to address the increasing prevalence and complexity of products containing various tetrahydrocannabinols (THC) that emerged in the market beginning in 2018. The legalization of hemp under the 2018 Farm Bill acted as a catalyst for these products, by allowing the cultivation and processing of hemp containing less than 0.3% delta-9 THC. However, this legislation inadvertently created a loophole by not explicitly regulating other cannabinoids, like delta-8 THC. In response, producers began extracting CBD from hemp and converting it into synthetic THC compounds, leading to a rapid expansion of THC products in the unregulated market. To rectify these regulatory oversights and prioritize consumer safety and public health, legislative measures were necessary to address the issue.

The CR-101 initiating rulemaking to amend or repeal sections of WAC 314-55 related to THC compounds, consistent with the Administrative Procedures Act (APA), chapter 34.05 RCW was filed on June 21, 2023, as WSR 23-13-129.

Rules were formulated in coordination and collaboration with representatives from LCB’s Enforcement and Education Division, Licensing and Regulation Division, and Finance Division. Additionally, LCB staff worked closely with representatives from the Department of Health (DOH) and Washington State Department of Agriculture (WSDA), deliberating during regularly scheduled Collaborative Laboratory Services Program (CLASP) meetings to ensure uniform standards and facilitate a seamless implementation of the regulatory modifications.

Reason Rulemaking is Necessary

The board is granted broad statutory authority to adopt rules related to the production, manufacturing, possession, sale, and distribution of cannabis and

cannabis products under RCW 69.50.342 and RCW 69.50.345. Rulemaking is necessary to implement Engrossed Second Substitute Senate Bill (E2SSB 5367) 5367 (chapter 365, Laws of 2023), related to the regulation of products containing THC, enacted July 23, 2023. Furthermore, rulemaking is required to align state regulations with statutory changes made to RCW 69.50.360 resulting from Substitute House Bill (SHB) 1249, (chapter 9, Laws of 2024), regarding transaction limits on cannabis-infused products in liquid form with low-THC content.

Several sections of chapter 314-55 WAC require modifications to align the changes resulting from the legislation, as follows:

1. WAC 314-55-010 - Definitions
2. WAC 314-55-095 - Cannabis servings and transaction limits
3. WAC 314-55-102 - Quality assurance and quality control testing
4. WAC 314-55-105 - Packaging and labeling
5. WAC 314-55-106 - Cannabis warning symbol requirement
6. WAC 314-55-109 - Cannabinoid additives

Public Engagement

Extensive public engagement has been conducted to inform the proposed rules, including surveys, virtual webinars, and written comments. Key stakeholders included cannabis licensees, testing labs, members from Tribes, public health and prevention partners, advocacy groups, industry associations, medical cannabis patients, and hemp industry representatives. The informal comment period was opened from June 21, 2023 until February 3, 2024. Comments provided after the informal comment period were also considered in the rule development.

1. **December 2023 Collaborative Rule Making Discussions:** On December 15, 19, and 21, 2023 collaborative rulemaking discussions were held to review and discuss regulatory policy options and gather feedback on potential rule changes. Key concepts for implementing the legislation, included options for addressing measuring, reporting, and labeling THC concentration and establishing a detectable level for THC compounds.
2. **January 2024 Stakeholder Survey:** A survey was disseminated on January 22, 2024, to gather feedback from additional stakeholders who were unable to attend the December discussions. The survey closed on January 31, 2024, and there were 234 respondents, including a wide array of affiliations as detailed above.
3. **April – May 2024 Rule Making Workshops:** Virtual sessions held in April and May 2024 further refined the draft rules, incorporating stakeholder suggestions to improve clarity.

Stakeholder feedback played a crucial role in shaping the proposed regulations, ensuring they are practical, enforceable, and protective of both consumers and industry participants.

Estimated Costs of Compliance

Agencies are required to consider costs imposed on businesses 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.

LCB applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores. The industry descriptions for this code is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
453998	\$2000	Marijuana stores, medicinal and recreational	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$5,304.30	\$3,265.02 2021 Dataset pulled from ESD	\$5,304.40 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, implementation of these rules are not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

Small Business Impact Statement

Licensed processors may face costs associated with new labeling requirements for total THC and serving sizes, including, but not limited to, staff time resources. At this time, we are not aware of cannabis or cannabis products that have THC compounds, other than delta-9, present in amounts greater than the established threshold in the proposed rules for maximum serving size limits.

The LCB plans to support businesses through educational resources and potential phased implementation strategies to mitigate the impact.

Description of Rule Changes

1. **WAC 314-55-010 Definitions:** References to new and existing definitions in statute or rule are added to the definitions to ensure consistency with the legislation being implemented. The following definitions from RCW 69.50.101 are referenced: “cannabis,” “cannabis products,” “CBD concentration,” “cannabis concentrates,” “cannabis-infused products,” “package,” “THC concentration,” and “unit.” The following definitions from RCW 69.50.204 are referenced: “tetrahydrocannabinols” and “synthetic cannabinoid.” A new definition of “total THC” is created. “Total THC” means any tetrahydrocannabinol, as defined in chapter 69.50 RCW, that is detected during the product testing process that exceeds the established threshold, measured in mg/g, taking into account the conversion from acidic to neutral form. A new definition for “WSDA” is added referring to the Washington state department of agriculture.
2. **WAC 314-55-095 Cannabis servings and transaction limits:** The proposed rules limit the maximum amount of THC that may be in a single serving to 10 mg of active delta-9 THC, and limit the maximum amount of THC that may be in a single package to 100 mg of active delta-9 THC. These limits are consistent with current industry standards and products available on the market. A new requirement is proposed limiting the amount of any additional single tetrahydrocannabinol compound to not exceed 0.5 mg/g per serving and the combined concentration of additional tetrahydrocannabinol compounds to 1 mg per serving. “Unit” was replaced with “package” to align with new statutory definitions of “package” and “unit” created by the legislation. New limits to implement SHB 1249 (chapter 9, Laws of 2024) related to low THC beverages are added.
3. **WAC 314-55-102 - Quality assurance and quality control testing:** Testing for THC is only required specifically for delta-9 THC and delta-9 THCA as these are the most predominant naturally occurring cannabinoid in the plant; the proposed rules do not necessitate testing for any additional specific THC compounds. Despite the legislation broadening the definition of “THC concentration” to encompass the range of compounds falling under the statutory definition of “tetrahydrocannabinols,” the levels of other THC compounds, such as delta-8 THC and THCV, remain insignificantly low (less than 1% by weight). Furthermore, research on cannabinoid compounds remains limited. A new requirement is added mandating testing and reporting test results for every THC compound that is labeled, advertised, or marketed as part of the product. The term “potency analysis” is replaced by “cannabinoid concentration analysis” to align with WSDA regulations outlined in new chapters 16-309 and 16-310. The equation for calculating total THC is adjusted to reflect the new definition in WAC 314-55-010. Total THC must be calculated for delta-9 THC, and must also be individually calculated for any additional tetrahydrocannabinol compound detected above 0.2 mg/g. The

calculation for total delta-9 THC by combining delta-9 THC with delta-9 THC using a conversion of 0.877 applied to delta-9 THCA is maintained. Any additional tetrahydrocannabinol compounds reported require specific conversion factors for the individual tetrahydrocannabinol compounds based on the molar mass of the compound. This adjustment ensures that in the instance of testing for any other THC compound where the presence exceeds 0.2 mg/g, the formula is applicable for that specific compound. The term “certified laboratory” is clarified to specify the term means a laboratory that is certified by the board. The term “accreditation” is removed to reflect the transfer of cannabis testing laboratory accreditation to WSDA under 2SHB 2151 (chapter 69, laws of 2024) and reference to WSDA new accreditation rules (chapter 16-310) has been inserted. Additional changes to align with 2SHB 2151 will be addressed in a separate rulemaking. The term “container(s)” is replaced by “packaging” to align with statute.

4. **WAC 314-55-105 - Packaging and labeling:** The term “containers” has been removed and “packaging” is used. New labeling requirement that a total THC concentration, using formula in WAC 314-55-102, is calculated for any individual tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g. New language is added describing serving size for all products, as “the amount of product per serving”. References to “unit” are replaced with “package” for consistency with the new statutory definitions. For cannabis edibles in liquid form, “package” replaces “bottle” and indicates measuring device includes package cap.
5. **WAC 314-55-106 - Cannabis warning symbol requirement:** The term “package” replaces “container(s)” to align with the new statutory definitions of “unit” and “package.”
6. **WAC 314-55-109 - Cannabinoid additives.** Requirements for using CBD as a product additive from a non-licensed source are amended for consistency with the statutory definitions of “cannabis” and “cannabis products” modified by E2SSB 5367. References to “potency analysis” are replaced with “cannabinoid concentration analysis,” consistent with the proposed changes in WAC 314-55-102. Clarifies that licensees must use a lab certified by the board to screen products.
7. **Amended Sections - Title 314-55 WAC:** The agency acronym “WSLCB” was replaced with “LCB,” consistent with WSR # 34-11-037, in the amended sections described above.