

PROPOSED RULE MAKING



CR-102 (June 2024) (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 23-13-129 ; 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) Rule language is being proposed to amend sections of Title 314-55 WAC to implement of Engrossed Second Senate Bill (E2SSB) 5367, (chapter 365, Laws of 2023), concerning the regulation of products containing THC, codified as RCW 69.50.101, RCW 69.50.1025, RCW 69.50.326, RCW 69.50.346, and enacted on July 23, 2023. Rule language is also being proposed to WAC 314-55-095 to implement Substitute House Bill (SHB) 1249, (chapter 9, Laws of 2024), regarding limits on the possession and sale of cannabis products, codified as RCW 69.50.360, enacted on June 9, 2024.

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

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

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 11, 2024	10:00 A.M.	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 Board room headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance and the public may also login using a computer or a 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 https://lcb.wa.gov/Boardmeetings/Board_meetings

Date of intended adoption: No earlier than September 25, 2024

(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name Cassidy West, Policy and Rules Manager
Address PO Box 48030, Olympia WA 98504-3080
Email rules@lcb.wa.gov
Fax 360-704-5027
Other

Beginning (date and time) July 31, 2024, 12:00 PM
By (date and time) September 11, 2024, 12:00 PM

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
Other
By (date) September 4, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules are intended to implement the statutory changes resulting from the passage of E2SSB 5367, which mandates stricter regulations on products containing THC due to increasing concerns about public health and safety, and sets guidelines for THC content in consumable products by providing clear distinctions between hemp and cannabis products under state law. The bill specifically targets the regulation of THC concentrations, and product packaging and labeling to mitigate the risks of overconsumption and accidental ingestion, particularly by minors. It also creates a new section explicitly banning the production, manufacturing, sale, or distribution of synthetic and semi-synthetic cannabinoids.

The proposed rule also include language reflecting the statutory changes resulting from Substitute House Bill (SHB) 1249, (chapter 9, Laws of 2024), regarding the limits on the sale and possession of retail cannabis products. The bill introduces a new category for low-dose liquid cannabis products, allowing cannabis retailers to sell larger quantities in a single transaction. However, the current regulations create obstacles for consumers looking to purchase and companies wanting to produce these products in liquid form. For instance, Initiative 502 limited the volume of liquid cannabis products to 72 ounces regardless of the THC content. This means that a consumer interested in a low-dose cannabis beverage can only buy a limited amount, while someone purchasing a different liquid cannabis product can buy the maximum 72 ounces even if it contains higher THC levels. The current regulatory framework does not support the development of low-THC cannabis products, leading to a bias towards high-THC products. The proposed rules amend WAC 314-55-095 – Cannabis servings and transaction limits, to allow for the sale of low-THC beverages, consistent with SHB 1249.

The proposed rules will:

1. Establish maximum allowable THC content in cannabis products to ensure consumer safety.
2. Introduce more stringent labeling requirements to provide clearer information on THC content.
3. Adjust quality control testing requirements to include testing for additional tetrahydrocannabinol compounds, as defined in RCW 69.50.204.
4. Align transaction limits for cannabis-infused products in liquid form with state law, authorizing retailers to sell 200 milligrams of THC within a cannabis-infused product in liquid form, to a retail customer, if the product is packaged in units containing no more than 4 milligrams of THC per unit. The authorization is in addition to the current authorization for licensed retailers and their employees to sell specified amounts of different cannabis products to a retail customer in a single transaction.

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:** 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.

Furthermore, the agency acronym "WLSCB" was replaced with "LCB," consistent with WSR # 34-11-037, in the amended sections described above.

The anticipated effects of these rules are multi-faceted, aiming to enhance public health and safety through better-informed consumer choices and reduced risk of overconsumption and accidental exposure:

1. By capping THC levels of specific THC compounds and enhancing labeling, consumers will be better able to manage dosage, potentially reducing incidents related to overconsumption.
2. Clearer, more informative labels will empower consumers to informed decisions regarding their cannabis consumption.
3. Provide clear guidelines for cannabis licensees, aiding in compliance and enforcement efforts, thus ensuring that all market participants adhere to standardized practices regarding THC content in products.

Reasons supporting proposal: Aligns state regulations with recent legislative changes, enhancing consumer protection, and clarifying the status of hemp-derived products.

Statutory authority for adoption: RCW 69.50.342 and RCW 69.50.345, as amended by E2SSB 5367 and SHB 1249

Statute being implemented: E2SSB 5367, (chapter 365, laws of 2023) and SHB 1249, (chapter 9, Laws of 2024)

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| 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:

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

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting Rules Manager	Cassidy West, Policy and	1025 Union Avenue, Olympia, WA 98504	360-480-1238

Implementation Rebecca Smith, Licensing and Regulation 1025 Union Avenue, Olympia, WA 9850 360-664-1753

Enforcement Chandra Wax, Director of Enforcement and Education 1025 Union Avenue, Olympia, WA 9850 360-664-1726

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes 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: : A cost benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5)(c).

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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 34.05.310(4)(e).

Explanation of how the above exemption(s) applies to the proposed rule: This rule proposal is exempt because it involves agency actions that are mandated by statute, implementing Engrossed Second Substitute Senate Bill (E2SSB) 5367, chapter 365, Laws of 2023, to regulate consumable products containing tetrahydrocannabinols.

(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) 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).

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
- Address
- Phone
- Fax
- TTY
- Email
- Other

<p>Date: July 31, 2024</p> <hr/> <p>Name: David Postman</p> <hr/> <p>Title: Chair</p>	<p>Signature:</p> 
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