



Washington State  
**Liquor and Cannabis Board**

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Date: December 11, 2019

To: Jane Rushford, Board Chair  
Ollie Garrett, Board Member  
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director  
Megan Duffy, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

Subject: **Request for adoption of final rules (CR 103) regarding chapter 314-35 WAC – Vapor products**

The Policy and Rules Coordinator requests that the Board adopt the final rules as presented, and approve the CR 103 that will establish new and amended regulations pertaining to chapter 314-35 WAC – Vapor Products.

The Board has been briefed and provided with an exhaustive CR103 memorandum describing rule development background. The Board has also been briefed and provided with a Concise Explanatory Statement containing public comment received and WSLCB responses provided for this rule making. The CR103 memorandum, draft CR103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will send the concise explanatory statement concerning this rulemaking to all persons who submitted comments. The Policy and Rules Coordinator will file the adopted rules with the Office of the Code Reviser. The effective date will be 21 days after filing, on January 1, 2020.

Consistent with RCW 34.05.380(3), the effective date of January 1, 2020 is necessary because the adopted amendments and new sections of rule implement relevant sections of Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019) that become effective January 1, 2020, regarding the legal age of sales for tobacco and vapor products. The adopted amendments and new sections of rule also implement relevant sections of Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019) regarding vapor taxation that became effective October 1, 2019

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: CR103 Memorandum



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

### CR-103P (December 2017) (Implements RCW 34.05.360)

**Agency:** Washington State Liquor and Cannabis Board

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) January 1, 2020 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain: The adopted amendments and new sections of rule implement relevant sections of Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019) that becomes effective January 1, 2020, regarding the legal age of sales for tobacco and vapor products. The adopted amendments and new sections of rule also implement relevant sections of Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019) regarding vapor taxation that became effective October 1, 2019.

**Purpose:** The adopted amendments and new sections added Chapter 314-35 WAC – Vapor Products implement the directives of EHB 1074, regarding vapor product legal age for sales; and E2SHB 1873, regarding vapor taxation. The adopted rules increase the age of sale for vapor products; increase vapor product licensee record keeping requirements; clarify vapor product licensee requirements, including qualification, application denial, insurance requirements, license suspension and revocation; establish transportation requirements, establish the ability for the Board to seize both cannabinoid vapor products and vapor products; establish forfeiture guidelines; and establish a penalty structure that aligns with the current Board penalty reform framework. The adopted rules apply to existing and future vapor product distributors, retailers, and product delivery sellers.

**Citation of rules affected by this order:**

New: WAC 314-35-015; WAC 314-35-021; WAC 314-35-023; WAC 314-35-024; WAC 314-35-025; WAC 314-35-027; WAC 314-35-045; WAC 314-35-050; WAC 314-35-053; WAC 314-35-055; WAC 314-35-060; WAC 314-35-065; WAC 314-35-070; WAC 314-35-075; WAC 314-35-080; WAC 314-35-085.

Repealed:

Amended: WAC 314-35-010; WAC 314-35-020; WAC 314-35-030; WAC 314-35-040.

Suspended:

**Statutory authority for adoption:** RCW 70.345; RCW 82.24.250; RCW 82.32.300.

**Other authority:** Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019); Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019).

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-21-102 on October 16, 2019 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes other than minor editing from the proposed to adopted version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	7	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	9	Amended	4	Repealed	___

**Date Adopted:** December 11, 2019

**Name:** Jane Rushford

**Title:** Chair

**Signature:**





## CR103 Memorandum Chapter 314-35 WAC – Vapor Products

Date: December 11, 2019  
Presented by: Kathy Hoffman, Policy and Rules Coordinator

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### Description of the Issue

The final rules concern vapor products, defined in RCW 70.345.010(19) as any noncombustible product that may contain nicotine and employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance. Vapor products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic device. The final rules *do not* apply to any product that meets the definition of marijuana as provided in RCW 69.50.101. It is important to distinguish these rules and those products given the attention to reported adverse health impacts attributed to vaping nicotine products, non-nicotine products, and vapor products containing marijuana, or THC. It is also important to distinguish that this rule project superseded and does not concern the Washington State Board of Health emergency rules and bans of certain products issued under chapter 246-80 WAC.

Chapter 70.345 RCW provides the Board with limited licensing and enforcement authority of vapor product distributors, retailers, and product delivery sales. RCW 70.345.020(2) provides, in relevant part, that the Board may adopt rules regarding the regulation of vapor *licenses*. RCW 70.345.160(4) provides that the Board may work with local health departments or districts, as well as law enforcement to conduct random unannounced inspections to ensure compliance. More importantly, RCW 70.345.160(5) provides that if the Secretary of Health or local health jurisdiction determines that a product may be injurious to human health, or poses a significant risk that the Board, in consultation with the Department of Health and others, may cause a vapor product to be analyzed. Thus, while the Board's regulatory authority is currently limited with respect to vapor *products*, the extent of Board's authority with respect to *licensing* and *enforcement* is reflected in these final rules, and supports the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Washington State has recognized the growing body of empirical research, including a recent report issued by the National Institute of Medicine to support an overall, state-wide health goal of increasing the age of sale for both tobacco and vapor products to twenty-one. Based on this evidence, increasing the age of sale for these products will significantly reduce the number of adolescents and young adults who are smoking, and will immediately improve the health of adolescents, young adults, young mothers, and young children. To achieve that goal, Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019), prohibited the sale of cigarettes, tobacco products, and vapor products to persons under the age of twenty-one. This aligned Washington with several other states who have raised the minimum legal sales age to twenty-one in an effort to save lives and reduce healthcare costs.

Additionally, Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019) accomplished several related goals. In addition to establishing a vapor tax structure that applies to all persons licensed to sell vapor products under chapter 70.345 RCW, it also contains statutory amendments and new sections that include, but are not limited to the establishment of recordkeeping, business, product sales and distribution requirements that also apply to all persons licensed to sell vapor products under chapter 70.345 RCW.

Since the legislation directing these rule revisions was enacted, and subsequently codified, concern around the use of vapor products has significantly increased. These concerns hinge on several factors, including but not limited to the composition and content of the concentrates used in vapor products, and the product delivery system. Based on the current regulatory environment, the heightened concern around the safety of vapor products, and Governor Inslee's Executive Order 19-03 Addressing the Vaping Use Public Health Crisis, the overall public health and safety benefits of these rule amendments and new sections outweigh any increase in costs or administrative burden related to their adoption and implementation.

## **Rule necessity**

Currently, chapter 314-35 WAC provides a limited regulatory framework around the manufacturing, distribution and sale of vapor products. Both EHB 1074 and E2SHB 1873 expanded WSLCB's regulatory authority by:

- Increasing the age of sale of vapor products;
- Increasing record keeping requirements;
- Clarifying vapor product licensee requirements, including qualification, application denials, insurance requirements, license suspension and revocation;
- Establishing transportation requirements;

- Establishing the ability for the Board to seize both cannabinoid vapor products and vapor products under specific circumstances;
- Establishing forfeiture guidelines;
- Establishing a penalty structure that aligns with the current Board penalty reform framework.

These final new rule sections and amendments support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

## **Public Comment Received**

Six (6) written comments were received during the open public comment period. Those comments, in their native form, along with WSLCB response, is provided in the Concise Explanatory Statement, consistent with RCW 34.05.325. The Concise Explanatory Statement accompanies this issue paper.

No oral testimony was offered during the public hearing on November 26, 2019.

## **Rule Changes Recommended for Adoption**

**Amended Section. WAC 314-35-010 – Vapor products-Introduction.** Addition of “delivery sales” to the list of licensees to whom the chapter applies.

**New Section. WAC 314-35-015 – Definitions.** Establishes definitions for “domicile,” “control,” “financial institution,” and “profit” for clarity.

**Amended Section. WAC 314-35-020 – Licensing requirements.** Clarifies and more concisely describes licensing requirements for all vapor product licensees, including background investigation, and premise inspection.

**New Section. WAC 314-35-021 – Insurance requirements.** Requires vapor product licensees to obtain commercial general liability insurance, to increase and protect public safety.

**New Section. WAC 314-35-023 – Vapor product license transfer and relocation.** Establishes requirements for transfer, or relocation of a vapor product license, in addition to ownership or location changes of a licensed vapor product business.

**New Section. WAC 314-35-024 – Vapor product packaging and labeling.** Describes vapor product packaging and labeling requirements, consistent with RCW 70.345.075.

**New Section. WAC 314-35-025 – Vapor product applicant and licensee hearing rights.** Describes applicant and licensee hearing rights language consistent with the applicable provisions of the Administrative Procedures Act, chapter 34.05 RCW.

**New Section. WAC 314-35-027 – Qualifying for a vapor product license.** Establishes a framework and guidelines to determine which true party(ies) of interest must be qualified to be listed on a vapor product license, consistent with RCW 70.345.020(4).

**Amended Section. WAC 314-35-030 – Vapor product licensee recordkeeping requirements.** Clarifies and more concisely describes recordkeeping requirements. Adds recordkeeping requirements established in E2SHB 1873 regarding the requirement to provide the board with a list of names and addresses of all vapor product representatives and distributors.

**Amended Section. WAC 314-35-040 – Age-restricted vapor products retailer license locations.** Updates existing rule to incorporate age of sale requirements of EHB 1074, increasing age of sale from eighteen to twenty-one.

**New Section. WAC 314-35-045 – Vapor product licensee responsibilities.** Establishes a framework to guide licensee, employee and patron conduct that aligns with liquor and marijuana regulation, including but not limited to Titles 9, 9A RCW, chapters 69.50, 70.155, 70.158, 70.345, 82.24, and 82.26 RCW.

**New Section. WAC 314-35-050 – Vapor product license suspensions and revocations.** Establishes a framework and guidelines effectuating the requirements of RCW 70.345.180 regarding penalties, sanctions and actions against licensees.

**New Section. WAC 314-35-053 –Transportation.** Establishes a framework and guiding requirements for the transportation of vapor products in Washington State as described in E2SHB 1873, including invoice and or delivery ticket requirements, and the provision of WSLCB authority to stop a vehicle and inspect for contraband vapor products.



**New Section. WAC 314-35-055 – Seizure of cannabinoid vapor products.** Consistent with the statutory authority provided in E2SHB 1873, establishes a process for the WSLCB to seize, without warrant, any vapor product given or offered for sale containing cannabinoids as provided in RCW 70.345.030.

**New Section. WAC 314-35-060 – Seizure of vapor products.** Consistent with the statutory authority provided in E2SHB 1873, establishes a process for the WSLCB to seize, without warrant, any vapor product in the possession of a person acting as a distributor, delivery seller, manufacturer or retailer of vapor products, and who is not licensed as required by statute and regulation. Provides that seized products are subject to forfeiture. Establishes conveyance forfeitures, and exceptions.

**New Section. WAC 314-35-065 – Forfeiture.** Consistent with the statutory authority and direction provided in E2SHB 1873, establishes a process and guidelines for property made subject to forfeiture by seizure.

**New Section. WAC 314-35-070 – Penalty structure.** Establishes a penalty structure consistent with the framework of the redesigned marijuana licensee penalty framework. Establishes three distinct penalty categories:

- Category I: Violations that create a direct or immediate threat to public health, safety, or both;
- Category II: Violations that create a potential threat to public health, safety, or both; and
- Category III: Regulatory violations.

Consistent with the authority provided in chapter 70.345 RCW, describes aggravating and mitigating factors that the board may consider when assessing penalties.

**New Section. WAC 314-35-075 – Category I.** Establishes list of violations and associated penalties that may result in license cancellation, consistent with the provisions of chapter 70.345 RCW, RCW 26.28.080, chapter 82.24 RCW, chapter 82.26 RCW, and others.

**New Section. WAC 314-35-080 – Category II.** Establishes list of violations and associated penalties that create a potential threat to public health, safety, or both, consistent with the provisions of chapter 70.345 RCW.

**New Section. WAC 314-35-085 – Category III.** Establishes list of regulatory violations and associated penalties consistent with the provisions of chapter 70.345 RCW.

## **Changes to the language proposed in CR-102**

No substantive changes were made from the proposed rules to the rules as presented for adoption.

### **Rule Implementation**

To assist current and future licensees, and other interested parties in planning and preparing for compliance with the new and amended requirements described in this memorandum, the agency has developed the following strategy that includes, but is not limited to:

- Messaging and webpage information regarding the effect of EHB 1074 that raised the minimum sales age of tobacco and vapor products to 21 years of age began well before these rule changes became effective. On September 10, 2019, Chief Nordhorn and Lacy Fehrenbach issued a joint letter to all Washington state tobacco and vapor product retailers that provided information regarding the change, a yellow sign, stickers, decals, and flyers to encourage and support compliance. The letter also contained a link to a WSLCB frequently asked questions page, links to WSLCB enforcement and customer service resources. This letter and other resources, including information about E2HSB 1873 have been available on the WSLCB website since mid-September.
- Messaging to all GovDelivery subscribers, including licensees, containing a brief description of the rules, rule effective date, and other important, section by section details to assure that any interested and all affected parties are aware of rule changes. Messaging may also be provided through other platforms, such as LinkedIn and Twitter.
- Messaging to all LCB staff and Enforcement, containing a brief description of the rules, rule effective date, and other important, section by section details to assure knowledge of rule changes.
- Provide internal and external training and education, as needed. Internal training is being designed and offered by the Vapor Enforcement Unit with the WSLCB.
- Provide external training through on-sight engagement with licensees, YouTube videos as needed, and other means as appropriate and necessary. The WSLCB is currently developing a webpage containing important information regarding these rules, along with links to all rule documents in their native form, a list of frequently asked questions, and other relevant material provided to support licensee compliance success. This page will be refreshed and updated as needed to assure that licensees and other interested parties have access to the most recent material and information related to these rules.

## **Rule Effectiveness Evaluation**

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring the number of compliance and consultation visits to share information and support compliance;
- Monitoring the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring licensee feedback, including but not limited to the number of requests for assistance, interpretation of rule, and other metrics as appropriate.

Attachments: Final Rules  
Concise Explanatory Statement



## Notice of Permanent Rules Chapter 314-35 WAC – Vapor products

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of new sections and amendments to existing rules regarding chapter 314-35 WAC – Vapor 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. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Kathy Hoffman, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### Background and reasons for adopting this rule

The adopted rules apply to vapor products, defined in RCW 70.345.010(19) as any noncombustible product that may contain nicotine and employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance. Vapor products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic device. The adopted rules *do not* apply to any product that meets the definition of marijuana as provided in RCW 69.50.101. It is important to distinguish these rules and those products given the attention to reported adverse health impacts attributed to vaping nicotine products, non-nicotine products, and vapor products containing marijuana, or THC. It is also important to distinguish that this rule project superseded and does not concern the Washington State Board of Health emergency rules and bans of certain products issued under chapter 246-80 WAC.

Chapter 70.345 RCW provides the Board with limited licensing and enforcement authority of vapor product distributors, retailers, and product delivery sales. RCW 70.345.020(2) provides, in relevant part, that the Board may adopt rules regarding the regulation of vapor *licenses*. RCW 70.345.160(4) provides that the Board may work with local health departments or districts, as well as law enforcement to conduct random unannounced inspections to ensure compliance. More importantly, RCW 70.345.160(5) provides that if the Secretary of Health or local health jurisdiction determines that a



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product may be injurious to human health, or poses a significant risk that the Board, in consultation with the Department of Health and others, may cause a vapor product to be analyzed. Thus, while the Board's regulatory authority is currently limited with respect to vapor *products*, the extent of Board's authority with respect to *licensing* and *enforcement* is reflected in these adopted rules, supporting the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Washington State recognizes that there is a growing body of empirical research, including a recent report issued by the National Institute of Medicine to support an overall, state-wide health goal of increasing the age of sale for both tobacco and vapor products to twenty-one. Based on this evidence, increasing the age of sale for these products will significantly reduce the number of adolescents and young adults who are smoking, and will immediately improve the health of adolescents, young adults, young mothers, and young children. To achieve that goal, Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019), prohibits the sale of cigarettes, tobacco products, and vapor products to persons under the age of twenty-one. This aligns Washington with several other states who have raised the minimum legal sales age to twenty-one in an effort to save lives and reduce healthcare costs.

Additionally, Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019) accomplishes several related goals. In addition to establishing a vapor tax structure that applies to all persons who sell vapor products under chapter 70.345 RCW, it also contains statutory amendments and new sections that include, but are not limited to the establishment of recordkeeping, business, product sales and distribution requirements that also apply to all persons licensed to sell vapor products under chapter 70.345 RCW.

Since the legislation directing these rule revisions was enacted, concern around the use of vapor products has increased significantly. These concerns hinge on several factors, including but not limited to the composition and content of the concentrates used in vapor products, and the product delivery system. Based on the current regulatory environment, the heightened concern around the safety of vapor products, and Governor Inslee's Executive Order 19-03 Addressing the Vaping Use Public Health Crisis, the overall public health and safety benefits of these rule amendments and new sections outweigh any increase in costs or administrative burden related to their implementation.

Currently, chapter 314-35 WAC provides a limited regulatory framework around the manufacturing, distribution and sale of vapor products. Both EHB 1074 and E2SHB 1873 expanded WSLCB's regulatory authority by:

- Increasing the age of sale of vapor products;
- Increasing record keeping requirements;
- Clarifying vapor product licensee requirements, including qualification, application denials, insurance requirements, license suspension and revocation;



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- Establishing transportation requirements;
- Establishing the ability for the Board to seize both cannabinoid vapor products and vapor products under specific circumstances;
- Establishing forfeiture guidelines;
- Establishing a penalty structure that aligns with the current Board penalty reform framework.

These adopted rule sections and amendments support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

### Rulemaking history for this adopted rule:

**CR-101** – filed June 12, 2019, under WSR #19-13-036

**CR 102** – filed October 16, 2019 as WSR #19-21-102

Public hearing held November 26, 2019

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### Public comment received on the rule proposal

The following comments were received as indicated below, and are presented in their native form, including formatting, text and spelling. A response to each comment is provided, along with an indication as to whether the comment was reflected in the adopted rule.

#### 1. Email message, received November 14, 2019:

“WAC 246-80 should be repealed in it's entirety! They have now discovered the source of the Lung disease and this is putting undue stress and strain on business owners who are ALREADY complying with stringent laws that will become unenforceable when the federal government changes it's status ANYWAY! CANNABIS is natural and should not be lumped into the same category as other drugs! Every single case has proven to be a use by a NON REPUTABLE company! Cannabis licensed companies should not have to COMPENSATE for the illegal use of products they DIDN'T produce!!”

**WSLCB response:** These rules are unrelated to chapter 246-80 WAC, a recently adopted Washington State Board of Health emergency rule regarding vapor products and flavors. The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. The commenter was provided with contact information for the Washington State Department of Health, and the Washington State Board of Health to encourage continued participation in rule and policy development process.

**Was the comment reflected in the adopted rule?** The comment was not reflected in the final rule.



2. Email message, received November 14, 2019:

“LCB,

As a former grower, current retailer and stakeholder, I would like to give you my input regarding vaping.

1. I have operated my retail store since March of 2016 we have never had any complaints regarding any health issues with the products we've sold. All of our vape products are tested and to my knowledge we have never had any cartridges, or dabs that had the vitamin e acetate in them. I think it would be prudent to make sure that product is banned from all vaping products in Washington State.

2. I think the ban on flavored Vapes initiated by the Governor is completely erroneous, as we have never had any issues and I have not heard of any reported issues of flavored Vapes impacting the health of any of the users here in Washington. I know that we should be cautious and protect the public interest, but without any research or documentation of a problem, I don't believe it's prudent to remove 10% to 25% of our vape products off the market.

In some cases it has caused businesses to close because of this new ban, especially with no research to back it up.

Along that note I don't think LCB and enforcement is going after the black market well enough, with all of the resources that could be mustered with the exorbitant taxation that we pay 45.6%, are sales growth and viability is still being challenged. I know there has been many producers, processors and retail stores that have closed because they cannot pay the taxes, employees and overhead.

3. The black market is alive, well and thriving and they don't really care what they're selling, when they're doing basement manufacturing of vape products. I don't believe they intentionally trying to harm anyone, they are just not sophisticated and also find it hard to find the materials to complete a clean safe product and lack the knowledge to make a safe product. Nevertheless it is out there.”

**WSLCB response:** These rules are unrelated to chapter 246-80 WAC, a recently adopted Washington State Board of Health emergency rule regarding vapor products and flavors. The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. The commenter was provided with contact information for the Washington State Department of Health, and the Washington State Board of Health to encourage continued participation in rule and policy development process.

**Was the comment reflected in the adopted rule?** The comment was not reflected in the final rule.



3. Email message, dated November 18, 2019:

*“My comment is in regards to WAC 314-35-030 (4) Vapor product licensee recordkeeping requirements, specifically regarding keeping records at the retail outlet for five (5) years and to be produced ‘at any time’.*

*For our company with multiple locations, all of the record keeping is conducted out of our central corporate office. Due to a small retail space, turn-over of employees, and proper chain of custody of the documents there is minimal paperwork that can be reasonably kept at the individual retail locations. In addition, our managers are our gate-keepers of documents at the retail store and work set hours. They cannot reasonably be expected to produce them outside their working hours.*

*What language we would prefer to see:*

- Keep one (1) year of invoices at the individual retail location for inspection and provide the additional four (4) years of paperwork upon request.*
- The board or its duly authorized agents enter the licensed location to inspect the required invoices before 3pm weekdays only.”*

**WSLCB response:** The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. The language contained in the adopted rule concerning retention of records at retail outlets for five (5) years aligns with statutory language contained in RCW 82.25.075, effective October 1, 2019, regarding distributors and retailer invoices, that provides:

- (1) No person engaged in or conducting business as a distributor or retailer in this state may:
  - (b) Fail to produce, on demand of the department or of the board all invoices of all the vapor products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person’s control.

Additionally, WSLCB enforcement works with and attempts to reasonably accommodate the business and operational schedules of all 3,700 vapor product licensees. Limiting, or decreasing the ability of the WSLCB to inspect records as suggested in this comment does not align with agency best practices, or offer the scheduling flexibility that is needed to encourage positive engagement, and support compliance success.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.





4. Email message, received November 26, 2019, entitled, "Error(s) in CR-102 for Vaping Product Rules."

"I wanted to bring to your attention an error in the CR-102 relating to WSR 19-13-036, as presented during the Oct 16, 2019 Board meeting.

The MINOR COST THRESHOLD calculated on page 3 is incorrect and dramatically understates the actual 1% of actual annual payroll" figure that it is supposed to represent.

Further, the justification document you supply seem to deny that the proposed rule will result in a negative impact on the sales of affected businesses. On the face of it, that denial is without merit and is, clearly, false."

**WSLCB response:** The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. This comment is related to the Small Business Economic Impact Statement (SBEIS) required consistent with the Regulatory Fairness Act described in chapter 19.85 RCW, and used to analyze the new section of rule that will require vapor product licensees to obtain general commercial liability insurance. This comment is not related to, suggest or offer rule language revisions. It does not offer substantive or constructive feedback for the WSLCB to consider.

Consistent with RCW 19.85.030(1)(a), the WSCLB prepared an SBEIS because it determined that one sub-section of the proposed rule regarding mandatory commercial insurance would impose more than minor costs on businesses in the industry. The WSLCB *estimated* costs, based on currently available data from the North American Industry Classification System (NAICS) and the United States Census. Calculations, estimates, and analysis were completed consistent with the requirements of chapter 19.85 RCW and the guidance provided, and publicly available through the Governor's Office of Regulatory Innovation and Assistance (ORIA).

As described in the adopted rules, the intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act of omission of a vapor product licensee. The WSLCB finds that the current estimated costs associated with the adopted rules are related to the necessary protection of public health and safety. The WSLCB finds that these estimated are necessary, appropriate, and supported not only by the agency's statutory mandate to protect public health and safety, but also by the Governor's Executive Order 19-03 Addressing the Vaping Use Public Health Crisis, and the Washington State Board of Health emergency rules issued as WSR 19-21-050 on October 10, 2019.



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**Was the comment reflected in the adopted rule?** The comment was not reflected in the final rule.

5. Undated letter, received as an attachment to an email message received November 25, 2019:

### **“PROPOSED RULE MAKING WSR #19-21-102**

#### Comments/Suggestions

1. Prohibit the internet sales of Tobacco and Flavored E-juices to an individual.
2. Tobacco and Flavored E-juices should only be sold by a licensed Vape Store.
3. Only sell Tobacco and Flavored E-juices made in the USA and registered at FDA.
4. Prohibit the sale of pre-fill Tobacco and Flavored E-juices like Juul. An individual won't be able to know if the e-juices inside the cartridge is bad or not because it is sealed/attached in the device unlike the e-juices sold in a bottle. And the e-juices in a bottle has expiration date.”

**WSLCB response:** The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. Consistent with RCW 70.345.020, the WSLCB is authorized to license vapor product retailers, distributors, and delivery sales. These comments suggest activities that are beyond the statutory authority provided to the WSLCB in chapter 70.345 RCW. Specifically, the WSLCB does not have the statutory authority to prohibit, restrict or otherwise limit sales of vapor products, or the products themselves, as suggested in this comment. The suggested revisions require statutory revisions that would be the result of legislative action as opposed to rule making.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.



6. Letter dated November 21, 2019, received as an attachment to an email message received on November 21, 2019:

Thank you for the opportunity to comment on the rules governing Vapor Products.

Okanogan County Community Coalition is a youth substance abuse prevention coalition. We have been providing prevention services in Okanogan County for over 10 years. One of our focuses is youth tobacco prevention. We have conducted STARS and VSTARS assessments of tobacco retailers in the County. We promote positive social norms, tobacco cessation programs, and smoke and vape free public spaces. We provide public awareness around dangers of tobacco and vaping use, and we also provide evidenced based curriculum in Omak School District. These strategies work together to create a healthy community, but these strategies also depend on rules and laws helping to the create norms and values in Omak. Please consider my comments below as you implement rules for Vapor Products sold in Washington State.

- **WAC-314-35-075 -Category I-Violations**

According to the category title these violations are for acts that create a DIRECT or IMMEDIATE threat to public health, safety, or both. I do not believe retailers should be given five opportunities to impact public safety before their license is cancelled and they should not be able to have their license reinstated. Four violations in three years is sufficient evidence that a retailer does not care about public safety. Please consider the following for violation penalties.

- 1<sup>st</sup> Violation- \$1000 fine
- 2<sup>nd</sup> Violation - \$2000 fine and 6 month license suspension
- 3<sup>rd</sup> Violation – \$3000 fine and 9 month license suspension
- 4<sup>th</sup> Violation – License cancellation and no reinstatement

**Violation Type-Selling, giving, or permitting products to person under 21 (RCW 26.28.080)** I do think the fines should be steeper for selling or giving Vapor products to someone under 21 years old due to the direct threat to public safety. The fines should start at \$150 and increase by at least \$50-\$100 per violation.

- **WAC-314-35-080- Category II Violations- Potential threats to public safety**

The fines should be higher for the first violations and suspension of sales should occur for the 3<sup>rd</sup> violation. Please consider the following for violation penalties.

- 1<sup>st</sup> Violation - \$500 fine
- 2<sup>nd</sup> Violation - \$1000 fine
- 3<sup>rd</sup> Violation - \$1500 fine and 6 month license suspension



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- 4<sup>th</sup> Violation - \$2000 fine and 12 month license suspension
- 5<sup>th</sup> Violation – Cancellation of License

- **WAC 314-35-085- Category III Regulatory Violations**  
Violation: *Selling or distributing vapor products from self-serve displays or with out the intervention of a store employee (RCW 7-.345.080)* should be a Category II violation if the product is not attended then there is more of a Potential for abuse and misuse therefore it's a public threat not just a regulatory issue.

I do recognize that retailers can receive more than one violation at a time and that these fines could quickly add up for a small business but I do think it's important that the penalties convey the seriousness of the violation to deter activities that are a public health threat.

Thank you for considering my comments,

**WSLCB response:** The WSLCB appreciates this comment and demonstration of participation in the rulemaking process. The penalties, sanctions, and actions against licensees adopted in this rule are statutorily established in RCW 70.345.180, and the Board may not exceed the monetary penalties as set forth in the statute. Specifically, RCW 70.345.180 provides in relevant part:

- (1) The board may impose a monetary penalty as set forth in subsection (2) of this section, if the board finds that the licensee has violated RCW [26.28.080](#) or any other provision of this chapter.
- (2) Subject to subsection (3) of this section, the sanctions that the board may impose against a person licensed under this chapter based upon one or more findings under subsection (1) of this section may not exceed the following:
  - (a) A monetary penalty of two hundred dollars for the first violation within any three-year period;
  - (b) A monetary penalty of six hundred dollars for the second violation within any three-year period;
  - (c) A monetary penalty of two thousand dollars for the third violation within any three-year period and suspension of the license for a period of six months for the third violation of RCW [26.28.080](#) within any three-year period;
  - (d) A monetary penalty of three thousand dollars for the fourth or subsequent violation within any three-year period and suspension of the license for a period of twelve months for the fourth violation of RCW [26.28.080](#) within any three-year period;
  - (e) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.



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

There were no changes from the proposed rules to the final rules.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-010 Vapor products—Introduction.** This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

NEW SECTION

**WAC 314-35-015 Definitions.** The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010, unless the context clearly indicates otherwise:

(1) "Control" means the direct power to order or direct the management of a licensee.

(2) "Domicile" means a person's true, fixed primary permanent home. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(3) "Financial institution" means any bank, consumer loan company, credit union, savings bank, savings and loan association, trust company, or similar lending institution under the jurisdiction and registered with the department of financial institutions.

(4) "Profit" means the entire gross receipts from all sales and services made in, upon or from a licensed business.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-020 (~~Vapor product licenses required Licensing requirements, denials, suspensions, and revocations.~~) Licensing requirements.** (1) ~~((The))~~ Vapor product license types are:

(a) Vapor product retailer's license((τ))<sub>i</sub>

(b) Vapor product distributor's license((τ))<sub>i</sub> and

(c) Vapor product delivery sale license. ((A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is))

(2) All vapor product license types are required to perform the functions ((of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not)) of the respective license type regardless of whether the vapor product contains nicotine.

((2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot) (3) A vapor product manufacturer must hold a vapor product distributor license if the manufacturer is engaged in the business of selling vapor products in Washington state, and brings or causes to be brought into

this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

(4) No vapor product license will be issued to a location that is a domicile or attached to a domicile, is not a fixed or stationary location, or both.

~~((3))~~ (a) The board will not approve any vapor product license for a location where board access without notice or cause is limited.

(b) The board may revoke any vapor product license that is issued to an attached structure or any other location inconsistent with this section.

(5) A person or entity must meet ~~((certain))~~ all qualifications ~~((to receive))~~ described in this chapter and chapter 70.345 RCW to be issued a vapor product license, and must continue to meet those qualifications to maintain the license.

~~((4) No more than))~~ (6) One license of each vapor product license type may be issued at a single location.

~~((5))~~ (7) A licensed location must be separated from other vapor product businesses, and not accessible through neighboring businesses.

~~((6))~~ (8) For the purpose of initial or renewal application review for a vapor product license, the board may conduct an investigation of all licenses it has issued to an applicant including, but not limited to, administrative violation history. The board reserves its discretion to issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the board.

(9) For the purpose of ~~((reviewing an))~~ initial or renewal application review for a vapor product license ~~((or considering the denial of a license application, the WSLCB)),~~ the board may consider the applicant's prior criminal conduct ~~((of the applicant))~~ and criminal history record within the five years prior to the date the application is received by the ~~((WSLCB))~~ board. The ~~((WSLCB))~~ board uses the following point system to determine a person's qualification for a license ~~((. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (e) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.))~~:

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 70.345, 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

~~((7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally is-~~

~~sue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.~~

~~(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.)~~ (10) The board may, at its discretion, issue a vapor product license to a person or entity that has accumulated eight or more points as described in this subsection.

(11) If an applicant has a pending case for an alleged offense that totals eight or more points, the board will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the board may administratively close the application.

(12) The board may conduct a final inspection of the proposed licensed premises to determine if the applicant has met the requirements of the licensure requested.

#### NEW SECTION

**WAC 314-35-021 Insurance requirements.** Vapor product licensees must obtain insurance coverage described in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the vapor product licensees. Vapor product licensees must furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance may result in license cancellation.

(1) Commercial general liability insurance: The licensee must at all times carry and maintain commercial general liability insurance or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance must not be less than one million dollars.

(a) This insurance must cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants.

(b) The insurance must also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section must be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers must be named as an additional insured on insurance poli-



cies required under this section. All policies must be primary over any other valid and collectable insurance.

NEW SECTION

**WAC 314-35-023 Vapor product license transfer and relocation.**

(1) A license may not be transferred or relocated without prior approval of the board.

(a) A licensee must notify the board at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to notify the board without applying for a separate license for a new location will be treated as operating without a license.

(b) If a licensee fails to notify the board prior to moving a location, the licensee may be suspended until the new location meets the requirements and qualifications for a vapor products license.

(c) License relocation may be requested by contacting board enforcement by email or telephone.

(2) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition.

Examples of clean and sanitary conditions include, but are not limited to:

(i) Vapor product mixing areas separate from restroom;

(ii) Storage of cleaning agents separate from consumable vapor products;

(iii) Vapor products not in contact or stored with or near hazardous materials and products.

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements described in RCW 70.345.075.

(c) Vapor product licensees may only purchase vapor products from board licensed vapor product locations.

NEW SECTION

**WAC 314-35-024 Vapor product packaging and labeling.**

(1) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must label the vapor product with all of the following:

(a) A warning regarding the harmful effects of nicotine;

(b) A warning to keep the vapor product away from children;

(c) A warning that vaping is illegal for those under the legal age to use the product; and

(d) Except as provided in WAC 314-35-023 of this section, the amount of nicotine in milligrams per milliliter of liquid along with the total volume of the liquid contents of the product expressed in milliliters.

(2) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must comply with any other packaging and labeling requirements including, but not limited to, specific warnings as mandated by the United States Food and Drug Administration, any other federal agency, or any agency of state of Washington including, but not limited to, the Washington state department of health.

NEW SECTION

**WAC 314-35-025 Vapor product applicant and licensee hearing rights.** (1) If the board denies a vapor product license application or renewal, or suspends or revokes a license for any of the reasons listed in this chapter or in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions of chapter 34.05 RCW.

(2) Appeals under this chapter will be conducted by a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

**WAC 314-35-027 Qualifying for a vapor product license.** A vapor product license must be issued in the name(s) of the true party(ies) of interest.

(1) True parties of interest must qualify to be listed on the license, consistent with RCW 70.345.020. For purposes of this chapter, "true party of interest" means:

Entity	True Party(ies) of Interest
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	All general partners and spouses. All limited partners and spouses.
Limited liability company	All members and spouses. All managers and spouses.
Privately held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Publicly held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.

Entity	True Party(ies) of Interest
Multilevel ownership structures	All persons and entities that make up the ownership structure.
Any entity or person(s) expecting or receiving profits, or part thereof, or exercising control over a licensed business  Any entity or person(s) who exercise(s) control over the licensed business in exchange for money or expertise	Any entity or person who is in receipt of, or has the right to receive profits, or part thereof, from the licensed business during any full or partial calendar or fiscal year.  Any entity(s) or person(s) and spouses who exercise(s) control over the licensed business in exchange for money or expertise.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) The board may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations, including a financial investigation, a criminal history background check, or both. When an entity other than the owner controls daily business operations consistent with an agreement between the owner and the operating entity, the operating entity becomes a true party of interest. The operating entity must meet the same qualifications and requirements as a licensee.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-030 Vapor product licensee recordkeeping requirements.** (1) Vapor product (~~((distributors and manufacturers))~~) licensed locations must keep complete, legible and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought (~~((in))~~) into or caused to be brought (~~((in from without))~~) into the state from outside the state, or shipped or transported to (~~((retailers in this state, and of all sales of vapor products made. These))~~) locations in Washington state, or sold. The required records must show:

- (a) The names and addresses of purchasers((~~r~~));
- (b) The names and addresses of sellers;
- (c) The inventory of all vapor product(~~(s,r))~~) (to include the description of the product, size (mL), brand); and
- (d) Other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. (~~((All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.))~~)

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, brand, size (mL), and all prices. (~~Vapor product licensees must preserve legible copies of all such invoices for five years from the date of sale.~~)

(3) (~~Every licensed~~) Vapor product (~~retailer~~) licensees must (~~procure~~) obtain itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, brand, size (mL), and all prices and discounts.

(4) (~~The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.~~) Vapor product licensees must make all records available for inspection upon request of the board or its duly authorized agents or employees, and may not interfere with location inspection, record inspection, or both. The board or its duly authorized agents or employees may enter any vapor product licensed location at any time without a search warrant to inspect the premises for:

(a) Required invoices as described in this section; and

(b) Regulated products contained in the licensed location.

(5) All invoices, documents, or other records required under the provisions of this chapter must be legible, preserved, and retained for five years from the date of the invoices, documents, or other records at the place of the business where the vapor products are sold or stored.

(6) Vapor product licensees must provide the board, any of its agents or employees free, unhindered access to the vapor product licensed location.

(7) A licensed manufacturer with representatives who sell or distribute the manufacturer's vapor products must provide the board with a list of the names and addresses of all such representatives at an email address established by the board and maintained on the board's website. The licensed manufacturer must ensure that the list of representatives who sell or distribute its vapor products is kept current.

(a) A manufacturer's representative is not authorized to distribute or sell vapor products unless the manufacturer holds a valid distributor's license under chapter 70.345 RCW; and

(b) A manufacturer's representative must carry a copy of the hiring distributor's license at all times when selling or distributing the manufacturer's vapor products.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-040 Age-restricted vapor products retailer licensed locations.** (1) Age-restricted vapor products retailer licensed locations must register as such with the (~~WSLCB~~) board by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the (~~WSLCB~~) board in writing ten business days prior to a change in the age-restriction status. The board will make the appropriate age-restricted status form (~~is~~) available on (~~the WSLCB~~) its website.

(2) (~~Holder of a~~) Vapor product retailer (license) licensed locations where entry into the licensed premises is age-restricted to persons (~~eighteen~~) twenty-one years of age or older must post signs provided by the (~~WSLCB~~) board at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time (~~during opening hours of the licensed vapor products retail establishment~~).

(3) All vapor product licensed locations that allow vapor products to be consumed on the premises, including vapor product tastings as provided in RCW 70.345.100, must be restricted to persons age twenty-one and over at all times.

(4) Any restricted location as described above may not employ persons under the age of twenty-one.

#### NEW SECTION

**WAC 314-35-045 Vapor product licensee responsibilities.** (1) Vapor product licensees and their employees must conduct the licensed premises in compliance with all applicable statutes as they now exist or may later be amended including, but not limited to, Titles 9, 9A RCW, chapters 69.50, 70.155, 70.158, 70.345, 82.24, and 82.26 RCW.

(2) Licensees have the responsibility to control their conduct and the conduct of employees and patrons at all times. Except as otherwise provided by law, licensees and employees may not:

(a) Be disorderly, apparently intoxicated, or under the influence of a controlled substance, on the licensed premises;

(b) Permit any disorderly person to remain on the premises;

(c) Engage in or allow behavior that provokes conduct that may endanger public safety.

#### NEW SECTION

**WAC 314-35-050 Vapor product license suspensions and revocations.** (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW, this chapter, or both.

(2) Any retail location license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it finds that the licensee has complied with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the

person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020 and RCW 26.28.080.

(5) On the date a vapor product license suspension goes into effect a board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the board due to a violation of a board law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises has been closed for any reason other than what is stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than what is stated in the board's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may operate their business provided there is no sale, delivery, service, consumption, removal, or receipt of vapor products.

(b) If a vapor product license is suspended, revoked, or both, the location's licenses under chapter 82.24 or 82.26 RCW if held are also revoked, consistent with subsection (4) of this section.

(8) If the board makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license for the reasons listed in this section, or as provided in this chapter or chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions described in chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

#### NEW SECTION

**WAC 314-35-053 Transportation.** (1) No person may transport or cause to be transported vapor products for sale, except:

(a) A licensed distributor under chapter 70.345 RCW;

(b) A licensed retailer under chapter 70.345 RCW;

(c) A seller with a valid delivery sale license under chapter 70.345 RCW; or

(d) A person who has given the board advance notice of the commencement of transportation of vapor products.

(2) When transporting vapor products for sale, the person must have, in their actual possession, invoices or delivery tickets for the vapor products that must show:

(a) The true name and address of the consignor or seller;

(b) The true name and address of the consignee or purchaser; and

(c) The number of items, size of each item in mL, and brands of the vapor products being transported.

(3) In any case where the board has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section or chapter 70.345 RCW, the board is authorized to stop the vehicle and to inspect for contraband vapor products.

#### NEW SECTION

**WAC 314-35-055 Seizure of cannabinoid vapor products.** (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.

(2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and subject to forfeiture.

(3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

#### NEW SECTION

**WAC 314-35-060 Seizure of vapor products.** (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

#### NEW SECTION

**WAC 314-35-065 Forfeiture.** (1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds must be distributed consistent with chapter 70.345 RCW.

(3) The board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned un-



der this section, the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

NEW SECTION

**WAC 314-35-070 Penalty structure.** (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;

(b) Category II: Violations that create a potential threat to public health, safety, or both; and

(c) Category III: Regulatory violations.

(2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW 70.345.180. Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

NEW SECTION

**WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.**

**Category I: Violations that create a direct or immediate threat to public health, safety, or both.**

<b>Violation Type</b>	<b>1st Violation in a three-year period</b>	<b>2nd Violation in a three-year period</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting.  RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence.  RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law.  RCW 70.345.030 WAC 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both.  Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer.  RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

NEW SECTION

**WAC 314-35-080 Category II—Violations that create a potential threat to public health, safety, or both.**

**Category II: Violations that create a potential threat to public health, safety, or both.**

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Failure to comply with child resistant packaging requirements. RCW 70.345.130	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Failure to comply with product labeling requirements. RCW 70.345.075	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Vapor products purchased from an unlicensed source. WAC 314-35-023	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
True party of interest. RCW 70.345.020 WAC 314-35-020 WAC 314-35-027	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Operating without a valid license. RCW 70.345.030	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Transportation violations. WAC 314-35-053	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension

NEW SECTION

**WAC 314-35-085 Category III—Regulatory violations.**

**Category III: Regulatory Violations.**

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Noncompliance with record keeping requirements. WAC 314-35-020 WAC 314-35-030	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to post required signs. RCW 70.345.070 WAC 314-35-040	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Selling or distributing vapor products from self-serve displays or without the intervention of a store employee. RCW 70.345.080	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Noncompliance with mail or internet sales requirements. RCW 70.345.090	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to verify age or accepting unpermitted forms of identification. RCW 70.345.120	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to comply with license suspension or revocation. WAC 314-35-050	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Giving or distributing vapor products without charge by coupon, unless exempted. RCW 70.345.110	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension



**Washington State  
Liquor and Cannabis Board**

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**Date:** October 30, 2019

**To:** Jane Rushford, Board Chair  
Ollie Garrett, Board Member  
Russ Hauge, Board Member

**From:** Kathy Hoffman, Policy and Rules Coordinator

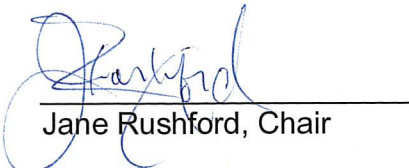

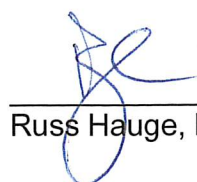
**Copy:** Rick Garza, Agency Director  
Megan Duffy, Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director

**Subject:** **Approval for filing proposed rules (CR 102) regarding WAC 314-55-105 – Packaging and labeling requirements; and WAC 314-55-077(8) and (9) – Marijuana processor license – Privileges, requirements and fees.**

The Rules Coordinator requests approval to file a rule proposal (CR 102) for the rule making described in the Issue Paper attached to this order and presented at the Board meeting on October 30, 2019.

If approved for filing, the tentative timeline for this rule proposal is as follows:

October 30, 2019	Board is asked to approve filing the proposed rules (CR 102 filing).
November 20, 2019	Code Reviser publishes notice, LCB sends notice to rules distribution list.
December 11, 2019	Public hearing held.
December 11, 2019	End of written comment period.
December 18, 2019	Board is asked to adopt rules.
December 18, 2019	Agency sends notice to those who commented both at the public hearing and in writing.
December 18, 2019	Agency files adopted rules with the Code Reviser (CR 103)
January 1, 2020	Rules are effective consistent with RCW 34.05.380(3)(a), the rule is effective on a date required by state law (see ESSB 5298).

<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	 Jane Rushford, Chair	<u>10/30/19</u> Date
<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	 Ollie Garrett, Board Member	<u>10-30-2019</u> Date
<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	 Russ Hauge, Board Member	<u>10/30/19</u> Date

Attachment: Issue Paper



## Issue Paper

### **Regarding WAC 314-55-105 – Packaging and labeling requirements; and WAC 314-55-077(8) and (9) – Marijuana processor license – Privileges, requirements and fees.**

Date: October 30, 2019  
Presented by: Kathy Hoffman, Policy and Rules Coordinator

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#### **Description of the Issue**

Washington State marijuana packaging and labeling regulations have evolved since their initial promulgation in 2013. Originally designed to provide a basic framework, requirements included, but were not limited to what products must be packaged in child-resistant containers, what warning language needed to be on accompanying material, and what traceability information needed to be on every product label. Over time, rules related to packaging and labeling of marijuana products have been revised in response to legislation and industry growth. Other factors, such as the use of biodegradable packaging, and reduction of the market's environmental impacts suggest that additional options to support industry sustainability should be explored.

However, protecting children and youth from accidental exposure to marijuana products continues to be a priority shared by the industry, the prevention community, the Board and many others. Assuring that marijuana product packaging is designed and constructed to be significantly difficult for children and youth to open, and requiring labeling that clearly communicates the adult nature of the product also continue to be shared priorities. As the industry has grown and evolved, so has the need for the Board to consider refining regulations around the packaging and labeling of these products.

This proposal reflects the outcome of an inclusive and engaged rule development process occurring from August to October of 2019 that was designed to balance several competing interests. Those interests include, but are not limited to:

- Assuring that marijuana products are not appealing or marketed to persons under twenty-one years of age;
- Offering a more concise, yet flexible framework to provide licensees the ability to engage in product development, design and marketing that will support business growth. At the same time, the Board is interested in sustainable business practices that will reduce industry waste and environmental impact, while maintaining an emphasis on public safety

- and the reduction of potential for accidental exposure to marijuana products;
- Assuring that required product warnings are aligned by product type;
- To the extent possible in rule, providing guidance for the provision of structure and function claims that are anticipated to increase consumer product knowledge; and
- To the extent possible in rule, providing clarity regarding what types of labeling designs and packaging characteristics should be avoided to reduce the possibility of unintended, accidental exposure to marijuana products.

The nexus and balance of these interests are demonstrated through this proposal.

Further, Engrossed Substitute Senate Bill (ESSB) 5298 (Chapter 393, Laws of 2019) involving marijuana product labeling will become effective January 1, 2020. Among other revisions, ESSB 5298, amended RCW 69.50.345, RCW 69.50.346, and created a new section describing the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist in making purchases of these products. The Board is required to align existing rule with the amendments of this legislation, and to the extent possible, within the timeline established by the legislature. This rule proposal reflects and incorporates those statutorily required revisions.

This Issue Paper requests approval from the Board to file a CR 102 rule proposal to amend and update both WAC 314-55-077(8) and (9), and to amend and update WAC 314-55-105 regarding marijuana packaging and labeling requirements.

## **Rule Necessity**

Rules are needed for the following reasons:

1. The Board received two rule petitions from The Cannabis Alliance on March 11, 2019 as follows:
  - The first petition requested that the Board open WAC 314-55-105 to consider removing the current requirement that marijuana-infused liquid edible products must include a measuring device, such as a measuring cup or dropper;
  - The second petition requested that the Board open WAC 314-55-105 to revise the current requirement that marijuana-infused products for oral ingestion must be packaged in plastic 4 mil or greater in thickness, and instead, reduce the requirement to plastic 2 mil or greater in thickness.



The Board accepted both of these petitions on April 30, 2019, and consistent with the provisions of RCW 34.05.330, agreed to open the identified rule to consider the petitions and language proposed therein.

These proposals have been vetted, thoroughly discussed and researched during the rule development process, including a focus group with licensees, a focus group with prevention and public health representatives, and a listen and learn session consisting of all representatives from all interested parties, cumulating in acknowledgement of shared goals and general agreement on this proposal.

2. Engrossed Substitute Senate Bill (ESSB) 5298 (Chapter 393, Laws of 2019) involving marijuana product labeling will become effective January 1, 2020. Among other revisions, ESSB 5298 amended RCW 69.50.345, RCW 69.50.346, and created a new section describing the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist in making purchases of these products. The Board is required to align existing rule with the amendments of this legislation, and to the extent possible, within the timeline established by the legislature.

3. The Board approved five Board Interim Policies (BIP) on January 9, 2019 as follows:

- BIP 05-2018 – Implementation of Cannabis Packaging and Labeling Rule changes;
- BIP-07-2018 – Marijuana labeling –False and misleading definition clarification;
- BIP-08-2018 – Marijuana labeling - Curative of therapeutic effects;
- BIP-09-2018 – Marijuana labeling - Marijuana infused edibles colors and homogenization, specific to WAC 314-55-077(8) and (9); and
- BIP-10-2018 – Marijuana labeling – Marijuana infused edibles colors.

Since the specific sections of rule that these BIP address were open for inquiry based not only the Cannabis Alliance petitions, but on the rule revisions that are necessary to comply with the provisions of ESSB 5298, these BIP were updated on July 19, 2019 to extend their compliance date to July 1, 2020. However, since the policies that these BIP sought to address have been incorporated into this rule proposal, addressed by way of ESSB 5298, or addressed by alternative resolution options, it is appropriate to rescind these BIP as soon as these rules become effective on January 1, 2020.

These new rule sections and amendments, in addition to proposed technical and clarifying revisions support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current, dynamic regulatory environment.

## **Description of Rule Changes**

**Amended Section. WAC 314-55-077(8)** – Removed phrase “throughout the product” and struck requirement that product prominently display on the label that, “This product contains marijuana.” Revised to indicate that marijuana-infused edible products in both solid and liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

**Amended Section. WAC 314-55-077(9)**– Clarifies and streamlines guidance for processors wishing to infuse foods or drinks, provided that: any coatings applied to such products are compliant with the requirements of the chapter; the products do not require cooking or baking by the consumer; and package design that is not similar to commercially available products marketed to persons under twenty-one years of age,

**Amended Section. WAC 314-55-105(1) – Definitions.** Relocates definition section from the end of the section, to the beginning of the section. Adds product specific definitions and cross references to parallel statutory definitions; removes references to “especially appealing to children,” “youth,” and “minor” and assigns a single definition of “especially appealing to persons under the age of twenty-one” to assure consistency. Defines “structure and function claims” to the extent possible, in alignment with the FDA definition.

**Amended Section. WAC 314-55-105(2) – Marijuana concentrates.** Describes new and reaffirms existing standards that apply specifically to the packaging and labeling of marijuana concentrates. New provisions include, but are not limited to: packaging may be two mil or greater in thickness, as opposed to four mil; adds additional disclosure requirements around the addition of chemicals, compounds, thickening agents, terpenes, and other substances to any concentrate or extract during any point in production; reaffirms parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**Amended Section. WAC 314-55-105(3) – Marijuana edibles in solid form.** Describes new and reaffirms existing standards that apply specifically to the packaging and labeling of marijuana edibles in solid form. New provisions include, but are not limited to: packaging can be two mil or greater in

thickness, as opposed to four mil; reaffirms parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**Amended Section. WAC 314-55-105(4) – Marijuana edibles in liquid form.** Describes new and reaffirms existing standards that apply specifically to the packaging and labeling of marijuana edibles in liquid form. New provisions include, but are not limited to: packaging can be two mil or greater in thickness, as opposed to four mil; provides that packaging may include a measuring cup or dropper, and that hash marks on the bottle or package qualify as a measuring device; reaffirms and clarifies parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or an y function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**New Sub-Section. WAC 314-55-105(5) – Usable marijuana.** Describes new and reaffirms existing standards that apply specifically to the packaging and labeling of usable marijuana. New provisions include, but are not limited to: additional clarity around the parameters of labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**New Sub-Section. WAC 314-55-105(6) – Marijuana mix.** Describes new and reaffirms existing standards that apply specifically to the packaging and labeling of marijuana mix. New provisions include, but are not limited to: additional clarity around parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**New Sub-Section. WAC 314-55-105(7) – Marijuana topicals.** Describes standards that apply specifically to the packaging and labeling of marijuana topicals. New provisions include, but are not limited to: additional

clarity around parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement. Language updates include requirements of ESSB 5298, now codified in chapter 69.50 RCW.

**New Sub-Section. WAC 314-55-105(8) – Optional label**

**information.** Previously embedded in another section of existing rule, this section has been streamlined to more clearly describe optional label information, specifically harvest date and “best by” date.

**New Sub-Section. WAC 314-55-105(9) – Accompanying**

**materials.** Formerly subsection (3) of this section, amendments reaffirm, clarify and update existing language around accompanying product-specific materials that must be provided with a marijuana product or made available to a consumer purchasing such products, including a statement disclosing all pesticides. Adds a requirement that a list disclosing all chemicals, compounds, additives, thickening agents, terpenes, or other substances added to marijuana concentrate during or after production be made available to consumers.

**New Sub-Section. WAC 314-55-105(10) – Upon request**

**materials.** Formerly subsection (4) of this section, reaffirms and clarifies that a consumer may request the name of the certified lab and quality assurance testing results for any marijuana product, and that the retailer must provide that information upon consumer request.



# PROPOSED RULE MAKING

## CR-102 (December 2017) (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** 19-12-029 ; 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) WAC 314-55-105 – Packaging and labeling requirements. The Washington State Liquor and Cannabis Board (Board) proposes new sections and amendments to existing rule that will remove the requirement for measuring devices for marijuana-infused liquid edibles; reduce plastic package thickness for marijuana-infused edibles; and implement the requirements and directives of Engrossed Senate Substitute Bill (ESSB) 5298 (Chapter 393, Laws of 2019). The Board also proposes non-substantive technical and clarifying revisions to WAC 314-55-077(8) and (9).

**Hearing location(s):**

**Date:**                      **Time:**                      **Location:** (be specific)                      **Comment:**

December 11, 2019	10:00 am	1025 Union Avenue, Olympia, WA 98501	
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**Date of intended adoption:** December 18, 2019 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Katherine Hoffman

Address: 1025 Union Avenue, Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-664-9689

Other:

By (date) December 11, 2019

**Assistance for persons with disabilities:**

Contact Claris Nhanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) December 4, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed rules significantly restructure and revise existing rules for marijuana packaging and labeling by distinguishing each product by type, and clearly listing the packaging and labeling requirements for each type. The rule proposal describes new provisions that include packaging thickness reduction from four mil to two mill or greater in thickness; provides that packaging may include a measuring cup or dropper, and that hash marks on the bottle or package qualify as a measuring device; reaffirms and clarifies parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement, consistent with the requirements of ESSB 5298 now codified in chapter 69.50 RCW, and effective in January 1, 2020.

**Reasons supporting proposal:** Washington State marijuana packaging and labeling regulations have evolved since their initial promulgation in 2013. Originally designed to provide a basic framework, requirements included, but were not limited to what products must be packaged in child-resistant containers, what warning language needed to be on accompanying material, and what traceability information needed to be on every product label. Over time, rules related to packaging and labeling of marijuana products have been revised in response to legislation, prevention concerns, and industry growth. Other factors, such as the use of biodegradable packaging, and reduction of the market's environmental impacts suggest that additional options to support industry sustainability and product safety are needed. Protecting children and youth from accidental exposure to marijuana products continues to be a priority shared by the industry, the prevention community, the Board and many others. Assuring that marijuana product packaging is designed and constructed to be significantly difficult for children and youth to open, and requiring labeling that clearly communicates the adult nature of the product also continue to be shared priorities. This proposal reflects those priorities, as well as the outcome of an inclusive and engaged rule development process designed to balance several competing interests. These rules are needed to set enforceable standards consistent with legislative and policy directives, affirmatively respond to two rule petitions, and to clarify existing rule.

**Statutory authority for adoption:** RCW 69.50.342 and 69.50.345.

**Statute being implemented:** Engrossed Senate Substitute Bill (ESSB) 5298 (Chapter 393, Laws of 2019).

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  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  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Coordinator	Katherine Hoffman, Rules	1025 Union Avenue, Olympia WA, 98501	360-664-1622
Implementation: Director	Becky Smith, Executive	1025 Union Avenue, Olympia, WA. 98501	360-664-1753
Enforcement: Director	Becky Smith, Executive	1025 Union Avenue, Olympia, WA, 98501	360-664-1753

**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(5)(b)(iv) because the rules only clarify language without changing its effect. Additionally, a cost benefit analysis is not needed under RCW 34.05.328(5)(b)(v) because the content of the rules are explicitly and specifically dictated by statute.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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)<br>(Internal government operations)         | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)             | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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(3): WAC 314-55-077(8); WAC 314-55-077(9); WAC 314-55-105(1); WAC 314-55-105(2); WAC 314-55-105(3); WAC 314-55-105(4); WAC 314-55-105(5); WAC 314-55-105(6); WAC 314-55-105(7); WAC 314-55-105(8); WAC 314-55-105(9); and WAC 314-55-105(10).

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If 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 analysis showing how costs were calculated. This rule proposal does not create any additional compliance costs, nor does it create any additional administrative, or regulatory burden. Rather, shifting the provision of a measuring cup for marijuana infused liquid edible products from a requirement to an option is anticipated to result in compliance cost reduction. Similarly, reducing packaging thickness from 4 mil to no less than 2 mil is anticipated to result in compliance cost reduction.

Additionally, the proposed, significant restructuring of WAC 314-55-105 is anticipated to result in ease of use, reduced administrative burden, and increased compliance success.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Katherine Hoffman  
Address: 1025 Union Avenue, Olympia, WA 98501  
Phone: 360-664-1622  
Fax: 360-664-9689  
TTY:

Email: rules@lcb.wa.gov

Other:

**Date:** October 30, 2019

**Name:** Jane Rushford

**Title:** Chair

**Signature:**

A handwritten signature in cursive script, appearing to read "Jane Rushford", is written in the signature field.



**WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees.** (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) **Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The ((WSLCB)) board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The ((WSLCB)) board may reopen the marijuana processor application window at subsequent times when the ((WSLCB)) board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the ((WSLCB)) board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) **Recipes, product, packaging, and labeling approval.**

(a) A marijuana processor licensee must obtain label and packaging approval from the ((WSLCB)) board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the ((WSLCB)) board for approval. More information on the product, packaging, and

label review process is available on the (~~WLSCB's web site at www.leb.wa.gov~~) boards website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the (~~WSLCB~~) board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the (~~WSLCB~~) board or its designee.

(c) If the (~~WSLCB~~) board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must (~~(~~

~~(a)) be homogenized to ensure uniform disbursement of cannabinoids ((throughout the product; and~~

~~(b) Until January 1, 2019, prominently display on the label "This product contains marijuana."))~~.

(9) A marijuana processor (~~(is limited in the types of)~~) may infuse food or drinks (~~(they may infuse)~~) with marijuana(~~(. Marijuana-infused products that)~~), provided that:

~~(a) The product or products do not require cooking or baking by the consumer ((are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.~~

~~(a))~~;

~~(b) Coatings applied to the product or products are compliant with the requirements of this chapter;~~

~~(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1) (c).~~

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

~~((b))~~ (11) Other food items that may not be infused with marijuana to be sold in a retail store include:

~~((i))~~ (a) Any food that has to be acidified to make it shelf stable;

~~((ii))~~ (b) Food items made shelf stable by canning or retorting;

~~((iii))~~ (c) Fruit or vegetable juices (this does not include shelf stable concentrates);

~~((iv))~~ (d) Fruit or vegetable butters;

~~((v))~~ (e) Pumpkin pies, custard pies, or any pies that contain egg;

~~((vi))~~ (f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

~~((vii))~~ (g) Dried or cured meats.

~~((e))~~ (h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

~~((d))~~ (i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

~~((e)Per)~~ (12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

~~((f))~~ The ~~((WSLCB))~~ board may designate other food items that may not be infused with marijuana.

~~((10))~~ (13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

~~((11))~~ (14) Processing service arrangements. A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

~~((12))~~ (15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 18-11-005, filed 5/2/18, effective 1/1/19)

**WAC 314-55-105 Marijuana product packaging and labeling ((requirements)). ((1) ~~Packaging requirements.~~**

~~(a) **General packaging requirements applying to all marijuana products.** Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.~~

~~(b) **Additional product-specific packaging requirements.** The following product-specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:~~

~~(i) **Marijuana-infused products general requirements.**~~

~~(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:~~

~~(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or~~

~~(II) Plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b) (i) (A) (III) and (B) of this subsection.~~

~~(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.~~

~~(B) **Marijuana-infused solid edible products.**~~

~~(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in child resistant packaging as provided in (b) (i) of this subsection and placed in the outer package except as provided below.~~

~~(II) Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.~~

~~(C) **Marijuana-infused liquid edible products.** Packages containing more than one serving of marijuana-infused liquid edible product must:~~

~~(I) Have a resealing cap or closure; and~~

~~(II) Include a measuring device such as a measuring cap or dropper with the package containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device.~~

~~(ii) **Marijuana concentrates.** Marijuana concentrates must be packaged:~~

~~(A) In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or~~

~~(B) Plastic four mil or greater in thickness, heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.~~

~~(2) **Labeling requirements.**~~

~~(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:~~

~~(i) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.~~

~~(ii) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.~~

~~(iii) All information, warning statements, and language required in this section must not be covered or obscured in any way.~~

~~(iv) Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:~~

~~(A) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;~~

~~(B) The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;~~

~~(C) If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;~~

~~(D) Net weight in ounces and grams or volume as applicable;~~

~~(E) THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A and CBD concentration (cannabidiol) listed as total CBD and activated CBD-A;~~

~~(v) Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:~~

~~(A) Is false or misleading;~~

~~(B) Promotes over consumption;~~

~~(C) Represents the use of marijuana has curative or therapeutic effects;~~

~~(D) Depicts a child or other person under legal age consuming marijuana, or includes:~~

~~(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or~~

~~(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.~~

~~(b) **Standard warnings required on all labels.** The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a~~

size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way.

~~(i) "Warning — May be habit forming";~~

~~(ii) "Unlawful outside Washington State";~~

~~(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and~~

~~(iv) The marijuana universal symbol as provided in WAC 314-55-106.~~

~~(c) **Additional product-specific labeling requirements.** In addition to the labeling requirements in subsection (3) (a) and (b) of this section, the following product-specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:~~

~~(i) **Usable marijuana, including marijuana mix.** The statement "Smoking is hazardous to your health."~~

~~(ii) **Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.**~~

~~(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and~~

~~(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.~~

~~(iii) **Marijuana-infused products** (except for marijuana-infused products for topical application as provided in (c) (iv) of this subsection).~~

~~(A) Serving size and the number of servings contained within the unit;~~

~~(B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;~~

~~(C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and~~

~~(D) The following sentence: "CAUTION: Intoxicating effects may be delayed by 2+ hours."~~

~~(iv) **Marijuana-infused products for topical application.**~~

~~(A) The statement "DO NOT EAT" in bold, capital letters; and~~

~~(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.~~

~~(d) **Permitted optional information that may be included on labels.**~~

~~(i)) (1) The following definitions apply to this section, unless the context clearly indicates otherwise:~~

~~(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that meets any of the following criteria:~~

~~(i) The use of comically exaggerated features;~~

~~(ii) The attribution of human characteristics to animals, plants, or other objects;~~

~~(iii) The attribution of animal, plant, or other object characteristics to humans;~~

~~(iv) The attribution of unnatural or extra-human abilities.~~

~~(b) "Child resistant packaging" means packaging that is used to reduce the risk of poisoning in persons under the age of twenty-one through the ingestion of potentially hazardous items including, but~~

not limited to, marijuana concentrates, useable marijuana, and marijuana-infused products.

(c) "Especially appealing to persons under the age of twenty-one" means a product or label that includes, but is not limited to:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like font;

(iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of twenty-one;

(iv) Symbols or celebrities that are commonly used to market products to persons under the age of twenty-one;

(v) Images of persons under the age of twenty-one; or

(vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.

(d) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent, consistent with RCW 69.50.101(z).

(e) "Marijuana edible" means a marijuana-infused product as defined in RCW 69.50.101(ff).

(f) "Marijuana topical" or "topical" means any product containing parts of the cannabis plant that is intended for application to the body's surface including, but not limited to, lotions, ointments, salves, gels, or cream that are not intended for ingestion, inhalation, or insertion by humans or animals.

(g) "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product.

(h) "Useable marijuana" means dried marijuana flowers consistent with RCW 69.50.101(wv). The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(2) **Marijuana concentrates.** The following standards apply to all packaging and labeling of marijuana concentrates:

(a) Containers or packaging containing marijuana concentrates must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana concentrate.

(b) Marijuana concentrates must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana concentrates.

(c) Marijuana concentrates must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Marijuana concentrate labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Marijuana concentrate labels must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the marijuana producer and processor;

(ii) The lot numbers of the product;  
(iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;  
(iv) The serving or draw size and the number of servings contained with the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;  
(v) The net weight in ounces and grams or volume as applicable;  
(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;  
(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;  
(viii) If solvents were used to create concentrate or extract, a statement that discloses the type of extraction method, including in solvents or gases used to create the concentrate; and  
(ix) A complete list of any other chemicals, compounds, additives, thickening agents, terpenes, or other substances used to produce or added to the concentrate or extract at any point during production. A copy of the complete list of chemicals, compounds, additives, thickening agents, terpenes, or other substances must be kept and maintained at the facility in which the marijuana concentrates are processed.  
(f) Marijuana concentrate labels may not contain any statement, depiction, or illustration that:  
(i) Is false or misleading;  
(ii) Promotes over consumption;  
(iii) Represents that the use of marijuana has curative or therapeutic effects;  
(iv) Depicts a person under the age of twenty-one consuming marijuana; or  
(v) Is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.  
(g) The following statements must be included on all marijuana concentrate labels:  
(i) "Warning - May be habit forming;"  
(ii) "Unlawful outside Washington State;"  
(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana;"  
(iv) The marijuana universal symbol as provided in WAC 314-55-106; and  
(v) "Smoking is hazardous to your health."  
(h) Product labeling for marijuana concentrates identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:  
(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or  
(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.  
(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.  
(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must



state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(3) **Marijuana edibles in solid form.** The following standards apply to all packaging and labeling of marijuana edibles in solid form:

(a) Containers or packaging containing marijuana edibles in solid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in solid form.

(b) Marijuana edibles in solid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in solid form.

(c) Marijuana edibles in solid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for marijuana edibles in solid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) A list of ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(ix) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that were added to the extract.

(f) Labels for marijuana edibles in solid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;  
(ii) Promotes over consumption;  
(iii) Represents that the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all marijuana edibles in solid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"  
(ii) "Unlawful outside Washington State;"  
(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for marijuana edibles in solid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(4) **Marijuana edibles in liquid form.** The following standards apply to all packaging and labeling of marijuana edibles in liquid form:

(a) Containers or packaging containing marijuana edibles in liquid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in liquid form.

(b) Marijuana edibles in liquid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in liquid form.

(iii) Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form may include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.

(c) Marijuana edibles in liquid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for marijuana edibles in liquid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Protections Act of 2004;

(ix) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract.

(f) Labels for marijuana edibles in liquid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all marijuana edibles in liquid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for marijuana edibles in liquid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(5) **Useable marijuana.** The following standards apply to all packaging and labeling of useable marijuana:

(a) Containers or packaging containing useable marijuana must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the useable marijuana.

(b) Useable marijuana must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Useable marijuana must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for useable marijuana must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving or draw size contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use.

(e) Labels for useable marijuana may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all useable marijuana. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for useable marijuana identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(6) **Marijuana mix.** Marijuana mix is defined in WAC 314-55-010(22) as an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm. The following standards apply to all packaging and labeling of marijuana mix:

(a) Containers or packaging containing marijuana mix must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana mix.

(b) Marijuana mix must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana mix must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana mix must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must

prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract;

(ix) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(e) Labels for marijuana mix form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana mix. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for marijuana mix identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(7) **Marijuana topicals.** The following standards apply to all packaging and labeling of marijuana topicals:

(a) Containers or packaging containing a marijuana topical must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana topical.

(b) Marijuana topicals must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana topicals must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The label must prominently display the net weight in ounces and grams or volume as applicable, and may not exceed serving and transaction limits as described in WAC 314-55-095;

(v) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use; and

(vii) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(e) Labels for marijuana topicals may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana topicals. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Unlawful outside Washington State;"

(ii) The marijuana universal symbol as provided in WAC 314-55-106; and

(iii) "DO NOT EAT" in bold, capital letters.

(g) Product labeling for marijuana topicals identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the

marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(8) **Optional label information.** Optional label information includes the following: Harvest date, "best by" date, and manufactured dates ((are optional information that may be placed on labels.

(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:

(A) The producer or processor has test results from a certified third-party lab to support the claim; and

(B) The lab results are made available to the consumer upon request)).

((+3)) (9) **Accompanying materials.** ((The following)) Accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products ((at retail)).

A producer or processor ((may)) must provide ((this)) the following product-specific information, for as long as the product is for sale, through an internet link, web address, or QR code on the product label ((so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.)) as follows:

(a) A statement ((that discloses)) disclosing all pesticides applied to the marijuana plants and growing medium during production of the ((usable)) useable marijuana or the base marijuana used to create the concentrate or the extract added to infused products;

(b) A list disclosing all of the chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production.

((+4)) (10) **Upon request materials.** ((Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.

(5) For the purposes of this section, the following definitions apply:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like or action font;



~~(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;~~

~~(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;~~

~~(v) Symbols or celebrities that are commonly used to market products to minors;~~

~~(vi) Images of minors; or~~

~~(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.))~~ A consumer may request the name of the certified lab and quality assurance test results for any marijuana or marijuana product. A retailer must provide the information upon request.