



**Washington State
Liquor and Cannabis Board**

December 18, 2019

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

From: Janette Benham, Policy and Rules Coordinator

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

Subject: Approval to file proposed rules (CR 102) regarding 2019 Liquor Legislation to implement Substitute House Bill 1034 (soju endorsement), House Bill 1672 (recapping sake), and Senate Bill 5909 (manufacturers packaging)

The Rules Coordinator requests approval to file proposed rules (CR 102) for the rule making described above. The proposed rules revisions implement 2019 legislation, make minor technical and clarifying changes, and remove unnecessary rules language. An issue paper outlining the specific changes is attached.

Process

If approved for filing, the tentative timeline for the rule making process is:

December 18, 2019	<ul style="list-style-type: none"> • CR 102 and proposed rules filed with the Office of the Code Reviser • WSLCB webpage updated and notice sent to the rules distribution list
January 2, 2020	Notice published by the Office of the Code Reviser in WSR # 20-01
January 22, 2020	Public Hearing held and end of written comment period
February 5, 2020	<ul style="list-style-type: none"> • Board asked to adopt rules if no additional changes are made • Notice and Concise Explanatory Statement sent to those who commented both at the public hearing and in writing • CR 103 and adopted rules filed with the Office of the Code Reviser • WSLCB webpage updated and notice sent to the rules distribution list
March 7, 2020	Rules effective – Normally 31 days after filing the CR 103

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: Issue Paper



Issue Paper

2019 Legislation Implementation:

Substitute House Bill 1034 – Soju Endorsement

House Bill 1672 – Recapping Sake

Senate Bill 5909 – Manufacturers Packaging

Date: December 18, 2019
Presented by: Janette Benham, Policy and Rules Coordinator

Description of the Issue and Background

The purpose of this Issue Paper is to request approval from the board to file the CR 102 with proposed revisions to WAC 314-02-015, 314-02-045, and 314-30-010.

The proposed revisions implement legislation that passed during the 2019 legislative session.

Substitute House Bill (SHB) 1034 created an endorsement that allows spirits, beer, and wine restaurants to serve bottles of soju for on-premises consumption to tables of two or more patrons. The new law also allows restaurants to recap soju bottles and for patrons to remove recapped soju bottles from the premises. WAC 314-02-015 was revised to allow service of soju by the bottle.

- SHB 1034 also required the board to develop a responsible sale and service of soju training curriculum for individuals serving soju. The curriculum was developed by our licensing division and is available on the WSLCB website. The training curriculum and information related to the soju endorsement are also on the WSLCB website in the Korean language.

House Bill 1672 allows spirits, beer, and wine restaurants and beer and wine restaurants to recap sake purchased for consumption with a meal. The new law also allows patrons to remove recapped sake from the premises. WAC 314-02-015 and WAC 314-02-045 were revised to allow recapping and removal of sake.

Senate Bill 5909 allows manufacturers licensed under RCW 66.24.150 to contract with distilleries, breweries, and wineries to provide packaging services. WAC 314-30-010 was revised to include packaging and add a reference to the packaging provisions outlined in statute.

Additional technical and clarifying changes were made to all revised sections of WAC, and unnecessary language in WAC 314-30-010 was removed.

Why is rule making necessary?

Rules needed to be revised to implement the above-referenced legislation.

Amended Sections:

WAC 314-02-015 What is a spirits, beer, and wine restaurant license?

WAC 314-02-045 What is a beer and/or wine restaurant license?

WAC 314-30-010 Sales and contracting by manufacturers.

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

(a) Serve spirits by the individual glass or soju by the bottle for on-premises consumption(~~(+)~~).

(i) Soju served by the bottle may only be served in restaurants holding a soju endorsement and must be served under the provisions outlined in RCW 66.24.400(5);

(ii) Soju endorsement holders must ensure servers providing soju to patrons are trained every five years in the soju curriculum developed by the board.

(b) Serve beer by the bottle or can or by tap for on-premises consumption;

(c) Serve wine and sake for on-premises consumption;

(d) Allow patrons to remove recorked or recapped wine, sake, or soju from the licensed premises;

(e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and

(f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer or cider as defined in RCW 66.24.210(6) (~~(to a purchaser)~~) in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" means a business where the board can clearly determine that the primary purpose of the business is the service of complete meals. "Complete meals" is defined in WAC 314-02-035.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-02-045 What is a beer and/or wine restaurant license?

(1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine <u>or sake</u> for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked <u>or recapped</u> wine <u>or sake</u> from the premises).	\$200
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120

Privilege	Annual fee
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in (c) of this subsection.
(e) Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the restaurant at the time of purchase. The licensee must comply with federal regulations.	In conjunction with off-premises privilege outlined in (c) of this subsection.
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in (c) of this subsection.

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010 ~~((+30))~~.

(a) Minimum food service is required, as defined in WAC 314-02-010.

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, three days a week.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license ~~((+see))~~ as described in WAC 314-02-070 ~~((regarding the tavern license))~~.

WAC 314-30-010 Sales and contracting by manufacturers. (1) Manufacturers licensed ~~((in accordance with))~~ under RCW 66.24.150 may sell within the state:

(a) Spirituous liquor products only to spirits distributor~~((s))~~ licensees;

(b) Wine products only to wine distributor licensees;

(c) Beer products only to beer distributor licensees; or

(d) To permit holders as authorized by RCW 66.20.010 (7) through (10).

(2) Manufacturers licensed under RCW 66.24.150 may contract with licensed liquor distillers, craft distillers, domestic brewers, micro-breweries, wineries, and domestic wineries to provide packaging services. Contracted packaging services must be done under the provisions outlined in RCW 66.24.150 (2) and (3).

(3) The first spirits distributor, wine distributor, or beer distributor to receive spirits, wine, or ~~((malt beverages))~~ beer from a ~~((distiller,))~~ distillery, winery, brewery, or manufacturer ~~((, rectifier, or bottler shall be liable for))~~ must pay the fees and/or taxes due.

~~((3) Manufacturers selling spirits, wine, or malt beverage products will be considered a supplier and will be required to meet the requirements of WAC 314-23-005, 314-24-190, and 314-20-100 respectively.~~

~~(4) Manufacturers selling spirits to a licensed spirits distributor, wine to a licensed wine distributor, or beer to a licensed beer distributor shall file monthly reports with the board on forms prescribed by the board showing the quantity of liquor shipped to each above referenced licensee during the preceding month. Such report shall be submitted on or before the twentieth day of the month following the month of sale or delivery.~~

~~(5) Failure to make such report at the time prescribed will be sufficient cause for the board to forthwith suspend or cancel the license privilege of the manufacturer. When the twentieth day of any month falls on a Sunday, or a legal holiday, the report may be filed not later than the close of business the next business day.)~~



Washington State
Liquor and Cannabis Board

December 18, 2019

Office of the Code Reviser:

Consistent with RCW 34.05.335 and WAC 1-21-060, the Liquor and Cannabis Board is withdrawing its preproposal statement of inquiry (CR-101), filed on December 13, 2017 as WSR 18-01-058, concerning cannabis production and canopy rules in chapter 314-55 WAC.

A handwritten signature in black ink, appearing to read "Jane Rushford".

Jane Rushford,
Chair



Washington State
Liquor and Cannabis Board

Date: December 18, 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 to file a pre-proposal statement of inquiry (CR 101) to consider revisions to WAC 314-55-075 regarding marijuana producer licenses.**

This preproposal statement of inquiry (CR101) will consider revisions to WAC 314-55-075 regarding marijuana producer licenses that would incrementally increase the plant canopy square footage currently allowed for licensed Tier 1 producers.

Revisions considered may also include clarifying and technical updates to existing rule within the scope of this topic.

Process

The Policy and Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR101 Memorandum is attached to this rule making was presented at the Board meeting on December 18, 2019, and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process is outlined below:

December 18, 2019	CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Informal comment period begins.
January 2, 2020	Notice published in the Washington State Register under WSR #2020
February 2, 2020	End of informal comment period.
June 24, 2020	Board is asked to approve filing proposed rules (CR 102).

	CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Formal comment period begins.
July 15, 2020	Notice published in the Washington State Register.
August 5, 2020	Public hearing held and formal comment period ends.
September 2, 2020	Board is asked to adopt rules if no substantive changes are made (CR103). Concise Explanatory Statement provided to individuals offering written and oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list.
October 3, 2020	Rules are effective 31 days after filing (unless otherwise specified).

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

Attachment: CR101 Memorandum



CR-101 Memorandum Incremental Expansion of Tier 1 Canopy

Date: December 18, 2019
Presented by: Kathy Hoffman, Policy and Rules Coordinator

Description of the Issue

RCW 69.50.345(3) directed the Washington State Liquor and Cannabis Board (Board) to adopt rules establishing the “maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law.” In response to this mandate, LCB adopted rules under WAC 314-55-075(6) establishing limitations for three tiers of licensed marijuana producers. Current rule provides that Tier 1 licensees may produce up to 2,000 square feet, Tier 2 licensees may produce from 2,000 up to 10,000 square feet, and Tier 3 licensees may produce from 10,000 up to 30,000 square feet.

Since these tier limits have been established, Board staff has received requests from segments of the industry, including medical marijuana patients, to increase the availability of Department of Health (DOH) compliant product in licensed retail stores. The Board has also learned that smaller producers are concerned about business viability based on canopy space restrictions. Recognizing this, the Board would like to explore the ways that it can support Tier 1 producers to support business viability in a highly competitive market.

Understanding that patient access to safe marijuana products priorities in Second Substitute Senate Bill 5052 passed during the 64th legislative session, increased access to medical marijuana is a goal identified in the Board’s 2019 – 2024 Strategic Plan. Addressing barriers to small businesses is also a goal described in the Strategic Plan. Considering rule amendments that support those initiatives will further reinforce the Board’s commitment to those goals.

Additionally, it is possible that the ability for licensed Tier 1 producers to incrementally increase canopy may offset potential business expenses associated with the proposal that would amend and create new sections of rule regarding quality control testing. Increasing growing capacity for these producers may provide an opportunity to generate revenue that could support quality control compliance.

Reasons why rules may be needed:

As discussed above, canopy size and any adjustments must established in rule. Rulemaking is needed to consider revisions or adjustments to those production canopy limitations.



Revisions may also include clarifying and technical updates to existing rule.

Process

The rule making process begins by announcing LCB's intent to consider changes to existing rules, adding new rule sections, or both by filing a CR-101 form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing proposed rule changes. At the CR-101 stage of the rulemaking process, no proposed language is offered. Any interested party may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity pertaining to this preproposal inquiry. The notice will identify the public comment period and where comments can be sent.

PREPROPOSAL STATEMENT OF INQUIRY



CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Subject of possible rule making: WAC 314-55-075 – Marijuana producer license – Privileges, requirements, and fees. The Washington State Liquor and Cannabis Board (Board) is considering revisions and new rule sections that would incrementally expand the plant canopy square footage allowed for licensed Tier 1 producers.

Statutes authorizing the agency to adopt rules on this subject: RCW 69.50.342; RCW 69.50.345.

Reasons why rules on this subject may be needed and what they might accomplish: The Board has received requests from medical marijuana patients and segments of the industry to increase the availability of Department of Health (DOH) compliant product in licensed retail stores. The Board has also learned that smaller producers are concerned about business sustainability based on canopy space restrictions. Recognizing this, the Board would like to explore the ways that it can support Tier 1 producer business viability. Revisions considered may also include clarifying and technical updates to existing rule within the scope of this topic.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The Board will coordinate with other Washington State agencies as necessary, such as the Washington State Department of Agriculture, Washington State Department of Health, Department of Ecology, and Department of Revenue, and others as necessary.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rulemaking.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Katherine Hoffman
Address: PO Box 43080, Olympia, WA 98504
Phone: 360-664-1622
Fax: 360-664-9689
TTY:
Email: Rules@lcb.wa.gov
Web site: lcb.wa.gov
Other:

(If necessary)

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Additional comments:

Date: December 18, 2019

Name: Jane Rushford

Title: Chair

Signature:



Washington State
Liquor and Cannabis Board

Date: December 18, 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 approval of final rules (CR 103) 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 Policy and Rules Coordinator requests that the Board adopt the final rules, and approve the CR 103 that will establish new and amended rules 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 Board has been briefed on the issue, the rule development background, and public comment received for this rule making. A 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 rules with the Office of the Code Reviser. The effective date will be 13 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 Substitute Senate Bill (ESSB) 5298 (Chapter 393, Laws of 2019) involving marijuana product labeling that become effective January 1, 2020.

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

Attachment: CR103 Memorandum



CR103 Memorandum

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: December 18, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

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 have been 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.

These final rules reflect 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 final rule package.

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 final rule package reflects and incorporates those statutorily required revisions.

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 were 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, culminating 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 or 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 final 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 must 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. 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.

Variance between proposed rule (CR102) and final rule

Non-substantive, clarifying revisions were made to the final rules consistent with RCW 34.05.340. The following factors were considered in determining whether the final and subsequently adopted rules were substantially different from the proposed rules, consistent with RCW 34.05.340(2):

- (a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;
- (b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and
- (c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

The WSLCB determined, after an analysis of rule variance under the criteria above, that the following changes made to the final rule language were non-substantive:

Section	Proposed Language	Final Language
WAC 314-55-105(1)(g) – Definitions	(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	(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, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).
WAC 314-55-105(2) – Marijuana concentrates.	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). This must be the same number that appears on the transport manifest; (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;
	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a)</u> ;
WAC 314-55-105(3) – Marijuana edibles in solid form.	Formerly WAC 314-55-105((B)(II)(4)) 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.	<u>(c) Marijuana infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board 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.</u>
	(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (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;	(de) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). This must be the same number that appears on the transport manifest; (iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

	(f) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(fe) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a)</u> ;
WAC 314-55-105(4) – Marijuana edibles in liquid form.	(b)(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.	(b)(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.
	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (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;	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). This <u>must be the same number that appears on the transport manifest</u> ; (iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;
	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(5) – Usable marijuana.	(d) Labels for usable marijuana must clearly and visibly provide all of the following information: (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). This <u>must be the same number that appears on the transport manifest</u> ; (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;
	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(6) – Marijuana mix.	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (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;	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). This <u>must be the same number that appears on the transport manifest</u> ;

	iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;
	(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);;</u>
WAC 314-55-105(7) – Marijuana topicals.	(d) Labels for marijuana topicals must clearly and visibly provide all of the following information: (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;	(d) Labels for marijuana topicals must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest;</u> iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;
	(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);</u>

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:

- Provision of a comprehensive guidance document to help explain the marijuana packaging and labeling rules. The WSLCB anticipates that the first version of this guidance document will be prepared for release on or about December 18, 2019, and will include checklists that align with the requirements of the adopted rules. The WSLCB will revise this guidance as needed to support licensee compliance and success. Although the guide is not a replacement for the rules, and the WSLCB encourages licensees and other interested parties to thoroughly review the rules, review the guidance, and contact the WSLCB with any additional questions and concerns.

- Updated application forms that align with the adopted rules to assure ease of use and increase licensee compliance success.
- 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, including webinars, in-person training and potentially YouTube videos if appropriate and warranted.

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 contacts occurring after the effective date of these adopted rules;
- Monitoring the number of applications that result in revisions;
- Monitoring and cataloguing questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- 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

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

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new sections amendments to existing rules 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 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.

Background and reasons for adopting this rule

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 have been 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.



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These adopted rules reflect 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 final rule package.

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 final rule package reflects and incorporates those statutorily required revisions.

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.



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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 or 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.



Rulemaking history for this adopted rule:

CR-101 – filed June 12, 2019 as WSR #19-12-029;
CR 102 – filed October 30, 2019 as WSR #19-22-030
Public hearing held December 11, 2019

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 regarding whether the comment was reflected in the adopted rule.

1. **Email message, received November 5, 2019:**

“I wanted to follow up after our last conversation and flag something in the PAL rule set to try to get some visibility on if it slipped through the cracks or if there was some intention around include it.

In WAC 314-55-105 section 3 (marijuana edibles in solid form), sub section e, item (ii) it calls for "the lot numbers of the product" to be included on "labels for marijuana edibles in solid form" and that it "must clearly and visibly provide all of the following information."

Lots numbers are not currently required on any packaging and labeling, and I am unclear as to the intention around bringing it back onto packaging and labeling after it was removed a few years back from the original PAL rules. The lot numbers serve no purpose on final packaging and a single product could include many lots of flower to make the final finished good.

Traceability (in whatever form it currently takes or will take in the future) would capture input lot information should a recall be needed. But no end consumer of the products would have value for lot information and no retailer would have need for it either. I would like to point out that this requirement is currently in all PAL requirements for labels on each type of finished marijuana product.

This was something I flagged in written and in person testimony on the listen and learn, and wanted to make sure I flagged again and understood the intent behind it remaining in the proposed rules. Any guidance or feedback on the matter is greatly appreciated and please let me know if I can be of any further assistance. Thank you again for all your hard work, please know that we see everything you have done to make this a more transparent and efficient process!”



WSLCB response: The WSLCB appreciates this comment and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? This comment was reflected in the final rule.

2. **Letter, dated November 15, 2018, attached to email message received November 15, 2019:**

The Cannabis Alliance is writing to highlight a couple of small changes we would like the agency to consider as it pertains to the Packaging & Labeling CR102. We believe our recommendations are not substantive changes but rather a bit of housekeeping on some potentially unintended outcomes. These points were highlighted to us by our membership and were also briefly mentioned in the Listen & Learn session that took place on October 11.

WAC 314-55-105 (2)(e)(iv), (5)(d)(iv) and (6)(d)(iv) re: labeling serving size

The proposed language adds serving size requirements for marijuana concentrates, usable marijuana, and marijuana mix. This requirement was previously **only** required on “marijuana-infused products (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).”¹

The proposed language also adds that labels should contain the “draw size” contained within the unit for marijuana concentrates and usable marijuana.

We are concerned about this addition. We understand it is possible to calculate serving size for edibles as it is definable and quantifiable, much like you would see on other food products. However, it is simply not possible to quantify serving size for concentrates or flower and “draw size” will vary tremendously from person to person. Therefore, serving size language for these products does not translate as there is no way to determine a number that would represent a typical “serving.”

Initially we thought this might be a formatting error as the section has been significantly restructured. However, with the addition of the draw size language we understand this addition to be intentional. Either way, the difficulty remains in determining serving size for marijuana concentrates, usable marijuana, and marijuana mix and draw size for marijuana concentrates and usable marijuana.

¹ <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-105> (2)(c)(iii)(A)



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WAC 314-55-105 (2)(e)(ii), (3)(e)(ii), (4)(e)(ii), (5)(d)(ii), (6)(d)(ii) and (7)(d)(ii) re: lot number

The requirement to include the lot number on the package is a new addition that creates complexity on the package, potentially very long labels for those that mix several lots and does not provide any substantial new information that is not already captured in the numbers already required. We ask that you remove this addition for the reasons outlined.

We sincerely hope that these changes can be easily addressed and are happy to answer any questions about why we feel these additions create unnecessary challenges.

With these minor adjustments, we support the majority of the current language as written in the draft rule and hope the rule making can move forward along the original timeline.

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? The comments were reflected in part the final rule

3. Email message, received November 20, 2019:

“If I could I’d also like to ask you about the accompanying materials portion of the WAC, specifically as it relates to the pesticide disclosure.



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(3) **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 provide this information 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.

A statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the usable marijuana or the base marijuana used to create the concentrate or the extract added to infused products.

We have partnerships with two farms and source all of our cannabis that is used in our products only from them. On our website we have both disclosures, one that is from a farm that is pesticide free and the other from a farm that uses two organic and natural pesticides. We feel that this is an appropriate manner in which to disclose our pesticides used, and has been acceptable to the LCB all year. We recently submitted some new packaging for review and were told that this manner of disclosing does not meet the requirements and that instead we need to list each product number on the website, and provide the pesticide disclosure for each specific product. Our packaging submissions are on hold until this is remedied.

Our preferred method of disclosing pesticides is to provide that information on our website. I know firsthand that when providing the pesticide disclosures at delivery often times it does not make it into the budtenders hand, or is often times not even made accessible to the budtender and thusly the consumer. Providing this on our website ensures that anyone who is curious about our products can access pesticide testing information. The problem, however, is if we were to list the disclosure individually for each lot (or even each UBI) this would be INCREDIBLY time consuming and cumbersome to every processor and take up quite a bit of space on the website, causing the consumer to scroll through hundreds of product numbers for their product – only to find the same two disclosures that we already provide on the FAQ section of our website. I have reached out to other processors who concur that they also do not disclose pesticides per lot/UBI/product but rather provides a general disclosure such as we do.

We feel that this method, that we have been utilizing since the pesticide disclosure requirement came to be, is wholly adequate and does a sufficient job to the consumer displaying what, if any, pesticides have been used on the cannabis utilized in our products. It is similar to how on the back of a bag of plain M&Ms you'll read 'this product may have been produced in a facility with nuts', anyone sensitive to nuts is made aware they are at risk if they choose to consume.

I have reread the draft rules and see that even more language has been added on this topic,

(93) **Accompanying materials.** ~~The following a-~~Accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products.



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(a) ~~at retail.~~ A producer or processor ~~may~~-must provide the following ~~this 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:

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

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

We ask that you remove ‘product specific’ from the language. If a processor is using the same material for all of their products, with the same pesticides, we believe providing a general disclosure is adequate. If we were to deviate from our trusted partner, we would be sure to update our disclosure for as long as that product is in market. We do not believe it is worth the time and effort that would be required of us processors to provide the disclosure for each product specifically and do not see any added benefit to the consumer. If our pesticide disclosure is always the same – why must we go through the very repetitive and redundant task of uploading it daily for each batch – of which we create three to four batches a day of product. In a year we would have uploaded the same pesticide disclosure 1,004 times, to put this into perspective for you.

Proposed language:

(a) ~~at retail.~~ A producer or processor ~~may~~-must provide the following ~~this 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:”

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The language proposed in the CR102 regarding accompanying materials is the same language that was offered at the October 11, 2019 Listen and Learn session. No comments were offered at that session with respect to these revisions.

Specifically, the WSLCB added the language concerning disclosure of all chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production to align with the same language of WAC 314-55-105(2) regarding marijuana concentrates. This language was developed and added as a result of Governor Inslee’s Executive Order 19-03 Addressing the Vapor Product Epidemic, and as noted in the paragraph above, offered for comment as part of the rule draft discussed at the October 11, 2019 Listen and Learn session. The WSLCB finds that this language aligns with not only with Executive Order 19-03, but with the overall agency mandate to protect public health and safety.

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



4. Email message, received November 25, 2019:

“Please find below my comments on your Marijuana Packaging and Labeling Rules.

As a parent of two small kids and a prevention professional I find that the proposed rules need to do much more to protect kids. Protecting kids and public health should be the LCB's first priority above profits for the marijuana industry.

The LCB should clarify what is appealing to kids to be more broad and specific. The LCB currently allows "fruit chews" which are no different than gummy bears - both appeal to kids. The LCB has approved 3,000 marijuana infused products, most of which are appealing to kids including such things as candy, chocolate, cookies, fruit chews, snacks, sodas, and many items that resemble commonly sold food products. These products should not be allowed.

Not only should these products be prohibited to protect kids but as an adult I don't want to attend a party and accidentally eat an infused product that looks just like a common food product sitting on the snack or drink table.

Any liquid infused product should preferably be sold in a single serve container (ie. no more than 10mg THC per container). If for some reason multiple serving liquid containers are needed (which I think are very unsafe because who only drinks 1/8th of a bottle of soda?) then a measuring cap that is the size of one serving should be included and a child proof resealable cap must be required.

Liquid products that resemble sodas, juice, or flavored sparkling water, that are fruit flavored or have colors are all very appealing to kids - should not be allowed at all.

All edible products (in 10mg THC or less doses) should be individually wrapped in 4mm childproof wrappers. These wrappers ideally should be opaque/non-see through so they don't show off appealing products inside and/or have the "Not for Kids" symbol printed on each individual wrapper.

These individually wrapped doses could be combined (maximum of 5 or 10 doses to not exceed 50-100 mg of THC per package) and sold in a common plain generic/non see through packaging that would be in an un-appealing color to kids and only contain a label with required information such as name of product, THC/CBD %, ingredients, lab test results and other required items. This would eliminate any need to review/approval MJ packaging other than the name of an item (ie. Girl Scout Cookies is appealing to youth so products should not have that name). This would save the retail and producer industry money as they would not need to produce special graphics/packaging for each of their products. So when you go into a store and leave a store and go home all you have are plain brown or some other color packages with a label on it. Inside would be individually wrapped by dose edibles each encased in 4mm childproof plastic or similar childproofing material. This also eliminates



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the many youth appealing MJ product wrappers that find their way into our neighborhoods as litter.

Inside of the store, producers could have advertising on the shelves next to their generic packaging that could display whatever graphic/appealing images they want (as long as not promoting misleading claims) as long as those ads stay in the store and are not visible from the outside. Since all products are individually wrapped in childproof packaging then this would eliminate the need for the outer generic packages to be resealable and these outer packages would NOT need to be childproof - also saving producers money on the outer packaging costs.

Rather than trying to figure out what product colors appeal to kids - instead figure out what color is the least appealing to kids and require that all MJ infused products (edible and drinkable) be manufactured in that color. This will assist parents, school staff and first responders to identify these products more easily. Likewise you could allow only a few unappealing sizes/shapes for edible products.

Thank you for considering these recommendations to protect our kids.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. Although these comments have been presented at different phases of the rule development process for this and other projects, no empirical, peer reviewed studies or verifiable, substantive evidence or data was provided to support the opinions and assertions offered.

Additionally, rule language revisions were not offered for the WSLCB, the licensed community, the prevention community or the public to consider. For example, the adopted rule no longer uses the phrase “especially appealing to children,” as noted in the above comment. That phrased was changed early in the rule development process, provided to all stakeholders, and discussed at the various focus groups, as well as the Listen and Learn session on October 11, 2019. The adopted language is the same as was discussed in those forums:

- (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.



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Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

The comments offered are beyond the identified scope and focus of this project.

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

5. Email message, received December 4, 2019:

"Hi there,

I wanted to share a comment for WAC 314-55-105 and WAC 314-55-077(8) and (9) regarding marijuana packaging and labeling. Community members from our prevention coalition in Southwest Washington (Clark County) developed the following statement:

From a prevention stand point, removing the current requirement that marijuana-infused liquid edible products must include a measuring device, such as a measuring cup or dropper, has the ability to have harmful consequences on adults and youth. It is our suggestion that if you were to remove this requirement that the liquid container must then contain score marks and at a minimum have a resealable cap. Although this may still incur additional costs to producers, the cost on public health could be much greater.

Prevention professionals from the SW Washington region have discussed the difficulty in defining what is "especially appealing to children" and understand that this definition can be subjective and ever-changing. In order to address this problem, we wanted to present the idea of creating a review board that would be in charge of approving the different advertising and promotion ideas. We believe this would be the most effective way to ensure products are not being marketed towards our youth. As an example, currently "VSCO girls" are trending among our youth. If a product came out that was titled VSCO girl or contained symbols that related to the VSCO lifestyle, it would be appealing to our young people. This is not something that can be encompassed in a single definition and needs the individual attention of a review board. In our attempts to still define "especially appealing to



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children,” we would suggest: marketing or promotion that contained animals, caricatures, memes, sight words, mimicking candy/alcohol/medicine, or other youth popular trends.

Thank you for listening. Peace to you.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that requiring a resealable cap on marijuana products offered for sale and consumption to persons over twenty-one years of age results in increased costs on public health. Additionally, although the WSLCB appreciates the suggestion, the WSLCB piloted a review board model from early to mid-2019, and found that such a process did not add value or increase the safety of products, but became overly cumbersome, unnecessarily delayed the review process, and did not influence packaging approval or denial outcomes.

However, the intent of the section regarding the measuring devices for marijuana-infused liquid edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(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 ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in part, in the final rule.

6. Email message, received December 5, 2019:

“We have concerns with the language concerning serving size for concentrates and flower in the proposed packaging and labeling rules. We are concerned with how we would accurately and safely draw the line for how to prescribe our consumers to ingest our vapor and flower products. It is hard to quantify the volume of a “puff”, “draw”, or “hit”, due to a number of variables unique to each consumer such as; lung capacity, the speed of which they draw smoke/vapor, and the mode of consumption. Additionally one customers tolerance of cannabinoids compared to another can greatly vary, what may be a “normal” draw size could be too overpowering for an infrequent cannabis consumer. The mode of heating up cannabis for inhalation will also change how a set serving size will affect them, for example, combusting flower vs. vaporizing flower will result in very different experiences for the



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consumer due to the efficiency of cannabinoid absorption in vaporizing over smoking. One step further down this road of digression, if a consumer uses a water pipe vs a cannabis cigarette they can expose their lungs to different amounts/levels of cannabinoids with the same base product. This is in part because of the temperature of the smoke, but also in part of the differences between the delivery devices and ability to inhale more easily through different mediums.

I believe the intention of this language is to help consumers regulate their cannabis consumption. In regards to cannabis infused edible products a means to regulate cannabis consumption by volume or an easy to measure metric is very rational, because of the delayed effects, and constancy in dosage. Although cannabis extracts for inhalation and useable flower, the consumer can easily “feel out” their own experience while they are enjoying their product of choice, as the product will affect users instantaneously based upon their own unique endocannabinoid system. Due to the number of ways to combust cannabis, the variance of the measure of a “puff”, and the variance of consumer tolerance, It makes it impossible for a processor to not put misleading or inaccurate information on our packaging (in our effort to be compliant with this proposed language). Processors will inherently be put into a position where they need to make an arbitrary decision placing language like “1-3 draws per serving and “x” servings per unit” on their packaging to be compliant with this regulation, while simultaneously becoming non-compliant with placing false or misleading information on our packaging. Until there is a scientifically sound and standardized way to measure combusted cannabis inhalation and its relationship to the specific end user, this industry is not ready for this liability.

In short I am asking the Board to reconsider and remove this language of “*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*” to products other than cannabis infused edibles. This language doesn’t address consumer self-regulation of their safe consumption, it adds misleading language/guidance to our packaging, and further places a unmeasurable nonsensical dosage upon the consumer varying widely from consumer to consumer based on personal preference.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.



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Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

7. Email message, received December 10, 2019:

“As the co-lead of the Youth Marijuana Prevention and Education initiative at King County, I would like to provide feedback on the proposed rules for marijuana labeling and packaging, WSR 19-22-030. These rules are a key opportunity to prevent marijuana exposures for youth while maintaining the market for consumers 21 and over. Utilizing the best available evidence for marijuana packaging as well as considering the applicability of the tobacco prevention evidence-base can guide us to rules that are promising to protect the young public’s health. Please amend the following components of the rule to meet this mission:

Product design- Product form itself contributes to appeal to young audiences. An experimental study that asked over 27,000 US and Canadian panelists to gauge the appeal of cannabis oil, joints and gummies found that 16-18 year-olds and 19-35 year-olds ranked gummies as the most appealing of these products. All age groups in the study also ranked gummies as the most likely to be oriented to youth, with the 16-18 year old group having the strongest perception that these were youth oriented products (Goodman, Leos-Toro, & Hammond, 2019).

The proposed rules state that cannabis products may not have “Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.” The rules need a clear and sufficient test for this requirement. Given the appeal to youth, the more conservative this test the better. Many currently available edible cannabis products resemble products marketed to youth (eg, peanut butter cups, gummies, truffles). Moreover, the individual packaging for these items is often transparent, which allows for a direct appeal of form to youth and very young adults. The rules should include opaque individual-serving packaging to limit this appeal.

Packaging design- Youth and young adults rate fully-branded cannabis products as more appealing than plain packaging products (Goodman et al., 2019; Mutti-Packer, Collyer, & Hodgins, 2018). Plain packaging is a transferrable best practice from the tobacco control world as it reduces brand familiarity and eliminates images and coloring that suggest safety, health benefits or affinity with a desired lifestyle (Orenstein & Glantz, 2018). Product packaging travels outside of the age-restricted marijuana retail environment, exposing people under 21 to fully-branded messaging.

Washington’s rules should require plain or logo-only packaging on a non-youth appealing background (eg, dull colored). In-store branding displays next to products can be fully colorful and designed as these components will not be seen by those under-age. This requirement would have a benefit of streamlining package approval for processors and LCB, as packaging would be relatively uniform and thus the test of youth appeal easier to implement.



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Liquid cannabis products need to come with a measuring device. The proposed rules state a measuring device “may” be included with products, and define hashmarks as a measuring device. All products need to come with hashmarks for consumers to titrate a dose. The hashmarks should not fall under the “may” directive.

Warning labels- The proposed rules require multiple warnings appear on all packaging without distinction from other required or voluntary labeling. The content and styles of the warnings themselves are unlikely to create emotion or knowledge that changes consumption behavior for youth. Warning labels should instead reflect existing evidence in marijuana research and applicable best practices from tobacco control. They should also respond to known threats in Washington’s youth marijuana risk profile. Given this, warning labels on marijuana products should:

- Garner prominence and attention by being distinct from other claims and information and of sufficient font size for easy notice and reading (Orenstein & Glantz, 2018);
- Increase interest and impact by rotating through different messages and by using images (Orenstein & Glantz, 2018) and by using messages that youth have identified as having potential to impact behavior (Mutti-Packer et al., 2018);
- Directly and compellingly address Washington youth’s decreasing perception of harm for marijuana use and high rates of driving or being in a vehicle with someone under the influence of marijuana (HYS, 2019). For instance, by including a warning about brain development or describing the crash risk associated with DUI (rather than the legality).

These recommendations reduce appeal and exposure for those under-age and directly respond to some of the known threats from marijuana to young people in our state. Thank you for your consideration.

References:

- Goodman, S., Leos-Toro, C., & Hammond, D. (2019). The impact of plain packaging and health warnings on consumer appeal of cannabis products. *Drug and Alcohol Dependence*, 205. <https://doi.org/10.1016/j.drugalcdep.2019.107633>
- HYS. (2019). *2018 Washington State Healthy Youth Survey - Data Brief: Marijuana*. 6–8. Retrieved from [https://www.askhys.net/Docs/HYS 2018 marijuana data brief Final.pdf](https://www.askhys.net/Docs/HYS%2018%20marijuana%20data%20brief%20Final.pdf)
- Mutti-Packer, S., Collyer, B., & Hodgins, D. C. (2018). Perceptions of plain packaging and health warning labels for cannabis among young adults: Findings from an experimental study. *BMC Public Health*, 18(1). <https://doi.org/10.1186/s12889-018-6247-2>
- Orenstein, D. G., & Glantz, S. A. (2018). Regulating Cannabis Manufacturing: Applying Public Health Best Practices from Tobacco Control. *Journal of Psychoactive Drugs*, 50(1), 19–32. <https://doi.org/10.1080/02791072.2017.1422816>”

WSLCB response: The WSLCB appreciates these comments and demonstration of participation in the rulemaking process. Additionally, the WSLCB appreciates the provision of literature regarding the subject of marijuana packaging and labeling, and looks forward to peer reviewed, empirical evidence demonstrating a causal link between marijuana packaging and labeling, and the inadvertent or accidental



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exposure to marijuana products by persons under twenty-one years of age. No rule language or revisions were offered for consideration by the commenter for consideration of stakeholders, the agency, or other interested parties.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring device was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(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 ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected in the final rule.

8. Email message, received December 10, 2019 (highlighting original):

“I see the language still exists and again implore you to delete this rule as it’s not logical nor a definable quantity to apply to an inhaled product as there is vast personal variance on how much one can inhale.



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(5) Useable Marijuana / (6) Marijuana mix: d(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;

I am also unclear why LCB feels adding the lot number is needed as per: d(ii) The lot numbers of the product;

This takes up valuable real-estate on the small labels – the trace number points back to the lot so why is the inclusion on the label felt as needed?”

WSLCB Response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of listing serving size on all marijuana and marijuana product labels has been part of WSLCB packaging labeling rules for some time. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? These comments were reflected in in the final rule.

9. Email message, received December 11, 2019:

“On behalf of the Washington Association for Substance Abuse and Violence Prevention (WASAVP) I am submitting our comments about the proposed rule changes to WAC 314-55-105. WASAVP has partnerships with 13 coalitions and associations across the entire State of Washington. Since our founding in 2001 we have been an ardent advocate for prevention policy, especially as relates to youth substance abuse. We are proactive and seek to set community norms and standards that support healthy youth and family development



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which includes environmental factors, advertising regulations and access to marijuana, tobacco, alcohol and now vaping devices.

Because our work emphasizes prevention, the coalition is concerned about the proposed rule changes to **WAC 314-55-105**. Together, the two changes would make measuring devices such as a measuring cup or dropper optional and allowing for thinner plastic packaging. We, like Prevention WINS, have serious concerns as is outlined in the following paragraphs.

Further, we request that the comment period be extended into 2020 to continue the rules refinement on this topic. This would be more effective and would prevent finalizing bad policy rules. We expect to survey our members and coalition partners to gain a better understanding of the issues our local communities are facing. For example, one of our board members recently reported that products that appeal to children and youth are still being presented in marijuana shops in the Seattle area.

Looking first at the change to measuring devices as proposed in **WAC 314-55-105 section 4, paragraph iii** (*Marijuana edibles in liquid form*). If the change is approved, manufacturers could eliminate measuring cups or droppers and rely on hash marks to indicate serving size. The confusion this would create is significant. Take for example, a cannabis-infused soda currently available. One bottle contains 10 mg of THC, a second identical bottle has 30 mg of THC and yet a third contains 50 mg. of THC. Three bottles—identical in every way except THC dosage. All could be sold without a measuring device except hash marks. This goes counter to the examples of serving size measurements that pharmaceutical and food manufacturers currently deal with. Take children's Tylenol for example.

A leading website for parents, BabyCenter, has an entire section dedicated to getting dosages correct acetaminophen, commonly referred to by the major brand Tylenol. Warnings on the dosage guide page state:

- *Acetaminophen is one of the hardest drugs to give correctly, because it's sold in many forms.*
And
- *Use the measuring device that comes with the medicine ... If you lose the device, get a replacement from the pharmacy or use a standard measuring teaspoon (the kind used for baking), not a regular spoon used for eating. ([BabyCenter](#))*

Tylenol's manufacture, Johnson and Johnson, has its own educational website called [GetReliefResponsibly](#). From a prevention perspective, the responsibility belongs with the company, not the consumer. As it should for the cannabis industry in our state.

Looking at a non-medical product, there multiple examples of serving size issues when it comes to kids and adults. The news and quiz site BuzzFeed mocks this with their quiz titled, "[Do You Actually Understand How Ridiculous Serving Sizes Can Be?](#) Hint: 'Till it's gone' is technically not considered an official serving size." One example of ridiculous servings is a 32 ounce bottle of Powerade which contains 2.5 servings.



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Because eating or drinking a cannabis-infused product delays the effect of THC from 45 minutes to 2 hours, overconsumption is easy. New York Time's columnist Maureen Dowd was derided after she wrote about eating an entire bar of cannabis-infused chocolate in Colorado. That chocolate bar was not dosage scored.

Dosages must be clearly labeled and easy to measure. WASAVP strongly opposes the proposal to make measuring devices optional as proposed in **WAC 314-55-105 section 4, paragraph iii**.

Our second concern is about thinner plastic for packaging edibles referenced in **WAC 314-55-105 section 3, paragraph (b) (ii)**. The cannabis industry says reducing the plastic thickness from the current 4 mil to 2 mil benefits the environment with less plastic. We applaud any efforts to minimize waste throughout the industry. However, given the sorry state of plastic recycling globally, where the cost of recycling plastic now greatly exceeds the market for recycled plastic and municipalities including King County are cutting back on plastic recycling programs, the change from 4 mil to 2 mil is not going to make an impact on the environment. We expect it will make a negative impact on the safety of young children by leading to more unintended cannabis exposures.

Making packages thinner, and therefore easier to open, does not benefit anyone when considered against keeping infants, toddlers, or preschoolers from consuming a misplaced cannabis purchase. Since marijuana legalization in 2014, the Washington State Poison Center has seen almost triple the number of calls about children between the ages of 0-5. It's our expectation that maintaining the current requirement of 4 mil in plastic packaging will keep these cannabis exposures at or below the current level as measured by calls to the poison center. Prevention WINS strongly opposes the proposal to switch to 2 mil plastic packaging detailed in **WAC 314-55-105 section 3, paragraph (b) (ii)**.

In addition to opposing these two changes, WASAVP supports feedback provided to the LCB by Cheryllynne Crowther of Prevention WINS. Simply put we believe Washington rules should require plain or logo-only packaging on a non-youth appealing background (dull colors).”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the WSLCB provided additional time for public comment on these rules as they were being developed that was not required by the Administrative Procedures Act described in chapter 34.05 RCW between the filing of the CR101 in May of 2019 and the filing of the CR102 in October 2019. The duration of the statutorily required formal comment period described in RCW 34.05.320 was exceeded for this rule project. The WSLCB is unable to unilaterally prolong a comment period that ended consistent with the provisions of RCW 34.05.320 to extend the comment period on



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these rules "...into 2020 to continue the rules refinement on this topic. This would be more effective and would prevent finalizing bad policy rules. We expect to survey our members and coalition partners to gain a better understanding of the issues our local communities are facing. For example, one of our board members recently reported that products that appeal to children and youth are still being presented in marijuana shops in the Seattle area" when no rule language has been offered, and no verifiable data or other supporting evidence has been offered to support the consideration of a revision that could be a substantive change to the adopted rules that would require a supplemental hearing on the issue.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(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 ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

10. Email message, received December 11, 2019:

"Thank you Kathy for your continuing involvement to better our industry. I believe there is a whole email thread on the 502 forum dedicated to draw & serving size requirements for concentrates, usable marijuana, and mixed marijuana.

I agree with Crystal that we should not mandate serving size requirements on packaging. Liability, lack of scientific data, Crystal nailed it all.

The only other thing I would add, that I have not seen people discussing it is that the serving size requirements conflicts and highly impacts the nutritional info. By specifying servings size 1 truffle 10mg THC, the nutritional label needs to be made for 1 truffle.

The thing is *_most_* of the confectionary products specify nutritional data based on a >1 number of servings. So what happens when you convert a nutritional label for a chocolate product from N:1 servings, most of the nutritional numbers start looking like zeroes and you cannot meet FDA nutritional label requirements anymore (FDA will not let you do 0.0xxx calories as an example).

I am pretty sure I have provided this feedback multiple times to LCB."



WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

11. Email message, received December 11, 2019:

“Thank you for your continued dedication to collaborative rule making. It’s been interesting to observe how the proposed rule sets differ based on the format of stakeholder engagement used.

I apologize for not getting these notes to you sooner, the month of November has been very busy with meetings, preparing for session, completing my MPA program, and the Thanksgiving Holiday. I will offer that from a farmer’s perspective, release of rules at the end of October decreases farmer’s opportunity to read them as it is the busiest time of year and is something the agency might consider in the future.

Tomorrow’s hearing is also on my birthday, my wedding anniversary, and the 6 year anniversary of when my husband & I applied for our marijuana license but I won’t hold it against you as I’ve had a marijuana related hearing to attend on this day for many years now. :)

I have attached our comments on this rule set. I found it much easier to comment and correct technical errors via track changes in word and am hopeful that this is helpful to you.

Our biggest concerns are:

- **The draw & serving size requirements for concentrates, usable marijuana, and mixed marijuana should not be required on packaging.**
 - - It is not possible to accurately communicate the number of draws in a vape pen cartridge because it is an **unknown number**. There are **a lot of variables** that impact this number including the battery used, how recently the battery was charged, how much oil is in the cartridge or remaining in the cartridge, how warm or cold the cartridge is when used, and whether the cartridge is stored upright or layed on its side. **The technology hasn’t yet evolved to the point where this information could be accurately known nor listed on packaging.**
 - We also **lack scientific research and evidence to establish a serving size** for useable marijuana or concentrates.
 - Since there is no standard serving size for concentrates nor flower this **will lead to increased consumer confusion as each processor will define serving size differently.**



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- This rule would lead consumers to purchase the package with the most “draws” or “servings” and would have the **unintended consequence of driving competition over which cartridge, concentrate, or useable marijuana package advertises the most draws or servings on their packaging.**
- **The definition of "structure and function" is unclear.** "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."

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. Notices provided by GovDelivery to all licensees and any other interests parties regarding filing of the CR101, comment periods, the listen and learn session, the CR102 filing, and the hearing held on December 11, 2019 have aligned with collaborative rule development practices of the last year. A copy of the draft conceptual rules was offered for public comment on about September 26, 2019, along with a synopsis of the rule changes. The WSLCB has invited and encouraged participation and engagement at all points of this process.

Some rule sets may require additional listen and learn sessions based on the complexity of the project, and the timeline involved. Since the CR101 for this project identified three specific elements to be addressed for this project, the narrow scope and timeline, which was continuously articulated in messaging, in presentations to industry associations, and at board meeting updates every other week, suggested one day long listen and learn session on October 11 was appropriate for this project. Further, the WSLCB provided additional time for public comment on these rules as they were being developed that is not required by the Administrative Procedures Act described in chapter 34.05 RCW between the filing of the CR101 in May of 2019 and the filing of the CR102 in October 2019. The duration of the statutorily required formal comment period described in RCW 34.05.320 was exceeded for this rule project.

Additionally, the concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Finally, the definition of structure and function is aligned with the federal definition of the same. The agency has added a reference to the United States Code to provide clarity and guidance. Additional comments offered were questions regarding rule



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interpretation exclusive to the commenter. The WSLCB encourages interested parties to review guidance that is being designed to assist with compliance success, and to review the Washington State Code Reviser's Bill Drafting Guide 2019 to become familiar with drafting best practices.

Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

12. Email message, received December 11, 2019:

"I've worked in the alcohol, tobacco, marijuana and other drug prevention field for over 25 years (employed by King County) and am also a Certified Prevention Professional in Washington State. As a resident of Kent, I am also a concerned parent of a 16 year old, as well as an aunt/ grandaunt.

I appreciate your efforts to carefully make decisions related to Marijuana Packaging and Labeling rules. Regarding CR-102, please see my comments below:

- We need better protections so that children and youth do not have access to marijuana.
- Reducing the package thickness to 2 mil or greater means that it would be easier for children and youth to tear open the package. Please maintain to at least 4 mil.
- To help all avoid accidental overdose, I urge you to require measuring devices that may include measuring cups, droppers and/or hash marks on the bottle or package.
- There have been previous discussions with the public health and prevention community regarding this proposed rule. Please incorporate the important recommendations including making warnings more visible and clearer, as well as ensuring cultural considerations and literacy issues are taken into account.

I know people -- youth as well as those who are of legal age -- who have overconsumed and overdosed from marijuana edibles. Packaging for marijuana edibles especially need to convey the importance of safer quantities and to wait before taking additional dosages.

Thank you for your work as you strive to work with diverse stakeholders in developing needed rules."

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:



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- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature’s intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)
Suggested language for rule:

(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 ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

13. Email message, received December 11, 2019:

“I speak on behalf of Prevention Works in North Seattle (Prevention WINS), a community coalition with the goal of reducing underage substance abuse in the region. We focus on middle and high school students, their parents, and the community. Our coalition began in 2002 with a state grant after the Healthy Youth Survey results showed higher than average underage substance abuse in our area’s schools. We’ve continued our prevention work through Drug-Free Communities grants managed through Seattle Children’s.

Prevention works best in stopping underage substance abuse, which is why we are concerned about rule changes to **WAC 314-55-105**. The two changes would allow the cannabis industry to eliminate measuring cups or droppers from liquid products and allowing for thinner, easier to open, packaging on other products.



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Let's look first at *Marijuana edibles in liquid form* (**WAC 314-55-105 section 4, paragraph iii**). The change would let manufacturers eliminate dosage measurers such as small cups or droppers altogether with an option to add hash marks indicating individual serving size to the container. The confusion this would create is significant.

Take for example, a cannabis-infused orange cream soda available in multiple doses but sold in one size bottle. The bottles are identical in shape and volume, but the liquid inside provides 10, 100, or 250 mg of THC. Anyone trying to figure out how much to drink is challenged to measure correctly even with the small plastic cup that currently comes with the bottle. Shifting to just hash marks along the side borders is dangerous.

The issue of measuring devices is a significant consumer problem for a common over-the-counter medication—liquid acetaminophen for infants and children.

Tylenol is the top-selling brand of the pain reliever. Despite coming with a measuring device in the box, it's not uncommon for parents to accidentally overdose their child. Pharmacists are advised to show parents the hashmarks on the measuring device. A popular website for new parents, has an entire section on dosages for the drug. It states off the top, "*acetaminophen is one of the hardest drugs to give correctly, because it's sold in many forms.*" It advises if parents have lost the device included in the package to "*get a replacement from the pharmacy or use a standard measuring teaspoon (the kind used for baking), not a regular spoon used for eating.*"

Tylenol's manufacture, Johnson and Johnson, created an entire "how-to" website for the drug called [GetReliefResponsibly](#). From a prevention perspective, the responsibility for safe dosing belongs with the company, not the consumer. The same should for the cannabis industry in our state.

Dosages must be clearly labeled and easy to measure. Prevention WINS strongly opposes the proposal to make measuring devices optional as proposed in **WAC 314-55-105 section 4, paragraph iii**.

Our second concern is using thinner plastic for marijuana product packaging. (**WAC 314-55-105 section 3, paragraph (b) (ii)**.)

The cannabis industry states thinner plastic is an environmental advantage. They would change from 4 mil to 2 mil thick packaging. We applaud any efforts to minimize waste throughout the industry. However, given the state of plastic recycling globally, where the cost of recycling plastic now greatly exceeds the market for recycled plastic, and municipalities—including King County—are cutting back on recycling programs, the change from 4 mil to 2 mil is not going to make any significant environmental impact. It will likely have a negative impact on the safety of young children by leading to more unintended cannabis exposures.



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Making packages thinner makes it easier for young children to get into a marijuana purchase. The incidence of unintentional pediatric exposure has increased since legalization. One study looking at 2010-2016 said the median age of exposed children was 2 years (range 0–9 years) and 81% of the exposures occurred in the child's own home. Prevention WINS strongly opposes the proposal to switch to 2 mil plastic packaging detailed in **WAC 314-55-105 section 3, paragraph (b) (ii)**.

In addition to opposing these two changes, Prevention WINS supports feedback provided to the LCB by Sarah Ross-viles of King County's Youth Marijuana Prevention and Education initiative. Her complete December 9th letter is below but we want to emphasize our support for plain packaging. The benefits are multiple as Ms. Ross-viles explains:

***Packaging design-** Youth and young adults rate fully-branded cannabis products as more appealing than plain packaging products (Goodman et al., 2019; Mutti-Packer, Collyer, & Hodgins, 2018). Plain packaging is a transferrable best practice from the tobacco control world as it reduces brand familiarity and eliminates images and coloring that suggest safety, health benefits or affinity with a desired lifestyle (Orenstein & Glantz, 2018). Product packaging travels outside of the age-restricted marijuana retail environment, exposing people under 21 to fully-branded messaging.*

Washington's rules should require plain or logo-only packaging on a non-youth appealing background (eg, dull colored). In-store branding displays next to products can be fully colorful and designed as these components will not be seen by those under-age. This requirement would have a benefit of streamlining package approval for processors and LCB, as packaging would be relatively uniform and thus the test of youth appeal easier to implement."

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and



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- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)
Suggested language for rule:

(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 ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

14. Email message, received December 11, 2019:

“The new rules have the line below from the definition of appealing to youth: : (iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children -

Bright colored edible products are appealing to children and should not be allowed. The only purpose to sell such products would be make them appealing to youth, adults should not care how the product appears as they are buying it to seek a certain effect.

The definition of appealing to youth should include any aspect that makes a product appealing to those under the age of 21 including colors, flavors, shapes, product names, or images.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. This language was struck during the developmental phase of this rule project, before the focus group meetings occurred. It was also struck from the conceptual rule draft provided to the general public for review on or about September 26, 2019. As noted above, the adopted definition of “especially appealing to persons under twenty-one” reads as follows:



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- (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.

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

15. Email message, received December 11, 2019:

“There are just a few things that concern me with the new CR-102 PAL language.

Lot Number

- According to the statutory definition of “Lot Number,” we already provide all the requested information in their definition.
 - o SB 5318 definitions of “Lot” & “Lot Number”
 - o “Lot” means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.
 - o “Lot number” must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.
- With the WSLCB’s definition of “Lot Number,” we would now have to include the lot/batch numbers of all lot’s included on a final product’s label, which is unreasonable for any product made from distillate.
 - o WSLCB’s definition of “Batch” & “Lot”
 - o “Batch” means a quantity of marijuana-infused product containing material from one or more lots of marijuana.
 - o “Lot” means either of the following: (a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or (b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves or other plant matter cannot weigh more than fifteen pounds.

Serving / Draw Size

- It will be extremely difficult to determine the serving size of flower since there are so many different forms in which flower is used. There will also be drastically different amounts used based on the consumption method.



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- The amount that is in a serving for cartridge vaporizers will differ greatly depending on the consumer's battery, their choice of voltage, the age of the battery, and potentially many other factors.
- It does not appear to be reasonable or even possible to quantify how many servings are in each cartridge due to the above factors.

I also would like to thank you for your continued effort to work with the cannabis industry and for being so inclusive in this rulemaking process for packaging and labeling.”

WSLCB response: The WSLCB appreciates these comments and demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on the feedback from attendees at the public hearing and others, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? The comments were reflected in part the final rule

Public Hearing, December 11, 2019:

Several individuals provided oral testimony at the public hearing. The comments above are reflective of the comments received during the public hearing, and can be reviewed in the transcript of the Board meeting.



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

Section	Proposed Language	Final Language
WAC 314-55-105(1)(g) – Definitions	(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	(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, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).
WAC 314-55-105(2) – Marijuana concentrates.	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest;</u> (iii) <u>The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</u> (iv) <u>The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;</u>
	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a);</u>
WAC 314-55-105(3) – Marijuana edibles in solid form.	Formerly WAC 314-55-105((B)(II)(H)) 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.	<u>(c) Marijuana infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board 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.</u>
	(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (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;	(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest;</u> (iii) <u>The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;</u>



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	(f) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(fe) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a)</u> ;
WAC 314-55-105(4) – Marijuana edibles in liquid form.	(b)(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.	(b)(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 must include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.
	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (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;	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). This <u>must be the same number that appears on the transport manifest</u> ; iii) The unique identifier number generated by the board’s traceability system. This is the same number that appears on the transport manifest;
	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(5) – Usable marijuana.	(d) Labels for usable marijuana must clearly and visibly provide all of the following information: (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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). This <u>must be the same number that appears on the transport manifest</u> ; 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 in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;
	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(6) – Marijuana mix.	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board’s traceability	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). This



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	<p>system. This is the same number that appears on the transport manifest;</p> <p>iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;</p>	<p><u>must be the same number that appears on the transport manifest;</u></p> <p>iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</p> <p>iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;</p>
	<p>(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading;</p>	<p>(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);;</u></p>
<p>WAC 314-55-105(7) – Marijuana topicals.</p>	<p>(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:</p> <p>(ii) The lot numbers of the product;</p> <p>(iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</p>	<p>(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:</p> <p>(ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest;</u></p> <p>iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</p>
	<p>(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading;</p>	<p>(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);;</u></p>

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, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).

(h) "Useable marijuana" means dried marijuana flowers consistent with RCW 69.50.101(w). 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 number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) The net weight in ounces and grams or volume as applicable;

(iv) 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;

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

(vi) 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

(vii) 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, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(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 Washing-

ton. 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-infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board 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.

(d) 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.

(e) 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.

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

(iii) 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;

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

(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;

(vii) 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;

(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 that were added to the extract.

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

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(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.

(h) 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."

(i) 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.

(j) Where there is one statement made under (i) 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."

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

(iii) 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;

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

(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;

(vii) 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;

(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.

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

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(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 (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;
 - (iii) Net weight in ounces and grams or volume as applicable;
 - (iv) 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;
 - (v) 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, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);
 - (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 number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

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

(iv) 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;

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

(vi) 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;

(vii) 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, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

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

(iii) 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;

(iv) 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;

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

(vi) 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, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(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.



Washington State
Liquor and Cannabis Board

December 18, 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 approval to rescind the following Board Interim Policies (BIP):

- **BIP 05-2019 regarding cannabis packaging and labeling rules implementation;**
- **BIP 07-2019 regarding false and misleading clarification**
- **BIP 08-2019 regarding curative and therapeutic effects**
- **BIP 09-2019 regarding marijuana infused edible (MIE) colors and homogenization**
- **BIP 10-2019 regarding marijuana infused edible (MIE) colors**
- **BIP 14-2019 regarding retail sell-down**

Marijuana packaging and labeling rules, WAC 314-55-105 and WAC 314-55-077(8) and (9), were adopted December 18, 2019 with an effective date of January 1, 2020.

Since the adopted rules either incorporate parts of the above policies, or have been addressed by statutory revisions that have been incorporated into the adopted rules, these BIP are no longer needed.

If approved, the BIP listed above will be rescinded and notice will be sent to stakeholders.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date



Liquor and Cannabis Board Interim Policy BIP-17-2019

Subject: Implementation of WAC 314-55-105 regarding marijuana packaging and labeling rules, and WAC 314-55-077(8) and (9)

Effective Date: December 18, 2019

Ending Date: January 1, 2021

Approved:

Jane Rushford, Board Chair

Ollie Garrett, Board Member

Russ Hauge, Board Member

Background:

Purpose:

This policy addresses and describes both “phase in” and “sell down” periods for marijuana packaging and labeling rules that become effective January 1, 2020. These phase-in and sell-down periods allow implementation flexibility, increase licensee compliance success and are intended to mitigate industry compliance impact and cost.

Policy Statement:

Effective July 1, 2020, WSLCB licensed marijuana retailers cannot accept product, packaging or labeling that do not comply with the rules adopted by the Board, WAC 314-55-105 and WAC 314-55-077(8) and (9), on December 18, 2019, and effective January 1, 2020.

WSLCB licensed retailers may not sell non-compliant products after December 31, 2020.

WSLCB licensed retailers who are still in possession of these products on or after January 2021 may return those products to the WSLCB licensed processor consistent with the requirements of WAC 314-55-077, or dispose of the products consistent with WAC 314-55-079(13) and WAC 314-55-097.