



Washington State Liquor and Cannabis Board

Date: July 7, 2021

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Manager

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Policy and External Affairs Director
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director

Subject: **Approval to file a pre-proposal statement of inquiry (CR 101)
regarding evaluating tetrahydrocannabinol (THC) compounds.**

The Washington State Liquor and Cannabis Board is considering establishing a new rule section that would allow the WSLCB to evaluate additives, solvents, ingredients or THC compounds used in the production and processing of marijuana products to determine whether such substances pose a risk to public health or youth access.

Process

The Policy and Rules Manager requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR 101 Memorandum is attached to this rule making was presented at the Board meeting on July 7, 2021, and is attached to this order.

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

July 7, 2021	CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Informal comment period begins.
July 21, 2021	Notice published in the Washington State Register under WSR #21-14
August 20, 2021	End of informal comment period.
September 29, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser.



CR 101 Memorandum

Re: Evaluating Tetrahydrocannabinol (THC) Compounds

Date: July 7, 2021

Presented by: Kathy Hoffman, Policy and Rules Manager

Background

In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 tetrahydrocannabinol (THC). In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in the Revised Code of Washington (RCW), the Washington State Administrative Code (WAC), or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

WSLCB issued Policy Statement PS-21-01 on April 28, 2021 concerning tetrahydrocannabinol (THC) compounds other than delta-9 and the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, or any other cannabis compound not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both. Based on questions received concerning the policy statement, and the agency voluntarily issued a clarifying statement on May 3, 2021. Both of these communications were issued as part of an agency initiated strategic, iterative and transparent process designed to leverage the Board's limited regulatory authority concerning THC compounds, maximize stakeholder engagement, and assure that the rule development process could be meaningfully and effectively used to inform future legislation while being grounded in verifiable data, fact, and science.

On May 12, 2021, the Board approved a CR 101 filed as WSR 21-11-036. When the CR 101 was approved and filed, the scope of the rule project was limited and narrowly scoped to marijuana compounds other than delta-9.

On June 16, 2021, a special Board caucus was held. During the caucus, it became apparent that the scope of WSR 21-11-036 needed to be expanded and clarified.

Reasons Why Rules Are Needed

Washington State statute and the rules that implement those statutes provide a framework for the types of activities that marijuana licensees may engage in. The only products that can be sold in licensed marijuana retail stores are marijuana concentrates, usable marijuana, marijuana infused products and paraphernalia.

WSLCB reviews and pre-approves marijuana-infused labeling for edible products that will be sold in licensed retail marijuana stores. WSLCB does not review or approve labeling for marijuana concentrates, usable marijuana, marijuana mix, or marijuana topical products that will be sold in licensed retail marijuana stores. WSLCB does not have statutory or regulatory authority for products containing marijuana compounds other than delta-9 THC sold outside the licensed marijuana system it regulates.

The process of genetic or chemical alteration of hemp or other sources to potentially intoxicating, psychoactive compounds may generate additional chemicals that are not naturally occurring in marijuana. Currently, there are no mandatory testing standards for these compounds, and no potency or concentration limits have been established in statute or regulation concerning these compounds in Washington State. The impact of those different chemicals on health are unknown and could be harmful.

Additionally, WSLCB understands that some accredited/certified testing laboratories are able to test for the presence of delta-8 THC, but testing for THC isomers is evolving and not standardized. For example, delta-8 THC as a stand-alone product is not currently being tested for contaminants, but only for cannabinoid testing. Thus, it is unclear whether delta-8 or CBD isolate from hemp or other sources that is genetically or chemically altered into compounds other than delta-9 THC are safe for consumer use.

Rules are needed to allow the WSLCB to evaluate additives, solvents, ingredients or compounds used in the production and processing of marijuana products to determine whether such substances pose a risk to public health or youth access. Currently, there are no mandatory testing standards for these compounds, and no potency or concentration limits have been established in statute or regulation concerning these compounds in Washington State. The impact of these different chemicals on health are unknown and could be harmful.

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-XXX – Marijuana additives, solvents, ingredients, or compounds. The Washington State Liquor and Cannabis Board (WSLCB) is considering establishing a new rule section that would allow the WSLCB to evaluate additives, solvents, ingredients or compounds used in the production and processing of marijuana products other than delta-9 tetrahydrocannabinol (THC), as well as CBD, hemp, or both converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both, to determine whether such substances pose a risk to public health or youth access.

Statutes authorizing the agency to adopt rules on this subject: RCW 69.50.342(1)(m); RCW 69.50.345

Reasons why rules on this subject may be needed and what they might accomplish: In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 tetrahydrocannabinol (THC). In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in the Revised Code of Washington (RCW), the Washington State Administrative Code (WAC), or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

WSLCB reviews and pre-approves marijuana-infused labeling for edible products that will be sold in licensed retail marijuana stores. WSLCB does not review or approve labeling for marijuana concentrates, usable marijuana, marijuana mix, or marijuana topical products that will be sold in licensed retail marijuana stores. WSLCB does not have statutory or regulatory authority for products containing marijuana compounds other than delta-9 THC sold outside the licensed marijuana system it regulates.

The process of genetic or chemical alteration of hemp or other sources to potentially intoxicating, psychoactive compounds may generate additional chemicals that are not naturally occurring in marijuana. Currently, there are no mandatory testing standards for these compounds, and no potency or concentration limits have been established in statute or regulation concerning these compounds in Washington State. The impact of those different chemicals on health are unknown and could be harmful.

Additionally, WSLCB understands that some accredited/certified testing laboratories are able to test for the presence of delta-8 THC, but testing for THC isomers is evolving and not standardized. For example, Delta-8 THC as a stand-alone product is not currently being tested for contaminants, but only for cannabinoid testing. Thus, it is unclear whether delta-8 or CBD isolate from hemp or other sources that is genetically or chemically altered into compounds other than delta-9 THC are safe for consumer use.

Washington State statute and the rules that implement those statutes provide a framework for the types of activities that marijuana licensees may engage in. The only products that can be sold in licensed marijuana retail stores are marijuana concentrates, usable marijuana, marijuana infused products and paraphernalia. Rules are needed to allow WSLCB to evaluate additives, solvents, ingredients or compounds used in production and processing of marijuana products when such products may contain CBD isolate from hemp and other sources that have been genetically or chemically altered to result in potentially intoxicating, psychoactive compounds, or compounds other than delta-9 THC, as well as CBD, hemp, or both that have been converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently defined or identified in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both, to determine whether such substances may pose a risk to public health or youth access.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: Washington State Pharmacy Quality Assurance Commission; Washington State Board of Health; Washington State Department of Health; Washington State Department of Agriculture.

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

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

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

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Web site: lcb.wa.gov
Other:

(If necessary)

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

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at <https://public.govdelivery.com/accounts/WSLCB/subscriber/new>. Rule-making notices and stakeholder engagement opportunities will be emailed via GovDelivery and posted to the WSLCB website at lcb.wa.gov.

Date: July 7, 2021

Name: David Postman

Title: Chair

Signature:

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