



## Notice of Permanent Rules for Marijuana Advertising Rules

**This explanatory statement concerns the Washington State Liquor Control Board's adoption of amendments to marijuana advertising rules.**

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. This statement must be provided to anyone who gave comment about the proposed rulemaking.

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

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### Background and reasons for adopting this rule.

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 with the passage of ESSB 5131, which became effective on July 23, 2017. Guidance and information on the changes to the law was shared with licensees and stakeholders and was posted on the WLSCB's website in advance of the effective date of the changes to the law. While rulemaking did not delay the effective date of the new changes to advertising restrictions and requirements, rule changes in Chapter 314-55 WAC are needed to provide further clarification to the new requirements and to adhere to legislative direction included in ESSB 5131. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and the escalating penalty provisions related to advertising violations required under ESSB 5131 will be handled in that separate rulemaking.

**CR-101** – filed July 19, 2017, as WSR 17-15-120.

**CR 102** – filed December 6, 2017, as WSR 17-24-119.

Public Hearing held January 10, 2018.

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### Summary of public comments received on this rule proposal.

#### Written Comments Received:

Below is a summary of the comments received as part of this rulemaking.



- 1. Comments were received that the proposed advertising rules changes are too extreme. Virtually all advertising to cannabis consumers happens inside of the cannabis retail store, where persons under 21 are not allowed. There should be no strong limitations on the type of images used in cannabis advertising and packaging. Because of other implemented rules, persons under 21 are not exposed to cannabis advertising, in general. Please allow cannabis consumers like myself to be entertained and amused, and allow cannabis companies to market to us in ways that are culturally appropriate - which includes illustrations of many types.**

**WSLCB response:** Thank you for your comments.

**Was the comment reflected in the final rule?** No. Because the changes reflect changes in the law, the rules were not changed as they must be consistent with requirements in the law. Packaging rules are not affected by this rulemaking, but similar restrictions on content on packages/labels already apply under law and rules.

- 2. The rules state not to advertise out of state. The internet is worldwide.**

**WSLCB response:** Thank you for your comments. The underlying law and the rules state that licensees cannot engage in advertising or marketing that *specifically targets* persons residing outside Washington State. While the commenter is correct that internet websites may be accessed from anywhere, the simple act of posting a website does not specifically target persons outside Washington. Whether persons residing outside Washington are specifically targeted will depend on content, the actions of the licensee, and the placement of the advertising. Examples include placing an advertisement in a newspaper that is based outside Washington or placing a billboard for a Washington licensed business in another state, or language that incites, invites, or targets persons residing outside Washington.

**Was the comment reflected in the final rule?** No. The comment was already addressed in the rule language.

- 3. Comments were received about images or content that does not necessarily break rule requirements as drafted, but it's not just things that are especially appealing to small children but also what appeals to youth and the promotion of a lifestyle that encourages use. Rules should be adjusted to address this issue.**

**WSLCB response:** Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.



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**Was the comment reflected in the final rule?** No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 4. We suggest defining “*appealing to youth*” and “*especially appealing to children or other persons under legal age*.” These definitions should consider what a youth would normally encounter in their daily lives and restricting “lifestyle” imagery, such as the depiction of young adults in socially exciting or relationally appealing vignettes. These images serve as aspirational messages to youth and support the perceived benefits of “marijuana culture.”**

**WSLCB response:** Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.

**Was the comment reflected in the final rule?** No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 5. Enhance effectiveness of restrictions on outdoor advertising. Much outdoor advertising is visible to youth regardless of placement. While rules limit placing ads near locations frequented by youth to limit exposure to messages that support or normalize marijuana use, outdoor advertising such as billboards will expose youth to these same problematic messages. In addition to proposed restrictions, we recommend requiring all billboard and outdoor sign warning messages to use a standardized font (consider that used on cigarette warning labels, white/ black contrast) and include language that restricts depictions of future THC delivery devices and useable product as the market is innovating faster than the legislative and rule making processes.**

**WSLCB response:** Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.

**Was the comment reflected in the final rule?** No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 6. We recommend billboards in motion (on vehicles, planes, boats) be proactively banned in part because insuring the legibility of warning messages in motion creates potentially insurmountable enforcement challenges. We recommend ride-share options (ex: Lyft, Uber) popular with youth be included in advertising restrictions similar to buses.**



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**WSLCB response:** Thank you for your comments. Mobile advertisements and transit advertisements are already prohibited under law and rule.

**Was the comment reflected in the final rule?** Yes. This was already included in proposed rules and the final rules due to its inclusion in state law.

- 7. We recommend that Adopt-a-Highway signage specific to marijuana be considered as advertisement by the LCB and fall under this section that regulates licensees. The signage contradicts common-sense DUI-Cannabis prevention efforts.**

**WSLCB response:** Thank you for your comments. Adopt-a-Highway signs are not considered advertising by WSDOT. This is also why they are exempted from being considered advertising in the rules. All Adopt-a-Highway signs are reviewed and under the control of WSDOT.

**Was the comment reflected in the final rule?** No. Because Adopt-a-Highway signs are not considered advertising by WSDOT, the WSLCB took a similar approach in the rules.

- 8. Comments were received regarding the use of informational signs. Retailers use a number of different exterior signs to identify parking and no-parking areas, designate doors where deliveries can be made, direct customers to appropriate entrances, etc. We would like the LCB to include informational signage such as this (on addition to open signs, hours signs and ATM-inside signage) in Section 1e, to exempt them from additional regulation or counting against new sign limits.**

**WSLCB response:** Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

**Was the comment reflected in the final rule?** Yes. Rule language was adjusted to clarify this prior to adoption.

- 9. Clarify Section 2(a) to make clear that store signage and billboards may include logos or artwork, as long as it does not depict marijuana leaves or cannabis plants. We have been told by Enforcement that logos will be allowed, but the draft language is unclear.**

**WSLCB response:** Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

**Was the comment reflected in the final rule?** Yes. Rule language was adjusted to clarify this prior to adoption.



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**10. Remove language from Section 7(d) which would treat interior signage visible from the street as exterior signage. This should be changed to exempt interior signage which is not placed on the window of the store and intended to serve as an exterior sign. This rule will force many of us to black out or frost our windows, which is less appealing to customers and serves as an invitation for robbery. Please reconsider your approach.**

**WSLCB response:** Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

**Was the comment reflected in the final rule?** Yes. Rule language was adjusted to clarify this prior to adoption.

**11. We have seen the tobacco industry push advertising aggressively at youth—a practice science has shown necessary to create new generations of smokers. We are concerned about parallels emerging in Washington’s commercial marijuana industry that seem to be taken from “Big Tobacco’s” playbook. We encourage the Board to lean towards more conservative restrictions on advertising especially in this new, and still volatile, marijuana marketplace.**

**WSLCB response:** Thank you for your comments. We understand the concerns you raise. We will continue to assess advertising restrictions and requirements and will keep your comments in mind.

**Was the comment reflected in the final rule?** No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

**12. Restrict licensees from contracting with private businesses or other private industries or partnering with non-licensed services/products for the purposes of advertising. We recognize the LCB does not have the authority to regulate non-licensed entities. We recommend restricting licensees from contracting with third party entities for the purpose of advertising, or engaging in actions that would cause de-facto non-regulated advertising to occur. (Ex: WeedMaps, Leafly).**

**WSLCB response:** Thank you for your comments. While you are correct that the WSLCB does not have jurisdiction over unlicensed entities, licensees are responsible for ensuring advertising complies with WSLCB rules and state law even when using third parties.

**Was the comment reflected in the final rule?** No. Law and rule already require licensees to adhere to requirements regardless of whether the advertising is done through a third party.

**13. If any advertising is allowed that it should include warning statements and that these statements be specified to be large enough to read from a distance, be**



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in plain black font on a white background, and cover enough of the ad to be visible.

**WSLCB response:** Thank you for your comments. Warning statements were removed from the requirements for outdoor advertising (two 1600 sq. in. signs and billboards) due to the limitations included in law on content of outdoor signs. Warning statements are still required on all other forms of advertising. Minimum size requirements were added for warning statements.

**Was the comment reflected in the final rule?** Minimum size requirements were included in the proposed rules and the rules as adopted. Warning statements are not required on outdoor advertising, however, due to the content limitations included in the law for outdoor advertising. See WSLCB response above.

**14. Allow pillar signage in instances where a storefront is not visible.**

**WSLCB response:** Thank you for your comments. Pillar signage is only allowed under the law if it is either one of the two allowed 1600 sq. in. signs allowed on the premises, or a billboard, which must be off premises as defined in rule.

**Was the comment reflected in the final rule?** No. See above explanation in WSLCB response.

**15. I wanted to comment on the rule stating we cannot have a cannabis plant on our logo. This seems very short sighted. We have been in business for a year and a half and have grown our brand as well as our logo, pictured below. It seems unfair that a normal business (head shop, smoke shop etc) can have a picture of a marijuana plant or depiction of one in their logo or on their building and we cannot. We sell the products, it makes no sense to hide what we do, let alone have other business not involved in the sale of marijuana be able to have depictions of the plant.**

**WSLCB response:** Thank you for your comments. Restrictions on plants or products in logos or otherwise is only applicable on outdoor signage and advertisements under the law and the rules must be consistent with state law. Logos or other artwork or pictures that include plants or products is permissible on all other forms of advertising.

**Was the comment reflected in the final rule?** No. See above explanation in WSLCB response.

**16. Include a preventative provision for subliminal messages, images, and similar techniques. An example from WAC on Alcohol: WAC 314-52-015 Section 1, sub section (h) - Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of**



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**images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.**

**WSLCB response:** Thank you for your comments. We will keep your comments in mind as we continue formulating the regulatory landscape for the marijuana industry and if we begin to see such advertising strategic that become problematic.

**Was the comment reflected in the final rule?** No.

**17. Include a time limit on how long marijuana advertisements can be displayed on billboards.**

**WSLCB response:** Thank you for your comments. Because billboards can stationary, setting a time limit would not be effective for those displays.

**Was the comment reflected in the final rule?** No. See above explanation in WSLCB response.

**18. Comments were received that the definition of billboard is too narrow. A minimum size shouldn't be established.**

**WSLCB response:** Thank you for your comments. A minimum size was included in the definition of billboard based on industry standards and to ensure the legislative intent in the changes to the law is carried out in the rules.

**Was the comment reflected in the final rule?** No. See above explanation in WSLCB response.

**19. A great deal of time and money has been spent complying with the previous rules. The new rules will cost money to remove signage that were allowed by local jurisdiction building codes and ordinances. Signage that existed previously should be "grandfathered."**

**WSLCB response:** Thank you for your comments. The changes to advertising requirements and restrictions occurred when changes to the law by the Legislature became effective on July 23, 2017. Rules cannot supersede laws and must be consistent with law. The rule changes in this rulemaking are to make updates to ensure the rules are consistent with requirements in law and to provide additional clarification and guidance to those requirements in law.

**Was the comment reflected in the final rule?** No. See above explanation in WSLCB response.



## **Public Hearing Comments:**

### Dylan Doty – Lamar Advertising

Mr. Doty stated that he has identified what he hopes is a small issue with the definition of a billboard, pertaining to the size restriction.

Included in the definition, I believe it is 10x20 feet. That does not capture the industry standard for the size of billboards. We would actually prefer to see no size restriction at all. The net effect of this if it were to stay the way it currently is written, is that it would eliminate advertising in a lot of jurisdictions that might not have the size that fits the 10x20 range. We will be submitting comments.

### Chris Marr - Consultant

Mr. Marr stated that he had reviewed the rules with several of his clients, and that a lot of his comments were going to be about the issue of interior signage visible from the exterior.

There are a couple other areas that I would like to comment on and that is adding some additional exemptions to Section 2e for ancillary business signage and also allowing for the voluntary posting of prevention signage. We'd request that you allow for directional parking or warning signs such as "no cannabis consumption allowed in the parking lot", which is a warning that often has to be given, to be considered also as non-advertising and exempted from limitation or regulation.

Please add clarifying language to Section 2a(i) stating that logos or artwork are permitted on signage as long it is consistent with the provisions of the following sub addressing marijuana plant depictions. In other words Section 2a(i) is, we think, unnecessarily confusing because it says "only text will be allowed that contains these things", and then in the subsequent reference it says "no marijuana representation". So in our mind you should add, within Section 2a(i), state "logos or artwork are permissible consistent with restrictions below". Again, that is laid out in my written comments.

On regulatory implementation we are encouraged by the Liquor and Cannabis Board's intent to create advertising compliance coordinator position. We think that will go a long way to reducing frustration on the part of licensees and allow a prior approval process before people invest a lot of money in signage. Also, maybe taking the effort to monitor warnings and AVNs in the initial phase to make sure your intent is being carried out, and provide feedback in real time.

I think we need a clear communication of lead-times. Some folks have been told that signs need to be covered as of 2/15. Other have been told we don't have final rules. Once those have been adopted, what is the timeline, and consider the fact that it can take up to 90 days to have a sign designed and manufactured.

### Michael Schroeder – Green Owl Media

Mr. Schroeder stated that he works with several farms and retailers in the industry.



Mr. Schroeder had concerns that the changes were also impacting labels. Section 1a says that “this applies to all marijuana advertising and labels of useable marijuana products”. I want to be certain that, earlier Joanna mentioned that these rules apply only to advertising, but if so the language clearly says labels. So we want that stricken because we are talking about different things. If we are also talking about labels...

Member Hauge stated that labels were not being discussed. Mr. Schroeder asked for clarification about the labels part of the amendatory Section. Member Hauge asked Ms. Eide to respond. Ms. Eide stated that there are restrictions in the rule as far as what does apply to advertising and labels, but these provisions are not new requirements. These are requirements that are already in place for all advertising, packages, and labels.

Mr. Schroeder continued, noting that the language may be limiting in that it basically describes “what is appealing to youth”. That is very, very wide, and enforcement in the LCB has had a lot of different interpretations in different regions. I’d hate to see a space where one part of the state can advertise with pink and blue and another can’t because of interpretation of enforcement.

Lastly, regarding the posting of information at a retailer, I have encountered at a couple of stores that had text as vision blocking. I wanted to know if that would be addressed as signage as well if they had text that was just their brand name or even iteration of the “no open packaging” or things of that nature.

#### Logan Bowers - Hashtag

Mr. Bowers stated that he thought Brooke and Chris would cover all of the substantive technical issues that affect retailers with advertising.

I’m the guy that just got fined \$1,000 for having a “Black Lives Matter” and “All Races Welcome” sign in my window at my shop in Redmond. I was not originally going to come and speak today, but I received that fine last night at 6:00 p.m. My LCB officer is on the record saying “those signs have to go” which I think is a little absurd. He did also cite me for a sign that I had in the window that described the nature of the business but not the trade name of the business. I know there has been a lot of confusion over, does a sign have to have literally all of those characteristics or can it be the nature of the business or the trade name of the business.

I think my two points here, one, when you are looking at these rules I think you want take an item and ask do we want to be fighting over 1<sup>st</sup> Amendment issues non-stop or do we want to be focusing on regulatory issues and issues of keeping marijuana out of the hands of kids.

The other thing is, can we come up with a reasonable mechanism to handle enforcement of these issues. Does the LCB really want to be on the record saying that I can’t say all races are welcome in my store? Can we just do that over an email or have



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a discussion? I get that it's complicated, and it's a grey area, we're going to figure out a solution here, but do we have to jump straight to fines in these kinds of circumstances or can we just have an email discussion. I bring that up specifically because I actually just did this dance in August because I was the one that was fined for the mural on the side of my building painted by a local artist, which was subsequently dismissed on appeal.

I commend the agency for the handling of that one because my enforcement agent gave me very advanced warning, we had a discussion about it, I sent an email saying "here's why I think I'm allowed to have it". They had that discussion internally, ultimately they still decided to issue the citation, but there was a long kind of progression and I think there was a recognition that it was a complicated subject. This time around, I had a different location with a different enforcement officer kind of blackened my experience, where now I just get slapped out of nowhere.

Hopefully as you look over these rules you can focus on what really matters and come up with an enforcement policy that I think recognizes the complexities of the situation.

### Brooke Davies – C.O.R.E.

Ms. Davies comments on behalf of C.O.R.E., the Cannabis Organization of Retail Establishments, we are a non-profit trade association that represents licensed 502 retailers in the state of Washington. The organization has had the opportunity to review the proposed rules and I will be submitting written comments in more detail later today.

First I want to thank Joanna and the members of the Board for addressing the interior signage issue. That was a major concern of ours which seems to have already been addressed.

A couple other points I'd like to make which have already been made was expanding the language on Section 2e about the incidental business signage. Just hoping that could be expanded a little bit as Chris mentioned.

The other issue was the size requirement on the billboards which was brought up by Lamar. A lot of our members are in urban areas where the billboards are much smaller, so this restricts that and may also cause some unnecessarily large billboards that could be smaller. Thank you for the opportunity to speak today.

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

Technical and clarifying changes that are not substantially different from the proposed rules as filed in the CR-102 were made prior to the version as presented for the CR-103. These changes were made in direct response to comments received and seek to further clarify rule provisions. These changes are detailed below by underlining and strikethroughs on language changed or added after the CR-102 was filed:



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- **In subsection (2)(a)(i):** All text on outdoor signs, including billboards, are is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.
- **In subsection (2)(a)(ii):** No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.
- **In subsection (2)(e):** A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, or that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.
- **In subsection (3):** Advertising or signs placed on windows within the premises of a licensed marijuana retail store that may be visible outside the premises facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.
- **In subsection (7)(b):** "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ten five feet in height by twenty eleven feet in width.