



Notice of Permanent Rules for Cannabis Packaging and Labeling 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.

Background and reasons for adopting this rule.

The WSLCB has received feedback from industry members, the public, staff, and other agency members regarding concerns or changes needed with packaging, labeling, warning statements, and other related rules. Industry members and others have stated that labeling requirements are too onerous, while others have stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, the WSLCB recognized that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure, packaging, labeling, and warning statement rules are effective.

The WSLCB engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements and proposals. These rule changes are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

CR-101 – filed January 11, 2017, as WSR 17-03-072.

CR 102 – filed February 7, 2018, as WSR 18-04-113.

Public Hearing held March 21, 2018.



Summary of public comments received on this rule proposal.

1. Harvest dates are one of the most important pieces of information that I look for, as well as my customers. It is important that consumers know as much about a product before purchasing it. Products lose freshness, potency, and quality after time, leaving customers uncertain of what they'll get with their purchases. The vast majority of recreational marijuana is not packaged or stored in a way which allows it to age well, it is often package too wet and due to problems with the microbial testing system, product tainted with potentially harmful microbes does get packaged sometimes can fester and become more potentially harmful.
2. Other comments were received supporting the removal of harvest date as a required item on labels and making the information optional to include on labels. Some licensees stated that the inclusion of harvest date misleads consumers to thinking "fresher is better" and stated that marijuana is best cured for several weeks. Other statements that harvest dates disproportionately favor indoor growers above outdoor growers.
3. Comments were received stating that harvest date is important information for medical marijuana patients and that it should remain as a requirement on the label.

WSLCB response: While the proposed rules remove the requirement that harvest date appear on the label, it is still included as allowable optional information that licensees may choose to place on the label. It will be up to each producer/processor to determine whether to place that information on the label should the Board approve the draft rule changes as proposed.

As for concerns about microbial testing, tests for water activity (how likely bacteria is to grow) and water content (how much moisture/water is contained in the material) are required under quality assurance testing rules. The limits for test results help to ensure that product will remain acceptable while on the shelf and not exceed microbial limits in testing requirements.

Was the comment reflected in the final rule? The rules were adopted including harvest date as an optional piece of information to include on the label.

4. "Especially appealing to children" is subjective, hard to enforce, and will likely lead to litigation. Use current knowledge of developmental science to guide decision making over colors, fonts, graphics, etc.

WSLCB response: The changes included in rule amendments to further define and clarify the "especially appealing to children" standard are intended to incorporate items already used to determine whether a product, package, or label is especially



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appealing to children and promote more objectivity, consistency, and clarity in the term's application.

Was the comment reflected in the final rule? No changes were made to the proposed definitions prior to adoption.

- 5. Making information available only through a URL/QR code is not convenient for customers when they go into a store to purchase products, and they aren't useful for consumers who are not tech savvy. Concerns that certificates of analyses (quality assurance testing results) are not onsite or given to consumers upon request, though they are required to do both.**

WSLCB response: Current rule (WAC 314-55-105(11)) already allows licensees to provide accompanying materials to consumers in a format other than paper. The requirement states that accompanying materials must be "attached to the package or is given separately to the consumer," but does not specify how the materials "may be given separately to the consumer." The rule change included in this proposal is to clarify this. We appreciate the concerns that this is not convenient for consumers that are not tech savvy. Producers/processors are required to include lab testing results to licensees purchasing their products, and retailers are still required to provide lab testing results to consumers upon request under the rules. The WSLCB will look to including some reminders to licensees about these requirements in upcoming planned communications.

Was the comment reflected in the final rule? No changes was made to the language as the change itself was technical in nature and intended to clarify existing requirements/allowances.

- 6. I am concerned that this rule on not allowing adulteration of usable marijuana is being struck with no replacement. This rule protects the efficacy of useable marijuana in its natural state and without this rule, opens up the practice of treating usable marijuana with all sorts of compounds that are not naturally occurring in the plant material. Chemical or other compounds that could be used to adulterate the product are vast, untested for safety and unnatural to the plant which likely could lead to unsafe product for consumption and test results that are misleading. It is assumed that an easy open tab makes the product more accessible by youth while most of I502 products use packaging that is designed with an easy open tab; it is the way most packaging is available to us. Any person, no matter age, can access contents with or without the tab making this rule ineffective in preventing use by minors. A 5 year old can use scissors or teeth; we cannot regulate how packages are treated once the product is sold to the consumer. This rule is in-effective, poses additional costs to create custom packaging and is not enforced currently.**



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WSLCB response: Thank you for your comments. Subsection (9) in WAC 314-55-105 regarding treating or adulterating useable marijuana was removed in these rule amendments because the requirement/prohibition is being moved to the producer and processor rule sections in another separate rulemaking currently underway. This change is being proposed as it is more closely associated with production and processing of marijuana, rather than packaging and labeling. The separate rulemaking will not have the same extended effective date as the packaging and labeling rules, so the requirement will remain in place without disruption. There is no intent by the WSLCB to remove this as a requirement applying to licensees.

The requirement that a product packaged in 4 mil plastic must not have an easy open tab, dimple, corner, or flap has been in place for some time and was included as an option for licensees who wanted an alternative to child resistant packaging requirements (16 C.F.R. 1700). The WSLCB and Packaging and Labeling Work Group discussed whether there was another option other than 4 mil plastic that would meet the packaging safety requirements, and did not find any other reasonable alternatives. Again, licensees can choose to package in child resistant packaging that meets 16 C.F.R. 1700 or choose the 4 mil plastic packaging option under both current rules and rules as amended in this rulemaking.

Was the comment reflected in the final rule? No changes to the rule language were necessary to accommodate the issues raised in these comments.

- 7. Proposed symbol does not make it clear that marijuana products are unlawful outside Washington, and is hard to know which dimensions to measure. The color clashes with product designs, and color is more expensive to print on branding. It is too large, and the symbol proposed by the Cannabis Alliance should be adopted. There should be a WA emphasis on the universal symbol. Two symbols shouldn't be required for edibles – should merge the two into one symbol.**

WSLCB response: The universal symbol is similar to those adopted by other marijuana regulating states and Canada as included in the 3/21/18 presentation to the Board. The symbol is not intended to take the place of the warning "This product is illegal outside Washington state." It is intended to readily inform a consumer or any person viewing the package that the product is or contains marijuana, takes the place of the warning statement "This product contains marijuana," and the inclusion of "21+" takes the place of the warning "For use only by persons 21 of age or older." The color of the symbol is intended to ensure that it is visible and draws the eyes of the viewer, and color was emphasized in consumer surveys. We understand that color is more expensive to print with, which is why there is included flexibility in requirements to incorporate the symbol on pre-printed labels or on stickers that are placed on the product to reduce impacts to licensees. The public safety interest and effectiveness of using color was deemed appropriate in this case. The warning statement "Unlawful outside Washington state" is required on all products in the rule amendments – a shortened version of the statement required under current rules –



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to continue to make it clear that marijuana products are unlawful outside Washington. The measurement requirements are from point to point, top to bottom and side to side. We will ensure this is clear in guidance materials. Efforts were made to reduce size impacts while still ensuring that the symbol was of a minimum size so as to be legible and immediately visible to a person viewing the package, as well as make the symbol consistent with the “Not For Kids” warning symbol already required on marijuana-infused edible products.

Was the comment reflected in the final rule? No changes to the universal symbol requirements were included in the rules as adopted.

- 8. The definition of “cartoon” restricts commercial speech and is ambiguous, and “bright colors” is too broad and difficult to define. Until such time as the LCB can provide a visual aid for licensees and officers about how to determine if a label is acceptable, no such rule change should occur. Other comments were received that the definition for “especially appealing to children” as proposed is too vague.**

WSLCB response: Thank you for your comments. The prohibition of cartoons on labels (and advertisements) a definition of cartoon needed to promote fairness and consistency and avoid labeling/marketing that the Legislature has deemed appealing to children. This definition was created by combining several components from Colorado and Oregon’s definitions of “cartoon.” The “bright colors” component of the definition of “especially appealing to children” must be read in its entirety, which is: “the use of bright colors similar to those used on commercially available products that are intended for or that target youth or children.” Under this provision, the mere fact that a bright color is present may not be sufficient to make the product be “especially appealing to children.” Rather, it would be the use of bright colors that is similar to those used on commercially available products that are intended for or that target youth or children.

We acknowledge that these terms are difficult to define, but were proposed to provide more detail. The WSLCB is confident that these changes will serve to provide more guidance and clarity to licensees, as well as promote consistency. They are also intended to be more flexible to handle creative marketing and labeling practices on a case-by-case basis. Additionally, in conjunction with these rule changes, the WSLCB is working to provide more resources and guidance materials to licensees for packaging and labeling.

Was the comment reflected in the final rule? The language in the definition was not changed in the rules as adopted.

- 9. Consider grandfathering in previously approved labels, as making this change to all cannabis products may be devastating to preexisting product lines. All infused products have already been approved and involved a lot of processor investment. Existing standards would be changed and shouldn’t be.**



WSLCB response: The rule amendments are intended to apply to all products and will not “grandfather” products created prior to the effective date of these rules. The changes are to address concerns raised by both the industry, other stakeholders, and the WSLCB.

Was the comment reflected in the final rule? No. No products will be “grandfathered” under the new rule requirements. This is to ensure uniformity of application of requirements, and to ensure industry, stakeholder, and WSLCB concerns are addressed.

10. Comments were received regarding extended effective dates, implementation plans, the need for more resources and guidance, and the need for more consistency in product reviews/approvals. Comments were also received expressing supply chain concerns as an effective date approaches and asked that the WSLCB consider that in implementation/effective dates. Requests were made for an interim policy to allow licensees to use some or all of the new packaging and labeling requirements.

WSLCB response: The Board took these comments under consideration since the outset of the project. An extended effective date will be included and a Board Interim Policy will accompany the CR-103 for this rulemaking to allow licensees to use new requirements in advance of the firm effective date, as well as current rule requirements and the option to remove the “optional” information provided in this rulemaking (harvest date, best by date, manufactured date, and retailer name and UBI). In conjunction with this rulemaking the WSLCB is also looking at its products review process and will be creating new resources, checklists, and guidance materials.

Was the comment reflected in the final rule? Somewhat. The comment was geared more to the process rather than the content of the rule. The WSLCB has responded to these requests and concerns as detailed above.

11. Comments were received asking for the WSLCB to pre-approve certain packaging manufacturers or particular packaging products.

WSLCB response: Products and packaging must be reviewed on a case-by-case basis due to the options for packaging and differing standards depending on the product. Additionally, adding another approval process for packaging or manufacturers would restrict options for licensees that could hinder costs savings and innovation as new child resistant packaging is continually being developed. Instead, the WSLCB will continue its current practice in reviewing products, packages, and labels individually and requiring that licensees be responsible for ensuring that they adhere to rule requirements for all other products.



Was the comment reflected in the final rule? No, for the reasons described above.

- 12. Comments were received regarding potency labeling, with concerns that the current practice of labeling potency on packages based on testing results is misleading. Concerns were expressed that licensees “lab shop” to find a lab that will give them the highest potency values. A desire to find a new approach for potency labeling was requested, including revisions to testing rules to go for an average potency value or for a +/- standard variance. Comments were also received that the WLSLCB should adopt a standard potency “nutrition fact” style label that would be required on all products.**

WLSLCB response: We have heard these concerns and are continuing to explore ways to identify this and develop solutions in a multi-faceted way. Many discussions were had during the Packaging and Labeling Work Group on this issue, and no consensus was reached or workable solutions without their own risks/pitfalls were found. It is possible that changes to testing requirements may be advisable before exploring further ways to present potential potency labeling solutions. While the “nutrition fact” style potency label standardization is an interesting idea and has its merits, it would also take up valuable “real estate” on packages/labels, a concern we’ve heard from many in the industry, including those commenting on this proposal. Additionally, a standard “nutrition fact” style label could be problematic for smaller serving or single serving products, as well as pre-rolled joints. We will continue these discussions and determine whether future changes may be advisable.

Was the comment reflected in the final rule? No. No changes were made from the rules as proposed to the rules as adopted due to the above-detailed considerations.

- 13. Comments were received thanking the WSLCB for the opportunity to weigh in on changes as part of the Work Group, but that there were some missed opportunities and outstanding issues.**

WLSLCB response: We are committed to continuing conversations and seeking innovation and improvements as the regulated industry develops.

Was the comment reflected in the final rule? No changes were made from the proposed rules to the rules as adopted.

- 14. Imported or non-marijuana derived CBD products should be labeled. Anything that is not cannabis should be labeled. Questions about what a person considers an “additive.”**

WLSLCB response: All ingredients must be labeled on marijuana-infused edible products, which would include those items. Additionally, if solvents were used to create an extract, those must be on the label, as well as any added chemicals or



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compounds that were added to or used to produce the extract. Further, due to the passage of HB 2334 in the 2018 legislative session, the WSLCB is currently engaged in rulemaking to establish testing requirements for CBD products not generated within the regulated system that are used to create marijuana products within the regulated system. These products cannot be used by licensees unless they pass testing requirements that will be established in rule. These changes will make the addition of these product less concerning since they will have been tested to be able to be used.

Was the comment reflected in the final rule? No changes were needed to address concerns due to current and future rule requirements.

15. Concerns were expressed about packaging and waste. Comments were received stating packaging and waste was not an issue in the medical marijuana market, but now they see it everywhere. Requests that the WSLCB consider more environmentally-friendly alternatives in its requirements.

WSLCB response: Licensees are free to use eco-friendly packaging so long as it meets packaging requirements. The WSLCB will continue to explore ways to reduce packaging impacts while still maintaining requirements that promote safe products protected from contamination that prevent youth and children from access and exposure.

Was the comment reflected in the final rule? This is a rule issue due to packaging requirements to ensure public safety as well as a business decision issue. The rules were not changed from as proposed to as adopted.

16. Comments were received stating that patients and consumers should be included in conversations and rulemaking discussions.

WSLCB response: The WSLCB is committed to inclusivity and continuing conversations as the regulated industry develops. We will involve and are involving as many stakeholders as possible in current conversations and encourage participation from the medical cannabis patient community.

Was the comment reflected in the final rule? N/A. Comment was about process rather than rule content.

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

No changes to the rules were made from proposed rules to the rules as adopted.