



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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FILED

DATE: May 02, 2018

TIME: 1:54 PM

WSR 18-11-005

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 1, 2019 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes
 - No
- If Yes, explain:

Purpose: This rulemaking makes adjustments to packaging and labeling requirements for marijuana and marijuana products. 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. These rule changes are a product of what was learned from this work group and other states that regulate marijuana, as well as through other information gathering and consumer surveys. Updates and clarifications were needed for the rules involved, and adjustments to requirements were needed due to concerns raised by the industry and stakeholders, and to continue to develop the regulatory landscape in this emerging industry. Most of the changes in this rulemaking were made to streamline labeling requirements and to reduce pressure on the “real estate” on labels to ensure information is readable and effective for consumers and the public. Removal of the requirement to list the retailer business/trade name and UBI number is included because of the passage of HB 2474 during the 2018 legislative session. Accompanying materials are proposed to be virtually eliminated except for pesticides information and clarification is included that they may be provided in paper form or an electronic format via url or QR code. Adjustments to packaging requirements were made to provide flexibility for certain edible products packaging, and to further prevention of the promotion of over consumption. An enhanced definition providing additional clarity for what is considered “especially appealing to children” is included and a new definition for the term “cartoon” is included. A delayed effective date is included to ensure licensees have adequate time to cycle through existing inventory and make changes to adapt to new packaging and labeling requirements.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 314-55-105 and 314-55-106
 Suspended:

Statutory authority for adoption: RCW 69.50.342 and 69.50.345 and 2018 c 43 s 1 (HB 2474)

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-04-113 on February 7, 2018 (date).
 Describe any changes other than editing from proposed to adopted version: No changes were made from the proposed rules as filed with the CR-102 to the rules as adopted.

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

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

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

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

The number of sections adopted in order to comply with:

| | | | | | | |
|----------------------------------|-----|-----|---------|----------|----------|-----|
| Federal statute: | New | ___ | Amended | ___ | Repealed | ___ |
| Federal rules or standards: | New | ___ | Amended | ___ | Repealed | ___ |
| Recently enacted state statutes: | New | ___ | Amended | <u>1</u> | Repealed | ___ |

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

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|-----|---------|----------|----------|-----|
| New | ___ | Amended | <u>2</u> | Repealed | ___ |
|-----|-----|---------|----------|----------|-----|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|-----|---------|-----|----------|-----|
| Negotiated rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Pilot rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | ___ | Amended | ___ | Repealed | ___ |

Date Adopted: May 2, 2018

Name: Jane Rushford

Title: Chair

Signature:



WAC 314-55-105 Packaging and labeling requirements. (1) ~~((All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.~~

~~(2))~~ **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.

~~((3) Upon the request of a retail customer, a retailer must disclose the name of the certified third party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or marijuana-infused product the customer is considering purchasing.~~

~~(4) 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.~~

~~(5) The certified third party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.~~

~~(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:~~

~~(a) Lot number;~~

~~(b) UBI number of the producer; and~~

~~(c) Weight of the product.~~

~~(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in))~~ **(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 ((use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in))

(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 ((also)) 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 ((childproof)) child resistant packaging ((see WAC 314-55-105(7))) 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. ((If there is)) Packages containing more than one serving ((in the package,)) of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

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

~~(8)~~

~~(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.~~

~~(10))~~ (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.

~~((11) All marijuana and marijuana products when sold at retail must include accompanying material that is attached to the package or is given separately to the consumer containing the following warnings:~~

~~(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";~~

~~(b) "There may be health risks associated with consumption of this product";~~

~~(c) "Should not be used by women that are pregnant or breast feeding";~~

~~(d) "For use only by adults twenty one and older. Keep out of reach of children";~~

~~(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";~~

~~(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.~~

~~(12))~~ (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))~~ (A) The business or trade name and the ~~((sixteen))~~ nine digit Washington state unified business identifier (UBI) number of the licensees that produced ~~(,)~~ and processed ~~((and sold))~~ the marijuana or marijuana products ~~((. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label))~~;

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

~~((e))~~ (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 ~~((appropriate;~~

~~(d) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to infused products; and~~

~~(e) If solvents were used, 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.~~

~~(f) Warnings that state: "This product has intoxicating effects and may be habit forming";~~

~~(g) Statement that "This product may be unlawful outside of Washington state";~~

~~(h) The WSLCB may create a logo that must be placed on all usable marijuana and marijuana infused products.~~

~~(13) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing usable marijuana, or packaged marijuana mix sold at retail must include:~~

~~(a) Concentration of THC ~~()~~ 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) ~~((Date of harvest.~~~~

~~(14))~~ 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 ~~((10))~~ (3)(a) and (b) of this section, ~~((labels affixed to the container or package containing marijuana-infused products meant to be eaten or swallowed sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~

(e)) 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;

~~((d) Total milligrams of active THC, or Delta 9 and total milligrams of active CBD;~~

(e)) (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;

~~((f) "Caution: When eaten or swallowed, the)) (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 ((of this drug)) may be delayed by ((two or more)) 2+ hours."

~~((15) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused extract for inhalation, or infused marijuana mix sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~
- ~~(c) Concentration of THC (total Delta 9 and Delta 9 THC A) and CBD (total CBD and activated CBD A).~~

~~(16) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana topicals sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~
- ~~(c) Total milligrams of active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.~~

~~(17)~~) (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) 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))~~ (A) The producer or processor has test results from a certified third-party lab to support the claim; and

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

(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.

(4) 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.

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products (~~((meant to be eaten or swallowed))~~) for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

~~((+2))~~ (c) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on ~~((its))~~ the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

~~((+a))~~ (i) Must meet all requirements of ~~((subsection (1)))~~ (a) and (b) of this ~~((section))~~ subsection; and

~~((+b))~~ (ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(2) All marijuana products sold at retail must be labeled on the principal display panel or front of the product package with the marijuana universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the WSLCB. The digital file for the universal symbol is available on the WSLCB's web site.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains marijuana, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package; and

(c) Licensees may download the digital universal symbol from the WSLCB's web site and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

(i) Must meet all requirements of this section; and

(ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of

any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.