



Notice of Permanent Rules

Regarding New Rule Section WAC 314-55-560 – Evaluation of additives, solvents, ingredients or compounds used in the production of marijuana products.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new rule section WAC 314-55-560.

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 Manager, 360-664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules.

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.

The agency's stated goal of grounding this work in science and verifiable data was realized in extensive stakeholder engagement that began by hosting two Deliberative Dialogue sessions on cannabis plant chemistry. Based on this initial panel discussion and its subsequent question/answer session, themes and points of clarification emerged, suggesting that a follow up session may be appropriate. As a result, WSLCB hosted a second Deliberative Dialogue session on July 20, 2021, reassembling the original panel with the exception of one individual. This session was as well attended as the first, and both sessions informed the development of conceptual draft rules that eventually became the rule text of this proposal. Additionally, the WSLCB hosted one virtual Listen and Learn session on September 9, 2021 to provide an opportunity for licensees and other interested parties to respond to conceptual draft rules for the evaluation of THC compounds.

As noted above, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 THC, and later 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 statute or regulation. The agency's regulatory authority is limited to marijuana products as defined in statute. As a result, products containing cannabinoids other than delta-9 THC, and products that are the result of the conversion of CBD, hemp, or both to delta-8 THC or delta-9 THC are not subject to that same rigorous regulatory and quality standards that marijuana edibles, concentrates and other products defined in statute are.

Although the Board has statutory authority to engage in emergency rulemaking under certain conditions described in RCW 34.05.350 generally, the adopted rules provide a specific framework for the Board to evaluate additives, solvents, ingredients or compounds used in the production of marijuana products and prohibit use of substances determined to pose a risk to public health or youth access. The framework provides that such prohibition may occur by either emergency or permanent rule, providing an additional layer of oversight for substances that may pose risk to public health or youth access.

Rulemaking history for this adopted rule:

CR 101 – filed July 7, 2021 as WSR #21-14-117.

CR 102 – filed October 13, 2021 as WSR #21-21-041.

Public hearing held December 8, 2021.

The effective date of these rules is February 5, 2022.

Public comment received on the rule proposal:

1. Oral testimony provided during the public hearing held December 8, 2021, as transcribed directly from the meeting recording:

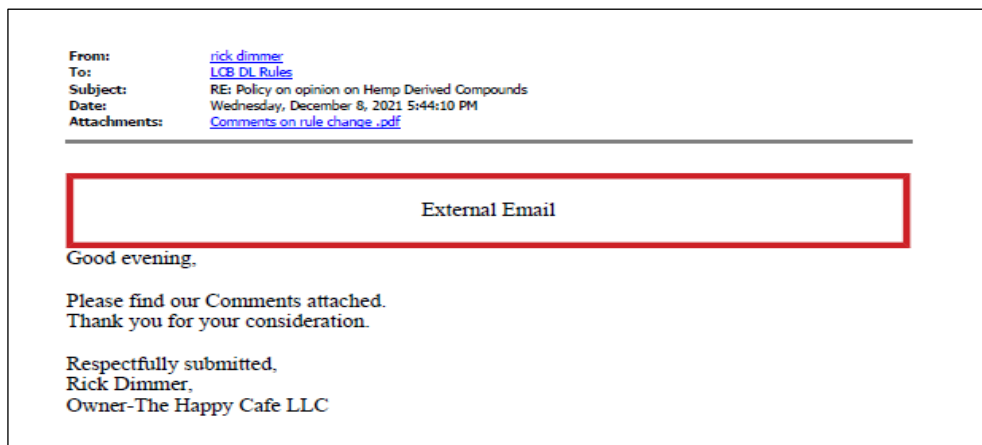
From Shawn DeNae, Washington Sun and Craft Grower's Association:

"Thank you so much for having this hearing. I am Shawn DeNae Waggenseller. I'm CEO of Washington Bud Company, a Tier 2 producer/processor up in north Snohomish County. I'm also a board of director member for the newly established Washington Sun and Craft Grower's Association. We are the only trade group association that's lead 100% by licensees, and we're really proud of that. Running a volunteer group is challenging, but we're gettin' 'er done. Our mission, so that you know, is that we are here to advance and protect the interests of sun and craft cannabis growers through the development of rule and law that supports an economically and environmentally sustainable cannabis industry. And so, in that light, I would like to offer that this set of rulemaking is a fine set of rulemaking and we're really glad that it's moved forward so swiftly, and acknowledge that the LCB does need increased authority over these newly developing compounds that are being made. The only section that we would like to see changed is in (3)(a) where it states, let me read it to you, it states under procedures that the Board may prohibit the use of any additive, solvent, ingredient or compound in the production of marijuana products that may pose a risk to public health or youth access, including but not limited to. We suggest that you change the Board may prohibit the use to the Board must prohibit the use. If there is any question that a compound, an additive, solvent or ingredient may pose a risk to public health, then we believe that the Board must prohibit its use until there's no ambiguity of its safety, and so based on that, that concludes my comments."

Board response: The Board appreciates this comment and the demonstration of interest in collaborative participation in the rulemaking process. Use of the word "may" in adopted rule section WAC 314-55-550(3)(a) provides the agency and Board needed flexibility to, among other things, work with other local, state and federal agencies who may have an impact or may assist in future evaluation of additives, solvents, ingredients, or compounds used in the production of marijuana products that may pose a risk to public health or youth access.

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

2. Email message with attachment from Rick Dimmer, received December 8, 2021 at 5:44 PM:



The attachment, entitled “Comments on rule change” offered the following:

12/7/2021

Katherine Hoffman
1025 Union Ave SE
Olympia, Washington 98504
Email: rules@lcb.wa.gov

Re: Policy Opinion on Hemp Derived Compounds

Hello,

My name is Rick Dimmer. I am the owner of the Happy Café. I am a hemp retailer that sells compounds CBD, Delta 8, Delta 10 as well as additional 100% Hemp derived products. As an individual who was arrested for marijuana possession and now a Seattle based black business owner in the Cannabis industry, I would like to offer my perspective on the proposed rule changes from an equity point of view.

Were it not for the 2018 farm bill we would not have the opportunity to participate in this industry as there are currently no licenses available.

The regulated cannabis industry is 97% white owned, not just locally but nationally. In my opinion there must be an opportunity for free enterprise.

I would like the WSClB to look at who or what group of individuals are requesting immediate action, what the asks are and if what they are asking grossly benefits one group over another.

And If the WSClB wants to participate in putting businesses out of business to the benefit of other businesses.

It is concerning that those who seek to benefit from prohibiting and regulating THC compounds would use a public health crisis as a gateway to solidify their hold on the cannabis market. In addition, 1502 business have asked the to WSClB prohibit retailers and consumers from purchasing out of state compounds. Essentially asking the cannabis board to assist them in monopolizing the Washington state cannabis industry. It is my hope that that the WSClB will not be bias and look at fact and laws.

Synthetic vs 100% Hemp Derived

The difference between synthetic THC and natural hemp derived cannabinoid's is the process of refinement. Synthetic cannabinoids are derived from chemicals or other artificial substances, all naturally occurring hemp-based cannabinoid's come from refined hemp material and transformed into natural delta 8 products.

Product Safety

Accredited laboratories exist throughout US that can perform tests that are in compliance with WSLCB regulations.

Product samples can be shipped directly to accredited laboratories, results are provided within three business days along with COA'S and analysis documentation. – *Product Testing is Available!*

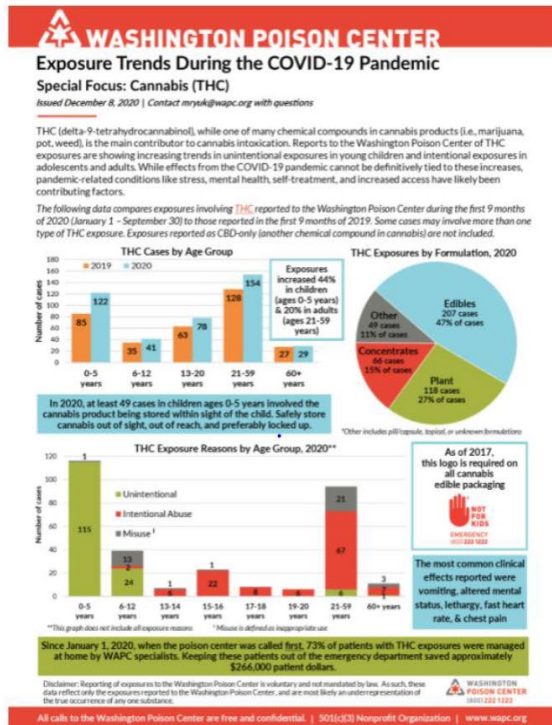
CDC Advisory 9/14/2021

According to the CDC the FDA reported an increase in adverse event reporting in regard to Delta 8 THC. 12/2020 thru 7/2021.

According to Washington State poison control, to date they have not received one documented call regarding Delta 8 or any other THC compound in the entire Washington State.

According to Poison control in 2020 Delta 9 THC exposures increased 44% in children aged 0 to 5 and 20% in adults aged 21 to 59.

Please see the below graph from the Washington state poison control website



The CDC recommendations for retailers selling cannabis products:

- 1) Retailers selling cannabis products should provide information to consumers about the psychoactive qualities of delta 8 THC.
- 2) Retailers selling cannabis products should report total THC content on product labeling, including ingredients like D8 THC that may be synthetically produced to create a psychoactive effect.

It is our belief that non I502 retailers can adhere to the CDC recommendations for selling compound products. As a hemp business owner, I adhere to:

- 1) All product labeling lists milligrams, FDA disclosures, ingredients, suggested dosage display adult only, no bright colors, or characters that would appeal to children.
- 2) We use 3rd party age identification verification company
- 3) All products come from licensed farms and have COA's from accredited laboratories
- 4) All products are purchased from licensed retailers who confirm that all products are 2018 farm bill compliant.
- 5) We have product and liability insurance
- 6) All products have been audited by our insurance company, under writers, payment processor, and bank for safety and legality.
- 7) Signature of purchaser is required upon delivery.

In summary, were the WSLCB to uphold the request of I502 business owners and prevent the sales of compounds to anyone outside of the I502 market, would cause financial hardship and further inability for anyone to enter the cannabis industry, especially people of color and further perpetuate inequality within the cannabis market.

Respectfully Submitted,

Rick Dimmer

Board response: The Board appreciates this comment and the demonstration of interest in collaborative participation in the rulemaking process.

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

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

There were no changes between the proposed rules (CR 102) and the rules as adopted.