



## CR 101 Memorandum

### Re: Evaluating Tetrahydrocannabinol (THC) Compounds

Date: July 7, 2021

Presented by: Kathy Hoffman, Policy and Rules Manager

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#### 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.