



## Washington State Liquor and Cannabis Board

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**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-105) Harvest and Processing Dates on Retail Product Labels.

**Date:** March 13, 2024

**Presented by:** Cassidy West, Policy and Rules Manager

### **Background**

On January 25, 2024, Chuck Olivier (petitioner), who is a concerned citizen, submitted a petition for rulemaking to the Washington State Liquor and Cannabis Board (Agency, LCB, or Board) requesting the Board initiate rulemaking to consider amending [WAC 314-55-105](#) to require the harvest date for useable cannabis and the processing date for cannabis concentrates (the dates) to be on retail product labels.

### **Issue**

Whether the Board should accept the petition to initiate the rulemaking proceedings to consider amending WAC 314-55-105 to require harvest dates for useable cannabis and processing dates for cannabis concentrates on cannabis retail product labels.

### **Analysis**

When making a recommendation to the Board regarding a petition for rulemaking submitted, the Director's Office Staff considers the following factors to the extent practicable:

- Statutory authority and obligations;
- Alignment with the Board's policy goals and priorities, including whether the problem or issue is already being addressed either through rulemaking or otherwise;
- The immediacy of the safety, environmental, or security concern(s) raised;
- Level of public interest;
- Merits of the petition, including, but not limited to, the magnitude of the impact and relevance of the request for addressing the petitioner's concerns;
- Interagency and intragency impacts;
- Potential benefits, costs, risks, and consequences (intended and unintended); and
- Public health impacts;
- Interagency and intragency impacts;
- Equity impacts; and
- Feasibility/practicability of the request.

Accepting the petition initiates rulemaking proceedings in accordance with the Administrative Procedures Act (APA). If accepted and rulemaking is initiated, it does not mean the agency will amend the rules but provides an opportunity for the LCB to engage

with interested parties to assess whether and how a regulation should be modified to ensure the most favorable outcomes.

### ***Statutory Authority and Obligations***

The Board has broad statutory authority to establish rules related to product quality standards, and packaging and labeling requirements to promote public health and safety.<sup>1</sup> The labeling rules are intended to assist consumers in making informed choices.<sup>2</sup>

When developing rules, the legislature directs the Board to consider security and safety issues, the provision of access to licensed sources of cannabis products to discourage purchases from the illegal market, economies of scale and impact on the licensee's ability to both comply with the regulatory requirements and undercut illegal market prices.<sup>3</sup>

### ***Reason for Request***

The petitioner suggests that requiring the dates on products sold at retail would improve consumer safety by enabling consumers to better assess the quality of a product and make more informed purchasing decisions based on their preferences. The petitioner indicated that over time the terpenes and cannabinoids degrade, making it difficult for consumers to know how the product may affect them. The risk of contaminant formation also increases over time and could potentially result in negative health consequences. The petitioner specifically cited concerns regarding the freshness of sun-grown cannabis that is harvested seasonally.

### ***Merits of the Petition***

Consumer access to date information: Under the current regulatory framework, the harvest date, processing (manufacturing) date, or "best-by" date are not required on retail product labels. Despite some licensees including the dates on labels, consumers may have difficulty obtaining this information otherwise. Although the COA has the date the samples are received by the laboratory, it may not be an accurate proxy for harvest or processing dates since cannabis and cannabis concentrates that will be further processed require testing on the end product and a new COA is issued. Additionally, the rules do not provide clear guidance limiting the shelf-life of products.

Consumer purchasing behaviors: Information asymmetry affects consumer choice by creating a situation where one party in a transaction has more or better information than the other, leading to an imbalance in power and potentially unfair decisions. When a consumer does not have the information to adequately assess the product's quality, they may make purchasing decisions that are not in their best interest (e.g., purchasing potentially harmful, low-quality cannabis at a high price).

Indoor and outdoor cultivation: The petitioner asserts that sun grown cannabis has a greater risk of contaminants formation when stored long-term compared with indoor

grown cannabis. However, the stability and quality of cannabis is primarily dependent on storage conditions, not the cultivation environment.

Adverse health effects: Although there is evidence that plant pathogens and mold can significantly impact the quality and safety of cannabis. The specific prevalence rates of these health issues among cannabis users is not well-documented, highlighting a gap in the research and underscoring the need for more studies to better understand the scale and scope of health risks associated with mold and pathogen exposure from cannabis use.<sup>4</sup>

### ***Potential Benefits of Proposed Rule Change***

Fair, equitable, efficient and thriving cannabis market: Requiring dates on retail product labels may benefit cannabis businesses by enabling them to make more informed decisions, ensure fair competition, and effectively allocate of resources to ensure efficient operations and customer satisfaction.

Public health and safety: Requiring dates on labels would directly address the consumer knowledge gap and enable consumers to make more informed purchasing decisions which could lead to a demand for higher quality and safer products.

### ***Potential Costs***

Compliance burden: Additional labeling requirements would likely increase the cost of compliance for licensees which could result in higher prices for consumers. Initiating rulemaking proceedings provides an opportunity to explore regulatory options and alternatives that may address the petitioner’s concerns while minimizing the compliance burden for businesses.

Market disruption: Changes in consumer purchasing behavior (demand) may temporarily disrupt the market as businesses adjust operations to allocate resources effectively (supply).

### ***Potential Risks and Consequences***

Diversion: Information asymmetry can incentivize diversion to the unregulated market. Consumers unsure about the quality or safety of legal products may be more likely to turn to unregulated sources where there is even less information available. However, the risk of diversion is likely low based on results form a 2021 survey, 77 percent of consumers in Washington reported buying cannabis products from licensed cannabis retailers, and it.<sup>5</sup>

### ***Equity Impacts***

Social equity licensees: Social equity licensees entering the market a decade after legalization are at a competitive disadvantage compared with existing operators. Social

equity licensees have a greater chance at being successful if they enter a fair and equitable market driven by consumer demand in which businesses can predict market trends, anticipate competitor moves, and identify potential problems before they arise.

Socioeconomic equity: Increased costs of compliance for businesses that could result from additional labeling requirements could lead to higher prices or reduce availability of certain products which could disproportionately impact low-income consumers who rely on affordable options. Alternatively, low-quality and potentially harmful products would likely disproportionately impact lower income individuals who have difficulty accessing healthcare and rely on cannabis for medical purposes.

### ***Comparison with Other Regulated Industries***

Food, medical device, and pharmaceutical industries are required to display expiration dates on product labels. This practice establishes a precedent for consumers' expectation of date-based transparency regarding product quality and safety.

### ***Feasibility and Practical Considerations***

Feasibility: The current packaging and labeling rules were last updated in 2018. While re-evaluation is warranted, the feasibility of implementing the proposed change needs further assessment.

Regulatory performance: The impact of labeling policies should be monitored, and adjustments made to address any unintended consequences.

Agency resources: If the petition is accepted, and it is determined through the rulemaking process that the dates should be required on labels, Agency division resources may be required to implement the rule, including but not limited to:

1. **Education and Enforcement** - E&E resources may be required to develop a framework for ensuring accurate date representation and to educate licensees for regulatory compliance.
2. **Licensing** - Resources may be required to update existing resource documents related to label approvals.
3. **Public Health and Prevention** - Educational initiatives may be necessary help consumers learn how to evaluate product quality to make well-informed decisions.
4. **Research Unit** - Research may be necessary to understand how adding the dates to labels may impact consumer behavior and to assist with developing tools (e.g., surveys) to understand consumer labeling preferences.
5. **IT** - The petitioner's request does not appear to impact the IT division.

**6. Finance** – The petitioner’s request does not appear to impact the finance division.

***Interagency Coordination***

Collaboration with Department of Health (DOH) and Department of Agriculture (WSDA) would be necessary to ensure consistent implementation and enforcement across the regulatory landscape.

**Conclusion**


The Petitioner raises important considerations regarding consumer transparency and potential public health benefits. A thorough rulemaking process, informed by stakeholder input, will be crucial for reaching a well-informed decision regarding harvest and processing date labeling requirements. By being thoughtful and nuanced in our approach to labeling policies, we can maximize their positive impact while minimizing the potential for harm.

**Recommendation**

Based on the reasons described above, the Director's Office Staff recommends the Board accept the petition for adoption, repeal or amendment of rules related to product labeling requirements and initiate rulemaking proceedings consistent with [RCW 34.05.330\(1\)\(b\)](#).

**Board Action**

After considering the recommendation of Director’s Office staff, the Board accepts or denies the petitions for rulemaking received submitted by Chuck Oliver on January 25, 2024.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>3.13.2024</u> Date
	David Postman, Chair	
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>3.13.2024</u> Date
	Ollie Garrett, Board Member	
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>3.13.2024</u> Date
	Jim Vollendroff, Board Member	

Attachments:

- 1) Petition form and supplementary documentation

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<sup>1</sup> [RCW 69.50.342](#)

(1) For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the board is empowered to adopt rules regarding the following:

...

(c) Methods of producing, processing, and packaging cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products; conditions of sanitation; safe handling requirements; approved pesticides and pesticide testing requirements; and standards of ingredients, quality, and identity of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products produced, processed, packaged, or sold by licensees;

...

(g) Labeling requirements and restrictions on advertisement of cannabis, useable cannabis, cannabis concentrates, cannabis health and beauty aids, and cannabis-infused products for sale in retail outlets;

<sup>2</sup> [RCW 69.50.346](#) **Labels on retail products.**

Intent—2019 c 393: "The legislature intends to allow additional information on the labels and labeling of marijuana [cannabis] products to assist consumers in making purchases of these products.

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<sup>3</sup> [RCW 69.50.345](#)

(6) In making the determinations required by this section, the board shall take into consideration:

- (a) Security and safety issues;
- (b) The provision of adequate access to licensed sources of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products to discourage purchases from the illegal market; and
- (c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

<sup>4</sup> Punja ZK, Collyer D, Scott C, Lung S, Holmes J and Sutton D (2019) Pathogens and Molds Affecting Production and Quality of Cannabis sativa L. *Front. Plant Sci.* 10:1120. doi: 10.3389/fpls.2019.01120

<sup>5</sup> In a 2021 survey by the International Cannabis Policy Study (ICPS), 77 percent of Washington cannabis consumers reported buying "any type of marijuana" from a "store, co-operative, or dispensary" in the previous year, while 17 percent said they had obtained pot from a "dealer."