



Washington State Liquor and Cannabis Board

CR-103 Memorandum

Regarding the Implementation of E2SSB 5367 Concerning THC Product Regulation

Date: October 9, 2024
Presented by: Cassidy West, Policy and Rules Manager

Background

[Engrossed Second Substitute Senate Bill \(E2SSB\) 5367](#) (chapter 365, Laws of 2023), which became effective on July 23, 2023, was designed to address the increasing prevalence and complexity of consumable products containing various tetrahydrocannabinol compounds (THC) that emerged onto the unregulated market beginning in 2018 following the passage of the [Agricultural Improvement Act](#) (2018 Farm Bill). The 2018 Farm Bill legalized industrial hemp federally, while inadvertently creating a loophole which allowed for the unregulated cannabinoid market to thrive. To rectify the regulatory oversight and prioritize consumer safety and public health, legislative measures were taken.

Rulemaking is necessary to align the current rules with statutory changes resulting from the passage of E2SSB 5367. Additionally, rule changes are necessary to update the transaction limits for liquid cannabis-infused products modified by [Substitute House Bill \(SHB\) 1249, \(chapter 9, Laws of 2024\)](#).

Rulemaking to implement E2SSB 5367 was initiated (CR-101) on June 21, 2023 ([WSR 23-13-129](#)). On July 31, 2024, the Board approved filing proposed rules (CR-102), and on August 6, 2024, the CR-102 was filed ([WSR-24-16-126](#)). The public hearing on the proposed rule was on September 11, 2024.

Rules were developed in coordination and collaboration with representatives from LCB's Director's Office, Enforcement and Education Division, Licensing and Regulation Division, and Finance Division. Additionally, LCB staff worked closely with representatives from the Department of Health (DOH) and Washington State Department of Agriculture (WSDA), deliberating during regularly scheduled Collaborative Laboratory Services Program (CLASP) meetings to ensure uniform standards and facilitate a seamless implementation of the regulatory changes.

Stakeholder Engagement

Stakeholder feedback played a crucial role in shaping the proposed regulations, ensuring they are practical, enforceable, and protective of both consumers and industry participants. Robust stakeholder engagement was critical for informing the development of the proposed rules. Various methods were used in the engagement process, including, surveys, virtual webinars, and written comments.

Stakeholders included representatives from the cannabis industry, hemp industry, public health and prevention partners, Tribes, advocacy groups, consumers, and medical patients, among others.

Summary of Stakeholder Engagement:

1. **December 15, 19, and 21 2023:** Virtual collaborative rulemaking discussions were held to discuss regulatory policy options and approaches for measuring, reporting, and labeling multiple THC compounds.
2. **January 22 – 31, 2024:** A survey was distributed via GovDelivery in January 2024 seeking more input from stakeholders to build onto the information received during the December engagements. There were 234 unique survey responses.
3. **April – May 2024:** Conceptual draft rule language incorporating feedback provided in prior engagements were discussed during these virtual sessions. Session feedback was incorporated into the proposed rules filed on August 6, 2024.

Public Comments

The Board received six written comments during the formal comment period ending on September 11, 2024. Additionally, the Board heard two oral testimonies on the proposed rules during the public hearing. Both stakeholders testifying expressed concerns related to the single-serving limits for cannabis-infused products in [WAC 314-55-095](#) of the proposed rules. The Concise Explanatory Statement includes more information about the public input.

Variance Between the Proposed Rule & Final Rule

WAC Section	Proposed Rule (CR-102)
WAC 314-55-095 Cannabis Servings and Transaction Limits	In the proposed rules for WAC 314-55-095, the term “serving” was intended to be replaced with “package” to align with the new definitions of “package” and “unit.” This change was made in other subsections but was not accurately reflected throughout the section. The final rule corrects the oversight to ensure consistency with the updated terminology used throughout the regulation, promoting clarity and compliance.
	The transaction allowance for cannabis-infused products, allowing purchase of up to ten cannabis-infused products meant to be “otherwise taken into the body” was inadvertently removed in the

	proposed rule and added back in the final rules for adoption.
	A new subsection (3) is created to specify that the LCB will maintain a non-exhaustive list of cannabinoid compounds that are not classified as THC and not subject to the single serving limits. This list will be publicly accessible via the internet, providing clarity for consumers and licensees regarding which cannabinoid compounds fall outside the THC classification. This addition aims to enhance consumer transparency and ensure that all parties are informed about the applicable regulations concerning THC content.
WAC 314-55-102 Quality Assurance and Quality Control Testing	The total THC calculation equation is updated in the final rules to incorporate the molar mass ratio, which was inadvertently left out. While the equation was previously written incorrectly, the actual calculation method remains unchanged.

Rule Implementation

Informing and Educating Persons Affected by the Rule

To help inform and educate persons affected by the rule, the LCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB GovDelivery list; and
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.

Promoting and Assisting Voluntary Compliance

LCB will promote and assist voluntary compliance through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.

- Rule and guidance documents will be available on the LCB website.
- LCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing LCB Staff

Several LCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Internal guidance documents may be prepared, as necessary. The LCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate; and
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

Evaluating Rule Effectiveness

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly,
- Monitoring the number of enforcement actions, including type, resolution, and the outcome,
- Monitoring the number of requests for rule language revisions or changes,
- Monitoring the number of requests for rule interpretation, and
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.