



Notice of Permanent Rules

Regarding WAC 314-55-105 – Packaging and labeling requirements; and WAC 314-55-077(8) and (9) – Marijuana processor license – Privileges, requirements and fees.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new sections amendments to existing rules regarding WAC 314-55-105 – Packaging and labeling requirements; and WAC 314-55-077(8) and (9) – Marijuana processor license – Privileges, requirements and fees.

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 Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule

Washington State marijuana packaging and labeling regulations have evolved since their initial promulgation in 2013. Originally designed to provide a basic framework, requirements included, but were not limited to what products must be packaged in child-resistant containers, what warning language needed to be on accompanying material, and what traceability information needed to be on every product label. Over time, rules related to packaging and labeling of marijuana products have been revised in response to legislation and industry growth. Other factors, such as the use of biodegradable packaging, and reduction of the market’s environmental impacts suggest that additional options to support industry sustainability have been explored.

However, protecting children and youth from accidental exposure to marijuana products continues to be a priority shared by the industry, the prevention community, the Board and many others. Assuring that marijuana product packaging is designed and constructed to be significantly difficult for children and youth to open, and requiring labeling that clearly communicates the adult nature of the product also continue to be shared priorities. As the industry has grown and evolved, so has the need for the Board to consider refining regulations around the packaging and labeling of these products.



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These adopted rules reflect the outcome of an inclusive and engaged rule development process occurring from August to October of 2019 that was designed to balance several competing interests. Those interests include, but are not limited to:

- Assuring that marijuana products are not appealing or marketed to persons under twenty-one years of age;
- Offering a more concise, yet flexible framework to provide licensees the ability to engage in product development, design and marketing that will support business growth. At the same time, the Board is interested in sustainable business practices that will reduce industry waste and environmental impact, while maintaining an emphasis on public safety and the reduction of potential for accidental exposure to marijuana products;
- Assuring that required product warnings are aligned by product type;
- To the extent possible in rule, providing guidance for the provision of structure and function claims that are anticipated to increase consumer product knowledge; and
- To the extent possible in rule, providing clarity regarding what types of labeling designs and packaging characteristics should be avoided to reduce the possibility of unintended, accidental exposure to marijuana products.

The nexus and balance of these interests are demonstrated through this final rule package.

Further, Engrossed Substitute Senate Bill (ESSB) 5298 (Chapter 393, Laws of 2019) involving marijuana product labeling will become effective January 1, 2020. Among other revisions, ESSB 5298, amended RCW 69.50.345, RCW 69.50.346, and created a new section describing the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist in making purchases of these products. The Board is required to align existing rule with the amendments of this legislation, and to the extent possible, within the timeline established by the legislature. This final rule package reflects and incorporates those statutorily required revisions.

Rules are needed for the following reasons:

1. The Board received two rule petitions from The Cannabis Alliance on March 11, 2019 as follows:

- The first petition requested that the Board open WAC 314-55-105 to consider removing the current requirement that marijuana-infused liquid edible products must include a measuring device, such as a measuring cup or dropper;
- The second petition requested that the Board open WAC 314-55-105 to revise the current requirement that marijuana-infused products for oral ingestion must be packaged in plastic 4 mil or greater in thickness, and instead, reduce the requirement to plastic 2 mil or greater in thickness.



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The Board accepted both of these petitions on April 30, 2019, and consistent with the provisions of RCW 34.05.330, agreed to open the identified rule to consider the petitions and language proposed therein.

These proposals have been vetted, thoroughly discussed and researched during the rule development process, including a focus group with licensees, a focus group with prevention and public health representatives, and a listen and learn session consisting of all representatives from all interested parties, cumulating in acknowledgement of shared goals and general agreement on this proposal.

2. Engrossed Substitute Senate Bill (ESSB) 5298 (Chapter 393, Laws of 2019) involving marijuana product labeling will become effective January 1, 2020. Among other revisions, ESSB 5298 amended RCW 69.50.345, RCW 69.50.346, and created a new section describing the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist in making purchases of these products. The Board is required to align existing rule with the amendments of this legislation, and to the extent possible, within the timeline established by the legislature.

3. The Board approved five Board Interim Policies (BIP) on January 9, 2019 as follows:

- BIP 05-2018 – Implementation of Cannabis Packaging and Labeling Rule changes;
- BIP-07-2018 – Marijuana labeling –False and misleading definition clarification;
- BIP-08-2018 – Marijuana labeling - Curative or therapeutic effects;
- BIP-09-2018 – Marijuana labeling - Marijuana infused edibles colors and homogenization, specific to WAC 314-55-077(8) and (9); and
- BIP-10-2018 – Marijuana labeling – Marijuana infused edibles colors.

Since the specific sections of rule that these BIP address were open for inquiry based not only the Cannabis Alliance petitions, but on the rule revisions that are necessary to comply with the provisions of ESSB 5298, these BIP were updated on July 19, 2019 to extend their compliance date to July 1, 2020. However, since the policies that these BIP sought to address have been incorporated into this rule proposal, addressed by way of ESSB 5298, or addressed by alternative resolution options, it is appropriate to rescind these BIP as soon as these rules become effective on January 1, 2020.

These new rule sections and amendments, in addition to proposed technical and clarifying revisions support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current, dynamic regulatory environment.



Rulemaking history for this adopted rule:

CR-101 – filed June 12, 2019 as WSR #19-12-029;
CR 102 – filed October 30, 2019 as WSR #19-22-030
Public hearing held December 11, 2019

Public comment received on the rule proposal

The following comments were received as indicated below, and are presented in their native form, including formatting, text and spelling. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

1. **Email message, received November 5, 2019:**

“I wanted to follow up after our last conversation and flag something in the PAL rule set to try to get some visibility on if it slipped through the cracks or if there was some intention around include it.

In WAC 314-55-105 section 3 (marijuana edibles in solid form), sub section e, item (ii) it calls for "the lot numbers of the product" to be included on "labels for marijuana edibles in solid form" and that it "must clearly and visibly provide all of the following information."

Lots numbers are not currently required on any packaging and labeling, and I am unclear as to the intention around bringing it back onto packaging and labeling after it was removed a few years back from the original PAL rules. The lot numbers serve no purpose on final packaging and a single product could include many lots of flower to make the final finished good.

Traceability (in whatever form it currently takes or will take in the future) would capture input lot information should a recall be needed. But no end consumer of the products would have value for lot information and no retailer would have need for it either. I would like to point out that this requirement is currently in all PAL requirements for labels on each type of finished marijuana product.

This was something I flagged in written and in person testimony on the listen and learn, and wanted to make sure I flagged again and understood the intent behind it remaining in the proposed rules. Any guidance or feedback on the matter is greatly appreciated and please let me know if I can be of any further assistance. Thank you again for all your hard work, please know that we see everything you have done to make this a more transparent and efficient process!”



WSLCB response: The WSLCB appreciates this comment and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? This comment was reflected in the final rule.

2. **Letter, dated November 15, 2018, attached to email message received November 15, 2019:**

The Cannabis Alliance is writing to highlight a couple of small changes we would like the agency to consider as it pertains to the Packaging & Labeling CR102. We believe our recommendations are not substantive changes but rather a bit of housekeeping on some potentially unintended outcomes. These points were highlighted to us by our membership and were also briefly mentioned in the Listen & Learn session that took place on October 11.

WAC 314-55-105 (2)(e)(iv), (5)(d)(iv) and (6)(d)(iv) re: labeling serving size

The proposed language adds serving size requirements for marijuana concentrates, usable marijuana, and marijuana mix. This requirement was previously **only** required on “marijuana-infused products (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).”¹

The proposed language also adds that labels should contain the “draw size” contained within the unit for marijuana concentrates and usable marijuana.

We are concerned about this addition. We understand it is possible to calculate serving size for edibles as it is definable and quantifiable, much like you would see on other food products. However, it is simply not possible to quantify serving size for concentrates or flower and “draw size” will vary tremendously from person to person. Therefore, serving size language for these products does not translate as there is no way to determine a number that would represent a typical “serving.”

Initially we thought this might be a formatting error as the section has been significantly restructured. However, with the addition of the draw size language we understand this addition to be intentional. Either way, the difficulty remains in determining serving size for marijuana concentrates, usable marijuana, and marijuana mix and draw size for marijuana concentrates and usable marijuana.

¹ <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-105> (2)(c)(iii)(A)



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WAC 314-55-105 (2)(e)(ii), (3)(e)(ii), (4)(e)(ii), (5)(d)(ii), (6)(d)(ii) and (7)(d)(ii) re: lot number

The requirement to include the lot number on the package is a new addition that creates complexity on the package, potentially very long labels for those that mix several lots and does not provide any substantial new information that is not already captured in the numbers already required. We ask that you remove this addition for the reasons outlined.

We sincerely hope that these changes can be easily addressed and are happy to answer any questions about why we feel these additions create unnecessary challenges.

With these minor adjustments, we support the majority of the current language as written in the draft rule and hope the rule making can move forward along the original timeline.

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? The comments were reflected in part the final rule

3. Email message, received November 20, 2019:

“If I could I’d also like to ask you about the accompanying materials portion of the WAC, specifically as it relates to the pesticide disclosure.



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(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.

We have partnerships with two farms and source all of our cannabis that is used in our products only from them. On our website we have both disclosures, one that is from a farm that is pesticide free and the other from a farm that uses two organic and natural pesticides. We feel that this is an appropriate manner in which to disclose our pesticides used, and has been acceptable to the LCB all year. We recently submitted some new packaging for review and were told that this manner of disclosing does not meet the requirements and that instead we need to list each product number on the website, and provide the pesticide disclosure for each specific product. Our packaging submissions are on hold until this is remedied.

Our preferred method of disclosing pesticides is to provide that information on our website. I know firsthand that when providing the pesticide disclosures at delivery often times it does not make it into the budtenders hand, or is often times not even made accessible to the budtender and thusly the consumer. Providing this on our website ensures that anyone who is curious about our products can access pesticide testing information. The problem, however, is if we were to list the disclosure individually for each lot (or even each UBI) this would be INCREDIBLY time consuming and cumbersome to every processor and take up quite a bit of space on the website, causing the consumer to scroll through hundreds of product numbers for their product – only to find the same two disclosures that we already provide on the FAQ section of our website. I have reached out to other processors who concur that they also do not disclose pesticides per lot/UBI/product but rather provides a general disclosure such as we do.

We feel that this method, that we have been utilizing since the pesticide disclosure requirement came to be, is wholly adequate and does a sufficient job to the consumer displaying what, if any, pesticides have been used on the cannabis utilized in our products. It is similar to how on the back of a bag of plain M&Ms you'll read 'this product may have been produced in a facility with nuts', anyone sensitive to nuts is made aware they are at risk if they choose to consume.

I have reread the draft rules and see that even more language has been added on this topic,

(93) **Accompanying materials.** ~~The following a~~ accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products.



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(a) ~~at retail.~~ A producer or processor ~~may~~-must provide the following ~~this product-specific~~ information, for as long as the product is for sale, 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.~~ as follows:

(i) A statement ~~that discloses~~ disclosing 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;

(ii) A list disclosing all of the chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production.

We ask that you remove ‘product specific’ from the language. If a processor is using the same material for all of their products, with the same pesticides, we believe providing a general disclosure is adequate. If we were to deviate from our trusted partner, we would be sure to update our disclosure for as long as that product is in market. We do not believe it is worth the time and effort that would be required of us processors to provide the disclosure for each product specifically and do not see any added benefit to the consumer. If our pesticide disclosure is always the same – why must we go through the very repetitive and redundant task of uploading it daily for each batch – of which we create three to four batches a day of product. In a year we would have uploaded the same pesticide disclosure 1,004 times, to put this into perspective for you.

Proposed language:

(a) ~~at retail.~~ A producer or processor ~~may~~-must provide the following ~~this product-specific~~ information, for as long as the product is for sale, 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.~~ as follows:”

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The language proposed in the CR102 regarding accompanying materials is the same language that was offered at the October 11, 2019 Listen and Learn session. No comments were offered at that session with respect to these revisions.

Specifically, the WSLCB added the language concerning disclosure of all chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production to align with the same language of WAC 314-55-105(2) regarding marijuana concentrates. This language was developed and added as a result of Governor Inslee’s Executive Order 19-03 Addressing the Vapor Product Epidemic, and as noted in the paragraph above, offered for comment as part of the rule draft discussed at the October 11, 2019 Listen and Learn session. The WSLCB finds that this language aligns with not only with Executive Order 19-03, but with the overall agency mandate to protect public health and safety.

Was the comment reflected in the adopted rule? The comment was not reflected in the final rule.



4. Email message, received November 25, 2019:

“Please find below my comments on your Marijuana Packaging and Labeling Rules.

As a parent of two small kids and a prevention professional I find that the proposed rules need to do much more to protect kids. Protecting kids and public health should be the LCB's first priority above profits for the marijuana industry.

The LCB should clarify what is appealing to kids to be more broad and specific. The LCB currently allows "fruit chews" which are no different than gummy bears - both appeal to kids. The LCB has approved 3,000 marijuana infused products, most of which are appealing to kids including such things as candy, chocolate, cookies, fruit chews, snacks, sodas, and many items that resemble commonly sold food products. These products should not be allowed.

Not only should these products be prohibited to protect kids but as an adult I don't want to attend a party and accidentally eat an infused product that looks just like a common food product sitting on the snack or drink table.

Any liquid infused product should preferably be sold in a single serve container (ie. no more than 10mg THC per container). If for some reason multiple serving liquid containers are needed (which I think are very unsafe because who only drinks 1/8th of a bottle of soda?) then a measuring cap that is the size of one serving should be included and a child proof resealable cap must be required.

Liquid products that resemble sodas, juice, or flavored sparkling water, that are fruit flavored or have colors are all very appealing to kids - should not be allowed at all.

All edible products (in 10mg THC or less doses) should be individually wrapped in 4mm childproof wrappers. These wrappers ideally should be opaque/non-see through so they don't show off appealing products inside and/or have the "Not for Kids" symbol printed on each individual wrapper.

These individually wrapped doses could be combined (maximum of 5 or 10 doses to not exceed 50-100 mg of THC per package) and sold in a common plain generic/non see through packaging that would be in an un-appealing color to kids and only contain a label with required information such as name of product, THC/CBD %, ingredients, lab test results and other required items. This would eliminate any need to review/approval MJ packaging other than the name of an item (ie. Girl Scout Cookies is appealing to youth so products should not have that name). This would save the retail and producer industry money as they would not need to produce special graphics/packaging for each of their products. So when you go into a store and leave a store and go home all you have are plain brown or some other color packages with a label on it. Inside would be individually wrapped by dose edibles each encased in 4mm childproof plastic or similar childproofing material. This also eliminates



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the many youth appealing MJ product wrappers that find their way into our neighborhoods as litter.

Inside of the store, producers could have advertising on the shelves next to their generic packaging that could display whatever graphic/appealing images they want (as long as not promoting misleading claims) as long as those ads stay in the store and are not visible from the outside. Since all products are individually wrapped in childproof packaging then this would eliminate the need for the outer generic packages to be resealable and these outer packages would NOT need to be childproof - also saving producers money on the outer packaging costs.

Rather than trying to figure out what product colors appeal to kids - instead figure out what color is the least appealing to kids and require that all MJ infused products (edible and drinkable) be manufactured in that color. This will assist parents, school staff and first responders to identify these products more easily. Likewise you could allow only a few unappealing sizes/shapes for edible products.

Thank you for considering these recommendations to protect our kids.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. Although these comments have been presented at different phases of the rule development process for this and other projects, no empirical, peer reviewed studies or verifiable, substantive evidence or data was provided to support the opinions and assertions offered.

Additionally, rule language revisions were not offered for the WSLCB, the licensed community, the prevention community or the public to consider. For example, the adopted rule no longer uses the phrase “especially appealing to children,” as noted in the above comment. That phrased was changed early in the rule development process, provided to all stakeholders, and discussed at the various focus groups, as well as the Listen and Learn session on October 11, 2019. The adopted language is the same as was discussed in those forums:

- (c) "Especially appealing to persons under the age of twenty-one" means a product or label that includes, but is not limited to:
- (i) The use of cartoons;
 - (ii) Bubble-type or other cartoon-like font;
 - (iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of twenty-one;
 - (iv) Symbols or celebrities that are commonly used to market products to persons under the age of twenty-one;
 - (v) Images of persons under the age of twenty-one; or
 - (vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.



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Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

The comments offered are beyond the identified scope and focus of this project.

Was the comment reflected in the adopted rule? These comments were not reflected in the final rule.

5. Email message, received December 4, 2019:

"Hi there,

I wanted to share a comment for WAC 314-55-105 and WAC 314-55-077(8) and (9) regarding marijuana packaging and labeling. Community members from our prevention coalition in Southwest Washington (Clark County) developed the following statement:

From a prevention stand point, removing the current requirement that marijuana-infused liquid edible products must include a measuring device, such as a measuring cup or dropper, has the ability to have harmful consequences on adults and youth. It is our suggestion that if you were to remove this requirement that the liquid container must then contain score marks and at a minimum have a resealable cap. Although this may still incur additional costs to producers, the cost on public health could be much greater.

Prevention professionals from the SW Washington region have discussed the difficulty in defining what is "especially appealing to children" and understand that this definition can be subjective and ever-changing. In order to address this problem, we wanted to present the idea of creating a review board that would be in charge of approving the different advertising and promotion ideas. We believe this would be the most effective way to ensure products are not being marketed towards our youth. As an example, currently "VSCO girls" are trending among our youth. If a product came out that was titled VSCO girl or contained symbols that related to the VSCO lifestyle, it would be appealing to our young people. This is not something that can be encompassed in a single definition and needs the individual attention of a review board. In our attempts to still define "especially appealing to



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children,” we would suggest: marketing or promotion that contained animals, caricatures, memes, sight words, mimicking candy/alcohol/medicine, or other youth popular trends.

Thank you for listening. Peace to you.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that requiring a resealable cap on marijuana products offered for sale and consumption to persons over twenty-one years of age results in increased costs on public health. Additionally, although the WSLCB appreciates the suggestion, the WSLCB piloted a review board model from early to mid-2019, and found that such a process did not add value or increase the safety of products, but became overly cumbersome, unnecessarily delayed the review process, and did not influence packaging approval or denial outcomes.

However, the intent of the section regarding the measuring devices for marijuana-infused liquid edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ~~such as a measuring cap or dropper~~ with the package containing the marijuana-infused liquid edible product. Hash marks ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in part, in the final rule.

6. Email message, received December 5, 2019:

“We have concerns with the language concerning serving size for concentrates and flower in the proposed packaging and labeling rules. We are concerned with how we would accurately and safely draw the line for how to prescribe our consumers to ingest our vapor and flower products. It is hard to quantify the volume of a “puff”, “draw”, or “hit”, due to a number of variables unique to each consumer such as; lung capacity, the speed of which they draw smoke/vapor, and the mode of consumption. Additionally one customers tolerance of cannabinoids compared to another can greatly vary, what may be a “normal” draw size could be too overpowering for an infrequent cannabis consumer. The mode of heating up cannabis for inhalation will also change how a set serving size will affect them, for example, combusting flower vs. vaporizing flower will result in very different experiences for the



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consumer due to the efficiency of cannabinoid absorption in vaporizing over smoking. One step further down this road of digression, if a consumer uses a water pipe vs a cannabis cigarette they can expose their lungs to different amounts/levels of cannabinoids with the same base product. This is in part because of the temperature of the smoke, but also in part of the differences between the delivery devices and ability to inhale more easily through different mediums.

I believe the intention of this language is to help consumers regulate their cannabis consumption. In regards to cannabis infused edible products a means to regulate cannabis consumption by volume or an easy to measure metric is very rational, because of the delayed effects, and constancy in dosage. Although cannabis extracts for inhalation and useable flower, the consumer can easily “feel out” their own experience while they are enjoying their product of choice, as the product will affect users instantaneously based upon their own unique endocannabinoid system. Due to the number of ways to combust cannabis, the variance of the measure of a “puff”, and the variance of consumer tolerance, It makes it impossible for a processor to not put misleading or inaccurate information on our packaging (in our effort to be compliant with this proposed language). Processors will inherently be put into a position where they need to make an arbitrary decision placing language like “1-3 draws per serving and “x” servings per unit” on their packaging to be compliant with this regulation, while simultaneously becoming non-compliant with placing false or misleading information on our packaging. Until there is a scientifically sound and standardized way to measure combusted cannabis inhalation and its relationship to the specific end user, this industry is not ready for this liability.

In short I am asking the Board to reconsider and remove this language of “*the serving or draw size contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving*” to products other than cannabis infused edibles. This language doesn’t address consumer self-regulation of their safe consumption, it adds misleading language/guidance to our packaging, and further places a unmeasurable nonsensical dosage upon the consumer varying widely from consumer to consumer based on personal preference.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.



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Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

7. Email message, received December 10, 2019:

“As the co-lead of the Youth Marijuana Prevention and Education initiative at King County, I would like to provide feedback on the proposed rules for marijuana labeling and packaging, WSR 19-22-030. These rules are a key opportunity to prevent marijuana exposures for youth while maintaining the market for consumers 21 and over. Utilizing the best available evidence for marijuana packaging as well as considering the applicability of the tobacco prevention evidence-base can guide us to rules that are promising to protect the young public’s health. Please amend the following components of the rule to meet this mission:

Product design- Product form itself contributes to appeal to young audiences. An experimental study that asked over 27,000 US and Canadian panelists to gauge the appeal of cannabis oil, joints and gummies found that 16-18 year-olds and 19-35 year-olds ranked gummies as the most appealing of these products. All age groups in the study also ranked gummies as the most likely to be oriented to youth, with the 16-18 year old group having the strongest perception that these were youth oriented products (Goodman, Leos-Toro, & Hammond, 2019).

The proposed rules state that cannabis products may not have “Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.” The rules need a clear and sufficient test for this requirement. Given the appeal to youth, the more conservative this test the better. Many currently available edible cannabis products resemble products marketed to youth (eg, peanut butter cups, gummies, truffles). Moreover, the individual packaging for these items is often transparent, which allows for a direct appeal of form to youth and very young adults. The rules should include opaque individual-serving packaging to limit this appeal.

Packaging design- Youth and young adults rate fully-branded cannabis products as more appealing than plain packaging products (Goodman et al., 2019; Mutti-Packer, Collyer, & Hodgins, 2018). Plain packaging is a transferrable best practice from the tobacco control world as it reduces brand familiarity and eliminates images and coloring that suggest safety, health benefits or affinity with a desired lifestyle (Orenstein & Glantz, 2018). Product packaging travels outside of the age-restricted marijuana retail environment, exposing people under 21 to fully-branded messaging.

Washington’s rules should require plain or logo-only packaging on a non-youth appealing background (eg, dull colored). In-store branding displays next to products can be fully colorful and designed as these components will not be seen by those under-age. This requirement would have a benefit of streamlining package approval for processors and LCB, as packaging would be relatively uniform and thus the test of youth appeal easier to implement.



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Liquid cannabis products need to come with a measuring device. The proposed rules state a measuring device “may” be included with products, and define hashmarks as a measuring device. All products need to come with hashmarks for consumers to titrate a dose. The hashmarks should not fall under the “may” directive.

Warning labels- The proposed rules require multiple warnings appear on all packaging without distinction from other required or voluntary labeling. The content and styles of the warnings themselves are unlikely to create emotion or knowledge that changes consumption behavior for youth. Warning labels should instead reflect existing evidence in marijuana research and applicable best practices from tobacco control. They should also respond to known threats in Washington’s youth marijuana risk profile. Given this, warning labels on marijuana products should:

- Garner prominence and attention by being distinct from other claims and information and of sufficient font size for easy notice and reading (Orenstein & Glantz, 2018);
- Increase interest and impact by rotating through different messages and by using images (Orenstein & Glantz, 2018) and by using messages that youth have identified as having potential to impact behavior (Mutti-Packer et al., 2018);
- Directly and compellingly address Washington youth’s decreasing perception of harm for marijuana use and high rates of driving or being in a vehicle with someone under the influence of marijuana (HYS, 2019). For instance, by including a warning about brain development or describing the crash risk associated with DUI (rather than the legality).

These recommendations reduce appeal and exposure for those under-age and directly respond to some of the known threats from marijuana to young people in our state. Thank you for your consideration.

References:

- Goodman, S., Leos-Toro, C., & Hammond, D. (2019). The impact of plain packaging and health warnings on consumer appeal of cannabis products. *Drug and Alcohol Dependence*, 205. <https://doi.org/10.1016/j.drugalcdep.2019.107633>
- HYS. (2019). *2018 Washington State Healthy Youth Survey - Data Brief: Marijuana*. 6–8. Retrieved from [https://www.askhys.net/Docs/HYS 2018 marijuana data brief Final.pdf](https://www.askhys.net/Docs/HYS%2018%20marijuana%20data%20brief%20Final.pdf)
- Mutti-Packer, S., Collyer, B., & Hodgins, D. C. (2018). Perceptions of plain packaging and health warning labels for cannabis among young adults: Findings from an experimental study. *BMC Public Health*, 18(1). <https://doi.org/10.1186/s12889-018-6247-2>
- Orenstein, D. G., & Glantz, S. A. (2018). Regulating Cannabis Manufacturing: Applying Public Health Best Practices from Tobacco Control. *Journal of Psychoactive Drugs*, 50(1), 19–32. <https://doi.org/10.1080/02791072.2017.1422816>”

WSLCB response: The WSLCB appreciates these comments and demonstration of participation in the rulemaking process. Additionally, the WSLCB appreciates the provision of literature regarding the subject of marijuana packaging and labeling, and looks forward to peer reviewed, empirical evidence demonstrating a causal link between marijuana packaging and labeling, and the inadvertent or accidental



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exposure to marijuana products by persons under twenty-one years of age. No rule language or revisions were offered for consideration by the commenter for consideration of stakeholders, the agency, or other interested parties.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring device was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ~~such as a measuring cap or dropper~~ with the package containing the marijuana-infused liquid edible product. Hash marks ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected in the final rule.

8. Email message, received December 10, 2019 (highlighting original):

“I see the language still exists and again implore you to delete this rule as it’s not logical nor a definable quantity to apply to an inhaled product as there is vast personal variance on how much one can inhale.



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(5) Useable Marijuana / (6) Marijuana mix: d(iv) The serving or draw size contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

I am also unclear why LCB feels adding the lot number is needed as per: d(ii) The lot numbers of the product;

This takes up valuable real-estate on the small labels – the trace number points back to the lot so why is the inclusion on the label felt as needed?”

WSLCB Response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of listing serving size on all marijuana and marijuana product labels has been part of WSLCB packaging labeling rules for some time. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? These comments were reflected in in the final rule.

9. Email message, received December 11, 2019:

“On behalf of the Washington Association for Substance Abuse and Violence Prevention (WASAVP) I am submitting our comments about the proposed rule changes to WAC 314-55-105. WASAVP has partnerships with 13 coalitions and associations across the entire State of Washington. Since our founding in 2001 we have been an ardent advocate for prevention policy, especially as relates to youth substance abuse. We are proactive and seek to set community norms and standards that support healthy youth and family development



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which includes environmental factors, advertising regulations and access to marijuana, tobacco, alcohol and now vaping devices.

Because our work emphasizes prevention, the coalition is concerned about the proposed rule changes to **WAC 314-55-105**. Together, the two changes would make measuring devices such as a measuring cup or dropper optional and allowing for thinner plastic packaging. We, like Prevention WINS, have serious concerns as is outlined in the following paragraphs.

Further, we request that the comment period be extended into 2020 to continue the rules refinement on this topic. This would be more effective and would prevent finalizing bad policy rules. We expect to survey our members and coalition partners to gain a better understanding of the issues our local communities are facing. For example, one of our board members recently reported that products that appeal to children and youth are still being presented in marijuana shops in the Seattle area.

Looking first at the change to measuring devices as proposed in **WAC 314-55-105 section 4, paragraph iii** (*Marijuana edibles in liquid form*). If the change is approved, manufacturers could eliminate measuring cups or droppers and rely on hash marks to indicate serving size. The confusion this would create is significant. Take for example, a cannabis-infused soda currently available. One bottle contains 10 mg of THC, a second identical bottle has 30 mg of THC and yet a third contains 50 mg. of THC. Three bottles—identical in every way except THC dosage. All could be sold without a measuring device except hash marks. This goes counter to the examples of serving size measurements that pharmaceutical and food manufacturers currently deal with. Take children’s Tylenol for example.

A leading website for parents, BabyCenter, has an entire section dedicated to getting dosages correct acetaminophen, commonly referred to by the major brand Tylenol. Warnings on the dosage guide page state:

- *Acetaminophen is one of the hardest drugs to give correctly, because it's sold in many forms.*
And
- *Use the measuring device that comes with the medicine... If you lose the device, get a replacement from the pharmacy or use a standard measuring teaspoon (the kind used for baking), not a regular spoon used for eating. ([BabyCenter](#))*

Tylenol’s manufacture, Johnson and Johnson, has its own educational website called [GetReliefResponsibly](#). From a prevention perspective, the responsibility belongs with the company, not the consumer. As it should for the cannabis industry in our state.

Looking at a non-medical product, there multiple examples of serving size issues when it comes to kids and adults. The news and quiz site BuzzFeed mocks this with their quiz titled, “[Do You Actually Understand How Ridiculous Serving Sizes Can Be?](#) Hint: ‘Till it's gone’ is technically not considered an official serving size.” One example of ridiculous servings is a 32 ounce bottle of Powerade which contains 2.5 servings.



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Because eating or drinking a cannabis-infused product delays the effect of THC from 45 minutes to 2 hours, overconsumption is easy. New York Time's columnist Maureen Dowd was derided after she wrote about eating an entire bar of cannabis-infused chocolate in Colorado. That chocolate bar was not dosage scored.

Dosages must be clearly labeled and easy to measure. WASAVP strongly opposes the proposal to make measuring devices optional as proposed in **WAC 314-55-105 section 4, paragraph iii.**

Our second concern is about thinner plastic for packaging edibles referenced in **WAC 314-55-105 section 3, paragraph (b) (ii).** The cannabis industry says reducing the plastic thickness from the current 4 mil to 2 mil benefits the environment with less plastic. We applaud any efforts to minimize waste throughout the industry. However, given the sorry state of plastic recycling globally, where the cost of recycling plastic now greatly exceeds the market for recycled plastic and municipalities including King County are cutting back on plastic recycling programs, the change from 4 mil to 2 mil is not going to make an impact on the environment. We expect it will make a negative impact on the safety of young children by leading to more unintended cannabis exposures.

Making packages thinner, and therefore easier to open, does not benefit anyone when considered against keeping infants, toddlers, or preschoolers from consuming a misplaced cannabis purchase. Since marijuana legalization in 2014, the Washington State Poison Center has seen almost triple the number of calls about children between the ages of 0-5. It's our expectation that maintaining the current requirement of 4 mil in plastic packaging will keep these cannabis exposures at or below the current level as measured by calls to the poison center. Prevention WINS strongly opposes the proposal to switch to 2 mil plastic packaging detailed in **WAC 314-55-105 section 3, paragraph (b) (ii).**

In addition to opposing these two changes, WASAVP supports feedback provided to the LCB by Cheryllyne Crowther of Prevention WINS. Simply put we believe Washington rules should require plain or logo-only packaging on a non-youth appealing background (dull colors).”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the WSLCB provided additional time for public comment on these rules as they were being developed that was not required by the Administrative Procedures Act described in chapter 34.05 RCW between the filing of the CR101 in May of 2019 and the filing of the CR102 in October 2019. The duration of the statutorily required formal comment period described in RCW 34.05.320 was exceeded for this rule project. The WSLCB is unable to unilaterally prolong a comment period that ended consistent with the provisions of RCW 34.05.320 to extend the comment period on



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these rules "...into 2020 to continue the rules refinement on this topic. This would be more effective and would prevent finalizing bad policy rules. We expect to survey our members and coalition partners to gain a better understanding of the issues our local communities are facing. For example, one of our board members recently reported that products that appeal to children and youth are still being presented in marijuana shops in the Seattle area" when no rule language has been offered, and no verifiable data or other supporting evidence has been offered to support the consideration of a revision that could be a substantive change to the adopted rules that would require a supplemental hearing on the issue.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)

Suggested language for rule:

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ~~such as a measuring cap or dropper~~ with the package containing the marijuana-infused liquid edible product. Hash marks ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

10. Email message, received December 11, 2019:

"Thank you Kathy for your continuing involvement to better our industry. I believe there is a whole email thread on the 502 forum dedicated to draw & serving size requirements for concentrates, usable marijuana, and mixed marijuana.

I agree with Crystal that we should not mandate serving size requirements on packaging. Liability, lack of scientific data, Crystal nailed it all.

The only other thing I would add, that I have not seen people discussing it is that the serving size requirements conflicts and highly impacts the nutritional info. By specifying servings size 1 truffle 10mg THC, the nutritional label needs to be made for 1 truffle.

The thing is *_most_* of the confectionary products specify nutritional data based on a >1 number of servings. So what happens when you convert a nutritional label for a chocolate product from N:1 servings, most of the nutritional numbers start looking like zeroes and you cannot meet FDA nutritional label requirements anymore (FDA will not let you do 0.0xxx calories as an example).

I am pretty sure I have provided this feedback multiple times to LCB."



WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

11. Email message, received December 11, 2019:

“Thank you for your continued dedication to collaborative rule making. It’s been interesting to observe how the proposed rule sets differ based on the format of stakeholder engagement used.

I apologize for not getting these notes to you sooner, the month of November has been very busy with meetings, preparing for session, completing my MPA program, and the Thanksgiving Holiday. I will offer that from a farmer’s perspective, release of rules at the end of October decreases farmer’s opportunity to read them as it is the busiest time of year and is something the agency might consider in the future.

Tomorrow’s hearing is also on my birthday, my wedding anniversary, and the 6 year anniversary of when my husband & I applied for our marijuana license but I won’t hold it against you as I’ve had a marijuana related hearing to attend on this day for many years now. :)

I have attached our comments on this rule set. I found it much easier to comment and correct technical errors via track changes in word and am hopeful that this is helpful to you.

Our biggest concerns are:

- **The draw & serving size requirements for concentrates, usable marijuana, and mixed marijuana should not be required on packaging.**
 - - It is not possible to accurately communicate the number of draws in a vape pen cartridge because it is an **unknown number**. There are **a lot of variables** that impact this number including the battery used, how recently the battery was charged, how much oil is in the cartridge or remaining in the cartridge, how warm or cold the cartridge is when used, and whether the cartridge is stored upright or layed on its side. **The technology hasn’t yet evolved to the point where this information could be accurately known nor listed on packaging.**
 - We also **lack scientific research and evidence to establish a serving size** for useable marijuana or concentrates.
 - Since there is no standard serving size for concentrates nor flower this **will lead to increased consumer confusion** as **each processor will define serving size differently.**



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- This rule would lead consumers to purchase the package with the most “draws” or “servings” and would have the **unintended consequence of driving competition over which cartridge, concentrate, or useable marijuana package advertises the most draws or servings on their packaging.**
- **The definition of "structure and function" is unclear.** "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product."

WSLCB response: The WSLCB appreciates these comments and the demonstration of meaningful, collaborative participation in the rulemaking process. Notices provided by GovDelivery to all licensees and any other interests parties regarding filing of the CR101, comment periods, the listen and learn session, the CR102 filing, and the hearing held on December 11, 2019 have aligned with collaborative rule development practices of the last year. A copy of the draft conceptual rules was offered for public comment on about September 26, 2019, along with a synopsis of the rule changes. The WSLCB has invited and encouraged participation and engagement at all points of this process.

Some rule sets may require additional listen and learn sessions based on the complexity of the project, and the timeline involved. Since the CR101 for this project identified three specific elements to be addressed for this project, the narrow scope and timeline, which was continuously articulated in messaging, in presentations to industry associations, and at board meeting updates every other week, suggested one day long listen and learn session on October 11 was appropriate for this project. Further, the WSLCB provided additional time for public comment on these rules as they were being developed that is not required by the Administrative Procedures Act described in chapter 34.05 RCW between the filing of the CR101 in May of 2019 and the filing of the CR102 in October 2019. The duration of the statutorily required formal comment period described in RCW 34.05.320 was exceeded for this rule project.

Additionally, the concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on oral testimony provided at the public hearing, and on written comment submitted during the formal comment period, the WSLCB has removed this language.

Finally, the definition of structure and function is aligned with the federal definition of the same. The agency has added a reference to the United States Code to provide clarity and guidance. Additional comments offered were questions regarding rule



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interpretation exclusive to the commenter. The WSLCB encourages interested parties to review guidance that is being designed to assist with compliance success, and to review the Washington State Code Reviser's Bill Drafting Guide 2019 to become familiar with drafting best practices.

Was the comment reflected in the adopted rule? These comments were reflected in the final rule.

12. Email message, received December 11, 2019:

"I've worked in the alcohol, tobacco, marijuana and other drug prevention field for over 25 years (employed by King County) and am also a Certified Prevention Professional in Washington State. As a resident of Kent, I am also a concerned parent of a 16 year old, as well as an aunt/ grandaunt.

I appreciate your efforts to carefully make decisions related to Marijuana Packaging and Labeling rules. Regarding CR-102, please see my comments below:

- We need better protections so that children and youth do not have access to marijuana.
- Reducing the package thickness to 2 mil or greater means that it would be easier for children and youth to tear open the package. Please maintain to at least 4 mil.
- To help all avoid accidental overdose, I urge you to require measuring devices that may include measuring cups, droppers and/or hash marks on the bottle or package.
- There have been previous discussions with the public health and prevention community regarding this proposed rule. Please incorporate the important recommendations including making warnings more visible and clearer, as well as ensuring cultural considerations and literacy issues are taken into account.

I know people -- youth as well as those who are of legal age -- who have overconsumed and overdosed from marijuana edibles. Packaging for marijuana edibles especially need to convey the importance of safer quantities and to wait before taking additional dosages.

Thank you for your work as you strive to work with diverse stakeholders in developing needed rules."

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:



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- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature’s intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and
- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)
Suggested language for rule:

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:
(I) Have a resealing cap or closure; and
(II) Include a measuring device ~~such as a measuring cap or dropper~~ with the package containing the marijuana-infused liquid edible product. Hash marks ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

13. Email message, received December 11, 2019:

“I speak on behalf of Prevention Works in North Seattle (Prevention WINS), a community coalition with the goal of reducing underage substance abuse in the region. We focus on middle and high school students, their parents, and the community. Our coalition began in 2002 with a state grant after the Healthy Youth Survey results showed higher than average underage substance abuse in our area’s schools. We’ve continued our prevention work through Drug-Free Communities grants managed through Seattle Children’s.

Prevention works best in stopping underage substance abuse, which is why we are concerned about rule changes to **WAC 314-55-105**. The two changes would allow the cannabis industry to eliminate measuring cups or droppers from liquid products and allowing for thinner, easier to open, packaging on other products.



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Let's look first at *Marijuana edibles in liquid form* (**WAC 314-55-105 section 4, paragraph iii**). The change would let manufacturers eliminate dosage measurers such as small cups or droppers altogether with an option to add hash marks indicating individual serving size to the container. The confusion this would create is significant.

Take for example, a cannabis-infused orange cream soda available in multiple doses but sold in one size bottle. The bottles are identical in shape and volume, but the liquid inside provides 10, 100, or 250 mg of THC. Anyone trying to figure out how much to drink is challenged to measure correctly even with the small plastic cup that currently comes with the bottle. Shifting to just hash marks along the side borders is dangerous.

The issue of measuring devices is a significant consumer problem for a common over-the-counter medication—liquid acetaminophen for infants and children.

Tylenol is the top-selling brand of the pain reliever. Despite coming with a measuring device in the box, it's not uncommon for parents to accidentally overdose their child. Pharmacists are advised to show parents the hashmarks on the measuring device. A popular website for new parents, has an entire section on dosages for the drug. It states off the top, "*acetaminophen is one of the hardest drugs to give correctly, because it's sold in many forms.*" It advises if parents have lost the device included in the package to "*get a replacement from the pharmacy or use a standard measuring teaspoon (the kind used for baking), not a regular spoon used for eating.*"

Tylenol's manufacture, Johnson and Johnson, created an entire "how-to" website for the drug called [GetReliefResponsibly](#). From a prevention perspective, the responsibility for safe dosing belongs with the company, not the consumer. The same should for the cannabis industry in our state.

Dosages must be clearly labeled and easy to measure. Prevention WINS strongly opposes the proposal to make measuring devices optional as proposed in **WAC 314-55-105 section 4, paragraph iii**.

Our second concern is using thinner plastic for marijuana product packaging. (**WAC 314-55-105 section 3, paragraph (b) (ii)**.)

The cannabis industry states thinner plastic is an environmental advantage. They would change from 4 mil to 2 mil thick packaging. We applaud any efforts to minimize waste throughout the industry. However, given the state of plastic recycling globally, where the cost of recycling plastic now greatly exceeds the market for recycled plastic, and municipalities—including King County—are cutting back on recycling programs, the change from 4 mil to 2 mil is not going to make any significant environmental impact. It will likely a negative impact on the safety of young children by leading to more unintended cannabis exposures.



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Making packages thinner makes it easier for young children to get into a marijuana purchase. The incidence of unintentional pediatric exposure has increased since legalization. One study looking at 2010-2016 said the median age of exposed children was 2 years (range 0–9 years) and 81% of the exposures occurred in the child's own home. Prevention WINS strongly opposes the proposal to switch to 2 mil plastic packaging detailed in **WAC 314-55-105 section 3, paragraph (b) (ii)**.

In addition to opposing these two changes, Prevention WINS supports feedback provided to the LCB by Sarah Ross-viles of King County's Youth Marijuana Prevention and Education initiative. Her complete December 9th letter is below but we want to emphasize our support for plain packaging. The benefits are multiple as Ms. Ross-viles explains:

***Packaging design-** Youth and young adults rate fully-branded cannabis products as more appealing than plain packaging products (Goodman et al., 2019; Mutti-Packer, Collyer, & Hodgins, 2018). Plain packaging is a transferrable best practice from the tobacco control world as it reduces brand familiarity and eliminates images and coloring that suggest safety, health benefits or affinity with a desired lifestyle (Orenstein & Glantz, 2018). Product packaging travels outside of the age-restricted marijuana retail environment, exposing people under 21 to fully-branded messaging.*

Washington's rules should require plain or logo-only packaging on a non-youth appealing background (eg, dull colored). In-store branding displays next to products can be fully colorful and designed as these components will not be seen by those under-age. This requirement would have a benefit of streamlining package approval for processors and LCB, as packaging would be relatively uniform and thus the test of youth appeal easier to implement."

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. The WSLCB looks forward to receiving empirical, peer reviewed studies or verifiable, substantive evidence or data to support the assertion that reducing package thickness results in accidental exposure to marijuana products.

Additionally, the scope of this rule project as stated in the CR 101 filed on May 29, 2019 narrowed the subjects of this project to the following:

- Considering the offerings of two rule petitions that suggesting revising requirements for measuring devices for marijuana-infused liquid edibles and reducing plastic package thickness from 4 mil to 2 mil for marijuana infused solid edibles;
- Implementing the requirements of Engrossed Senate Substitute Bill, or ESSB 5298, regarding the legislature's intent to allow additional information on the labels and labeling of marijuana products to assist consumers when purchasing these products; and



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- Consider whether to incorporate the provisions of five Board Interim Policies designed to clarify current marijuana packaging and labeling rules.

Some of the comments offered are beyond the identified scope and focus of this project.

However, the intent of the section regarding the measuring devices for marijuana-infused liquated edibles was to align with the Cannabis Alliance petition, and to require, at minimum, hash marks as a measuring device, with a measuring cup, cap, or dropper as an option for processors. The rule petition stated:

AMEND RULE - requesting the agency to change an existing rule.

List Rule # (WAC): WAC 314-55-105(1)(b)(i)(C)(II)
Suggested language for rule:

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:
(I) Have a resealing cap or closure; and
(II) Include a measuring device ~~such as a measuring cap or dropper~~ with the package containing the marijuana-infused liquid edible product. Hash marks ~~do not~~ qualify as a measuring device.

Was the comment reflected in the adopted rule? These comments, in part, were reflected, in the final rule.

14. Email message, received December 11, 2019:

“The new rules have the line below from the definition of appealing to youth: : (iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children -

Bright colored edible products are appealing to children and should not be allowed. The only purpose to sell such products would be make them appealing to youth, adults should not care how the product appears as they are buying it to seek a certain effect.

The definition of appealing to youth should include any aspect that makes a product appealing to those under the age of 21 including colors, flavors, shapes, product names, or images.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of participation in the rulemaking process. This language was struck during the developmental phase of this rule project, before the focus group meetings occurred. It was also struck from the conceptual rule draft provided to the general public for review on or about September 26, 2019. As noted above, the adopted definition of “especially appealing to persons under twenty-one” reads as follows:



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- (c) "Especially appealing to persons under the age of twenty-one" means a product or label that includes, but is not limited to:
- (i) The use of cartoons;
 - (ii) Bubble-type or other cartoon-like font;
 - (iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of twenty-one;
 - (iv) Symbols or celebrities that are commonly used to market products to persons under the age of twenty-one;
 - (v) Images of persons under the age of twenty-one; or
 - (vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.

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

15. Email message, received December 11, 2019:

“There are just a few things that concern me with the new CR-102 PAL language.

Lot Number

- According to the statutory definition of “Lot Number,” we already provide all the requested information in their definition.
 - o SB 5318 definitions of “Lot” & “Lot Number”
 - o “Lot” means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.
 - o “Lot number” must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.
- With the WSLCB’s definition of “Lot Number,” we would now have to include the lot/batch numbers of all lot’s included on a final product’s label, which is unreasonable for any product made from distillate.
 - o WSLCB’s definition of “Batch” & “Lot”
 - o “Batch” means a quantity of marijuana-infused product containing material from one or more lots of marijuana.
 - o “Lot” means either of the following: (a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or (b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves or other plant matter cannot weigh more than fifteen pounds.

Serving / Draw Size

- It will be extremely difficult to determine the serving size of flower since there are so many different forms in which flower is used. There will also be drastically different amounts used based on the consumption method.



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- The amount that is in a serving for cartridge vaporizers will differ greatly depending on the consumer's battery, their choice of voltage, the age of the battery, and potentially many other factors.
- It does not appear to be reasonable or even possible to quantify how many servings are in each cartridge due to the above factors.

I also would like to thank you for your continued effort to work with the cannabis industry and for being so inclusive in this rulemaking process for packaging and labeling.”

WSLCB response: The WSLCB appreciates these comments and demonstration of meaningful, collaborative participation in the rulemaking process. The concept of “draw size” was introduced into early discussions around this rule when the agency hosted a focus group consisting of industry members, along with WSLCB staff on August 12, 2019. Representatives from Colorado and Oregon briefly presented their approaches to packaging and labeling of marijuana products. The focus group was largely supportive of the Oregon model. Specifically, Oregon provided a copy of their [Packaging and Labeling Guide for Medical and Recreational Marijuana, Version 4.0](#). Page 31 of that guide addresses cannabinoid concentrates and extracts, the reference to “Suggested serving size is one 5-second draw.”

However, based on the feedback from attendees at the public hearing and others, the WSLCB has removed this language.

Additionally, the WSLCB agrees that “lot number” as identified in RCW 69.50.345(1)(b), effective 1/1/2020 was intended to align with, point to, or mean “the unique identifier generated by the board’s traceability system.” The WSLCB offers that to remain in alignment with the statute, hybrid language as presented in the adopted rule, (“...the lot numbers of the product (the unique identifier number generated by the board’s traceability system). This must be the same number that appears on the transport manifest...”) provides clarity, clear guidance, and addresses all concerns.

Was the comment reflected in the adopted rule? The comments were reflected in part the final rule

Public Hearing, December 11, 2019:

Several individuals provided oral testimony at the public hearing. The comments above are reflective of the comments received during the public hearing, and can be reviewed in the transcript of the Board meeting.



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

Section	Proposed Language	Final Language
WAC 314-55-105(1)(g) – Definitions	(g) "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product	(g) "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).
WAC 314-55-105(2) – Marijuana concentrates.	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest; (iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(e) Marijuana concentrate labels must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest</u> ; (iii) <u>The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest</u> ; (iv) <u>The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving</u> ;
	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Marijuana concentrate labels must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a)</u> ;
WAC 314-55-105(3) – Marijuana edibles in solid form.	Formerly WAC 314-55-105((B)(II)(H)) 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.	<u>(c) Marijuana infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board 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.</u>
	(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;	(<u>de</u>) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest</u> ; (iii) <u>The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest</u> ;



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	(f) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(fe) Labels for marijuana edibles in solid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 CFR 101.18(a)</u> ;
WAC 314-55-105(4) – Marijuana edibles in liquid form.	(b)(iii) Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form may include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.	(b)(iii) Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form may must include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.
	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board’s traceability system. This is the same number that appears on the transport manifest;	(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). <u>This must be the same number that appears on the transport manifest</u> ; iii) The unique identifier number generated by the board’s traceability system. This is the same number that appears on the transport manifest;
	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(f) Labels for marijuana edibles in liquid form must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(5) – Usable marijuana.	(d) Labels for usable marijuana must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board’s traceability system. This is the same number that appears on the transport manifest; (iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). <u>This must be the same number that appears on the transport manifest</u> ; iii) The unique identifier number generated by the board’s traceability system. This is the same number that appears on the transport manifest; iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;
	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading;	(e) Labels for usable marijuana must not contain any statement, depiction, or illustration that: (i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a)</u> ; ;
WAC 314-55-105(6) – Marijuana mix.	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product; (iii) The unique identifier number generated by the board’s traceability	(d) Labels for marijuana mix must clearly and visibly provide all of the following information: (ii) The lot numbers of the product (<u>the unique identifier number generated by the board’s traceability system</u>). This



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	<p>system. This is the same number that appears on the transport manifest;</p> <p>iv) The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;</p>	<p><u>must be the same number that appears on the transport manifest;</u></p> <p>iii) <u>The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</u></p> <p>iv) <u>The serving or draw size and the number of servings contained in the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in a package and the amount of product per serving;</u></p>
	<p>(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading;</p>	<p>(e) Labels for marijuana mix must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);;</u></p>
<p>WAC 314-55-105(7) – Marijuana topicals.</p>	<p>(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:</p> <p>(ii) The lot numbers of the product;</p> <p>(iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</p>	<p>(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:</p> <p>(ii) The lot numbers of the product (<u>the unique identifier number generated by the board's traceability system</u>). <u>This must be the same number that appears on the transport manifest;</u></p> <p>iii) <u>The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;</u></p>
	<p>(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading;</p>	<p>(e) Labels for marijuana topicals must not contain any statement, depiction, or illustration that:</p> <p>(i) Is false and misleading, <u>consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);;</u></p>