



## NOTICE OF ADOPTION OF AN INTERPRETIVE STATEMENT

**Title of Interpretive Statement:** Allowable Practices for a Holder of a Marijuana Processor License – Interpretive Statement Number IS-21-02.

**Issuing Entity:** Washington State Liquor and Cannabis Board.

**Subject Matter:** Clarifies allowable practices for holders of a marijuana processor license.

**Effective Date:** July 22, 2021

**Contact Person:** Katherine Hoffman, Policy and Rules Manager, 360-664-1622.

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**WSR 21-16-010**



# Interpretive Statement

Number: IS-21-02

**Title: Allowable Practices for a Holder of a Marijuana Processor License**

- References:** [RCW 69.50.101](#)  
[RCW 69.50.204](#)  
[RCW 69.50.325](#)  
[RCW 69.50.326](#)  
[RCW 69.50.363](#)  
[RCW 69.50.401](#)  
[RCW 15.140.020](#)

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**[RCW 34.05.230 – Interpretive and policy statements](#)**

- (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

This interpretive statement supersedes and replaces previous agency guidance concerning this topic.

## INTRODUCTION

Questions of the legality for manufacturing THC from hemp based CBD creates a need to assess and analyze statutory provisions related to this process.

## CONCLUSION

Processors licensed under RCW 69.50.363 may not legally convert CBD into delta-9 THC, as the license privileges do not allow them to manufacture THC.<sup>1</sup> As any producing of a THC product falls outside the license privileges of a processor licensed by the LCB, the manufacturing activity may be considered a controlled substances act violation, and a misuse of the processors license. Additionally, licensed processors may not sell or purchase any THC product not legally produced by a licensed marijuana producer.

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<sup>1</sup> This interpretive statement does not infer any approval for Marijuana Producer license holders to manufacture “marijuana” with a THC concentration greater than 0.3 percent on a dry weight basis from CBD.

## BACKGROUND

On April 28, 2021, LCB issued Policy Statement PS21-01, titled “Tetrahydrocannabinol (THC) compounds other than delta-9 and the conversion of CBD, hemp, or both to delta- 8 THC, delta-9 THC, or any other “marijuana” compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both.”

LCB subsequently commenced rulemaking by filing a CR-101 stating, “[WSLCB] is considering establishing a new rule section that would allow the WSLCB to evaluate additives, solvents, ingredients, or compounds used in the production and processing of marijuana products other than delta-9 tetrahydrocannabinol (THC) to determine whether such substances pose a risk to public health or youth access.” WSR 21-11-036 (filed May 12, 2021). The CR-101 was phrased, however, in terms of evaluating possible rulemaking with regard to additives “other than delta-9.”

Following the filing of the CR-101, LCB held a “deliberative dialogue” on June 3, 2021 to inform rulemaking related to tetrahydrocannabinols (THC) other than delta-9, which convened a panel of experts and numerous stakeholders for a discussion of cannabis plant chemistry and related topics.

During the following month the LCB received further information from various licensees, stakeholders, and other states’ regulators about the processes used to create tetrahydrocannabinols (THC) from CBD from hemp or other sources. As the LCB explored, and continues to explore, the legal parameters of manufacturing and consumer safety considerations of converting CBD, from hemp or other sources, into tetrahydrocannabinols (THC) new questions arose pertaining to this conversion as it relates to delta-9 THC.

LCB staff prepared a revised CR-101 for Board approval that removed the limitation “other than delta-9 THC.” The withdrawal of the original CR-101 and the introduction of the revised CR-101 were both approved by the Board on July 07, 2021. The revised CR 101 was filed as WSR 21-14-117.

The purpose of this interpretive statement is to address the license privileges established in RCW 69.50.325.

## STATUTORY PROVISIONS

Relevant definitions are provided in RCW 69.50.101:

...

(d) "CBD concentration" has the meaning provided in RCW [69.51A.010](#).

(e) "CBD product" means any product containing or consisting of cannabidiol.

...

(y)"Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound,

manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Hemp or industrial hemp as defined in RCW 15.140.020, seeds used for licensed hemp production under chapter 15.140 RCW.

...

(aa) "Marijuana processor" means a person licensed by the board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(bb) "Marijuana producer" means a person licensed by the board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers

...

(dd) "Marijuana researcher" means a person licensed by the board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

...

(uu) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

...

(underlining added)

"Hemp" is defined in RCW 15.140.020 as including derivatives from the cannabis plant with a delta-9 THC concentration of not more than 0.3 percent:

...

(5) "Hemp" means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

...

(8) "Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

....

(underlining added)

The state controlled substances act, RCW 69.50.204, provides:

Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

...

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation. For the purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers:

...

(30)(i) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genera Cannabis, as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the genera Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(A) 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(B) 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(C) 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers; or

(D) That is chemically synthesized and either:

(I) Has been demonstrated to have binding activity at one or more cannabinoid receptors; or

(II) Is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(ii) Hemp and industrial hemp, as defined in RCW 15.140.020, are excepted from the categories of controlled substances identified under this section;

....

(underlining added)

RCW 69.50.325, creating the processor's license, provides:

...

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers, regulated by the board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter [69.51A](#) RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

....

(underlining added)

RCW 69.50.326 provides:

(1) Licensed marijuana producers and licensed marijuana processors may use a CBD product as an additive for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, and sale under this chapter. Except as otherwise provided in subsection (2) of this section, such CBD product additives must be lawfully produced by, or purchased from, a producer or processor licensed under this chapter.

(2) Subject to the requirements set forth in (a) and (b) of this subsection, and for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, or sale under this chapter, licensed marijuana producers and licensed marijuana processors may use a CBD product obtained from a source not licensed under this chapter, provided the CBD product:

(a) Has a THC level of 0.3 percent or less on a dry weight basis; and

(b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter and in accordance with testing standards established under this chapter and the applicable administrative rules.

(3) Subject to the requirements of this subsection (3), the liquor and cannabis board may enact rules necessary to implement the requirements of this section. Such rule making is limited to regulations pertaining to laboratory testing and product safety standards for those cannabidiol products used by licensed producers and processors in the manufacture of marijuana products marketed by licensed retailers under chapter [69.50](#) RCW. The purpose of such rule making must be to ensure the safety and purity of cannabidiol products used by marijuana producers and processors licensed under chapter [69.50](#) RCW and incorporated into products sold by licensed recreational marijuana retailers. This rule-making authority does not include the authority to enact rules regarding either the production or processing practices of the industrial hemp industry or any cannabidiol products that are sold or marketed outside of the regulatory framework established under chapter [69.50](#) RCW.

(underlining added)

RCW 69.50.363, the “safe harbor” provision for processors, provides:

The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the state liquor control board to implement and enforce chapter 3, Laws of 2013, do not constitute criminal or civil offenses under Washington state law:

- (1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under chapter 3, Laws of 2013;
- (2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under RCW [69.50.345](#)(4);
- (3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under chapter 3, Laws of 2013; and
- (4) Delivery, distribution, and sale of useable marijuana, marijuana concentrates, or marijuana-infused products to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW [43.06.490](#).

(underlining added)

RCW 69.50.401 Prohibited acts provides:

- (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.
- (2) Any person who violates this section with respect to:

...

- (c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter [9A.20](#) RCW, except as provided in RCW [69.50.475](#);

...

- (3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in RCW [69.50.360](#), [69.50.363](#), or [69.50.366](#) shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

## ANALYSIS

Generally, RCW 69.50.401 prohibits any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance in Washington State. With the passage of I-502 in 2012, exceptions are provided in RCW 69.50.401(3) stating:

The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in RCW [69.50.360](#), [69.50.363](#), or [69.50.366](#) shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

Those issued licenses in accordance with chapter 69.50 RCW are afforded specific privileges to operate a “marijuana” business legally within the state involving the Schedule 1 substance. There are two types of Cannabis plants, as identified in law. One being “Hemp”, as defined in RCW 15.140.020 as including derivatives from the cannabis plant with a delta-9 THC concentration of not more than 0.3 percent; and the other being “marijuana” which includes “all parts of the plant *Cannabis*, whether growing or not, with a “THC concentration greater than 0.3 percent on a dry weight basis” (RCW 69.50.101(y)). Under these definitions, once the delta 9-THC concentration of a product outside the regulated system exceeds 0.3 percent, it no longer meets the definition of “hemp,” and it is thereby treated by statute as a Schedule 1 controlled substance under RCW 69.50.204(c)(30). In order to legally produce the Schedule 1 “marijuana” plant, operations must comply with RCW 69.50.401(3). This statute references specific privileges to licensees issued a particular type of “marijuana” license.

“Marijuana” producer and researcher licenses allow for the production of “marijuana” products exceeding 0.3 percent THC concentration on a dry weight basis. Licensed “marijuana” processors are authorized by statute to source “marijuana”, defined as containing greater than 0.3 percent delta-9 THC, from licensed “marijuana” producers. The statutes do not authorize a licensed processor to source hemp based product, such as legal CBD, and convert it to delta-9 THC, regardless of the method of production, nor are they licensed to process hemp into marijuana concentrates. As “marijuana” license types and associated privileges place production activities in the producer licenses, and limit the processors license to only processing, a clear difference is identified in statute. In addition, the processor license does not provide “conversion”<sup>2</sup> activity, as an allowable privilege. As “conversion”

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<sup>2</sup> RCW 69.50.101 (x) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance.



activity is not an identified privilege, it would not fall under the safe harbor protections. Further, RCW 69.50.326 provides for the sourcing of CBD products, whether from inside or outside the regulated system, by licensed processors for the purpose of enhancing the CBD concentration of marijuana and marijuana products. It does not address or affirmatively authorize the use of other isomers or derivatives of marijuana as additives to marijuana and marijuana products, nor does it authorize LCB-licensed processors to process other isomers or derivatives from hemp.

Under a well-established rule of statutory construction, *expressio unius est exclusio alterius*, where a statute specifically designates certain things, there is an inference that the legislature intended to omit others not mentioned. *State v. LG Elecs., Inc.*, 186 Wn.2d 1, 9, 375 P.3d 636 (2016).

For the purpose of analyzing whether there is a controlled substances act violation, it does not matter if the CBD product is added to a legal marijuana product and then converted to delta-9 THC or if it is directly converted to delta-9 THC into a finished product or additive.

## **SUMMARY**

Washington State statutes, which prescribe activities permitted by processors with respect to “marijuana”, do not allow processors to create their own delta-9 THC product. Processors are not subject to criminal prosecution for “[p]urchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed.” However, processors may be subject to administrative violations and/or criminal prosecution for engaging in activities not specified in statutory license privileges.

## **CONCLUSION**

Processors licensed under RCW 69.50.363 may not legally convert CBD into delta-9 THC, as the license privileges do not allow them to produce THC. As any producing of a THC product falls outside the license privileges of a processor licensed by the LCB, the producing activity may be considered a controlled substances act violation, and a misuse of the processors license. Additionally, licensed processors may not sell or purchase any THC product not legally produced by a licensed marijuana producer.