

WSR 21-14-117
PREPROPOSAL STATEMENT OF INQUIRY
LIQUOR AND CANNABIS
BOARD

[Filed July 7, 2021, 12:00 p.m.]

Subject of Possible Rule Making: WAC 314-55-XXX Marijuana additives, solvents, ingredients, or compounds, the Washington state liquor and cannabis board (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), as well as CBD, hemp, or both converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in RCW, WAC, or both, to determine whether such substances pose a risk to public health or youth access.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 69.50.342 (1)(m), 69.50.345.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than delta-9 THC. In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in RCW, WAC, or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

WSLCB reviews and preapproves marijuana-infused labeling for edible products that will be sold in licensed retail marijuana stores. WSLCB does not review or approve labeling for marijuana concentrates, usable marijuana, marijuana mix, or marijuana topical products that will be sold in licensed retail marijuana stores. WSLCB does not have statutory or regulatory authority for products containing marijuana compounds other than delta-9 THC sold outside the licensed marijuana system it regulates.

The process of genetic or chemical alteration of hemp or other sources to potentially intoxicating, psychoactive compounds may generate additional chemicals that are not naturally occurring in marijuana. Currently, there are no mandatory testing standards for these compounds, and no potency or concentration limits have been established in statute or regulation concerning these compounds in Washington state. The impact of those different chemicals on health are unknown and could be harmful.

Additionally, WSLCB understands that some accredited/certified testing laboratories are able to test for the presence of delta-8 THC, but testing for THC isomers is evolving and not standardized. For example, delta-8 THC as a stand-alone product is not currently being tested for contaminants, but only for cannabinoid testing. Thus, it is unclear whether delta-8 or CBD isolate from hemp or other sources that is genetically or chemically altered into compounds other than delta-9 THC are safe for consumer use.

Washington state statute and the rules that implement those statutes provide a framework for the types of activities that marijuana licensees may engage in. The only products that can be sold in licensed marijuana retail stores are marijuana concentrates, usable marijuana, marijuana infused products and paraphernalia. Rules are needed

to allow WSLCB to evaluate additives, solvents, ingredients or compounds used in production and processing of marijuana products when such products may contain CBD isolate from hemp and other sources that have been genetically or chemically altered to result in potentially intoxicating, psychoactive compounds, or compounds other than delta-9 THC, as well as CBD, hemp, or both that have been converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently defined or identified in RCW, WAC, or both, to determine whether such substances may pose a risk to public health or youth access.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington state pharmacy quality assurance commission; Washington state board of health; Washington state department of health; Washington state department of agriculture.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Katherine Hoffman, P.O. Box 43080, Olympia, WA 98504, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov, website lcb.wa.gov.

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at <https://public.govdelivery.com/accounts/WSLCB/subscriber/new>. Rule-making notices and stakeholder engagement opportunities will be emailed via GovDelivery and posted to the WSLCB website at lcb.wa.gov.

July 7, 2021
David Postman
Chair