



Washington State Liquor and Cannabis Board

Collaborative Rulemaking Discussion Implementation of E2SSB 5367 (THC Bill) Rulemaking

Cassidy West, *Policy and Rules Manager*

Cassidy.West@lcb.wa.gov

Rules@lcb.wa.gov

Washington State Liquor and Cannabis Board

1025 Union Avenue
Olympia WA 98502

Friday, December 15, 2023

Tuesday, December 19, 2023

Thursday, December 21, 2023

Last revision: 1/16/2024 2:30 PM



Washington State Liquor and Cannabis Board

Welcome

Reason Rulemaking is Necessary: To amend the current rules (chapter 314-55 WAC) to implement the provisions of E2SSB 5367 (“THC bill”).

Meeting Goal: Review and discuss regulatory policy options to align the current rules with the statutory changes, keeping mind factors such as benefits, costs, direct and/or indirect impacts, laboratory and/or testing considerations, and possible unintended consequences.



Washington State Liquor and Cannabis Board

Rulemaking Timeline

All dates are tentative.

PHASE I: CR-101

June 21, 2023 – Board approved of CR-101 to initiate the rulemaking.

[CR-101 Memo](#)

[CR-101 filed as WSR-23-13-129](#)

PHASE II: CR-102

January 2024 – Publicly disseminate survey to gather feedback on regulatory options discussed during recent engagement sessions.

January 31, 2024 – Survey deadline

February 2024 – Publicly disseminate draft conceptual rules for public comment and hold stakeholder engagement sessions to review and discuss draft proposed rule language.

March 2024 – Request Board approval of CR-102

April 2024 – Public Hearing

PHASE III: CR-103

May 2024 – Request Board approval of CR-103.

Rules become effective no sooner than 31 days after filing date.



Washington State Liquor and Cannabis Board

THC Bill Background

- **Bill Title:** Engrossed Second Substitute Senate Bill (E2SSB 5367) (Chapter 365, Laws of 2023), *“An Act relating to the regulation of products containing THC.”*
 - Agency (LCB) sponsored legislation to regulate intoxicating products containing THC and distinguish between a *“cannabis product”* and *“hemp consumable,”* subsequently expanded LCB’s authority to regulate products with any detectable amount of THC.
 - Effective date of legislation – July 23, 2023
 - [Final bill text pdf](#)
- **Amended sections (chapter 69.50.RCW):**
 - [RCW 69.50.101](#) *Definitions.*
 - [RCW 69.50.326](#) *Cannabis producers, processors—Use of additives to enhance CBD concentration of authorized products—Rules.*
 - [RCW 69.50.346](#) *Labels on retail products.*
- **New sections (chapter 69.50.RCW): :**
 - [RCW 69.50.3251](#) *Cannabis manufacture, sale, distribution prohibited without a license—Tribal agreements—Synthetic cannabinoids prohibited.*
 - [RCW 69.50.326](#) (**NOTES**) *Cannabis producers, processors—Use of additives to enhance CBD concentration of authorized products—Rules.*



Washington State Liquor and Cannabis Board

Overview of THC Bill Provisions

- **Amended [RCW 69.50.101](#) Definitions.**
 - Amended definitions:
 - "Cannabis"
 - "Cannabis products"
 - "THC concentration"
 - New definitions:
 - "Package"
 - "Unit"
- **Amended [RCW 69.50.326](#) Cannabis producers, processors – Use of additives to enhance CBD concentration of authorized products.**
 - **New – [RCW 69.50.326 \(Notes\)](#)** - States an Agency is not required to purchase liquid chromatography-mass spectrometry instruments.
- **Amended [RCW 69.50.346](#) Labels on retail products.**
- **Created new section [RCW 69.50.3251](#).** Cannabis manufacture, sale, distribution prohibited without a license – Tribal agreements – Synthetic cannabinoids prohibited.



Amended definition of “*THC concentration*”

E2SSB 5367 amended the definition of “*THC concentration*” to include forms of THC, in addition to *delta-9 THC*.

- Under the current rules, *delta-9 THC* is the only form of THC required for potency analysis (WAC 314-55-102(3)(a)).
- The formula for **total THC** calculates only the **total delta-9 THC**.
 - [WAC 314-55-102 Quality Assurance and Quality Control](#). (3)(a)(i)(A) “**Total THC** must be calculated as follows, where *M* is the mass or mass fraction of *delta-9 THC* or *delta-9 THCA*: $M \text{ total } \mathbf{delta-9 THC} = M \mathbf{delta-9 THC} + (0.877 \times M \mathbf{delta-9 THCA})$.”
- [RCW 69.50.346\(1\)\(c\)](#) requires labels on cannabis product packages sold at retail to include the THC concentration of the product.
 - [WAC 314-55-105](#) requires product labels sold at retail to include the total THC using the formulas referenced in WAC 314-55-102.



Washington State Liquor and Cannabis Board

Amending current rules to align with new statutory definition of “*THC concentration*” Regulatory Options to Consider

- ✓ **Option #1:** Do not amend current rules.
 - Require potency analysis to include only *delta-9 THC*, and continue calculating total THC based on only *delta-9 THC*, and
 - Require “*THC concentration*” to be reported on retail product labels as ‘*total [delta-9] THC*’.
- ✓ **Option #2:** Amend rules to include other forms of THC, in addition to *delta-9 THC*, in “*THC concentration*.”
 - Require potency analysis to include other forms of THC, in addition to delta-9 THC (e.g., delta-8 THC, THC-P, THCV, etc.).
 - Require retail product labels to include other forms of THC detected during potency analysis, and either:
 - a) Amend formula to calculate ‘total THC’ to include all forms of THC detected during potency analysis (*see notes for example*);
 - b) Calculate ‘total THC’ for each form of THC detected during potency analysis (*see notes for example*); or
 - c) Remove all references to ‘total THC’ throughout the rules and replace with “*THC concentration*.”
 - i. Require THC concentration to be reported on retail product labels for useable cannabis and cannabis concentrates to be expressed as a percentage, for each form of THC detected during potency analysis; and
 - ii. Require THC concentration to be reported on retail product labels for cannabis-infused products (solid, liquid, and topical) to be expressed in milligrams, for each form of THC detected during potency analysis.



Amended definition of “*cannabis products*”

E2SSB 5367 amended the definition of “*cannabis products*” to include products containing “***any detectable amount of THC,***” whereas “*cannabis products*” was previously defined as products with a THC concentration greater than ***0.3% delta-9 THC.***



Washington State Liquor and Cannabis Board

Amending current rules to align with new statutory definition of “*cannabis products*”

– Establishing a limit of detection for THC

Regulatory Options to Consider

✓ **Option #1:** The limit of detection (LOD) is 0.3 mg/g.

- 0.03% or 300 ppm
- LOD corresponds with current limit of quantification (LOQ) in rule, 1.0 mg/g.
- Recommendation from Cannabinoid Science Workgroup

✓ **Option #2:** The LOD is 0.02 mg/g.

- 0.002% or 20 ppm

✓ **Option #3:** The LOD is 0.001 mg/g.

- 0.0001% or 1 ppm

✓ **Option #5:** Do not include an LOD in rule and require compliance with third-party standards (i.e., AOAC).



Washington State Liquor and Cannabis Board

New and amended section – Prohibiting synthetic cannabinoids

E2SSB created a new section, [RCW 69.50.3251](#), prohibiting the producing, processing, manufacturing, and sale of ***any synthetically derived cannabinoid or completely synthetic cannabinoid***; and amended [RCW 69.50.326](#) to prohibit the use of a synthetic cannabinoid to be used as an additive to enhance the CBD concentration of a product.



Washington State Liquor and Cannabis Board

Amending current rules to align with statutory changes related to prohibiting synthetic cannabinoids Regulatory Options to Consider

✓ **Option #1:** Do not amend current rules.

- Default to dictionary definition - **“Synthetic”** means of, relating to, or produced by chemical or biochemical synthesis *especially*: produced artificially - *synthetic* drugs and *synthetic* silk. – Merriam Webster dictionary

✓ **Option #2:** Create a new definition for *“synthetic,” “synthetically-derived,”* and/or *“semi-synthetic.”*

- *Example language:*

- *“Synthetic cannabinoid” means any cannabinoid that does not occur in the cannabis plant and is produced through chemical manipulation in a laboratory or similar facility.*
- *“Artificially derived cannabinoid” means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant. “Artificially derived cannabinoid” does not include: (i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or (ii) a cannabinoid that is produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.*
- *“Manufactured cannabinoid” means cannabinoids naturally occurring from a source other than marijuana that are similar in chemical structure or physiological effect to cannabinoids derived from cannabis, as defined in RCW 69.50.101, but are derived by a chemical or biological process.*
- *“Synthetic cannabinoid” means any material, compound, mixture or preparation which contains any quantity of a substance having a psychotropic response primarily by agonist activity at cannabinoid-specific receptors affecting the central nervous system that is produced artificially and not derived from an organic source naturally containing cannabinoids.*
- *“Synthetic cannabinoid” does not include the thermo-chemical conversion of cannabinoids in their acidic form into their neutral form.*



Washington State Liquor and Cannabis Board

Thank you!