



POSITION PAPER
regarding
PACKAGING & LABELING
April 10, 2017

*Submitted by the Cannabis Farmers Council
to the Washington State Liquor and Cannabis Board's Work Group on Labeling & Packaging
with the unanimous approval of a duly constituted quorum of its Executive Board*

We have received and reviewed the April 3 email and attachments sent to us by Nicole Hernandez of the Washington State Liquor and Cannabis Board (LCB). The attachments to that email include a marked-up draft of several sections of the Washington Administrative Code (WAC) dealing primarily with packaging and labeling as prepared by Joanna Eide, Policy and Rules Coordinator for the LCB (JE).

The proposed changes, both in scope and detail, are welcomed, and we appreciate the opportunity to participate in the formative stage of the rule-making process. The efforts of JE are impressive, and will go a long way towards improving the overall clarity and coherency of the WAC.

Given the ambitious level of review undertaken by JE and her staff, we have followed suit. Attached is the document prepared by JE, but with all changes “accepted” and our own comments and suggestions embedded in it.

Our review has been as thorough as time allowed, and our suggestions range from substantive policy issues to grammar & punctuation. JE mentions that the draft is a work-in-progress, and her plans call for reorganizing and streamlining certain sections, use of defined terms where appropriate, and making careful distinctions between and among similar but not identical matters, such as ingested and inhaled infused products.

Our own comments frequently follow that lead, and we have suggested numerous technical drafting improvements focusing on grammar, punctuation, syntax, and coherency. In regulatory drafting especially, consistency of expression is a key to clarity, so that definitions of key terms should be carefully crafted and then used exclusively in the text. Generally accepted stylistic and grammatical conventions, e.g., parallel construction, matching tenses, cases, verbs, and pronouns, have been employed in preparing our proposed revisions to the draft. Many of these suggestions are not substantive, but are offered to clarify and improve the document as a whole.

Our marked-up changes and interspersed “Comments” are self-explanatory, but three topics merit special discussion.

1. Definitions

JE mentions in her notes that some additional terms could be defined, and we agree that doing so would improve ease and consistency of expression. From the outset, the WAC has been bedeviled by different terms and groups of words, normally undefined, being used when a single thing is being referenced. There are many examples, but two will suffice.

When referring to a licensed retailer, the current WAC variously uses the terms “retailer”, “retail licensee”, “marijuana retail licensee”, “retailer licensed by the WSLCB”, “marijuana retailer”, and perhaps others. In these types of cases, we propose defining the key term in its shortest formulation, say, “retailer”, and then using that term alone throughout the document when suitable.

Potency references are made several times in the text being reviewed, and are variously described as:

- THC
- THC (total THC and activated THC-A) and CBD (total CBD and activated CBD-A);
- active THC, or Delta 9 and total milligrams of active CBD
- Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD (total CBD and activated CBD-A).
- active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.

Other comments regarding potency labeling are made in section 3 below, but the point here is that a few defined terms would allow for shorthand and consistent references to THC and CBD potency terms. Pending suitable defined terms, the attached draft simply uses “THC” and “CBD” in place of the variety of formulations shown above.

We have taken the liberty of suggesting several such new definitions in the attachment to this paper.

2. Use of the Word “Marijuana”

The term “marijuana” is regarded as pejorative, and is generally avoided by the cannabis community. It is a word coined by prohibition advocates and narcotics agents in the 1930's in seeking to demonize the plant and create a sinister aura around its use. Its foreign origin and sound were intended to reinforce the connection between the “devil's weed” and Mexican immigrants who even then were held in disdain by many Americans.

Most contemporary medical and scientific papers (including the RTI paper mentioned by JE in a note) use the more clinical and scientifically accurate term “cannabis”, and we believe the Washington State Liquor and *Cannabis* Board should do so as well.

The use of the term “marijuana” in RCW 69.50.101 is not an impediment, since a cross-reference can be made in the WAC definition, such as follows:

"Cannabis" means Washington-grown cannabis, and is synonymous with the term "marijuana" as defined by RCW 69.50.101. "Cannabis" does not include "industrial hemp" as defined by RCW 15.120.010.

While cannabis remains (unfairly) classified as a Schedule 1 Controlled Substance under federal law, the LCB does a disservice to the industry it is charged with regulating by continuing to refer to it by use of an offensive and emotionally charged term. Twenty-eight states, the District of Columbia, Guam, and Puerto Rico have legalized the medical use of cannabis. The many millions of patients who find cannabis to be a holistic, herbal substitute to traditional pharmaceuticals deserve a modicum of respect when it comes to naming the medicinal plant from which they derive relief, and the many thousands of owners and employees working in state-sanctioned medical and recreational sectors deserve the same.

All references in the WAC to "marijuana" should be replaced by "cannabis". The attached draft reflects this change, although for the ease of read-through the changes are not all marked-up.

3. Terminology regarding Potency

A major concern for both labeling and quality assurance is the variety and inconsistency of the form and terminology used by the labs in describing the results of potency tests. Several factors combine to ensure confusion and misunderstanding among all parties, especially consumers:

a. There are at least two generally accepted (and state-approved) potency testing methods in Washington, *gas chromatography* (GC) and *liquid chromatography* (LC). Due to differences in testing methodology, GC testing does not (and cannot) provide a value for THC-A because the plant material is actually incinerated in the test. This is not the case in LC testing, which obtains a THCA value, and then calculates what is variously referred to as "THCmax", or "Total THC" or other different terms intended to mean the same thing.

(In this context, we make no comment on the types of testing methods approved by the state.)

b. To lend further confusion, the WAC and the existing traceability system both rely on THCA as one of the key measures of potency, yet any producer/processor using a GC lab is not able to provide a THCA value. Since THCA values are always higher than THCmax values, misunderstandings among consumers are commonplace and those producer/processors obtaining a THCA value from an LC lab enjoy an unfair competitive advantage since numbers rule the roost when it comes to THC labeling.

Any data fields required by the WAC for labeling or any other purpose should be one that every testing lab can report. THCA and CBDA, among others, do not meet this criterion, and therefore should not be mentioned in "mandatory sections" of the WAC. Any reference to such data should be relegated to "permitted sections" of the WAC addressing what additional testing results may be provided by the labs.

c. In whatever way the LCB determines that potency information should be provided to consumers, it should be ensured that all producer/processors have access to the same data fields that are required, to be provided to consumers.

d. This issue ties into the new and/or improved traceability system currently being considered. Consistency in terminology and form between the WAC requirements and the traceability system's capabilities is critical.

e. Clarity and simplicity (to the extent practicable) is especially needed in this context. We have reduced the working terminology to “THC” and “CBD”, but some refinement is certainly needed. We expect that the labs (or maybe the RJ Lee Group, the lab-certifying vendor), with relatively little effort, ought to be able to agree upon standard, defined terminology that should then be expressly included in the WAC. The attached definitions from RCW 69.50 (Controlled Substances Act) may also offer guidance.

f. Lastly, we also recommend a requirement be imposed on labs to lay out the potency (and other mandatory) test results in a standard, uniform, easy-to-read chart, similar perhaps to FDA nutritional labels required on all food products. We envision a small text box containing specific critical data fields and values appearing in each lab report, thereby allowing for ease of comprehension by all parties, including interested consumers. Some thought might also be given to requiring such a “box chart” on the packaging of products as well. A simplified representation for flower products is below:

Potency Test Results		
Cannabinoid	Test Result	Indicative Range
THC	XX.XX%	YY% TO ZZ%
CBD	XX.XX%	YY% TO ZZ%
Total Cannabinoids	XX.XX%	YY% TO ZZ%
Name of Testing Lab: Date of Test: Testing Method: GC LC Other The above results are based on a test of flower selected from the same 5-pound lot as the material in this package. Such test results are not exact, but do indicate a reliable average potency range for the overall lot. Details of these test results are available upon request from the retail shop where purchased.		

* * *

We thank you again for inviting our involvement in reviewing these rules, and hope you find our input to be constructive and of some assistance.