

**Initiative 502 - Initial Draft Rules:
Comments to Washington State Liquor Control Board
June 10, 2013**

Prevention, Treatment, and Public Health Considerations



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Introduction and Overview

In collaboration with the ACLU of Washington, organizational and individual members of Washington State’s substance abuse prevention, treatment, and public health communities provide the following suggestions for revisions to the initial draft rules for marijuana producers, processors, and retailers to be licensed under Initiative 502 (“I-502”).¹

The Liquor Control Board (“Board”) should be commended for the creation of the initial draft rules for I-502. Establishing regulations that will govern a new legal marketplace for marijuana is a difficult task. Many issues need to be addressed and there are differing views on how the law should be implemented. From a public health perspective, many of the proposed rules seem to be on the right track. For instance, the Board’s proposals for the traceability of marijuana and security requirements for marijuana businesses will go a long way towards preventing the diversion of marijuana to youth and out of state.

However, the Board should exercise the expansive authority it is given under I-502 and bolster the public health features mandated (RCW 69.50.345) and permitted (RCW 69.50.342) under the law. Our priorities are to ensure that the public health features of I-502 are implemented fully, and that the public is informed about the importance of emphasizing drug education, prevention, and increased availability of treatment – coupled with robust monitoring, enforcement, and evaluation – as core components of this major shift in marijuana policy.

¹ The organizations, coalitions, and individuals that created this document come from diverse backgrounds and do not universally share the same beliefs about marijuana policy. Some do not support the legalization and regulation of marijuana. This document was drafted in a forward-looking manner and is not intended to revisit the underlying debate of whether it was wise to pass I-502 in the first place. All signatories agree that I-502’s public health components should be implemented fully and fairly.

Comments on Initial Draft Rules

WAC 314-55-010 Definitions

The Board should create a science-based definition for “marijuana extract,” referenced in WAC 314-55-079(2) and 314-55-104. The Board should also define “hash oil” and “hashish,” and change the reference to “hash” in WAC 314-55-079(2) to “hashish.” The terms “hash,” “shatter,” and “wax” are slang, and while the Board may find it useful to include them in the definition of “marijuana extract,” “hashish,” or “hash oil,” it does not seem useful to treat these words as legally defined terms.

Also, if the Board is going to use the term “Delta 9” to refer to delta-9 tetrahydrocannabinol, it should include that information in the Definitions section.

WAC 314-55-075 What is a marijuana producer license and what are the fees related to a marijuana producer license?

RCW 69.50.345(3) requires the Board to determine “the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law,” yet the initial draft rules are silent on this issue. The Board should either establish the maximum(s) in the rules or set forth in the rules exactly how the maximum(s) will be determined during the initial licensing process. In addition to being statutorily mandated, such specifications seem necessary as a practical matter to allow prospective licensees to develop accurate operational plans as part of the application process required by WAC 314-55-020(8); for example, a producer cannot know “size of grow space allocated for plant production” without knowing how the statutorily-mandated maximum quantity of marijuana will be determined.

As this group has stated in previous comments submitted to the Board,² it would be wiser to begin this unprecedented experiment with a legal marijuana market with smaller-scale operations that will have limited capacity to advertise heavily, than to open the door immediately to industrial-scale enterprises focused on recouping heavy capital expenditures and maximizing profits for venture capitalists. Advertising is not the only concern. Large investments and revenues also support aggressive lobbying expenditures aimed at advancing legislation and regulations more favorable to private profits than public health; we have seen this not only in the contexts of alcohol and tobacco but also in the current debate about how Initiative 502 should be implemented.³

² “Initiative 502 – Producer, Processor, and Retailer License Rules: Comments to Washington State Liquor Control Board,” submitted electronically May 10, 2013.

³ See, e.g., “Your money please: Changes proposed in marijuana initiative,” by Tom James, Crosscut.com (March 13, 2013) (quoting Rep. Christopher Hurst: “Why would we sell these [licenses] for a thousand dollars? I’ve had folks in my office who’ve said they’d be happy to pay a quarter million”), available at (<http://crosscut.com/2013/03/13/olympia-2013/113419/your-money-please-change-proposed-marijuana-initia/>).

It must be remembered: **the policy goals underlying I-502's regulatory and tax structures are to meet existing demand through a controlled legal market without promoting increased use**; see, e.g.:

- RCW 69.50.345(2)(c), determining number of retail outlets by taking into consideration the “provision of *adequate* access to licensed sources of useable marijuana and marijuana-infused products *to discourage purchases from the illegal market*” (emphasis supplied);
- RCW 69.50.345(6)(b), determining maximum quantities of marijuana that can be on licensed premises, taking into consideration the “provision of *adequate* access to licensed sources of useable marijuana and marijuana-infused products *to discourage purchases from the illegal market*” (emphasis supplied);
- RCW 69.50.345(7)(d), requiring **labels** to include “[m]edically and scientifically accurate information about the health and safety risks posed by marijuana use” (emphasis supplied);
- RCW 69.50.345(9)(c), requiring **advertising** to include “[m]edically and scientifically accurate information about the health and safety risks posed by marijuana use” (emphasis supplied);
- RCW 69.50.345(9)(b), requiring advertising regulations “[m]inimizing exposure of people under twenty-one years of age”;
- RCW 69.50.342(7), providing broad authority to adopt additional rules regarding “[l]abeling requirements and restrictions on advertisement of marijuana, useable marijuana, and marijuana-infused products”;
- RCW 69.50.357, restricting retail operations and providing penalties;
- RCW 69.50.369, restricting advertising and providing penalties;
- RCW 69.50.535(5), requiring the Board to regularly review the marijuana excise tax levels and make recommendations for adjustments “that would further the goal of **discouraging use** while undercutting illegal market prices” (emphasis supplied);
- RCW 69.50.540, dedicating marijuana excise tax revenue to prevention, treatment, public health education, research, healthcare, enforcement, the Healthy Youth Survey, and the Building Bridges program; and
- RCW 69.50.550, requiring periodic cost-benefit evaluations by the Washington State Institute for Public Policy of the impacts of Initiative 502 on public safety, public health, youth and adult use rates, private and public economic activities, the criminal justice system, and state and local administration.

The primary intent of Initiative 502 is not to “mint millionaires”;⁴ it is to produce better outcomes in terms of public safety and public health than marijuana prohibition has delivered. The statute provides tools to achieve this goal, and the Board should use them to the fullest extent possible.

WAC 314-55-077 What is a marijuana processor license and what are the fees related to a marijuana processor license?

RCW 69.50.345(4) requires the Board to determine “the maximum quantities of marijuana, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law,” yet the initial draft rules are silent on this issue. The Board should either establish the maximum(s) in the rules or set forth in the rules exactly how the maximum(s) will be determined during the initial licensing process.

WAC 314-55-079 What is a marijuana retailer license and what are the fees related to a marijuana retailer license?

RCW 69.50.345(5) requires the Board to determine “the maximum quantities of useable marijuana and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law,” yet the initial draft rules are silent on this issue. The Board should either establish the maximum(s) in the rules or set forth in the rules exactly how the maximum(s) will be determined during the initial licensing process. In addition to being statutorily mandated, such specifications are necessary as a practical matter to allow prospective licensees to develop accurate operational plans as part of the application process required by WAC 314-55-020(8); for example, it will be difficult for a retailer to know “[w]hat array of products are to be sold” without knowing how large an inventory the potential licensee will be allowed to carry at any time.

WAC 314-55-080 What is a marijuana producer/processor license and what are the fees related to a marijuana producer/processor license?

Additives⁵ to marijuana-infused products and types of marijuana infused products should be regulated. Additives intended to entice use by youth, or abuse by adults – such as

⁴ See United Press International, “Ex-Microsoft exec plans ‘Starbucks’ of marijuana” (May 31, 2013), available at (http://www.upi.com/Top_News/US/2013/05/31/VIDEO-Ex-Microsoft-exec-plans-Starbucks-of-marijuana/UPI-41161369985400/).

⁵The Board may find it useful to define the term “additive.” The FDA has adopted the following definition in the tobacco context: The term “additive” means “any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical” (section 900(1) of the act (21 U.S.C. 387(1)). FDA, *Guidance for Industry – Listing of Ingredients in Tobacco Products*, available at

menthol – should be prohibited. Combining alcohol, tobacco, controlled substances, or other intoxicating products with marijuana should be prohibited.

WAC 314-55-081 Who can apply for marijuana retailer license?

In determining the number of marijuana retail license locations, the Board should consider using the method that was used prior to the approval of Initiative 1183 to determine the placement of liquor stores. The method was effective in providing communities with liquor in an equitable manner and preventing over-consumption and underage access. The Board should prohibit Internet and mail order sales.

WAC 314-55-083 What are the security requirements for a marijuana licensee?

The Board should add “When plants undergo extraction” and “When marijuana extracts are infused into products” to subsection (4).

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises?

The Board should require signs at retail locations that display the “marijuana use public health hotline” that will be created per RCW 69.50.540(5)(b)(i). It is vital that consumers understand that treatment for marijuana abuse is available.

Prevention and counter-messaging (messaging that counters the industry’s promotional advertising) signs should also be required at retail locations. This should include information on keeping marijuana products away from children and the emergency hotline number for the Washington Poison Center. As two Washington emergency medicine physicians recently commented:

The legalization of recreational marijuana, especially the solid and liquid-infused forms permitted in Washington, will provide children greater access to cookies, candies, brownies, and beverages that contain marijuana.

...

Methods to prevent accidental exposures to marijuana need to be studied for efficacy and progressively developed. Parents and providers should be encouraged to call the Poison Center for data collection, information, education, and management advice.⁶

(<http://www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM192053.pdf>).

⁶ William Hurley, MD, and Suzan Mazor, MD, “Anticipated Medical Effects on Children from Legalization of Marijuana in Colorado and Washington State: A Poison Center Perspective.” JAMA, May 27, 2013, available at (<http://archpedi.jamanetwork.com/article.aspx?articleid=1691419>).

WAC 314-55-095 Marijuana servings and transaction limitations.

The Board should explain how it arrived at the “single serving” amount of ten milligrams active tetrahydrocannabinol (THC), or “Delta 9.” It should also explain whether this measurement is applicable across gender and weight. If this information is not available in reasonably reliable scientific literature, the Board should consider not defining a “single serving” since this is likely to be interpreted as a state-approved, safe, and consistent standard for all consumers.

The Board should also consider using the term “dose” instead of “serving.” The ten-milligram measurement describes the amount of active THC contained within a single serving of a marijuana-infused product. Accordingly, a single serving of a high-concentration chocolate bar may contain multiple doses of active THC, whereas a low-concentration lozenge may contain only a quarter- or half-dose. It would be useful information for consumers to separate the dose of the psychoactive component from the serving size of the product.

The Board should also require packages of pre-rolled marijuana cigarettes and buds of useable marijuana to be labeled with dose information.

WAC 314-55-105 Packaging and labeling requirements.

RCW 69.50.345(8) requires the Board, “[i]n consultation with the department of agriculture, [to] establish[] classes of marijuana, useable marijuana, and marijuana-infused products,” yet the initial draft rules are silent on this issue. The Board should establish these classes. We recommend review of 27 C.F.R. §§ 4.21 and 5.22 for examples of how classes and types of wine and distilled spirits are described, especially the floors and ceilings for alcoholic content (see also 27 C.F.R. §7.71 regarding how different alcoholic contents for malt beverages may be described). We recommend the Board adopt class definitions for marijuana that include, but are not necessarily limited to, established floors and ceilings for THC concentration.

The board should also require all labels to include the class to which the marijuana product belongs, in a fashion analogous to requirement established for liquor by WAC 314-52-010(1)(b).

Key components of reducing risk and promoting public health will be responsible packaging, accurate and uniform labeling, and dissemination of pertinent information to the consumer. The Board should bolster WAC 314-55-105 by making the following changes:

Packaging

- **Prevent Packaging That Appeals to Youth.** Any useable marijuana or marijuana-infused product should be packaged uniformly with an emphasis on preventing access by young children. The Board should adopt rules that

reasonably restrict the manner in which useable marijuana and marijuana-infused products are packaged to avoid appealing to youth. For example, edible products currently being sold by medical marijuana dispensaries include brightly colored lollipops, cotton candy, and snow cones. Such products have obvious appeal to children;

- Marijuana should be packaged in plain, opaque, tamper-resistant, and child-proof containers without depictions of the product, cartoons, or images other than those approved by the Board;
- Packaging for marijuana-infused products should not bear a reasonable resemblance to packaging of any commercially branded candy that is not a marijuana-infused product;

Labeling

- For marijuana-infused products, mandate that a list of all ingredients are included on the label, similar to food nutrition labels;
- In addition to warning that the product “may be habit forming,” list potential side effects of use and include rotating warning statements on labels. For example, the warning statements listed in WAC 314-55-105(7) should not only be included in accompanying materials; they should also be rotated on the labels. See, e.g., 21 C.F.R. §1141.10(a)(1), requiring one of the mandatory tobacco warnings to appear on the front and rear panels of each cigarette package;
- Specify that labels must appear directly on the package; be clearly visible under any cellophane or other wrapping, and that such wrapping be clear and not colored; be of a minimum size, and use a minimum font size; comprise a specific percent of the package panels; and be indelibly printed and permanently affixed to the package, not to any removable wrapper. See, generally, 21 C.F.R. §1141.10;
- Require labels to include the statement “Not FDA Approved”;
- Require labels to display of the DOH help-line telephone number that will be established under RCW 69.50.540(5)(b)(i);
- Require the following, or similar, text: “In case of accidental use by youth or overdose:” accompanied by the Washington Poison Center emergency hotline number; and
- Require that all label language is available in other languages.

Accompanying Material

- Mandate retailers to distribute with each sale a document titled "Information for the Consumer," which should be created by the Board in consultation with the Department of Health. This document should be updated as necessary. The document should be required to have a minimum font size and specify the document's date of issue and version;

- Require the "Information for the Consumer" document to include educational information on:
 - how to read the labels (i.e., what THC, CBD, CBN, etc. mean) and to the extent possible, the different effects that can be expected for different chemical compositions (i.e., the psychoactive difference between high-THC/low-CBD marijuana and vice versa);
 - explanation of the THC dose amount;
 - a discussion of tolerance and withdrawal;
 - indicators of marijuana dependence;
 - examples of the most important physical and mental health risks;
 - rationale for warning against use by children and adolescents and restricting sale to adults;
 - rationale for warning that women should not use marijuana while pregnant or breast feeding; and
 - examples of the specific types of driving impairment that provide the rationale for warning not to operate a vehicle or machinery under the influence of this drug;
- Require inclusion of the statement “Not FDA Approved”;
- Require display of the DOH help-line telephone number that will be established under RCW 69.50.540(5)(b)(i);
- Require that all accompanying materials are available in other languages and in versions for consumers who are visually- or hearing-impaired; and
- Require a QR code and a website address to access the University of Washington's Alcohol and Drug Abuse Institute for more information.

The Board should eliminate or significantly revise the proposed Washington State icon logo. The image of a giant marijuana leaf centered over the State of Washington can reasonably be viewed as branding Washington “The Marijuana State,” or as Washington proudly promoting marijuana use to the rest of the world. A logo like this will undoubtedly end up on bumper stickers and t-shirts. While the Board can’t prevent private entrepreneurs from marketing similarly themed items, it should not incorporate such images in regulatory requirements. Instead, the Board should consider using its current state logo or a similar text-based logo.

WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales?

The Board should limit the hours that marijuana retail licensees may conduct sales to those that were in place for liquor stores prior to approval of Initiative 1183. Having marijuana readily available when bars and nightclubs are closing will increase the likelihood of late-night, impulse purchases and mixing of alcohol, marijuana, and driving. This is especially dangerous in the current absence of a robust public education campaign

advising consumers of the synergistically impairing effects of combining alcohol and marijuana use.

WAC 314-55-155 Advertising

The Board should review Chapter 314-52 WAC, the liquor advertising rules, and add provisions to the current draft WAC 314-55-155 that are similar to those already in place for alcohol, especially those intended to shield youth from marketing. At a minimum, the Board should include subsections in WAC 314-55-155 that are analogous to the following sections in Chapter 314-52 WAC:

- WAC 314-52-030, prohibiting advertising in school publications and media;
- WAC 314-52-040, restricting contests, competitive events, premium and coupons;
- WAC 314-52-050, prohibiting sound truck advertising;
- WAC 314-52-070, regulating outdoor advertising;
- WAC 314-52-080, regulating novelty advertising;
- WAC 314-52-113, regulating brand signs and point-of-sale displays;
- WAC 314-52-115, regulating advertising by private clubs; and
- WAC 314-52-130, regulating industry sponsorship of public and civic events.

Resources

The following resources describe and assess the effectiveness of various prevention, treatment, and public health strategies utilized in response to marijuana use and in other contexts. These resources specifically relate to issues the Board must address through I-502 rulemaking.

Prevention in General

- University of Washington – Social Development Resource Group - homepage (<http://www.sdrp.org/index.asp>) and resource page (<http://www.sdrp.org/prevention.asp>).
- Washington State Prevention Enhancement Policy Consortium – *Substance Abuse Prevention and Mental Health Promotion Five-Year Strategic Plan* (<http://www.theathenaforum.org/sites/default/files/SPE%20Strategic%20Plan%20FINAL%20-%20v.%208.10.12.pdf>).
- National Research Council and Institute of Medicine – *Preventing Mental, Emotional, and Behavioral Disorders Among Young People* (http://www.nap.edu/catalog.php?record_id=12480).
- Office of the Surgeon General – *National Prevention Strategy* (<http://www.surgeongeneral.gov/initiatives/prevention/strategy/report.html>).

Marijuana

- RAND – webcast on “Public Health Regulations for Marijuana Legalization” (<http://www.c-span.org/Events/RAND-Corp-Holds-Discussion-on-Public-Health-Effects-of-Marijuana/10737437957-1/>).
- University of Washington - Innovative Programs Research Group (<http://depts.washington.edu/iprg/index.html>).
- SAMHSA – National Registry of Evidence Based Programs and Practices - Marijuana (<http://nrepp.samhsa.gov/SearchResultsNew.aspx?s=b&q=marijuana>).
- Norberg MM, Kezelman S, Lim-Howe N, *Primary Prevention of Cannabis Use: A Systematic Review of Randomized Controlled Trials*. PLoS ONE 8(1): e53187 (<http://dx.plos.org/10.1371/journal.pone.0053187>).
- RAND – Drug Policy Research Center: Marijuana Legalization: (<http://www.rand.org/multi/dprc/marijuana.html>).

- RAND – *Marijuana Legalization: What We Know and What We Don't Know* - Congressional Briefing, November 2012 (<http://www.rand.org/multimedia/video/2012/07/17/marijuana-legalization.html>).
- RAND – *What Can We Learn from the Dutch Cannabis Coffeeshop Experience?* (http://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR768.pdf).

Tobacco

- Centers for Disease Control and Prevention – *Best Practices for Comprehensive Tobacco Control Programs – 2007* (http://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm).
- Office of the Surgeon General – *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, 2012* (<http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>).

Alcohol

- Office of the Surgeon General – *Surgeon General's Call to Action to Prevent and Reduce Underage Drinking* (<http://www.surgeongeneral.gov/library/calls/underagedrinking/index.html>).
- National Institute on Alcohol Abuse and Alcoholism – Alcohol Policy Information System (<http://alcoholpolicy.niaaa.nih.gov/>).
- Underage Drinking Enforcement Training Center (<http://www.udetc.org/Publications.htm>).
- John Hopkins School of Public Health – Center on Alcohol Marketing and Youth (<http://www.camy.org/>).