Washington State
Liquor and Cannabis Board

Date: June 8, 2022

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Jeff Kildahl, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Licensing Director
Chandra Brady, Director of Education and Enforcement
Kathy Hoffman, Policy and Rules Manager

Subject: Request for approval of final rules (CR 103) regarding amendments to WAC 314-55-108 – Pesticide action levels.

The Policy and Rules Coordinator requests that the Board adopt the final rules, and approve the CR 103 to amend existing rules regarding cannabis pesticide action levels.

The Board has been briefed on the rule development background for this rule making project. There were four public comments received. A CR 103 memorandum, CR 103 form, Concise Explanatory Statement, and rule text are attached.

If approved, the Policy and Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, or July 9, 2022.

_____ Approve _____ Disapprove _____ _____
David Postman, Chair Date

_____ Approve _____ Disapprove _____ _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____ _____
Jim Vollendroff, Board Member Date

Attachments: CR 103 Memorandum
Concise Explanatory Statement

Washington State
Liquor and Cannabis Board

CR 103 Memorandum

Regarding WAC 314-55-108 – Pesticide Action Levels.

Date: June 8, 2022
Presented by: Jeff Kildahl, Policy and Rules Coordinator

Background

On March 2, 2022, the Washington State Liquor and Cannabis Board adopted rule amendments to cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025. Among the changes to those rules, WAC 314-55-102 was amended to require pesticide testing of all cannabis products produced and sold in Washington.

The WSLCB has authority under RCW 69.50.342(1)(c) to approve specific pesticides for use with cannabis, and to establish pesticide testing requirements for cannabis products. WAC 314-55-084 allows the WSLCB to permit the use of pesticides registered by the Washington State Department of Agriculture under chapter 15.58 RCW in the production, processing, and handling of cannabis. WAC 314-55-108 establishes pesticide action levels for the pesticides approved for use with cannabis.

These amendments to WAC 314-55-108 ensure consistency with the recently-adopted cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025, and update technical chemical isomer information of several pesticides.

Stakeholder Engagement

The recently adopted cannabis quality control testing rule project involved extensive stakeholder engagement, including Deliberative Dialogue sessions, multiple Listen and Learn sessions, and multiple rule proposals. These amendments to WAC 314-55-108 incorporate for consistency changes that were adopted in rule through the cannabis quality control testing rule project.

Additionally, because these revisions are technical in nature, and do not change the form or substance of these rules, a Listen and Learn forum was not hosted. There were four public comments received after the CR 102 was filed. Those comments are included in the Concise Explanatory Statement.

Rule Necessity

Amendments are needed to WAC 314-55-108 to ensure consistency with the recently-adopted cannabis quality control testing rules. Consistent with the cannabis quality control testing rules, these amendments update the term “quality assurance testing” to “quality control testing”. Also for consistency, the amendments remove outdated rule language concerning remediation of cannabis products that have failed quality control testing.

Other changes to the rule include updating technical chemical isomer information for some types of pesticides included in cannabis quality control testing, and clarifying the number of significant digits testing laboratories are expected to use for reporting numerical pesticide testing results. Also, redundant rule language contained in existing rule subsections WAC 314-55-108(4) and WAC 314-55-108(5) was removed.

Description of Rule Changes

Amended Section. WAC 314-55-108 – Updates chemical isomer information for some types of pesticides included in cannabis quality control testing, clarifies the number of significant digits testing laboratories are expected to use for reporting numerical pesticide testing results, removes redundant rule language contained in existing rule subsections WAC 314-55-108(4) and WAC 314-55-108(5), updates the term “quality assurance testing” to “quality control testing”, and removes outdated rule language concerning remediation for consistency with WAC 314-55-102.

Variance between proposed rule (CR102) and final rule:

The term “marijuana” was replaced throughout WAC 314-55-108 with the term “cannabis” for conformance with Second Substitute House Bill 1210 (Chapter 16, Laws of 2022), Section 168.

Rule Implementation

<u>Informing and Educating Persons Impacted by the Rule</u>

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- Post rule adoption materials, including final rule language, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide information and training on request.

Promoting and Assisting Voluntary Compliance

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rule.
- Agency leadership and staff have actively participated in rule development, and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule documents will be available on the WSLCB website.
- WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rule.

Training and Informing WSLCB Staff

Internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate.
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

Rule Effectiveness Evaluation

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly.
- Monitoring requests for rule language revisions or changes.
- Monitoring requests for rule interpretation.
- Monitoring licensee feedback including, but not limited to, requests for assistance.

CODE REVISER USE ONLY

RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The Washington State Liquor and Cannabis Board (WSLCB) adopted amendments to WAC 314-55-108 to update technical chemical isomer information for some types of pesticides included in cannabis quality control testing, and to clarify the number of significant digits testing laboratories are expected to use for reporting numerical pesticide testing results.

Other amendments were completed to ensure consistency with WAC 315-55-102 concerning remediation of marijuana products that have failed quality control testing, remove redundant rule language contained subsections (4) and (5), and to update the term "quality assurance testing" to "quality control testing".

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 314-55-108
Suspended: None

Statutory authority for adoption: RCW 69.50.345 and RCW 69.50.348.

Other authority: RCW 69.50.345 and RCW 69.50.348.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 22-08-038 on March 30, 2022 (date).

Describe any changes other than editing from proposed to adopted version: The term "marijuana" was replaced throughout WAC 314-55-108 with the term "cannabis" for conformance with Second Substitute House Bill 1210 (Chapter 16, Laws of 2022), Section 168.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	____	Amended	____	Repealed	____
Recently enacted state statutes:	New	____	Amended	____	Repealed	____

The number of sections adopted at the request of a nongovernmental entity:

	New	____	Amended	____	Repealed	____

The number of sections adopted on the agency's own initiative:

	New	____	Amended	____	Repealed	____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	____	Amended	____	Repealed	____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	1	Repealed	____

Date Adopted: June 8, 2022	**Signature:** Place signature here
Name: David Postman	
Title: Chair	

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of ((~~marijuana~~)) cannabis, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality ((~~assurance~~)) control testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm.

((~~Analyte~~	~~Chemical Abstract Services (CAS) Registry Number~~	~~Action Level ppm~~
~~Abamectin~~	~~71751-41-2~~	~~0.5~~
~~Acephate~~	~~30560-19-1~~	~~0.4~~
~~Acequinocyl~~	~~57960-19-7~~	~~2~~
~~Acetamiprid~~	~~135410-20-7~~	~~0.2~~
~~Aldicarb~~	~~116-06-3~~	~~0.4~~
~~Azoxystrobin~~	~~131860-33-8~~	~~0.2~~
~~Bifenazate~~	~~149877-41-8~~	~~0.2~~
~~Bifenthrin~~	~~82657-04-3~~	~~0.2~~
~~Boscalid~~	~~188425-85-6~~	~~0.4~~
~~Carbaryl~~	~~63-25-2~~	~~0.2~~
~~Carbofuran~~	~~1563-66-2~~	~~0.2~~
~~Chlorantraniliprole~~	~~500008-45-7~~	~~0.2~~
~~Chlorfenapyr~~	~~122453-73-0~~	~~1~~
~~Chlorpyrifos~~	~~2921-88-2~~	~~0.2~~
~~Clofentezine~~	~~74115-24-5~~	~~0.2~~
~~Cyfluthrin~~	~~68359-37-5~~	~~1~~
~~Cypermethrin~~	~~52315-07-8~~	~~1~~
~~Daminozide~~	~~1596-84-5~~	~~1~~
~~DDVP (Dichlorvos)~~	~~62-73-7~~	~~0.1~~
~~Diazinon~~	~~333-41-5~~	~~0.2~~
~~Dimethoate~~	~~60-51-5~~	~~0.2~~
~~Ethoprophos~~	~~13194-48-4~~	~~0.2~~
~~Etofenprox~~	~~80844-07-1~~	~~0.4~~
~~Etoxazole~~	~~153233-91-1~~	~~0.2~~
~~Fenoxycarb~~	~~72490-01-8~~	~~0.2~~
~~Fenpyroximate~~	~~134098-61-6~~	~~0.4~~
~~Fipronil~~	~~120068-37-3~~	~~0.4~~

((~~Analyte~~	~~Chemical Abstract Services (CAS) Registry Number~~	~~Action Level ppm~~
~~Flonicamid~~	~~158062-67-0~~	~~1~~
~~Fludioxonil~~	~~131341-86-1~~	~~0.4~~
~~Hexythiazox~~	~~78587-05-0~~	~~1~~
~~Imazalil~~	~~35554-44-0~~	~~0.2~~
~~Imidacloprid~~	~~138261-41-3~~	~~0.4~~
~~Kresoxim-methyl~~	~~143390-89-0~~	~~0.4~~
~~Malathion~~	~~121-75-5~~	~~0.2~~
~~Metalaxyl~~	~~57837-19-1~~	~~0.2~~
~~Methiocarb~~	~~2032-65-7~~	~~0.2~~
~~Methomyl~~	~~16752-77-5~~	~~0.4~~
~~Methyl parathion~~	~~298-00-0~~	~~0.2~~
~~MGK-264~~	~~113-48-4~~	~~0.2~~
~~Myclobutanil~~	~~88671-89-0~~	~~0.2~~
~~Naled~~	~~300-76-5~~	~~0.5~~
~~Oxamyl~~	~~23135-22-0~~	~~1~~
~~Paclobutrazol~~	~~76738-62-0~~	~~0.4~~
~~Permethrins[a]~~	~~52645-53-1~~	~~0.2~~
~~Phosmet~~	~~732-11-6~~	~~0.2~~
~~Piperonyl butoxide[b]~~	~~51-03-6~~	~~2~~
~~Prallethrin~~	~~23031-36-9~~	~~0.2~~
~~Propiconazole~~	~~60207-90-1~~	~~0.4~~
~~Propoxur~~	~~114-26-1~~	~~0.2~~
~~Pyrethrins[bc]~~	~~8003-34-7~~	~~1~~
~~Pyridaben~~	~~96489-71-3~~	~~0.2~~
~~Spinosad~~	~~168316-95-8~~	~~0.2~~
~~Spiromesifen~~	~~283594-90-1~~	~~0.2~~
~~Spirotetramat~~	~~203313-25-1~~	~~0.2~~
~~Spiroxamine~~	~~118134-30-8~~	~~0.4~~
~~Tebuconazole~~	~~80443-41-0~~	~~0.4~~
~~Thiacloprid~~	~~111988-49-9~~	~~0.2~~
~~Thiamethoxam~~	~~153719-23-4~~	~~0.2~~
~~Trifloxystrobin~~	~~141517-21-7~~	~~0.2~~

~~[a]Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).~~

~~[b]Action level applies to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.~~

~~[c]Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively).~~))

Analyte	µg/g (ppm)	CAS#
Abamectin (Sum of Isomers)	0.50	71751-41-2
• Avermectin B1a		65195-55-3
• Avermectin B1b		65195-56-4

Analyte	µg/g (ppm)	CAS#
Acephate	0.40	30560-19-1
Acequinocyl	2.0	57960-19-7
Acetamiprid	0.20	135410-20-7
Aldicarb	0.40	116-06-3
Azoxystrobin	0.20	131860-33-8
Bifenazate	0.20	149877-41-8
Bifenthrin	0.20	82657-04-3
Boscalid	0.40	188425-85-6
Carbaryl	0.20	63-25-2
Carbofuran	0.20	1563-66-2
Chlorantraniliprole	0.20	500008-45-7
Chlorfenapyr	1.0	122453-73-0
Chlorpyrifos	0.20	2921-88-2
Clofentezine	0.20	74115-24-5
Cyfluthrin	1.0	68359-37-5
Cypermethrin	1.0	52315-07-8
Daminozide	1.0	1596-84-5
DDVP (Dichlorvos)	0.10	62-73-7
Diazinon	0.20	333-41-5
Dimethoate	0.20	60-51-5
Ethoprophos	0.20	13194-48-4
Etofenprox	0.40	80844-07-1
Etoxazole	0.20	153233-91-1
Fenoxycarb	0.20	72490-01-8
Fenpyroximate	0.40	134098-61-6
Fipronil	0.40	120068-37-3
Flonicamid	1.0	158062-67-0
Fludioxonil	0.40	131341-86-1
Hexythiazox	1.0	78587-05-0
Imazalil	0.20	35554-44-0
Imidacloprid	0.40	138261-41-3
Kresoxim-methyl	0.40	143390-89-0
Malathion	0.20	121-75-5
Metalaxyl	0.20	57837-19-1
Methiocarb	0.20	2032-65-7
Methomyl	0.40	16752-77-5
Methyl parathion	0.20	298-00-0
MGK-264	0.20	113-48-4
Myclobutanil	0.20	88671-89-0
Naled	0.50	300-76-5
Oxamyl	1.0	23135-22-0
Paclobutrazol	0.40	76738-62-0
Permethrins (Sum of Isomers)	0.20	52645-53-1
• cis-Permethrin		54774-45-7

Analyte	µg/g (ppm)	CAS#
• trans-Permethrin		51877-74-8
Phosmet	0.20	732-11-6
Piperonyl butoxide	2.0	51-03-6
Prallethrin	0.20	23031-36-9
Propiconazole	0.40	60207-90-1
Propoxur	0.20	114-26-1
Pyrethrins (Sum of Isomers)	1.0	8003-34-7
• Pyrethrin I		121-21-1
• Pyrethrin II		121-29-9
Pyridaben	0.20	96489-71-3
Spinosad (Sum of Isomers)	0.20	168316-95-8
• Spinosyn A		131929-60-7
• Spinosyn D		131929-63-0
Spiromesifen	0.20	283594-90-1
Spirotetramat	0.20	203313-25-1
Spiroxamine	0.40	118134-30-8
Tebuconazole	0.40	80443-41-0
Thiacloprid	0.20	111988-49-9
Thiamethoxam	0.20	153719-23-4
Trifloxystrobin	0.20	141517-21-7

(4) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(5) Except as otherwise provided in this section, licensed ((~~marijuana~~)) cannabis producer or processor that provided a sample that fails quality ((~~assurance~~)) control testing must dispose of the entire lot or batch from which the sample was taken as provided by ((~~marijuana~~)) cannabis waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087. A licensee's sample that does not test above the pesticide action levels under this section where test results show the presence of a pesticide that is not allowed under subsection (1) of this section may still be subject to an administrative violation if the disallowed pesticide was applied.

((~~(5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.~~))

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

(7) ((~~Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.~~

~~(8)~~)) Pursuant to WAC 314-55-102, upon request a ((~~marijuana~~)) cannabis licensee must disclose and make available all quality ((~~assurance~~)) control tests and retest results for the lot or batch of usable ((~~marijuana, marijuana~~)) cannabis, cannabis concentrates, or ((~~marijuana-infused~~)) cannabis-infused products to the ((~~marijuana~~)) cannabis licensee or retail customer who is considering purchasing the usable ((~~marijuana, marijuana~~)) cannabis, cannabis concentrates, or ((~~marijuana-infused~~)) cannabis-infused products.

Washington State
Liquor and Cannabis Board

Notice of Permanent Rules

Regarding Amendment to WAC 314-55-108 – Pesticide Action Levels.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of amendments to WAC 314-55-108.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Jeff Kildahl, Policy and Rules Coordinator, at (360) 664-1781 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

On March 2, 2022, the Washington State Liquor and Cannabis Board adopted rule amendments to cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025. Among the changes to those rules, WAC 314-55-102 was amended to require pesticide testing of all cannabis products produced and sold in Washington.

The WSLCB has authority under RCW 69.50.342(1)(c) to approve the specific pesticides approved for use with cannabis, and to establish pesticide testing requirements for cannabis products. WAC 314-55-084 allows the WSLCB to permit the use of pesticides in the production, processing, and handling of cannabis that have been registered by the Washington State Department of Agriculture under chapter 15.58 RCW. WAC 314-55-108 establishes pesticide action levels for pesticides approved for use with cannabis.

Amendments are needed to WAC 314-55-108 to assure consistency with the recently-adopted cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025, and to update technical chemical isomer information of several pesticides.

Rulemaking history for this adopted rule:

CR 101 – filed February 2, 2022 as WSR #22-04-116.
CR 102 – filed March 30, 2022 as WSR #22-08-038.
Public hearing held May 11, 2021.

The effective date of these rules is July 9, 2022.

Public comment received on the rule proposal:

1. ***Email message received from Chris Bateman, received March 31, 2022:***

From: Chris Bateman <reactoroperator@gmail.com>
Sent: Thursday, March 31, 2022 11:30 AM
To: LCB DL Rules <rules@lcb.wa.gov>
Subject: Fwd: LCB Board Action: Pesticide Testing for Cannabis

External Email

Hello,

I would like to submit the following comment regarding rules and pesticide action levels:

LCB's action in requiring pesticide testing will result in a safer product for consumers, but places an onerous limit with regards to piperonyl butoxide (PBO) specifically. PBO occupational exposure limits recommended by WHO are 0.2mg/kg of body weight per day.

Assuming a light weight person at 50kg uses the same contaminated concentrate everyday, they would have to consume 1g of concentrate with 10ppm PBO every day to approach that limit which has the tenfold safety factors included. It is extremely unlikely that concentrates containing even 100ppm would have any harmful effects on any user at all.

PBO is essentially non-toxic and does not degrade heat or any other method of cannabis use. Changing the limit to 50 or 100ppm would allow for reasonable pest mitigation and allow for otherwise high quality concentrates to be marketed without compromising safety whatsoever.
---------- Forwarded message ----------

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

2. ***Email message and document attachment received from Dr. James MacRae, May 11, 2022:***

-----Original Message-----
From: jim@straightlineanalytics.biz <jim@straightlineanalytics.biz>
Sent: Wednesday, May 11, 2022 10:01 AM
To: LCB DL Rules <rules@lcb.wa.gov>
Cc: Dickson, Dustin P (LCB) <dustin.dickson@lcb.wa.gov>
Subject: Input regarding proposed changes to Pesticide Action Levels (Cannabis) - MacRae

External Email

Please find attached the proposed rule changes I will suggest today.

Thank-you

Jim MacRae

Document attachment received from Dr. James MacRae, May 11, 2022:

5/11/2022

Input on Pesticide Action Level Rules

Input document regarding pesticide action levels for marijuana in Washington

With homage to Erik Johansen, ex-WSDA (based on input initially submitted by Mr. Johensen in 2018 – a time at which he had oversaw the pesticide registration function for the WSDA for over a decade. These comments are, basically a re-statement of his earlier input.

Here are my initial suggestions for revisions to the pesticide action levels in WAC 314-55-108:

1. WAC 314-55-108(3) - The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm for pesticides with allowed food uses in 40 CFR, and 0.01 ppm for pesticides with no allowed food uses in 40 CFR.

2. Reduce the action level to 0.01 ppm for Carbofuran, Daminozide, Fenoxycarb, Methiocarb, Methyl parathion, Paclobutrazol, Propoxur, and Thiacloprid.

3. Revise the action level for Piperonyl butoxide to 3 ppm (inhalable marijuana and marijuana products) and 8 ppm (other marijuana and marijuana products). This action level would apply to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

4. Revise the action level for Pyrethrins to 0.5 ppm (inhalable marijuana and marijuana products) and 1 ppm (other marijuana and marijuana products). This action level would apply to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

5. Establish an action level for Salicylic acid. I suggest using 0.13 ppm as a starting point, but it would be important to get input from the WSDA Chemical and Hop Laboratory and the WSDA Pesticide Compliance Program.

Thank-you very much for once again accepting this testimony regarding Agency rules regarding Pesticide Action Levels.

Dr. James MacRae
jim@straightlineanalytics.biz
mobile: 425-877-6020

WSLCB response: The WSLCB appreciates these comments, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

3. Oral testimony from Dr. James MacRae provided during the public hearing held May 11, 2022, transcribed directly from the meeting recording:

"Hi, I just want to provide a little bit of public input here that the agency has heard in the past regarding pesticide action levels this was submitted a number of years ago by a gentleman who at the time had run the pesticide regulation function within the WSDA for over a decade Erik Johansen and he submitted this some version of the written testimony I just submitted this morning in 2018 and in those suggestions um Mr. Johansen effectively suggested and reiterated a point he had made on numerous occasions to the agency that the adoption effectively of the Oregon standards by Washington state and the failure to adopt the recommended standards recommended by the department of health in this state and the department of agriculture in this state jointly to the agency resulted in a set of pesticide action standards that effectively were not protective of human health I I'm not using the right words probably but he was concerned at the time and he gave his testimony and I've given it written so I'm not going to speak it out here it's uh it relates to specifically changing some action levels based on whether or not uh pesticides in question are allowed for use on any foodstuffs in the rest of the non-cannabis market you really did run through this and it was a shame at the time I feel and now I feel as well that the agency does not seem to have seriously entertained his input and the input of the department at the time now uh so I'm not going to read them all right now I'm going to use my time for something else which I will expand upon in the general comments however there are a couple of other things in these rules that I not did not put in my written input one is in trying to align them with the quality control uh not assurance quality control changes that uh you put into place a month or two ago uh you've chosen to make them aligned with I think is 102 or one of the subsets of the WAC there I want to remind you that there's another subset of the WAC that also makes reference to pesticide action levels that now will be the inconsistent one and doesn't seem to have been covered in any of these rule-making sessions and that's the one that relates to the CBD the imported CBD testing which requires pesticides and it still makes it still uses the old language so for example the standard of whether something is bad for a pesticide there uses the word if it is deleterious these current rules that you passed a month ago and the ones that you will basically accord by adoption in these rules change the word deleterious to harmful so there was never any explanation given for that change of language uh it's fairly obvious from a legal perspective that that raises the bar somewhat for bringing punitive action against someone who abuses it and puts consumers at risk so again it's an industry friendly certainly an industry-friendly move it's not a very consumer or patient-friendly move and that's a theme that goes through um I'll be frank the way this agency has run the quality assurance and quality control rules over the past few years many opportunities have been afforded to improve the lot of consumers of cannabis and this year with respect to the safety of the product and um those opportunities are generally not grasped and indeed with every success of every single successive iteration of quality assurance quality control rules um the agency has further degraded the quality and safety of the product that is available on the market you'll be hearing more from me on that later however for this thank you very much for your time I appreciate it please consider this input it really is Erik's input primarily but I thought it needed to be said again thank you"

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

4. Oral testimony from Dr. James MacRae provided during the Board meeting held May 11, 2022, transcribed directly from the meeting recording:

"Thank you so much um I want to reiterate other speakers welcome to Board Member Vollendroff welcome I was thrilled well I was really thrilled when I saw that you had a behavioral health background I think that's going to be a wonderful addition to the oversight of the agency and uh at some point hopefully we'll get an opportunity to speak one-on-one. I'm uh an experimental psychologist by training did substance abuse research way back when and have being an avid student of the data that had been thrown out by the market in Washington state over the last eight years so that's my background um a couple things I wanted to follow up a little on my input earlier thank you Dustin for allowing you to do this by phone um the gentleman you know one thing you may have noticed is you didn't get a whole lot of input on this rule set and it's a fairly important one when you consider that now you know the 99 of them the product sold in this market is not medical for patients is now actually going to be tested for pesticides that's a very good thing that is progress it's so much of the other little things that were done in the rules that bring it as a step backwards in overall um consumer safety in my opinion and I have pretty strong and well-informed opinions about that in my opinion uh I want to give you a bit more story about the gentleman who did the rules that I submitted in writing earlier this morning and it might speak to why you sometimes have a dearth of input and you know on October 3rd 2018 Erik Johansen gave testimony to the board on a public hearing uh it was item d on that agenda you might want to listen to the recording of it it's at time 220 on that recording and he basically stated his opinion and then board member I believe Garrett you may have been there at that meeting um asked him is he speaking for himself or speaking for the agency the department of agriculture and he said he was speaking for the department of agriculture it's his job he's you know being a cannabis point and he's pesticide guy there so within three working days he was pulled from his cannabis responsibilities by the WSDA and within two or three more working days he was pulled from over a decade of leading the pesticide registration program at the agency so you know I read that as a vindictive action on the part of the agency because a very good public servant did not follow the party line um and perhaps put you know inappropriately the words of the agency in his mouth but he was working on his job uh so you know that the vindictiveness it's not just go to licensees it goes to public servants it goes to anybody that crosses the agency that is part of the culture of what you're now overseeing Mr. Vollendroff it's there it's real I mean you can read the history you know I can give you a summary one-on-one at some point if you'd like to know uh two other things just this is the kind of behaviors of the agency that really should be reeled in a little bit you know we've just recently gone to referring to cannabis instead of marijuana that's very good one of the recent thing outages from outputs from the agency made reference to high thc cannabis which is a value driven turn no doubt your communications people have something to do with forming it I would suggest you not use such terminology cannabis is defined as having more than 30 seconds thank you it is defined on the basis of its get its thc content which is more than point three percent less than that it's hemp so now begin bringing in a term that is not defined of high thc cannabis it's evaporating it feeds into certain I would say uh prevention-minded and biased uh perspectives and finally canopy the stuff you're doing on canopy the new interpretation I warned you in February not to listen to the direction staff was going you they've put this."

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Changes from Proposed Rules (CR-102) to the Rules as Adopted:

WAC 314-55-108 was amended to replace all occurrences of the term “marijuana” with the term “cannabis” for conformance with Second Substitute House Bill 1210 (Chapter 16, Laws of 2022), Section 168.