



CR102 Memorandum - Amended as to timeline and explanation of paused rulemaking

Regarding WAC 314-55-101 – Quality assurance sampling protocols; WAC 314-55-102 – Quality assurance testing (effective until February 28, 2021); New Section WAC 314-55-1021 – Quality Assurance and Quality Control (Effective March 1, 2021 until August 31, 2021); New Section WAC 314-55-1022 – Quality Assurance and Quality Control (Effective September 1, 2021); and WAC 314-55-1025 – Proficiency testing.

Date: May 27, 2020
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Description of the Issue

In early 2018, several stakeholders, including medical marijuana patients, consumers, and licensees, urged WSLCB to require producers and processors to test recreational crops for pesticides and heavy metals. These partners asserted that such a move, already adopted in other states, would inspire confidence among consumers, increase access to medically compliant products, and bolster sales. In August 2018, the WSLCB began the initial stages of rule development regarding marijuana quality control and product requirements. Among the rule changes being considered was whether all marijuana products be tested for pesticides and heavy metals because neither test is required for recreational products.

As of the time of this analysis, there is currently one marijuana testing lab in Washington State capable of testing products for the full suite of I-502 tests, along with pesticides and heavy metals. There are currently a total of five labs capable of testing for the full suite of I-502 tests, plus with pesticides.

Marijuana grows operate on a wide spectrum of sophistication. Some grows are tightly controlled in technologically advanced indoor facilities; plants are grown in climate-controlled chambers where every aspect of the plant's cultivation is monitored. Other grows are comparatively "low tech," set outdoors and dependent on seasonable cycles. Which growth model a licensed producer chooses – either indoors or outdoors – is entirely a business decision of the licensee. Similarly, the variety of tests an accredited marijuana testing laboratory offers is entirely a business decision of the laboratory.

Marijuana cultivation, both indoor and outdoor, is associated with a variety of pests, bacteria, and fungi. Producers have used a wide variety of pesticides to reduce insect infestation. Pesticide misuse poses serious health risks to consumers, and exposure can result in a variety of well-documented symptoms,

such as difficulty breathing, abdominal pain, vomiting, dizziness, and muscle cramps. Additionally, some pesticides have been found to be carcinogenic (Taylor & Birkett, 2019).

Emerging literature and multiple studies, both nationally and globally, indicate that marijuana and marijuana products can become contaminated and must be tested to protect public health (Feldman, 2015; Subritzky, Pettigrew & Lenton, 2017; Feldman, 2015; Craven et. al., 2019; Seltenrich, 2019). Marijuana and its products can be contaminated with microbiological contaminants, such as mold or salmonella, potentially hazardous growth enhancers, and heavy metals such as chromium and lead. While marijuana in any form may be prone to contamination, extracts and concentrates may present a greater risk because any contaminants will become concentrated during processing (Seltenrich, 2019). To protect consumers against exposure to pesticides, solvents, and other contaminants, marijuana and marijuana products must be tested to ensure they are safe for human consumption.

Need for Withdrawal of Original CR102 Proposal

After the original rule proposal was filed on January 22, 2020 that set a public hearing for March 18, 2020, Governor Inslee declared a state of emergency regarding the COVID-19 pandemic. The Governor subsequently issued several proclamations that included limits on public congregation, and established social distancing guidelines. These proclamations severely limited the agency's ability to conduct public hearings as required under chapter 34.05 RCW. On March 11, 2020, the Board continued the March 18 public hearing on this proposal to April 1, 2020.

On March 23, 2020, Governor Inslee issued the first Stay Home, Stay Healthy proclamation. Because there were no viable options for the Board to hold a public hearing that complied with the Stay Home, Stay Healthy proclamation and subsequent updates, the Board was unable to hold a public hearing on the proposed rules on April 1, 2020. On March 27, 2020, and consistent with RCW 34.05.335 and WAC 1-21-060, the Board withdrew its proposed rulemaking filed on March 11, 2020 as WSR 20-07-052 as a continuance of proposed rulemaking filed on January 22, 2020 as WSR 20-03-076.

The Board's intention in taking this action was to refile a new CR102 regarding proposed marijuana quality control rules as soon as reasonably possible, and once virtual stakeholder engagement options became available. It was clearly articulated at the March 27 meeting that the Board was *not* redrafting rules for this project. The only change to the re-filed CR102 rule package would be the hearing date, potentially the forum for the public hearing, and timelines regarding phase in. The purpose of the withdrawal was to merely place the project on pause until venue and method for holding a public hearing were solidified and

available. The substance of the rule proposal would not change, and has not changed.

Rule Necessity

Rules are needed for the following reasons:

Current testing requirements for recreational marijuana are intended to ensure that products for sale are safe and have accurate potency levels. However, Washington state recreational marijuana products are not required to be tested for pesticides and heavy metals, and although not precluded from doing so, many producers and processors do not test for either. Based on a number of elements, including consumer concern and national best practices, it has become evident that standardized testing for *all* marijuana products produced, processed, and sold in Washington State is necessary. *Washington State is the only state with both recreational and medical programs that does not require such testing for all products.*

There is no guidance available to the WSLCB or any other state agency regulating marijuana from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule I drug, and federally illegal. This presents regulatory challenges to the WSLCB, regulators throughout the country, and the industry since there is limited funding to support research on how marijuana tainted with potential toxins affects humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, the overarching goal of the WSLCB is to protect public health and safety, and to assure that all products sold within the I-502 market are safe for all consumers.

Recently, concern around the composition and safety of marijuana concentrates for inhalation has highlighted the need to assure that all marijuana products are tested for the presence of harmful compounds and other contaminants. The proposed rule amendments and phase-in plan offer a reasonable time frame that provides both licensees and accredited labs the opportunity to adjust business models where necessary, and offers options to prepare for additional fields of testing either immediately or over an extended, but finite period of time.

These new rule sections and amendments, in addition to proposed technical and clarifying revisions support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current, dynamic regulatory environment.

Description of Rule Changes

Amended Section. WAC 314-55-101 – Reaffirms existing protocols designed to reduce, where possible, product contamination during and after sample reduction. Retains five-pound lot size for sample collection. Updates, reorganizes and streamlines rule language where appropriate to assure scientific accuracy.

Amended Section. WAC 314-55-102 (Effective through March 3, 2021) – Reaffirms existing protocols, and updates reorganizes, and streamlines rule language where appropriate to assure scientific accuracy. Adds allowance for terpene testing.

New Section. WAC 314-55-1021 (Effective March 4, 2021 until September 3, 2021) – Will replace WAC 314-55-102 by adding pesticide testing requirement to the list of quality control tests for all marijuana products.

New Section. WAC 314-55-1022 (Effective September 4, 2021) - Will replace WAC 314-55-1021 by adding heavy metals testing requirement to the list of quality control tests for all marijuana products.

Amended Section. WAC 314-55-1025- Updates language to include “board” where appropriate consistent with statutory reference.

References

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