



Notice of Permanent Rules

Regarding Amendment to WAC 314-55-101 – Quality assurance sampling protocols; WAC 314-55-102 – Quality assurance testing; and WAC 314-55-1025 – Proficiency testing.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025.

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:

In early 2018, several stakeholders, including medical marijuana patients, consumers, and licensees, urged WSLCB to require producers and processors to test adult use marijuana for pesticides and heavy metals. 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 were whether all marijuana products be tested 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.

There is no product testing 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.

Existing testing requirements for adult use marijuana were intended to safeguard products for sale and list potency levels. However, there has not been a requirement for Washington recreational marijuana products to be tested for pesticides or heavy metals, and although not precluded from doing so, many producers and processors did not test for either. Based on a number of elements, including consumer concern and national best practices, it became evident

that mandatory pesticide testing for all marijuana products produced, processed, and sold in Washington State was necessary, and that random or investigation driven heavy metal testing conducted by the WSLCB was also needed.

Adoption of these rules is needed to require that all marijuana products produced and sold in Washington State are tested for pesticides, and to allow the WSLCB to conduct randomized or investigation driven testing for heavy metals in marijuana products. In order to meet potential demand for pesticide testing, there are currently a total of five marijuana testing labs in Washington State capable of testing for the full suite of I-502 tests, along with pesticides. With the recent increase in hemp-derived delta-8, delta-9, and other unregulated products entering the I-502 market, it is important at this time to require pesticide testing and random or investigation driven heavy metal testing for adult use marijuana products to protect public health and safety.

Rulemaking history for this adopted rule:

CR 101 – filed as WSR #18-17-041.

CR 102 – filed December 8, 2021 as WSR #22-01-055.

Public hearing held February 2, 2021.

The effective date of these rules is April 2, 2022.

Public comment received on the rule proposal:

See Attachment A – Public Comment

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

WAC 314-55-102 is amended to include a new subsection (11) as follows:

(11) All marijuana products produced, processed, distributed or sold after the effective date of these rules must comply with these rules and this chapter, however, post-harvest products in the possession of, or being processed by a licensee that do not comply with these rules as of their effective date may be sold, distributed or both within a reasonable period of time determined by the board.

This non-substantive amendment was added to allow for a transition period for rule implementation.