



CR103 Memorandum

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

Date: March 2, 2022
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Background

In early 2018, several stakeholders, including medical marijuana patients, consumers, and licensees, urged the WSLCB to require marijuana producers and processors to test adult use marijuana 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 should be tested for pesticides and heavy metals, because neither test is required for adult use marijuana products in Washington.

Following the urging of stakeholders, these rule changes introduce in rule the requirement for pesticide testing of all marijuana products. These rule changes also allow the WSLCB to conduct randomized or investigation driven heavy metal testing through the Washington State Department of Agriculture (WSDA). In order to meet potential demand for pesticide testing, there are currently five marijuana testing labs in Washington capable of testing for the full suite of I-502 tests, along with pesticides.

Stakeholder Engagement

The WSLCB hosted three Deliberative Dialogue sessions on marijuana product testing in January and February 2021, and three Listen and Learn sessions, with the most recent session held virtually on October 20, 2021. During these sessions, the WSLCB collected significant input from industry members, associations, and other interested parties representing processors and producers across all tiers, and many others. These sessions were announced via GovDelivery and other media platforms, and open to the public, licensees, and any interested party to encourage community input. The WSLCB is aware that pesticide and heavy metal testing is a topic of interest to many Washington State citizens.

The WSLCB received a number of written and oral comments during and after the most recent Listen and Learn session held virtually on October 20, 2021 on a conceptual draft rule version of these rules. Comments continue to be offered into early December 2021. These comments did not embody or represent broad licensee or lab agreement on any specific theme or themes. These comments concerned sample collection, lot size, increased costs to producers and processors, and other topics, along with comments that did not pertain to this section of rule.

It is important to note that the first two “Listen and Learn” sessions on marijuana products were among the first that the WSLCB offered to increase and enrich stakeholder engagement in the rule development process. Initially, and understandably, in person participation was somewhat guarded as the licensed community and others became familiar with the approach, and the concept of collaborative rule making. It is also important to note that few producers and processors attended the first meeting despite all licensees receiving notice of the meeting more than two weeks in advance. By the second session, attendees were better prepared to present and discuss ideas and solutions, and the conversation continued well beyond the scheduled session time, although again, few producers and processors attended in person even though messaging was broadly distributed to all licensees through several platforms. However, several of these entities provided written comment in the way of email to the rules coordinator during the meeting. These were shared at the meetings, and throughout the rule development process. The most recent session was held virtually on October 20, 2021, and many comments were received during and after the session.

The public hearing for these rules was held virtually on December 8, 2021 and oral testimony was offered by approximately twenty attendees.

Rule Necessity

Rules are needed for the following reasons:

Current testing requirements for adult use marijuana are intended to ensure that products for sale are safe and have accurate potency levels. However, Washington state adult use marijuana products are not currently required to be tested for pesticides and heavy metals, and although not precluded from doing so, many producers and processors do not perform this testing. 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 adult use and medical programs that does not require pesticide and heavy metal 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.

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.

Description of Rule Changes

Amended Section. WAC 314-55-101 – Updates existing sample collection protocols designed to reduce product contamination during and after sampling, storage, and transportation. Updates labelling requirements for samples. Increases the maximum amount of marijuana flower that may be represented by a single I-502 panel of tests, and changes the number of one-gram flower samples required for testing. Removes allowance for labs to return any unused portion of a sample to the licensee. Updates, reorganizes and streamlines rule language where appropriate.

Amended Section. WAC 314-55-102 – Reaffirms existing protocols, and updates, reorganizes, and streamlines rule language where appropriate to assure scientific accuracy. Provides more detail regarding testing levels for required I-502 tests. Adds requirement for pesticide testing for marijuana products. Adds language allowing the WSLCB may conduct randomized or investigation-driven testing for heavy metals. Updates rule language regarding product retesting, remediation of failed lots, expiration of certificates of analysis, and referencing of samples. Adds a new subsection (11) as follows: 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.

Amended Section. WAC 314-55-1025 – Updates language to include “board” where appropriate consistent with statutory reference. Adds updated reporting requirements for lab proficiency testing. language to require laboratory to authorize release all results at the same time to the laboratory and the board, or the board’s vendor.

Variance between proposed rule (CR102) and final rule:

WAC 314-55-102 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.

Rule Implementation

Informing and Educating Persons Impacted by the Rule

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.
- Provide a summary document explaining these rule amendments.

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 and guidance 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.