



CR-102 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: December 8, 2021
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Description of the Issue

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 proposed 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.

Marijuana grows operate with a wide spectrum of growing techniques. Some grows are tightly controlled in indoor facilities, where plants are grown in climate-controlled chambers where every aspect of the plant's cultivation is monitored. Other grows are situated in outdoor environments and are dependent on seasonal cycles. The growing method a licensed producer utilizes, whether indoors or outdoors, is entirely a business decision of the licensee. While the variety of tests an accredited marijuana testing laboratory offers is entirely a business decision of the laboratory, many marijuana businesses are unable to select growing method based on a number of factors, including but not limited to access to capital, race, and gender. These factors present significant barriers to many licensees seeking to participate in the regulated marijuana market.

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.

WSLCB Stakeholder Engagement

This project has a lengthy history of rule development and extensive stakeholder engagement. The first Listen and Learn session on draft conceptual rules was held in April 2019, and the second was held in August 2019. It is important to note that these two 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 comments in the way of email to the rules coordinator during the meeting. These were shared at the meetings, and throughout the rule development process.

Additionally, agency staff visited the facilities of processors, producers, and labs who wished to participate in the process. To the extent possible, the qualitative and quantitative data presented in this significant analysis represent the multiple

dimensions and broad spectrum of positions, as well as mitigation strategies offered by all participating parties. The WSLCB also coordinated rule development with staff the Washington State Department of Health, the Washington State Department of Ecology, and the Washington State Department of Agriculture where possible and appropriate.

In all, well over 350 comments were received, organized, and reviewed as part of initial development efforts. These became a part of the original CR 102 package for this project.

The Board approved the first CR 102 for this project on January 22, 2020, setting a public hearing for March 18, 2020. However, this hearing was continued based on the status of the COVID-19 outbreak and the agency transferring operations to an all-virtual and remote platform that at the time, did not offer a way to hold a public hearing. The hearing was continued, but as the pandemic surged, the Board withdrew the CR 102 on the premise that it would re-file once an appropriate platform was available. On May 27, 2020, the Board approved re-filing of the original CR 102, setting a hearing date for July 8, 2020.

The hearing was held on July 8, 2020, and based on substantive feedback resulting in substantive changes to the proposal, the Board approved a supplemental CR 102 on September 20, 2020 with a hearing date of November 18, 2020. Following this hearing, the Board reviewed all feedback, and determined that a new approach was necessary.

To assure that the agency understood and heard from the complete system – processors, producers, retailers, consumers, and others – and provide an opportunity for all in the supply chain to have an opportunity to hear the wide range of perspectives around product testing, the WSLCB hosted three Deliberative Dialogue sessions on marijuana product testing in January and February 2021. These sessions were used to inform the development of new draft conceptual rules.

Current Rule Proposal

A Listen and Learn session on the new draft conceptual rules on October 20, 2021. 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 this is a topic of interest to many Washington State citizens, regardless of their positionality related to the regulatory structure.

The WSLCB received a number of written and oral comments during and after the Listen and Learn session held on October 20, 2021 on a conceptual draft of this proposal. Comments continued to be offered through November 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 cost to producers and processors, along with comments that did not pertain to this section of rule.

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.

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.

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.

References

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