



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: March 30, 2022

TIME: 10:42 AM

WSR 22-08-038

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 22-04-116 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 314-55-108 – Pesticide action levels. The Washington State Liquor and Cannabis Board (WSLCB) proposes amendments to WAC 314-55-108 to update information related to pesticide action level testing of cannabis products.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 11, 2022	10:00 am	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments.	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings .

Date of intended adoption: Not earlier than May 25, 2022 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Jeff Kildahl

Address: 1025 Union Avenue SE, Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-664-9689

Other:

By (date) May 11, 2022

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources

Phone: 360-664-1739

Fax: 360-664-9689
TTY: 7-1-1 or 1-800-833-6388
Email: anita.bingham@lcb.wa.gov
Other:
By (date) May 4, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the proposed rule amendments is to update technical chemical isomer information contained in WAC 314-55-108 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.

Rule amendments are also needed to ensure consistency with WAC 315-55-102 concerning remediation of marijuana products that have failed quality control testing, remove redundant rule language contained both in the existing subsections (4) and (5), and to update the term "quality assurance testing" to "quality control testing".

Reasons supporting proposal: The proposed rule updates will help to protect public health and safety by keeping marijuana pesticide action level information and marijuana remediation guidelines current and up to date. These changes are needed to ensure consistency with the amendments to marijuana quality control testing rules in WAC 315-44-101, WAC 315-55-102, and WAC 314-55-1025 that were permanently adopted as WSR 22-06-097 on March 2, 2022.

Statutory authority for adoption: RCW 69.50.345 and RCW 69.50.348.

Statute being implemented: RCW 69.50.345 and RCW 69.50.348.

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Coordinator	Jeff Kildahl, Policy and Rules	1025 Union Avenue SE, Olympia WA, 98501	360-664-1781
Implementation: Examiners Unit Manager	Kendra Hodgson, Marijuana	1025 Union Avenue SE, Olympia, WA. 98501	360-664-4555
Enforcement: Enforcement and Education	Chandra Brady, Director of the	1025 Union Avenue SE, Olympia, WA, 98501	360-664-1726

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Jeff Kildahl

Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-664-1781

Fax: 360-664-9689

TTY:

Email: rules@lcb.wa.gov

Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5)(c).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores, both medicinal and recreational, 424590 for marijuana processors, 111998 for outdoor marijuana growers, and 111419 for indoor marijuana growers. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects 4 hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
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424590	\$200	Marijuana merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79	\$3,684.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR
111998	\$200	Marijuana, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 2018 Dataset pulled from DOR
111419	\$200	Marijuana, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, implementation of these rules are not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

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

Date: March 30, 2022	Signature: 
Name: David Postman	
Title: Chair	

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, 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
Aeequinoeyl	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	†
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	†
Cypermethrin	52315-07-8	†
Daminozide	1596-84-5	†
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
Metaxyl	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
Myelobutanil	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

^aPermethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

^bAction level applies to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

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

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

(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 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 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 licensee must disclose and make available all quality ((assurance)) control tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.