



Notice of Permanent Rules

Regarding Amendment to WAC 314-55-108 – Pesticide Action Levels.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to WAC 314-55-108.

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:

On March 2, 2022, the Washington State Liquor and Cannabis Board adopted rule amendments to cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025. Among the changes to those rules, WAC 314-55-102 was amended to require pesticide testing of all cannabis products produced and sold in Washington.

The WSLCB has authority under RCW 69.50.342(1)(c) to approve the specific pesticides approved for use with cannabis, and to establish pesticide testing requirements for cannabis products. WAC 314-55-084 allows the WSLCB to permit the use of pesticides in the production, processing, and handling of cannabis that have been registered by the Washington State Department of Agriculture under chapter 15.58 RCW. WAC 314-55-108 establishes pesticide action levels for pesticides approved for use with cannabis.

Amendments are needed to WAC 314-55-108 to ensure consistency with the recently-adopted cannabis quality control testing rules in WAC 314-55-101, WAC 314-55-102, and WAC 314-55-1025, and to update technical chemical isomer information of several pesticides.

Rulemaking history for this adopted rule:

CR 101 – filed February 2, 2022 as WSR #22-04-116.

CR 102 – filed March 30, 2022 as WSR #22-08-038.

Public hearing held May 11, 2021.

The effective date of these rules is July 9, 2022.

Public comment received on the rule proposal:

1. Email message received from Chris Bateman, received March 31, 2022:

From: Chris Bateman <reactoroperator@gmail.com>
Sent: Thursday, March 31, 2022 11:30 AM
To: LCB DL Rules <rules@lcb.wa.gov>
Subject: Fwd: LCB Board Action: Pesticide Testing for Cannabis

External Email

Hello, |

I would like to submit the following comment regarding rules and pesticide action levels:

LCB's action in requiring pesticide testing will result in a safer product for consumers, but places an onerous limit with regards to piperonyl butoxide (PBO) specifically. PBO occupational exposure limits recommended by WHO are 0.2mg/kg of body weight per day.

Assuming a light weight person at 50kg uses the same contaminated concentrate everyday, they would have to consume 1g of concentrate with 10ppm PBO every day to approach that limit which has the tenfold safety factors included. It is extremely unlikely that concentrates containing even 100ppm would have any harmful effects on any user at all.

PBO is essentially non-toxic and does not degrade heat or any other method of cannabis use. Changing the limit to 50 or 100ppm would allow for reasonable pest mitigation and allow for otherwise high quality concentrates to be marketed without compromising safety whatsoever.

----- Forwarded message -----

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

2. Email message and document attachment received from Dr. James MacRae, May 11, 2022:

-----Original Message-----

From: jim@straightlineanalytics.biz <jim@straightlineanalytics.biz>
Sent: Wednesday, May 11, 2022 10:01 AM
To: LCB DL Rules <rules@lcb.wa.gov>
Cc: Dickson, Dustin P (LCB) <dustin.dickson@lcb.wa.gov>
Subject: Input regarding proposed changes to Pesticide Action Levels (Cannabis) - MacRae

External Email

Please find attached the proposed rule changes I will suggest today.

Thank-you

Jim MacRae

Document attachment received from Dr. James MacRae, May 11, 2022:

5/11/2022

Input on Pesticide Action Level Rules

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Input document regarding pesticide action levels for marijuana in Washington

With homage to Erik Johansen, ex-WSDA (based on input initially submitted by Mr. Johansen in 2018 – a time at which he had oversaw the pesticide registration function for the WSDA for over a decade. These comments are, basically a re-statement of his earlier input.

Here are my initial suggestions for revisions to the pesticide action levels in WAC 314-55-108:

1. WAC 314-55-108(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 for pesticides with allowed food uses in 40 CFR, and 0.01 ppm for pesticides with no allowed food uses in 40 CFR.
2. Reduce the action level to 0.01 ppm for Carbofuran, Daminozide, Fenoxycarb, Methiocarb, Methyl parathion, Paclobutrazol, Propoxur, and Thiacloprid.
3. Revise the action level for Piperonyl butoxide to 3 ppm (inhalable marijuana and marijuana products) and 8 ppm (other marijuana and marijuana products). This action level would apply to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.
4. Revise the action level for Pyrethrins to 0.5 ppm (inhalable marijuana and marijuana products) and 1 ppm (other marijuana and marijuana products). This action level would apply to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.
5. Establish an action level for Salicylic acid. I suggest using 0.13 ppm as a starting point, but it would be important to get input from the WSDA Chemical and Hop Laboratory and the WSDA Pesticide Compliance Program.

Thank-you very much for once again accepting this testimony regarding Agency rules regarding Pesticide Action Levels.

Dr. James MacRae
jim@straightlineanalytics.biz
mobile: 425-877-6020

WSLCB response: The WSLCB appreciates these comments, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

3. Oral testimony from Dr. James MacRae provided during the public hearing held May 11, 2022, transcribed directly from the meeting recording:

“Hi, I just want to provide a little bit of public input here that the agency has heard in the past regarding pesticide action levels this was submitted a number of years ago by a gentleman who at the time had run the pesticide regulation function within the WSDA for over a decade Erik Johansen and he submitted this some version of the written testimony I just submitted this morning in 2018 and in those suggestions um Mr. Johansen effectively suggested and reiterated a point he had made on numerous occasions to the agency that the adoption effectively of the Oregon standards by Washington state and the failure to adopt the recommended standards recommended by the department of health in this state and the department of agriculture in this state jointly to the agency resulted in a set of pesticide action standards that effectively were not protective of human health I I’m not using the right words probably but he was concerned at the time and he gave his testimony and I’ve given it written so I’m not going to speak it out here it's uh it relates to specifically changing some action levels based on whether or not uh pesticides in question are allowed for use on any foodstuffs in the rest of the non-cannabis market you really did run through this and it was a shame at the time I feel and now I feel as well that the agency does not seem to have seriously entertained his input and the input of the department at the time now uh so I’m not going to read them all right now I’m going to use my time for something else which I will expand upon in the general comments however there are a couple of other things in these rules that I not did not put in my written input one is in trying to align them with the quality control uh not assurance quality control changes that uh you put into place a month or two ago uh you’ve chosen to make them aligned with I think is 102 or one of the subsets of the WAC there I want to remind you that there's another subset of the WAC that also makes reference to pesticide action levels that now will be the inconsistent one and doesn't seem to have been covered in any of these rule-making sessions and that's the one that relates to the CBD the imported CBD testing which requires pesticides and it still makes it still uses the old language so for example the standard of whether something is bad for a pesticide there uses the word if it is deleterious these current rules that you passed a month ago and the ones that you will basically accord by adoption in these rules change the word deleterious to harmful so there was never any explanation given for that change of language uh it's fairly obvious from a legal perspective that that raises the bar somewhat for bringing punitive action against someone who abuses it and puts consumers at risk so again it's an industry friendly certainly an industry-friendly move it's not a very consumer or patient-friendly move and that's a theme that goes through um I'll be frank the way this agency has run the quality assurance and quality control rules over the past few years many opportunities have been afforded to improve the lot of consumers of cannabis and this year with respect to the safety of the product and um those opportunities are generally not grasped and indeed with every success of every single successive iteration of quality assurance quality control rules um the agency has further degraded the quality and safety of the product that is available on the market you'll be hearing more from me on that later however for this thank you very much for your time I appreciate it please consider this input it really is Erik's input primarily but I thought it needed to be said again thank you”

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

4. Oral testimony from Dr. James MacRae provided during the Board meeting held May 11, 2022, transcribed directly from the meeting recording:

“Thank you so much um I want to reiterate other speakers welcome to Board Member Vollendroff welcome I was thrilled well I was really thrilled when I saw that you had a behavioral health background I think that's going to be a wonderful addition to the oversight of the agency and uh at some point hopefully we'll get an opportunity to speak one-on-one. I'm uh an experimental psychologist by training did substance abuse research way back when and have being an avid student of the data that had been thrown out by the market in Washington state over the last eight years so that's my background um a couple things I wanted to follow up a little on my input earlier thank you Dustin for allowing you to do this by phone um the gentleman you know one thing you may have noticed is you didn't get a whole lot of input on this rule set and it's a fairly important one when you consider that now you know the 99 of them the product sold in this market is not medical for patients is now actually going to be tested for pesticides that's a very good thing that is progress it's so much of the other little things that were done in the rules that bring it as a step backwards in overall um consumer safety in my opinion and I have pretty strong and well-informed opinions about that in my opinion uh I want to give you a bit more story about the gentleman who did the rules that I submitted in writing earlier this morning and it might speak to why you sometimes have a dearth of input and you know on October 3rd 2018 Erik Johansen gave testimony to the board on a public hearing uh it was item d on that agenda you might want to listen to the recording of it it's at time 220 on that recording and he basically stated his opinion and then board member I believe Garrett you may have been there at that meeting um asked him is he speaking for himself or speaking for the agency the department of agriculture and he said he was speaking for the department of agriculture it's his job he's you know being a cannabis point and he's pesticide guy there so within three working days he was pulled from his cannabis responsibilities by the WSDA and within two or three more working days he was pulled from over a decade of leading the pesticide registration program at the agency so you know I read that as a vindictive action on the part of the agency because a very good public servant did not follow the party line um and perhaps put you know inappropriately the words of the agency in his mouth but he was working on his job uh so you know that the vindictiveness it's not just go to licensees it goes to public servants it goes to anybody that crosses the agency that is part of the culture of what you're now overseeing Mr. Vollendroff it's there it's real I mean you can read the history you know I can give you a summary one-on-one at some point if you'd like to know uh two other things just this is the kind of behaviors of the agency that really should be reeled in a little bit you know we've just recently gone to referring to cannabis instead of marijuana that's very good one of the recent thing outages from outputs from the agency made reference to high thc cannabis which is a value driven turn no doubt your communications people have something to do with forming it I would suggest you not use such terminology cannabis is defined as having more than 30 seconds thank you it is defined on the basis of its get its thc content which is more than point three percent less than that it's hemp so now begin bringing in a term that is not defined of high thc cannabis it's evaporating it feeds into certain I would say uh prevention-minded and biased uh perspectives and finally canopy the stuff you're doing on canopy the new interpretation I warned you in February not to listen to the direction staff was going you they've put this.”

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

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

WAC 314-55-108 was amended to replace all occurrences of the term “marijuana” with the term “cannabis” for conformance with Second Substitute House Bill 1210 (Chapter 16, Laws of 2022), Section 168.