



Washington State
Liquor and Cannabis Board

Date: April 12, 2023

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Dr. Kathy Hoffman, Policy and Rules Manager

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Director of Licensing
Chandra Wax, Director of Enforcement and Education

Subject: **Approval to adopt an emergency rules (CR 103E) regarding WAC 314-55-108 – Pesticide action levels, and new section WAC 314-55-580 – Production of cannabis in areas contaminated with DDT, its breakdown derivatives, or both.**

The Board conducts routine random sampling from licensed cannabis locations to screen for a broad range of pesticides, including some not listed in WAC 314-55-108. The Board contracts with the state Dept. of Agriculture (WSDA) laboratory in Yakima to perform pesticide tests. The WSDA lab can currently detect 243 pesticides. Their testing includes DDT (dichlorodiphenyltrichloroethane) and its breakdown products such as DDE (dichlorodiphenyldichloroethylene) and DDD (dichlorodiphenyldichloroethane). State-certified cannabis-testing labs screen for 59 pesticides, but DDT, DDE and DDD are not among these.

Immediate adoption of these temporary rules is necessary to preserve public health and welfare because exposure to DDT and its derivatives has resulted in harmful effects to humans.

The Board has specific authority under RCW 69.50.325, 69.50.342 and 69.50.348 to adopt rules concerning production, approved pesticides and pesticide testing requirements, and product standards for any and all cannabis produced in Washington State. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. These emergency rules:

- Establish pesticide action levels for DDT, DDE and DDD;
- Establish production and testing requirements for licensed cannabis producers in areas identified as likely to be contaminated with DDT and its derivatives; and
- Establish a framework for destruction of contaminated cannabis.

These emergency rules do **not** revise or otherwise change any other requirements of existing rule pertaining the production of cannabis in Washington state.

Process

The Policy and Rules Manager requests that the Board adopt the emergency rule as presented, and requests approval to file this emergency rule with the Washington State Office of the Code Reviser. A CR 103E Memorandum on this rule was presented at the Board meeting on April 12, 2023, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

April 12, 2023	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
April 12, 2023	Emergency rule becomes effective.
August 10, 2023	Emergency rule expires, consistent with RCW 34.05.350(2), unless adopted as a permanent rule.

_____ Approve _____ Disapprove _____
 David Postman, Chair Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
 Jim Vollendroff, Board Member Date

Attachment: CR 103E Memorandum



CR 103E Memorandum

Emergency rules (CR 103E) regarding new section WAC 314-55-580 – Production of cannabis in areas affected by DDT and its breakdown derivatives and amended section WAC 314-55-108 regarding pesticide action levels.

Date: April 12, 2023

Presented by: Dr. Kathy Hoffman, Policy and Rules Manager

Background

The Board conducts routine random sampling from licensed cannabis locations to screen for a broad range of pesticides, including some not listed in WAC 314-55-108. The Board contracts with the state Department of Agriculture (WSDA) laboratory in Yakima to perform pesticide tests. The WSDA lab can currently detect 243 pesticides. Their testing includes DDT (dichlorodiphenyltrichloroethane) and its breakdown products such as DDE (dichlorodiphenyldichloroethylene) and DDD (dichlorodiphenyldichloroethane). State-certified cannabis-testing labs screen for 59 pesticides, but DDT, DDE and DDD are not among these.

DDE is a remnant product of DDT, a pesticide that was banned in the United States in the 1970s.¹ The Centers for Disease Control and Prevention note that both human and animal exposure to DDT and its derivatives has resulted in harmful effects to the nervous system, liver, and reproductive system.² Both DDD and DDE are identified as acutely toxic, presenting health and environmental hazards by the National Library of Medicine, National Center of Biotechnology Information, with associated GHS (Globally Harmonized System of Classification and Labeling of Chemicals) classifications.³

¹ [Dichlorodiphenyltrichloroethane \(DDT\) Factsheet | National Biomonitoring Program | CDC](#)

² [DDT, DDE, DDD | ToxFAQs™ | ATSDR \(cdc.gov\)](#)

³ [p,p'-DDD | C14H10Cl4 - PubChem \(nih.gov\)](#); [p,p'-DDE | C14H8Cl4 - PubChem \(nih.gov\)](#)

Based on WSDA testing of random cannabis samples, Board Enforcement and Education staff identified a pattern of DDE contamination in cannabis products from a specific region of Okanogan County.

Reasons why rules are needed:

The Board has specific authority under RCW 69.50.325, 69.50.342 and 69.50.348 to adopt rules concerning production, approved pesticides and pesticide testing requirements, and product standards for any and all cannabis produced in Washington State. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. These emergency rules:

- Establish pesticide action levels for DDD, DDE and DDT;
- Establish production and testing requirements for licensed cannabis producers in areas
- identified as likely to be contaminated with DDT and its derivatives; and
- Establish a framework for destruction of contaminated cannabis.

This emergency rule does **not** revise or otherwise change any other requirements of existing rule pertaining the production, processing, or sale of cannabis in Washington state.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR 101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity and posted to the Board's website.



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Amend WAC 314-55-108 – Pesticide action levels; Create new section WAC 314-55-580 – Production of cannabis in areas affected by DDT and its breakdown derivatives. The Washington State Liquor and Cannabis Board (Board) has adopted emergency rules that address future production of cannabis products contaminated with DDT, its breakdown derivatives, or both.

Citation of rules affected by this order:

New: WAC 314-55-580
Repealed:
Amended: WAC 314-55-108
Suspended:

Statutory authority for adoption: RCW 69.50.325; RCW 69.50.342; RCW 69.50.348

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Board conducts routine random sampling from licensed cannabis locations to screen for a broad range of pesticides, including some not listed in WAC 314-55-108. The Board contracts with the state Dept. of Agriculture (WSDA) laboratory in Yakima to perform pesticide tests. The WSDA lab can currently detect 243 pesticides. Their testing includes DDT (dichlorodiphenyltrichloroethane) and its breakdown products such as DDE (dichlorodiphenyldichloroethylene) and DDD (dichlorodiphenyldichloroethane). State-certified cannabis-testing labs screen for 59 pesticides, but DDT, DDE and DDD are not among these.

DDE is a remnant product of DDT, a pesticide that was banned in the United States in the 1970s. The Centers for Disease Control and Prevention note that both human and animal exposure to DDT and its derivatives has resulted in harmful effects to the nervous system, liver, and reproductive system.

Based on WSDA testing of random cannabis samples, Board Enforcement and Education staff identified a pattern of DDE contamination in cannabis products from a specific region of Okanogan County.

Immediate adoption of these temporary rules is necessary to preserve public health and welfare because exposure to DDT and its derivatives has resulted in harmful effects to humans.

The Board has specific authority under RCW 69.50.325, 69.50.342 and 69.50.348 to adopt rules concerning production, approved pesticides and pesticide testing requirements, and product standards for any and all cannabis produced in Washington State. The Board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety or general welfare. These emergency rules:

- Establish pesticide action levels for DDD, DDE and DDT;
- Establish production and testing requirements for licensed cannabis producers in areas identified as likely to be contaminated with DDT and its derivatives; and
- Establish a framework for destruction of contaminated cannabis.

These emergency rules do **not** revise or otherwise change any other requirements of existing rule pertaining the production of cannabis in Washington state.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency’s own initiative:

New	<u>1</u>	Amended	<u>1</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>1</u>	Amended	<u>1</u>	Repealed	___

Date Adopted: April 12, 2023

Name: David Postman

Title: Board Chair

Signature:

Place signature here

AMENDATORY SECTION (Amending WSR 22-13-051, filed 6/8/22, effective 7/9/22)

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of cannabis, 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 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	µg/g (ppm)	CAS#
Abamectin (Sum of Isomers)	0.50	71751-41-2
• Avermectin B1a		65195-55-3
• Avermectin B1b		65195-56-4
Acephate	0.40	30560-19-1

Analyte	µg/g (ppm)	CAS#
Acequinocyl	2.0	57960-19-7
Acetamiprid	0.20	135410-20-7
Aldicarb	0.40	116-06-3
Azoxystrobin	0.20	131860-33-8
Bifenazate	0.20	149877-41-8
Bifenthrin	0.20	82657-04-3
Boscalid	0.40	188425-85-6
Carbaryl	0.20	63-25-2
Carbofuran	0.20	1563-66-2
Chlorantraniliprole	0.20	500008-45-7
Chlorfenapyr	1.0	122453-73-0
Chlorpyrifos	0.20	2921-88-2
Clofentezine	0.20	74115-24-5
Cyfluthrin	1.0	68359-37-5
Cypermethrin	1.0	52315-07-8
Daminozide	1.0	1596-84-5
DDVP (Dichlorvos)	0.10	62-73-7
Diazinon	0.20	333-41-5
<u>Dichlorodiphenyldichloroethane (DDD)</u>	<u>0.00</u>	<u>72-54-8</u>
<u>Dichlorodiphenyldichloroethylene (DDE)</u>	<u>0.00</u>	<u>72-55-9</u>
<u>Dichlorodiphenyltrichloroethane (DDT)</u>	<u>0.00</u>	<u>50-29-3</u>
Dimethoate	0.20	60-51-5
Ethoprophos	0.20	13194-48-4
Etofenprox	0.40	80844-07-1
Etoxazole	0.20	153233-91-1
Fenoxycarb	0.20	72490-01-8
Fenpyroximate	0.40	134098-61-6
Fipronil	0.40	120068-37-3
Flonicamid	1.0	158062-67-0
Fludioxonil	0.40	131341-86-1
Hexythiazox	1.0	78587-05-0
Imazalil	0.20	35554-44-0
Imidacloprid	0.40	138261-41-3
Kresoxim-methyl	0.40	143390-89-0
Malathion	0.20	121-75-5
Metalaxyl	0.20	57837-19-1
Methiocarb	0.20	2032-65-7
Methomyl	0.40	16752-77-5
Methyl parathion	0.20	298-00-0
MGK-264	0.20	113-48-4

Analyte	µg/g (ppm)	CAS#
Myclobutanil	0.20	88671-89-0
Naled	0.50	300-76-5
Oxamyl	1.0	23135-22-0
Paclobutrazol	0.40	76738-62-0
Permethrins (Sum of Isomers)	0.20	52645-53-1
• cis-Permethrin		54774-45-7
• trans-Permethrin		51877-74-8
Phosmet	0.20	732-11-6
Piperonyl butoxide	2.0	51-03-6
Prallethrin	0.20	23031-36-9
Propiconazole	0.40	60207-90-1
Propoxur	0.20	114-26-1
Pyrethrins (Sum of Isomers)	1.0	8003-34-7
• Pyrethrin I		121-21-1
• Pyrethrin II		121-29-9
Pyridaben	0.20	96489-71-3
Spinosad (Sum of Isomers)	0.20	168316-95-8
• Spinosyn A		131929-60-7
• Spinosyn D		131929-63-0
Spiromesifen	0.20	283594-90-1
Spirotetramat	0.20	203313-25-1
Spiroxamine	0.40	118134-30-8
Tebuconazole	0.40	80443-41-0
Thiacloprid	0.20	111988-49-9
Thiamethoxam	0.20	153719-23-4
Trifloxystrobin	0.20	141517-21-7

(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 cannabis producer or processor that provided a sample that fails

quality control testing, or any other required testing must dispose of the entire lot or batch from which the sample was taken as provided by cannabis 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.

(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) Pursuant to WAC 314-55-102, upon request a cannabis licensee must disclose and make available all quality control tests and retest results for the lot or batch of usable cannabis, cannabis concentrates, or cannabis-infused products to the cannabis licensee or retail customer who is considering purchasing the usable cannabis, cannabis concentrates, or cannabis-infused products.

[Statutory Authority: RCW 69.50.345 and 69.50.348. WSR 22-13-051, § 314-55-108, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-108, filed 5/31/17, effective 8/31/17.]

NEW SECTION

WAC 314-55-580 Cannabis production in areas affected by DDT and its breakdown derivatives. (1) **Definitions.** For purposes of this section, the following definitions apply unless the context clearly states otherwise:

(a) "Affected area" means any area where the presence of DDT and its derivatives is likely. The board will provide maps to identify affected areas.

(b) "Chemical testing" means testing for DDT and its breakdown derivatives.

(c) "Contaminated product" means any cannabis with any detectable level of DDT and its breakdown derivatives.

(d) "DDD" means dichlorodiphenyldichloroethane, a breakdown derivative of DDT.

(e) "DDE" means dichlorodiphenyldichloroethylene, a breakdown derivative of DDT.

(f) "DDT" means dichlorodiphenyltrichloroethane.

(2) Production and testing requirements.

(a) Licensed cannabis producers in an affected area are not permitted to grow cannabis in a growing medium that exceeds a DDD, DDE, or DDT concentration of 0.05 ppm as determined by a testing facility designated by the board.

(b) Licensed cannabis producers in affected areas may continue to cultivate cannabis consistent with these rules, but all cannabis and cannabis product must comply with WAC 314-55-108.

(c) All cannabis cultivated and harvested in an affected area is subject to chemical testing as defined in this section.

(d) Chemical testing conducted under this section will be conducted prior to and in addition to quality control testing currently required under this chapter.

(3) Destruction of contaminated product.

(a) Upon notification to the licensee of the results of any chemical testing, any contaminated product will be placed on an immediate administrative hold consistent with WAC 314-55-210 without further notification or action by the board.

(b) The board will provide guidance on requirements for destruction of contaminated product.

(c) In addition to current destruction requirements described in WAC 314-55-097, destruction of contaminated product must be approved by a board enforcement officer.

(i) Failure to timely destroy contaminated product will result in seizure and may result in additional enforcement action.

(ii) Failure to comply with these rules will subject the contaminated product to seizure and destruction and may result in additional enforcement action.

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