



Washington State Liquor and Cannabis Board

Date: August 5, 2020

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Manager

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

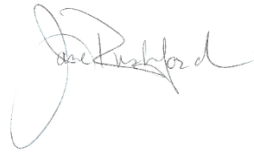
Subject: **New Section WAC 314-55-013 – Voluntary marijuana licensee consultation and education program.**

The Policy and Rules Manager requests approval to file a rule proposal (CR 102) for the rule making described in the CR 102 Memorandum attached to this order and presented at the Board meeting on August 5, 2020.

If approved for filing, the tentative timeline for this rule proposal is as follows:

August 5, 2020	Board is asked to approve filing the proposed rules (CR 102 filing).
August 19, 2020	Code Reviser publishes notice.
September 16, 2020	End of formal comment period.
September 16, 2020	Public hearing held.
October 14, 2020	Board is asked to adopt rules.
October 14, 2020	Agency sends notice to those who commented both at the public hearing and in writing.
October 14, 2020	Agency files adopted rules with the Code Reviser (CR 103)
November 14, 2020	Rules become effective consistent with RCW 34.05.380(2).

☒ Approve ☐ Disapprove



Jane Rushford, Chair

8.5.2020
Date

☒ Approve ☐ Disapprove



Ollie Garrett, Board Member

8.5.2020
Date

☐ Approve ☐ Disapprove

Not Present

Russ Hauge, Board Member

8.5.2020
Date

Attachments: CR102 Memorandum
Significant Analysis



CR 102 Memorandum

Regarding New Section WAC 314-55-013 – Voluntary marijuana licensee consultation and education program.

Date: August 5, 2020
Presented by: Kathy Hoffman, Policy and Rules Manager

Background

The Washington State Liquor and Cannabis Board (Board) enforcement division is responsible for a variety of activities related to the regulation of marijuana in Washington State. These activities include, but are not limited to, conducting compliance checks, inspections, following up on complaint investigations, and verifying license site locations, consistent with provisions described in chapter 69.50 RCW and chapter 314-55 WAC.

In the six years since the first marijuana licenses were issued, the marijuana market, industry, and authorizing environment have matured. Although the Board designed the current regulatory structure to align with I-502's direction to bring marijuana "under a tightly regulated, state-licensed system similar to that for controlling hard alcohol," it is appropriate to reevaluate that conservative system, including compliance, education, and enforcement activities.

The Board began to consider revisions to existing enforcement guidelines by initiating a formal rule inquiry under WSR #18-22-099 in October, 2018. Those efforts were extended by the passage of Engrossed Substitute Senate Bill (ESSB) 5318 during the 2019 regular session of the Washington State legislature. While ESSB 5318 provided direction for enforcement guideline redesign, it also provided a framework to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees.

Rules developed under the provisions of ESSB 5318 are required to include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees, and must include recommendations on abating violations described in chapter 69.50 RCW and chapter 314-55 WAC.

Rule Necessity

Rules are needed for the following reason:

ESSB 5318 (Chapter 394, Laws of 2019) involving marijuana licensee compliance and enforcement became effective July 28, 2019. Among other revisions, ESSB 5318 amended RCW 69.50.342, and created a new section, now codified as RCW 69.50.561, describing a program where a licensee may request advice and consultation from Board enforcement.

The Board is statutorily required to establish such a program consistent with the amendments of this legislation, and adopt rules regarding the frequency, manner and method of providing consultative services to licensees. RCW 69.50.561(7) provides that the rules may include scheduling of consultative services and prioritizing requests for services while maintaining the enforcement requirements of the chapter.

Advice and consultation services requested under these statutory provisions are limited to the matters specified in the request affecting the interpretation and applicability of the standards described in chapter 69.50 RCW as to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices of the licensee's licensed premises.

Description of Proposed Rules

New Section. WAC 314-55-013(1) – Purpose and scope. This new section reaffirms and frames the foundational elements that establish the marijuana licensee consultation and education program, as provided in RCW 69.50.342(3) and RCW 69.50.561. These include criteria for provision of advice, consultation and education visits; distinguishing advice, consultation, and education visits from inspections, technical visits, or investigations; and providing that advice, consultation and educational visits provided under the program do not include business advice, such as individual business operations, marketing, and other related concerns.

New Section. WAC 314-55-013(2) – Definitions. This new section aligns the definition of “a direct or immediate relationship to public health and safety” and “a direct or immediate risk to public health and safety” with current statutory language and with violations outlined in WAC 314-55-509 (1)(a), (b), and (c), and more fully described in WAC 314-55-520, 314-55-521, and 314-55-522. It also cross-references general definitions as provided in chapters 314-55 WAC and 69.50 RCW.

New Section. WAC 314-55-013(3) – Request for consultation. This new section establishes the following:

- Provision of one request for advice and consultation per year and per licensee, with Board discretion to consider additional requests;
- A time frame to allow for scheduling and completion of requests for advice and consultation; and
- A process by which a licensee, designee or board representative may request extension of time to schedule and complete the consultation visit.

New Section. WAC 314-55-013(4) – Advice and consultation services. This new section establishes the following concerning the nature and scope of advice and consultation services provided:

- A statement that the regulatory issues described in the chapter that may be observed during the course of an advice and consultation visit are not subject to disciplinary action unless the issue has a direct or immediate relationship to public health and safety;
- Frames the activities that may be included in a consultation, such as:
 - An initial meeting;
 - A walk-through visit to evaluate compliance concerns;
 - A closing meeting to discuss any conditions noted and to make recommendations;
 - A written report of the conditions; or
 - A follow-up visit, if appropriate.
- For identified conditions that are not direct or immediate risks to public health and safety, provides that:
 - The condition will be noted in the appropriate WSLCB database, along with a detailed description of the condition;
 - The full statutory or regulatory citation applicable to the non-compliant condition;
 - A statement of what steps the licensee must take to achieve compliance;
 - The date, method of service, name of the licensee participating in the visit; and
 - The date the licensee must achieve compliance, which may be mutually agreed upon by the board representative and the licensee, and may be based on a variety of factors, including but not limited to the severity and costs of the conditions to be abated.

New Section. WAC 314-55-013(5) – Licensee responsibilities.

This new section establishes general licensee responsibilities when participating in the voluntary marijuana licensee consultation and education program. These responsibilities include:

- Agreement to work with the board representative to schedule a consultation visit;
- Agreement to make reasonable efforts to correct or abate identified conditions;
- Agreement to contact the WSLCB in writing if unable to correct or abate all conditions identified in the statement of conditions to request an extension of time, describing the need for the extension, confirmation of steps taken to that point, and a proposed abatement date.



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

Agency: Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 19-15-074 ; 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 314-55-013 – Voluntary marijuana licensee consultation and education program. The Washington State Liquor and Cannabis Board (Board) is proposing to create a new section of rules to establish a voluntary compliance program for marijuana licensees consistent with the mandates of Engrossed Senate Substitute Bill (ESSB) 5318 (Chapter 394, Laws of 2019), now codified as RCW 69.50.342(3) and RCW 69.50.561.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
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September 16, 2020	10:00AM	1025 Union Avenue SE	
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Date of intended adoption: October 14, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Katherine Hoffman

Address: 1025 Union Avenue SE, Olympia WA 98504-3080

Email: rules@lcb.wa.gov

Fax:

Other:

By (date) _____

Assistance for persons with disabilities:

Contact _____

Phone:

Fax:

TTY:

Email:

Other:

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: ESSB 5318 emphasized a strong focus on compliance, education, and enforcement in the oversight of the regulated marijuana market. The bill mandated that the Board adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The proposed new rule section implements this mandate by establishing a new voluntary marijuana licensee consultation and education program, and includes the following subsections: purpose and scope, definitions, a framework for requesting advice and consultation services that among other things, describes how recommendations for abating violations described in chapter 69.50 RCW will be provided to licensees; and a licensee responsibility section that describes the process in which licensees may correct or abate conditions identified in a statement of conditions.

Reasons supporting proposal: ESSB 5318 involving marijuana licensee compliance and enforcement became effective July 28, 2019. Among other revisions, ESSB 5318 amended RCW 69.50.342, and created a new section, now codified as RCW 69.50.561, describing a program where a licensee may request advice and consultation from Board enforcement.

The Board is statutorily required to establish such a program consistent the intent of ESSB 5318, and adopt rules regarding the frequency, manner and method of providing consultative services to licensees. RCW 69.50.561(7) specifically provides that the rules may include scheduling of consultative services and prioritizing requests for services while maintaining the enforcement requirements of the chapter. The program must be created in consultation with licensed marijuana businesses and their employees, and is required to include recommendations on abating violations described in chapter 69.50 RCW and chapter 314-55 WAC.

Advice and consultation services requested under these rules are limited to the matters specified in the request affecting the interpretation and applicability of the standards described in chapter 69.50 RCW as to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices of the licensee’s licensed premises.

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.561.

Statute being implemented: RCW 69.50.342(3); RCW 69.50.561

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: N/A

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: Rules Manager	Katherine Hoffman, Policy and	1025 Union Avenue SE, Olympia WA 98502	360-664-1622
Implementation: Chief	Justin Nordhorn, Enforcement	1025 Union Avenue SE, Olympia WA 98502	360-664-1726
Enforcement: Chief	Justin Nordhorn, Enforcement	1025 Union Avenue SE, Olympia WA 98502	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: Katherine Hoffman, Policy and Rules Manager
Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-664-1622

Fax:

TTY:

Email:

Other:

☐ No: Please explain:

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 34.05.310(4)(e): WAC 314-55-013..

Explanation of exemptions, if necessary: WAC 314-55-013 adopts and incorporates the requirements of ESSB 5318, codified in RCW 69.50.342(3) and RCW 69.50.561.

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.

☒ No Briefly summarize the agency's analysis showing how costs were calculated:

The WSLCB applied a default cost of compliance (\$500) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This assumes the following costs, and assumes that the majority of marijuana businesses in Washington State are considered small as defined in RCW 19.85.020(3):

- Costs associated with the administrative process of requesting once-per-year consultation services by the licensee or their designee, including completion of the online request for consultation, and any associated interaction with Board representatives to schedule the consultation service. The time to complete these annual administrative tasks is estimated at three hours. Since there is not available data establishing an average hourly wage for marijuana business owners or their designees, and this figure could widely vary, the agency estimated an hourly wage of \$50. Under that premise, the estimated annual cost of compliance for these annual activities is \$150.00 (3 x \$50 = \$150).
- Costs associated with the initial meeting, walk through meeting and any follow up meetings that may result in time away from business operation. The agency estimated this time to be two hours annually, based on an hourly rate calculated above of \$50 per hour for an annual estimated cost of compliance of \$100.00 (2 x \$50 = \$100).
- Costs associated with abating a noted condition. The agency estimated this time to be an average of three hours annually based on an hourly rate of \$50 an hour (5 x \$50 = \$250). We did not estimate the widely variable costs of repair, purchasing new equipment or other related costs since this is not a requirement under the rule and considered an indirect cost of compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. For example, if the proposed rule requires that businesses install a new safety feature, the agency does not have to consider the increase in sales for manufacturers of the new

safety feature or decreases in sales of the old safety feature. The agency also need only consider costs incurred by businesses for compliance with the rule. RCW 19.85.040(1). Here, those costs are related only to the administrative aspects of the request for consultation services and associated activities.

Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance as noted above and calculated below, the estimated cost of compliance does not exceed any of the thresholds for any of the license types. Therefore, the Board does not anticipate that implementation of these rules will result in any administrative, intrinsic or actual costs to the licensees who wish to participate in this voluntary program.

The new rules offer increased public benefit by offering marijuana licensees an opportunity to request advice and consultation services that will be provided consistent with statutory provisions. Consultation services increase educational opportunities that offer pathways to licensee success, and support marijuana business production, processing and retail best practices. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$500	Marijuana Processors	All Other Food Manufacturing	\$22,986.58	\$9,214.26 2018 Dataset pulled from USBLS	\$22,986.58 2018 Dataset pulled from DOR
111	\$500	Marijuana Producers	Crop Production	\$4,010.47	\$4,010.47 2018 Dataset pulled from USBLS	\$2,399.33 2018 Dataset pulled from DOR
453	\$500	Marijuana Retailers	Miscellaneous Store Retailers	\$2,503.84	\$2,365.88 2018 Dataset pulled from USBLS	\$2,503.84 2018 Dataset pulled from DOR

☐ 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: August 5, 2020

Name: Jane Rushford

Title: Board Chair

Signature:

Place signature here

NEW SECTION

WAC 314-55-013 Voluntary marijuana licensee consultation and education program. (1) **Purpose and scope.** The purpose of this section is to:

(a) Establish a program for marijuana licensee consultation and education visits consistent with the requirements of RCW 69.50.342(3) and 69.50.561;

(b) Establish criteria for the provision of advice, consultation, and education visits including, but not limited to, recommendations on abating violations of this chapter;

(c) Ensure that advice, consultation and education visits are distinguished from inspections, technical visits, or investigations, and are limited to interpretation and applicability of standards in this chapter including, but not limited to, the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means and practices in the licensee's licensed premise; and

(d) Advice, consultation, and educational visits provided under this program do not include business advice concerning issues that may

include, but are not limited to, individual business operations, marketing, distribution, financing, profitability, or viability.

(2) **Definitions.**

(a) For purposes of this chapter, "a direct or immediate relationship to public health and safety" or "a direct or immediate risk to public health and safety" means, where the board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product out of the regulated market or sales across state lines;

(ii) Furnishing of marijuana product to persons under twenty-one years of age;

(iii) Diversion of revenue to criminal enterprise, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;

(iv) The commission of nonmarijuana-related crimes; or

(v) Knowingly making a misrepresentation of fact to the board, an officer of the board, or an employee of the board related to the conduct or action that is, or is alleged to be, any of the violations identified in (a)(i) through (iv) of this subsection.

(vi) Violations outlined in WAC 314-55-509 (1) (a), (b), and (c), and more fully described in WAC 314-55-520, 314-55-521, and 314-55-522.

(b) The definitions contained in chapters 314-55 WAC and 69.50 RCW also apply to this section.

(3) Request for consultation.

(a) A marijuana licensee or their designee may make one request for advice and consultation per year by completing and submitting an application to request consultation through the board's website. Additional requests may be considered at the board's discretion.

(b) A board representative will schedule and complete advice and consultation visits within forty-five calendar days of receipt of the request for consultation.

(i) If the marijuana licensee or designee, or the board representative requires more than forty-five calendar days to schedule and complete the consultation visit, the board representative may extend the completion deadline.

(ii) If the deadline is extended, at the licensee's request, more than sixty days after the board's receipt of the request for consultation, the marijuana licensee must resubmit a request for consultation consistent with this section.

(4) **Advice and consultation services.**

(a) Advice and consultation services offered in connection with a request for consultation do not preclude informal requests, or usual and customary interactions between licensees, the board, or any board staff.

(b) Regulatory issues described in this chapter observed during the course of an advice, consultation, and education visit are not subject to disciplinary action unless the identified issue has a direct or immediate relationship to public health and safety.

(c) Advice, consultation, education, and any written report or documentation provided under this section is limited to the matters specified in the request for consultation. At the request of the licensee, a consultation may include:

(i) An initial meeting to explain the licensee's rights and obligations;

(ii) A walk-through visit to evaluate the compliance concerns specified in the request for consultation;

(iii) A closing meeting to discuss conditions noted during the initial visit to make recommendations;

(iv) A written report of conditions found in the marijuana licensee's place of business and any recommendations or agreements made; or

(v) A follow-up visit, if appropriate, to ensure that the conditions specified in the request for consultation have been satisfactorily abated.

(d) If an identified condition is not a direct or immediate risk to public health and safety, the condition will be documented in the appropriate database as part of the consultation visit, and will include the following:

(i) A detailed description of the condition that is not in compliance;

(ii) The full text of the specific section or subsection of the statute or rule applicable to the condition that is not in compliance;

(iii) A statement and complete description of the actions and steps the licensee or their designee must take to achieve compliance;

(iv) The date, method of service, name, and signature of the licensee, their designee, or both participating in the visit; and

(v) The date that the licensee or their designee must achieve compliance. This date may be mutually agreed upon by the board representative and the licensee or their designee, and may be based on

a variety of factors including, but not limited to, the cost and severity of the conditions to be abated.

(e) A consultation report or notice to correct made by a board representative under this section is not a formal enforcement action.

(f) The board representative will provide the licensee or their designee with instructions regarding how to request an extension of time consistent with subsection (5) of this section.

(g) The board representative may perform a follow-up visit within sixty days of the mutually agreed upon compliance date based on the severity of the conditions described in this section.

(5) Licensee responsibilities.

(a) A marijuana licensee or their designee agrees to work with the board representative to schedule a consultation visit at a mutually agreed upon date and time.

(b) A marijuana licensee or their designee agrees to make reasonable efforts to correct or abate all conditions identified in the statement of conditions within the mutually agreed upon date and time.

(c) If a marijuana licensee or their designee is unable to correct or abate all of the conditions identified in the statement of conditions, the licensee or their designee may request an extension of

time by submitting a written request. The written request must describe:

(i) The need for the extension;

(ii) Confirmation of the steps taken to abate the conditions described in the statement of conditions; and

(iii) A proposed abatement date.

[]

Significant Legislative Rule Analysis

New WAC 314-55-013
Rules Concerning the Voluntary Marijuana Licensee
Consultation and Education Program

August 5, 2020

SECTION 1:

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Washington State Liquor and Cannabis Board (Board) enforcement division is responsible for a variety of activities related to the regulation of marijuana in Washington State. These activities include, but are not limited to conducting compliance checks, inspections, following up on complaint investigations, and verifying license site locations, consistent with provisions described in chapter 69.50 RCW and chapter 314-55 WAC.

In the six years since the first marijuana licenses were issued, the marijuana market, industry, and authorizing environment have matured. Although the Board designed the current regulatory structure to align with I-502's direction to bring marijuana "under a tightly regulated, state-licensed system similar to that for controlling hard alcohol," it is appropriate to reevaluate that conservative system, including compliance, education, and enforcement activities.

The Board began to consider revisions to existing enforcement guidelines by initiating a formal rule inquiry under WSR #18-22-099 in October, 2018. Those efforts were extended by the passage of Engrossed Substitute Senate Bill (ESSB) 5318 during the 2019 regular session of the Washington State legislature. While ESSB 5318 provided direction for enforcement guideline redesign, it also provided a framework to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. Rules developed under the provisions of ESSB 5318 are required to include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees, and must include recommendations on abating violations described in chapter 69.50 RCW and chapter 314-55 WAC.

The proposed rules establish the LCB's compliance education program, and consistent with ESSB 5318, frame the following provisions:

- WSLCB may grant a licensee's application for advice and consultation and visit the licensee's premises.
- If any areas of concern are disclosed within the scope of any on-site consultation, the LCB must recommend how to eliminate the areas of concern.
- A visit to a licensee's premises through the compliance education program is not considered an inspection or investigation.
- During the visit, the LCB may not issue notices or citations and may not assess civil penalties. However, if the on-site visit discloses a violation with a direct or immediate relationship to public safety and the violation is not corrected, the LCB may investigate.

Additionally, the proposed rules provide that violations with a direct or immediate relationship to public safety discovered during a consultative visit must be corrected

within a specified period of time and an inspection must be conducted at the end of the time period.

SECTION 2:

Is a Significant Analysis required for this rule?

Under RCW 34.05.328(5)(a)(i), the WSLCB is not required to complete a significant analysis for this or any of its rules. However, RCW 34.05.328(5)(a)(ii) also provides that except as provided by applicable statute, significant analysis applies to any rule of any agency, if voluntarily made applicable by the agency.

The WSLCB voluntarily asserts that proposed sub-sections WAC 314-55-013(3), (4), and (5) meet the definition of legislatively significant as described in RCW 34.05.328(5)(c)(iii)(C) because they are rules other than procedural or interpretive rules that adopt new, or make significant amendments to a policy or regulatory program.

Proposed new subsections (1) and (2) regarding scope, intent and definitions are exempt because they do not meet the definition of significant rule under RCW 34.05.328(5)(c).

For these reasons, the WSLCB voluntarily offers this significant analysis.

SECTION 3:

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The proposed rules implement specific sections of ESSB 5318, codified in RCW 69.50.342(3) and RCW 69.50.561. In stating its intent regarding ESSB 5318, the Washington State Legislature found, in relevant part, “While a strong focus on enforcement is an important component of the regulated marketplace, a strong focus on compliance and education is also critically necessary to assist licensees who strive for compliance and in order to allow the board to focus its enforcement priorities on those violations that directly harm public health and safety.”

The proposed rules implement the goals and objectives of RCW 69.50.342(3) and 69.50.561 by establishing a voluntary marijuana licensee consultation and education program that aligns with statutory requirements, but was developed in consultation with licensed marijuana business, their employees, industry representatives, and other interested parties.

SECTION 4:

Explain how the agency determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rules realize and embody the intent of ESSB 5318 by expanding existing programs for compliance education for licensed marijuana businesses and their employees.

Rules are needed to establish and frame the program, offer clear guidance and framework for licensees, and assure consistent application of rule and agency decision making.

SECTION 5:

Explain how the agency determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

1. WAC 314-55-013(3) – Request for consultation.

Description of the proposed rule: This new section establishes the following:

- Provision of one request for advice and consultation per year and per licensee, with Board discretion to consider additional requests;
- A time frame to allow for scheduling and completion of requests for advice and consultation; and
- A process by which a licensee, designee or board representative may request extension of time to schedule and complete the consultation visit.

Cost/Benefit Analysis:

WSLCB estimated that there may be annual costs associated with the administrative process of requesting once-per-year consultation services by the licensee or their designee, including completion of the online request for consultation, and any associated interaction with Board representatives to schedule the consultation service. The time to complete these annual administrative tasks is estimated at three hours. Since there is no available data establishing an average hourly wage for a marijuana business owner or their designee, and this figure could widely vary, the agency estimated an hourly wage of \$50. Under that premise, the estimated cost of compliance is \$150 annually. Based on the agency's analysis consistent with chapter 19.85 RCW,

the cost of compliance does not exceed 1% of average payroll or 0.3% of average annual gross business income.

2. WAC 314-55-013(4) - Advice and consultation services.

Description of the proposed rule: This new section establishes the following concerning the nature and scope of advice and consultation services provided:

- A statement that the regulatory issues described in the chapter that may be observed during the course of an advice and consultation visit are not subject to disciplinary action unless the issue has a direct or immediate relationship to public health and safety;
- Frames the activities that may be included in a consultation, such as:
 - An initial meeting;
 - A walk-through visit to evaluate compliance concerns;
 - A closing meeting to discuss any conditions noted and to make recommendations;
 - A written report of the conditions; or
 - A follow-up visit, if appropriate.
- For identified conditions that are not direct or immediate risks to public health and safety, provides that:
 - The condition will be noted in the appropriate WSLCB database, along with a detailed description of the condition;
 - The full statutory or regulatory citation applicable to the non-compliant condition;
 - A statement of what steps the licensee must take to achieve compliance;
 - The date, method of service, name of the licensee participating in the visit; and
 - The date the licensee must achieve compliance, which may be mutually agreed upon by the board representative and the licensee, and may be based on a variety of factors, including but not limited to the severity and costs of the conditions to be abated.

Cost/Benefit Analysis:

WSLCB estimates that there may be annual costs associated with the initial meeting, walk through meeting and any follow up meetings that may result in time away from business operation. The agency estimated this time to be two hours annually, based on an hourly rate calculated above of \$50 per hour for an annual estimated cost of compliance of \$100.00. Based on the agency's analysis consistent with chapter 19.85 RCW, the cost of compliance does not exceed 1% of average payroll or 0.3% of average annual gross business income.

3. WAC 314-55-013(5) – Licensee responsibilities.

Description of the proposed rule: This new section establishes general licensee responsibilities when participating in the voluntary marijuana licensee consultation and education program. These responsibilities include:

- Agreement to work with the board representative to schedule a consultation visit;
- Agreement to make reasonable efforts to correct or abate identified conditions;
- Agreement to contact the WSLCB in writing if unable to correct or abate all conditions identified in the statement of conditions to request an extension of time, describing the need for the extension, confirmation of steps taken to that point, and a proposed abatement date.

Cost/Benefit Analysis:

WSLCB estimates that there may be costs associated with abating a noted condition. The agency estimated this time to be an average of five hours annually based on an hourly rate of \$50 an hour ($5 \times \$50 = \250). We did not estimate the widely variable costs of repair, purchasing new equipment or other related costs since this is not a requirement under the rule and considered an indirect cost of compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. For example, if the proposed rule requires that businesses install a new safety feature, the agency does not have to consider the increase in sales for manufacturers of the new safety feature or decreases in sales of the old safety feature. The agency also need only consider costs incurred by businesses for compliance with the rule. RCW 19.85.040(1). Here, those costs are related only to the administrative aspects of the request for consultation services and associated activities.

Cost/Benefit Summary:

The new rules offer increased public benefit by offering marijuana licensees an opportunity to request advice and consultation services that will be provided consistent with statutory provisions. Consultation services increase educational opportunities that offer pathways to licensee success, and support marijuana business production, processing and retail best practices. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll ($0.01 \times \text{AvgPay}$)	0.3% of Avg Annual Gross Business Income ($0.003 \times \text{AvgGBI}$)
31199	\$500	Marijuana Processors	All Other Food Manufacturing	\$22,986.58	\$9,214.26 2018 Dataset pulled from USBLS	\$22,986.58 2018 Dataset pulled from DOR

111	\$500	Marijuana Producers	Crop Production	\$4,010.47	\$4,010.47 2018 Dataset pulled from USBLS	\$2,399.33 2018 Dataset pulled from DOR
453	\$500	Marijuana Retailers	Miscellaneous Store Retailers	\$2,503.84	\$2,365.88 2018 Dataset pulled from USBLS	\$2,503.84 2018 Dataset pulled from DOR

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the agency determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

Rule Development and Stakeholder Engagement Process

The proposed rules are the product of a protracted rule development process that began in July of 2019, paused briefly in response to the COVID-19 outbreak, and concluded in May of 2019. Initially, WSLCB planned to develop these rules along with the penalty reform rule project implementing ESSB 5318. Ultimately, that was not possible given the level of stakeholder engagement required by the authorizing statute, and the desire to distinguish this program and its development from the penalty rule redesign project.

WSLCB's stakeholder engagement process encouraged parties to:

- Identify burdensome areas of existing and proposed rules;
- Propose initial or draft rule changes; and
- Refine those changes.

WSLCB reached out to approximately 49 marijuana businesses owners and industry representatives in October 2019 to form a rules workgroup consistent with the consultation requirements of ESSB 5318. The first work session was held on November 12, 2019, attended by WSLCB staff and approximately 10 marijuana business owners and industry representatives. This meeting produced extensive feedback from business owners and industry representatives regarding the types of consultation and education services that would increase compliance opportunities while addressing the scope, nature and extend of the compliance visit.

From that feedback, WSLCB developed draft conceptual rules, and scheduled a second meeting that included a virtual attendance option held on February 24, 2020. This session was well attended, and additional feedback was gathered. From that feedback, WSLCB further refined the draft conceptual rules.

A Listen and Learn session was scheduled for early March 2020, but this session was postponed based on the Washington State response to the COVID-19 pandemic. The session was rescheduled and held virtually in May 2020. The session was well attended by over sixty participants. Comments received from that session are attached hereto. While these comments are considered informal because they were received before the

CR102 was filed, WSLCB offers these here to demonstrate the interest, level of participation, and the broad range of perspectives presented during this session.

WSLCB considered these comments, and made a number of revisions to the draft conceptual rules offered at the May 20, 2020 Listen and Learn session based on these comments. The proposed rules are a result of that iterative and inclusive process.

Summarized in Attachment A are the comments received during the Listen and Learn session. Below is a brief description of the main discussion topics that emerged during the Listen and Learn session related to the proposed rule set, and how the agency collaborated with stakeholders to mitigate potential burden associated with rule compliance:

Issue	Potential Burden	Mitigation Strategy
Concern that virtual visits are not explicitly provided as an option in rule.	Licensees in remote locations may experience reduced access to consultation services.	WSLCB will work with licensees to offer consultation and advice other than on-site consultation consistent with RCW 69.50.561(1).
Definition of “direct and immediate relationship to public health and safety” and “direct or immediate risk to public health and safety.”	Risk of broad interpretation that may result in inadvertent confusion or disparate enforcement.	Added additional language to 314-55-013(2) to mirror statutory language contained in RCW 69.50.
Request for consultation: section required that WSLCB schedule and complete advice and consultation visits within 30 days of assignment to an enforcement officer.	No time frame for the agency to assign an enforcement officer to the licensee request, creating uncertainty for licensees regarding when a response may be received to the consultation request.	Rules revised to require WSLCB to schedule and complete advice and consultation visits within forty-five days of receipt.
Advice and consultation service: Concern that written reports issued as a result of consultation visit may be viewed negatively by banks and at license renewal.	Inability to renew license or negative economic impact.	Clarified in rule that a written consultation report or notice to correct is not a formal enforcement action.

SECTION 7:

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rules do not require those to whom it applies to take action that violates requirements of federal or state law.

SECTION 8:

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rules do not impose more stringent performance requirements on private entities than on public entities.

SECTION 9:

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rules do not differ from any applicable federal regulation or statute.

SECTION 10:

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

These rules did not require coordination with federal, state, or local laws.

Source	Commenter	WAC Reference	Theme	Comment	Date Received
WebEx Live	Kelsey Holstrom	<u>N.S.</u> WAC 314-55-013(1)(d)	Scope: Business Advice v. Consultation	Subsection (d), Concerned that some of the things that would be under consultation could fall under the purview of business practices	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(1)(d)	Scope: Business Advice v. Consultation	General business advice outside the scope of enforcement: the purpose is to cover everything that might be general business advice	5/28/2020
WebEx Live	Kelsey Holstrom	<u>N.S.</u> WAC 314-55-013(2)	Definitions: Designee	Definition of “designee”—is there an official process to become one? Might be helpful to define	5/28/2020
WebEx Live	Lukas Hunter	<u>N.S.</u> WAC 314-55-013(2)	Definitions: Public Health and Safety	There is no definition of “Public Health and Safety.” Would be helpful to clarify/provide a definition. The Cole Memorandum outlines priorities. What is within the scope of LCB Jurisdiction that would be public health and safety and be applicable?	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(2)	Definitions: Public Health and Safety	See WAC 314-55-521—lists risks to public health and safety, might be a good place to start if interested in drafting up a definition applicable to this portion of the WAC.	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(3)	Consultation request: Education & Advisory Letters	Allowing requests for a No Action/ Advisory Letter by Licensees would give the LCB more opportunities to engage in education. Licensee could lay out the facts circumstances of a given situation; “Hey, I’m doing XYZ, are these things in compliance with the WAC?” The letter can be sent to others to review, e.g. AAGs, would help relieve stress/ pressure on enforcement officers to go out each time for a consultation visit. Envision it fitting in under education/ outreach.	5/28/2020
WebEx Live	Lukas Hunter	<u>N.S.</u> WAC 314-55-013	Terminology: Enforcement Officer v LCB Agent	Is there flexibility to change some of the language from "enforcement officer" to "agent" of the LCB?	5/28/2020
WebEx Live	Lukas Hunter	<u>N.S.</u> WAC 314-55-013(3)(b)	Consultation request: Timeline for assignment	Timeline for assignment to the LCB officer—is there a policy concerning the timeline: e.g., after submission, within in 10 business days, the case will be assigned to an agent of the LCB?	5/28/2020

WebEx Live	Kelsey Holstrom	<u>N.S.</u> WAC 314-55-013(3)	Consultation request: Number of visits	Just want to pass on the concern that informal requests still not be limited to a certain number of visits per year. The consultation visit is separate from the informal requests.	5/28/2020
WebEx Live	Kelsey Holstrom	<u>N.S.</u> WAC 314-55-013(3)	Consultation request: Application form	Is there an application/ form process for requesting a consultation visit?	5/28/2020
WebEx Live	Chris Bradley	<u>N.S.</u> WAC 314-55-013(3)	Consultation request: Virtual visits	The term “visit” shows up a couple of times. Does this term contemplate virtual visits?	5/28/2020
WebEx Live	Chris Bradley	<u>N.S.</u> WAC 314-55-013(3)	Consultation request: Streamline	Right now there is a sort of tiered approach, e.g. informal requests and consultation visits. Would be good streamline the opportunities for educational interactions.	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(3)(a)	Consultation request: Number of visits	Understands the risk or running out of staff availability to respond, but would be good to guarantee at least one consultation visit per year.	5/28/2020
WebEx Live	Lukas Hunter	<u>N.S.</u> WAC 314-55-013(4)(c)(ii)	Consultation: Workplace Safety	“Licensees workplace hazards” — would suggest changing this to “evaluate the licensee’s compliance concerns” (workplace hazards sounds like L&I not LCB)	5/28/2020
WebEx Live	Matthew Clark	<u>N.S.</u> WAC 314-55-013(4)	Consultation: Timeline for correction	Is there a timeline to get things identified in the letter corrected? Leaving things open-ended often means that things don’t get done. Would be a benefit to have a timeline. I would say 6 months to 1 year timeline, depending on the type of things that need to be corrected.	5/28/2020
WebEx Chat	Matthew Clark	<u>N.S.</u> WAC 314-55-013(4)	Consultation: Timeline for correction	Matthew Clark - 2:31 PM Q: To my first comment on section 4. Maybe add a line that creates an overall time limit for compliance. "No compliance date should exceed one year from the date of the initial notice." This will prevent things from being too open ended but some flexibility.	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(4)(c)	Consultation: Matters specified	Does subsection (c) mean--matters specified in the application? Could create anxiety by licensees, not knowing what “matters specified” means. Will offer up language afterwards.	5/28/2020
WebEx Live	Crystal Oliver	<u>N.S.</u> WAC 314-55-013(4)	Consultation: Timeline for correction	Also some concerns with the timeline—e.g. if I have to hire a contractor, how long do I have?	5/28/2020

WebEx Live	Crystal Oliver	<u>N.S.</u> WAC 314-55-013(4)	Consultation: Workplace Safety	Workplace Safety—It's so general, I wonder if in some areas there will be disparities in enforcement in the different regions.	5/28/2020
WebEx Live	Erik J	<u>N.S.</u> WAC 314-55-013(4)(c)	Consultation: Matters specified	Good idea to keep the language in there about asking the licensees to identify what the licensee is concerned about because if LCB does need to reach out to other agencies, L&I, etc., might make it easier to collaborate with other agencies and have agents from multiple agencies go out at the same time to address those issues.	5/28/2020
WebEx Live	Matthew Clark	<u>N.S.</u> WAC 314-55-013(4)(c)(v) and (5)	Licensee Responsibilities	Could licensees submit a report with photos to show how they've implemented the information received? (i.e. instead of a follow up in person visit?)	5/28/2020
WebEx Live	Ryan Lee	<u>N.S.</u> WAC 314-55-013(5)	Licensee Responsibilities: Education & Advisory Letters	Education—Advisory opinions could help alleviate some of the pressure on enforcement and licensees. Read those opinions and use them to understand and explain enforcement decisions.	5/28/2020
WebEx Live	Wendy Hull	<u>N.S.</u> WAC 314-55-013	Notice to Correct v. AVN Warning	Is the Notice to Correct going to be handled differently, and is it different from an AVN Warning?	5/28/2020
WebEx Live	Chris Bradley	<u>N.S.</u> WAC 314-55-013	Ways to Measure Efficacy of Program	Might be worthwhile to consider some way to measure the efficacy of the program from the viewpoint of the industry, as this program is being rolled out.	5/28/2020