



Washington State
Liquor and Cannabis Board

Date: October 14, 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: **Request for approval of final rules (CR 103) regarding new section WAC 314-55-013 – Voluntary marijuana licensee consultation and education program**

The Policy and Rules Manager requests that the Board adopt the final rules presented, and approve the CR 103 that will establish new section WAC 314-55-013 – Voluntary marijuana licensee consultation and education program.

The Board has been briefed on the issue and the rule development background. No written comment was received, nor was any public testimony offered at the CR 102 hearing. A CR 103 memorandum, draft CR 103 form, and rule text are attached.

If approved, the Policy and Rules Manager will post the concise explanatory statement concerning this rulemaking on the WSLCB outward facing webpage since no comments were received. The Policy and Rules Manager will file the rules with the Office of the Code Reviser. The effective date will be 31 days after filing, or November 14, 2020.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

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

Date: October 14, 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

The adopted rules are needed for the following reasons:

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 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.

These rules align with these statutory requirements.

What changes are being made?

This 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.

Variance between proposed rule (CR 102) and final rule:

There is no variance between the proposed rule and the final rule.

Rule Implementation

Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Communicate, through GovDelivery, newsletter, and other appropriate mediums the opportunity and process for requesting a consultation visit.
- Communicate opportunity and process for requesting a consultation visit to marijuana industry groups.
- Offer and schedule group presentations outlining the opportunity, process and agency expectations through virtual platforms, or in-person consistent with COVID-19 health and safety guidelines.
- Provide information and training on request.

Promoting and Assisting Voluntary Compliance

Although the adopted rules does not require licensee compliance, WSLCB will promote the opportunity to participate in the program to support licensee compliance with existing statute and rule. To accomplish this, WSLCB staff will:

- Respond to phone and email inquiries about the rules.

- Engage in internal and external education efforts to share knowledge and assure consistent application of rule have will be supported. Enforcement leadership and staff have participated in rule revisions, and are familiar with the final product.
- Provide rule and guidance documents on the WSLCB website.
- Use available and customary resources to disseminate program materials and information to all persons impacted by the rules.

These actions are designed to information and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing WSLCB Staff

Several WSLCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared. Also, the WSLCB will consider:

- Provision of internal and external training and education, as needed, including webinars, in-person training and potentially YouTube videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

Rule Effectiveness Evaluation

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring and cataloging questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions involving licensees who took advantage of a consultation visit;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback, including but not limited to the number of requests for assistance, and other metrics as appropriate.

Attachments: Final Rules
Concise Explanatory Statement



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain:

Purpose: WAC 314-55-013 – Voluntary marijuana licensee consultation and education program. The Washington State Liquor and Cannabis Board (Board) has adopted a new section of rule 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.

Citation of rules affected by this order:

New: WAC 314-55-013
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.561.

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-16-153 on August 5, 2020 (date).
 Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Katherine Hoffman
 Address: 1025 Union Avenue SE, Olympia WA 98501
 Phone: 360-664-1622
 Fax: 360-664-9689
 TTY:
 Email: rules@lcb.wa.gov
 Web site: www.lcb.wa.gov
 Other:

**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	1	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	___	Amended	___	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	1	Amended	___	Repealed	___

Date Adopted: October 14, 2020

Name: Jane Rushford

Title: Chair

Signature:

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.

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Notice of Permanent Rules

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

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new section WAC 314-55-013 establishing the voluntary marijuana licensee consultation and education program.

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 Kathy Hoffman, Policy and Rules Manager, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules

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 adopted rules are needed to establish an advice and consultation program that includes the scheduling of consultative services and request prioritization that has been developed in consultation with licensed marijuana businesses and their employees. The adopted rules also include a framework for licensees to abate violations as described in chapter 69.50 RCW and chapter 314-55 WAC.

Rulemaking history for this adopted rule:

CR 101 – filed July 17, 2019 as WSR #19-15-074;
CR 102 – filed August 5, 2020 as WSR #20-16-153.
Public hearing held September 16, 2020.

The effective date of these rules is November 14, 2020.

Public comment received on the rule proposal:

There were no written comments received on the rule proposal filed August 5, 2020.

Public Hearing, September 16, 2020:

There was no oral testimony offered at the public hearing held on September 16, 2020.

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

There were no changes to the proposed rules.