



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 cataloguing 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