



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 05, 2020

TIME: 11:07 AM

WSR 20-16-153

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:
September 16, 2020	10:00AM	1025 Union Avenue SE	

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:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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	Signature: 
Name: Jane Rushford	
Title: Board Chair	

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.