

Issue Paper

Marijuana Warning Symbol

Date: August 10, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) to create rules establishing a warning symbol to be applied to marijuana products meant to be eaten or swallowed.

Why is rule making necessary?

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Background

The Board approved the filing of a CR 101 to initiate permanent rulemaking on this subject on June 15, 2016. A presentation of the “Not for Kids” warning symbol by the Washington Poison Center occurred at the July 13, 2016, Board meeting. This proposed rule incorporates the “Not for Kids” symbol into the new warning symbol labeling requirements for marijuana products meant to be eaten or swallowed.

What changes are being proposed?

New Section. WAC 314-55-106 Marijuana warning symbol requirement.

A new WAC section is proposed to create a warning symbol for use on marijuana products. Marijuana licensees will be required to place the warning symbol on packaging of marijuana products meant to be eaten or swallowed. The “Not for Kids” symbol developed and made available in digital form to licensees without cost by the Washington Poison Center must be placed on the principal display panel or front of the product package. The warning symbol may be found on the Washington Poison Center’s website. The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width. The warning symbol must not be altered or cropped in any way other than to adjust

the sizing for placement on the principal display panel or front of the product package.

Licensees may use a sticker made available by the Washington Poison Center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

- (a) Must be obtained from the Washington poison center;
- (b) Must be placed on or near the principal display panel or on the front of the package; and
- (c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.



**Washington State
Liquor and Cannabis Board**

Date: August 10, 2016

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Joanna Eide, Policy and Rules Coordinator
Tim Gates, Marijuana Examiners Unit

Subject: **Approval for filing proposed rules (CR 102) creating a new section in Chapter 314-55 WAC to establish a marijuana warning symbol.**

A new warning symbol is needed to notify consumers and children that a marijuana product contains THC. Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact the Washington Poison Center when experiencing adverse effects. The WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on August 10, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

June 15, 2016	Board approved filing the pre-proposal statement of inquiry (CR 101)
July 6, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
August 10, 2016	End of written comment period
August 10, 2016	Board is asked to approve filing the proposed rules (CR 102 filing)

September 7, 2016	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 2, 2016	Public Hearing held
November 2, 2016	End of written comment period
November 16, 2016	Board is asked to adopt rules
November 16, 2016	Agency sends notice to those who commented both at the public hearing and in writing.
November 16, 2016	Agency files adopted rules with the Code Reviser (CR 103)
February 14, 2017	Rules are effective (90 days after filing)*

* The WSLCB plans to adopt a delayed effective date (90 days after adoption) as part of this rulemaking to allow sufficient time for licensees to make adjustments to labeling to comply with new requirements.

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

Attachment: Issue Paper



Washington State
Liquor and Cannabis Board

Date: August 10, 2016

To: Jane Rushford, Board Chair
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Tim Gates, Marijuana Examiners Unit

Subject: **Small Business Economic Impact Statement
Marijuana Product Warning Symbol**

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement:

WAC 314-55-106 Marijuana warning symbol requirement.

1. Description of reporting, record keeping and other compliance requirements of the proposed rule:

WAC 314-55-106, Marijuana warning symbol requirement, is a proposed new WAC section that creates a warning symbol for use on marijuana products meant to be eaten or swallowed. This warning symbol will alert children and consumers that marijuana products meant to be eaten or swallowed are not for children. The symbol is intended to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Marijuana licensees will be required to place the warning symbol on packaging of marijuana products meant to be eaten or swallowed. The "Not for Kids" symbol developed and made available in digital form to licensees without cost by the

Washington Poison Center must be placed on the principal display panel or front of the product package. The warning symbol may be found on the Washington Poison Center's website. The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width. The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

Licensees may use a sticker made available by the Washington Poison Center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

- (a) Must be obtained from the Washington Poison Center;
- (b) Must be placed on or near the principal display panel or on the front of the package; and
- (c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

The WSLCB used similar requirements found in the CFRs (Code of Federal Regulations) regarding poison labeling requirements and the Washington Department of Health's rules on labeling compliant marijuana products in developing the requirements in this proposed new section. See 16 C.F.R. 1500, available here: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title16/16cfr1500_main_02.tpl, and proposed new chapter 246-70 WAC, available here: <http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana/RulesinProgress/MarijuanaProductCompliance>.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

Licensees develop and print labels in a multitude of ways. Some licensees choose to create and print labels for products independently, while others may choose to hire professional designers and printers to develop or print labels or product packaging. Costs of professional designing and printing vary depending on the label or packaging design, size, and other aesthetic considerations the licensee chooses to make. The new warning symbol placement requirement will not require the use of professional services, but a licensee may choose to engage professional services if they wish.

Additionally, the digital image of the symbol is provided by the Washington Poison Center (WPC) free of charge to licensees and is available for immediate download from

the WPC's website. This means that no professional services are required should the licensee choose to download and place the digital image on products or labels independently.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:

All licensees are required to have a computer and internet access to acquire and maintain a marijuana license. For this reason, licensees already have the necessary equipment required to obtain the warning symbol from the WPC's website at no charge, so there are no costs of compliance that are necessary to obtain the new warning symbol.

Whether a licensee will incur costs due to the new warning symbol labeling requirement depends on the products the licensee produces and individual business decisions the licensee makes. Each licensee is different as far as the number of products they produce, types of packaging and labeling, and size of products, so costs associated with the new requirement may vary. Licensees will only have to comply with the new warning symbol requirement if the licensee produces or sells marijuana products intended to be eaten or swallowed. If the licensee chooses to acquire the digital image and incorporate the warning symbol on product labels or packaging independently (without the use of professional services), administrative costs should be minimal. If a licensee instead chooses to use professional design services to change labels and print them for the licensee, the costs will be higher. Again, these choices are voluntary on the part of the licensee and not necessary to comply with the new warning symbol requirements.

Licensees that create products in smaller packages may have the most costs associated with the new warning symbol requirement due to the minimum sizing provisions in the new rule. The minimum size requirement of no smaller than three-quarters (3/4) of an inch in height by one-half (1/2) of an inch in width are needed to ensure the symbol is of a size so as to be immediately recognizable and legible. However, the size of the symbol may pose some challenges for those licensees with small packaging/products, which may result in higher costs associated with compliance with the new requirement. This may result in some licensees having to re-conceptualize packaging of products, increasing the costs of initial compliance. These costs will vary depending on packaging type and product size, as well as by business decisions made by licensees, and cannot be predicted on a general level. The delayed effective date for the new requirement explained below is aimed at reducing these impacts. Licensees are also welcome to suggest ways to address these issues through the rulemaking process. The WSLCB will consider alternative options for compliance for these smaller products if possible and as long as the desired effect of the symbol can be achieved.

The WSLCB also plans on a delayed effective date so the new warning symbol requirement may be essentially “phased in,” further minimizing any costs licensees may incur in complying with the new labeling requirement. The WSLCB received input from several marijuana licensees that indicated that a phased-in approach with around a 90-day implementation would reduce any administrative costs for changing labels and phasing out product to comply with the new requirements. A phased-in approach will also allow licensees to move through product without the new warning labels and adjust new labeling to comply with the new warning symbol requirement.

If a licensee chooses not to incorporate the digital image of the warning symbol on packaging or labels of marijuana products intended to be eaten or swallowed, the licensee may obtain stickers bearing the warning symbols from the WPC. There will be costs associated with the use of such stickers, but these costs are only applicable if the licensee actively chooses this route rather than incorporating the digital image of the warning symbol at no cost. The WPC estimates that a roll of 1000 stickers would be approximately \$12.00-\$13.00 per roll, with an estimated shipping cost of roughly \$5.00. It is possible that purchasing stickers at a higher volume (50 or 100 rolls, for example), could mean a high quantity discount. These figures are estimates at this time and final costs are yet to be determined as WPC selects a vendor to produce the stickers.

4. Will compliance with the rules cause businesses to lose sales or revenue?

This new requirement is unlikely to cause the loss of sales or revenue by marijuana businesses.

5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- a. Cost per employee;**
- b. Cost per hour of labor; or**
- c. Cost per one hundred dollars of sales**

Most marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on the value of marijuana at retail and wholesale. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. The total amount of sales by retailers from July 1, 2014, through June 30, 2015, (fiscal year

2015) including excise taxes was \$44.9 million. The total amount of sales by retailers from July 1, 2015, to June 30, 2016, (fiscal year 2016) including excise taxes was \$972.7 million. As of July 5, 2016, 267 retail stores are reporting sales.

The additional costs associated with complying with the new warning symbol labeling requirement in the proposed rule should be minimal compared to sales revenue. The costs associated with complying with the new warning symbol requirement are further mitigated by the WSLCB's efforts to ensure that a digital image of the warning symbol be available to licensees at no cost.

The costs of complying with the new warning symbol labeling requirement as provided in the proposed rule is indeterminate as it will vary depending on the circumstances (types of products, size of products, labels, etc.) and business decisions made by licensees, i.e. whether the licensee chooses to engage the services of a professional designer or printer rather than incorporating the new warning symbol on products independently. These factors will depend on the individual business decisions of licensees who produce or sell marijuana products intended to be eaten or swallowed.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

The WSLCB sought to reduce costs on licensees through ensuring that the digital image of the warning symbol created by the WPC would be able to be provided to licensees at no cost. Additionally, the WSLCB plans to have a delayed effective date of 90 days after adoption of the new requirement (CR-103P), to allow licensees adequate time to cycle through product and adopt the new warning symbol on marijuana products meant to be eaten or swallowed.

Though the costs associated with complying with the new warning symbol labeling requirement should be minor, those costs are justified as the new warning symbol is intended to reduce public health and safety risks. The warning symbol will assist in deterring accidental consumption by minors by visually alerting children and consumers that the product is "not for kids." The warning symbol also provides a phone number to the WPC so consumers who may experience adverse reactions from ingesting a product containing THC can obtain emergency assistance.

7. A description of how the agency will involve small businesses in the development of the rule:

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process. The WSLCB also performed outreach with several licensed processors to gather information related to timelines for the new requirement and costs associated with compliance. The WSLCB used the feedback

received through these efforts to develop the timeline for the effective date of the new warning symbol labeling requirement to reduce costs to licensees and ensure adequate time for licensees to comply.

8. A list of industries that will be required to comply with the rule:

All licensed marijuana licensees that create or sell marijuana products meant to be eaten or swallowed will be required to comply with these rules.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

Because the costs associated with adopting the new warning symbol will be minor, there will be no jobs lost or created as a result of compliance with the proposed rule.

NEW SECTION

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products meant to be eaten or swallowed sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol created and made available in digital form to licensees without cost by the Washington poison center. The warning symbol may be found on the Washington poison center's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

(2) Licensees may use a sticker made available by the Washington poison center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

(a) Must be obtained from the Washington poison center;

(b) Must be placed on or near the principal display panel or on the front of the package; and

(c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.

Issue Paper

Emergency Rules for Laboratory Proficiency Testing and Certification Suspension and Revocation.

Date: August 10, 2016

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to refile emergency rules related to laboratory proficiency testing requirements and laboratory certification suspension and revocation.

Why is rule making necessary?

Emergency rules are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. Creating proficiency testing requirements to achieve and maintain certification and parameters for laboratories will promote accuracy and accountability in marijuana testing by certified laboratories. Additionally, current permanent rules provide how a laboratory may be certified by the WSLCB, but do not contain provisions on what a laboratory must do to remain certified or how the WSLCB may suspend or revoke the certification of a laboratory. WSLCB needs the authority to suspend or revoke the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results.

Process

The emergency rules are necessary for the preservation of the public health, safety, and general welfare. The rule becomes effective upon filing with the Code Reviser's Office and will expire December 7, 2016, 120 days after filing. This emergency rule filing is a refiling of previously adopted emergency rules on this subject. Permanent rulemaking for these rules is currently underway.

What are the changes?

New Section. WAC 314-55-1025 Proficiency testing.

The emergency rule creates requirements for proficiency testing for laboratories seeking certification, and for certified laboratories to maintain certification. The rule requires that laboratories may only use proficiency testing programs that are approved by the WSLCB or WSLCB's vendor. Laboratories seeking certification must complete one successful round of proficiency testing and provide proof of the successful completion prior to receiving certification, and certified laboratories must complete a minimum of two successful rounds of proficiency testing for each field of testing per year to maintain certification. The rule also provides requirements for laboratories that fail proficiency testing, as well as the

ability of WSLCB to suspend a certification should the laboratory fail to successfully complete proficiency testing. Lastly, the rules detail an avenue for laboratories to remediate if the laboratory fails proficiency testing so that the laboratory's suspended certification may be reinstated.

New Section. WAC 314-55-1035 Laboratory certification – Suspension and revocation.

The emergency rule provides the ways in which the WSLCB may suspend or revoke the certification of laboratories that do not follow rule requirements for laboratories or testing of marijuana. The rule provides two separate levels of suspensions:

1. A summary suspension or revocation applying to more egregious and substantial violations, and
2. A graduated suspension and revocation approach for less serious violations.

The language also references suspensions for failing proficiency testing requirements under proposed WAC 314-55-1025. Lastly, the rule recognizes the right of a laboratory that receives a suspension or revocation to receive an administrative hearing if they choose under the provisions of the Administrative Procedure Act (Chapter 34.05 RCW).



Washington State
Liquor and Cannabis Board

Date: August 10, 2016

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Tim Gates, Marijuana Examiners Unit
Joanna Eide, Policy and Rules Coordinator

Subject: **Approval to file Emergency Rules to create laboratory proficiency testing requirements and suspension/revocation of laboratory certification.**

Emergency rules are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. Creating proficiency testing requirements to achieve and maintain certification and parameters for laboratories will promote accuracy and accountability in marijuana testing by certified laboratories. Additionally, current permanent rules provide how a laboratory may be certified by the WSLCB, but do not contain provisions on what a laboratory must do to remain certified or how the WSLCB may suspend or revoke the certification of a laboratory. WSLCB needs the authority to suspend or revoke the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results.

The emergency rules are necessary for the preservation of the public health, safety, and general welfare. Staff is requesting the refiling of emergency rules on this subject previously adopted by the board while permanent rulemaking is underway. The rule becomes effective upon filing with the Code Reviser's Office and will expire December 7, 2016, 120 days after filing or until such time as permanent rules become effective, whichever comes first.

Process

The Rules Coordinator requests approval to file the Emergency Rules described above. An issue paper on these rule was presented at the Board meeting on August 10, 2016, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:



Washington State
Liquor and Cannabis Board

August 10, 2016	Board is asked to approve filing the Emergency Rules
August 10, 2016	The Emergency Rules become effective
December 7, 2016	The Emergency Rules expire

_____ Approve _____ Disapprove _____
 Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

NEW SECTION

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the WSLCB to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) WSLCB or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from WSLCB or WSLCB's vendor prior to conducting PT. The WSLCB may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If a laboratory fails a round of PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the WSLCB or WSLCB's vendor upon request.

(7) Laboratories are responsible for obtaining PT samples from vendors approved by WSLCB or WSLCB's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(8) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to,

adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(9) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to WSLCB or WSLCB's vendor.

(10) The WSLCB may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(11) The WSLCB may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by WSLCB.

(12)(a) The WSLCB will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The WSLCB may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The WSLCB will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. WSLCB may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the WSLCB a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(13) If a laboratory fails to remediate and have its certification reinstated under subsection (12)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(14) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

NEW SECTION

WAC 314-55-1035 Laboratory certification—Suspension and revocation. (1) The board may summarily suspend or revoke the certification of any third-party testing lab certified under WAC 314-55-102 for any of the following reasons:

(a) The laboratory owner or science director violates any of the requirements of chapter 314-55 WAC relating to the operations of the laboratory.

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapters 314-55 WAC, 69.50 RCW, 69.51A RCW, or Title 9 or 9A RCW related to the operations of the laboratory, or the laboratory owner or science director permits laboratory staff to do so.

(c) Evidence the certificate holder or owner made false statements in any material regard:

(i) On the application for certification;

(ii) In submissions to the board relating to receiving or maintaining certification; or

(iii) Regarding any testing performed or results provided to WSLCB or the marijuana licensee by the certificate holder or owner pursuant to WAC 314-55-102.

(d) The laboratory owner or science director is convicted of any crime substantially related to the qualifications or duties of that owner and related to the functions of the laboratory, including a conviction for falsifying any report of or that relates to a laboratory analysis. For purposes of this subsection, a "conviction" means a plea or finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(e) The laboratory submits proficiency test sample results generated by another laboratory as its own.

(f) The laboratory staff denies entry to any employee of the WSLCB or WSLCB's vendor during normal business hours for an on-site assessment or inspection, as required by WAC 314-55-102, 314-55-1025, or 314-55-103.

(2)(a) The following violations are subject to the penalties as provided in (b) of this subsection:

(i) The laboratory fails to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment.

(ii) The laboratory fails to report proficiency testing results pursuant to WAC 314-55-1025.

(iii) The laboratory fails to remit certification fees within the time limit established by a certifying authority.

(iv) The laboratory fails to meet recordkeeping requirements as required by chapter 314-55 WAC unless the failure to maintain records is substantial enough to warrant a suspension or revocation under subsection (1) of this section.

(b) The penalties for the violations in (a) of this subsection are as follows:

(i) First violation: Ten-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(ii) Second violation within a three-year period: Thirty-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(iii) Third violation within a three-year period: Revocation of laboratory certification under WAC 314-55-102.

(3) A laboratory may also be subject to a suspension of certification related to proficiency testing requirements under WAC 314-55-1025.

(4) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension or revocation as provided in chapter 34.05 RCW.