



Washington State  
**Liquor and Cannabis Board**

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**Date:** September 2, 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 WAC 314-55-035 – What persons or entities have to qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)**

The Policy and Rules Manager requests that the Board adopt the final rules, and approve the CR 103 that will establish new and amended rules regarding WAC 314-55-035, currently titled “What persons have to qualify for a marijuana license” but if approved today, will be retitled “Qualifying for a marijuana license.”

The Board has been briefed on the issue, the rule development background, and public comment received for this rule project. A CR 103 memorandum, draft CR 103 form, and rule text are attached.

If approved, the Policy and Rules Manager will send the concise explanatory statement concerning this rulemaking to all persons who submitted comments. 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 October 3, 2020.

Approval to File CR 103 - What persons or entities qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)

09/2/2020

\_\_\_\_\_ 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

Approval to File CR 103 - What persons or entities qualify  
for a marijuana license? (Retitled "Qualifying for  
a marijuana license")

09/2/2020



## CR 103 Memorandum

### **Re: WAC 314-55-035 – What persons or entities have to qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)**

Date: September 2, 2020

Presented by: Kathy Hoffman, Policy and Rules Manager

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### **Background**

In August 2018, the Washington State Liquor and Cannabis Board (WSLCB) filed a robust CR102 consisting of omnibus rule changes to implement 2017 legislation. Revisions to WAC 314-55-035 were included in the proposal. At the public hearing on October 3, 2018, multiple stakeholders offered feedback, requesting additional, significant revisions to WAC 314-55-035. When the final rule package was presented to the Board in November, 2018, staff excluded WAC 314-55-035 from the adopted rules to allow for additional development and stakeholder engagement.

In January of 2019, Engrossed Substitute House Bill (ESHB) 1794 was introduced that proposed amendments to RCW 69.50.395 concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property. Since there was potential for the substance of the bill to influence revisions being considered to WAC 314-55-035, the project was temporarily paused until the end of the legislative session. The bill was approved by the Governor on May 13, 2019, and became effective on July 28, 2019.

### **Rule Necessity**

The adopted rules are the result of protracted, extensive stakeholder engagement that began in late 2018, was temporarily paused as a result of enacted legislation described above, and then realigned with the purpose and intent of penalty rule redesign project that implemented Senate Bill (SB) 5318.

The adopted rules accomplish the following:

- Modernizes the section title, redesigns and reorganizes the section structure;
- Modernizes language regarding which entities are considered to be true parties of interest;
- Removes the spousal vetting requirement;
- Expands definitions to include, “control,” “financial institution,” “gross profit,” “net profit,” and “revenue;”
- Clarifies and expands upon what persons or entities are not considered to be true party(ies) of interest;
- Describes the circumstances under which licensees must continue to disclose funds that will be invested in a licensed marijuana business;
- Incorporates by reference amendments to RCW 69.50.395 regarding disclosure agreements and intellectual property; and
- Establishes a new subsection to distinguish the requirements for financiers from that of true party(ies) of interest.

### **What changes are being made?**

**Amended Subsection. Title – WAC 314-55-035.** Revised title from “What persons or entities have to qualify for a marijuana license?” to “Qualifying for a marijuana license.”

**Amended Subsection. WAC 314-55-035(1) True parties of interest.** Added language to clarify and more clearly define “true party of interest,” including updates to the existing table identifying business entity types and who, within a particular business structure, would be considered a true party of interest.

**Amended Subsection. WAC 314-55-035(2)** Previous rule required spousal vetting. Under that requirement, limitations on the number of licenses consistent with WAC 314-55-075(5), WAC 314-55-077(3), and WAC 314-55-079(3) applied to parties considered to be true parties of interest.

The adopted rule concentrates on the nature of the business relationship and ownership interest as opposed to whether or not one is a spouse.

This new section provides that a married couple may not be a true party of interest in more than five retail licenses, more than three producer or more than three processor licenses, consistent with the limitations in current rule.

CR 103 - What persons or entities qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)

09/2/2020

**Amended Subsection. WAC 314-55-035 (3) Definitions (formerly “Financiers”)** Establishes a new definition section that provides clarity and an initial framework for words that are specific to this regulatory area. This includes a definition for “control,” “financier,” “gross profit,” and “net profit.”

**Amended Subsection. WAC 314-55-035 (4) –What “true party of interest” does not mean (formerly “Persons who exercise control of business”)** Updated and provided a non-exhaustive list of circumstances where a person or entity would not be considered a true party of interest. This section is substantially expanded and enhanced.

**Amended Subsection. WAC 314-55-035 (5) Notification.** Re-establishes a general process for the disclosure of the source of funds invested in a licensed business and includes the provisions of Board Interim Policy (BIP) 06-2018 regarding person funds for business.

**New Subsection. WAC 314-55-035 (6) Disclosure agreements and intellectual property.** Provides a cross-reference to agreements described in RCW 69.50.395 where the provisions of ESHB 1794 are codified. WSLCB did not restate the legislation in rule since its provisions are clear.

**New Subsection. WAC 314-55-035(7) Financiers.** Significantly expands and reaffirms former WAC 314-55-035(3) regarding the definition of “financier,” including more fully describing a financier’s ownership interest, and the scope of residency requirements.

## **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.
- Provide information and training on request.

CR 103 - What persons or entities qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)

09/2/2020

## **Promoting and Assisting Voluntary Compliance**

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- Enforcement and licensing leadership and staff have participated in rule revisions, and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule have will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- WSLCB will 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, including type, resolution, and final outcome;
- 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.

CR 103 - What persons or entities qualify for a marijuana license? (Retitled "Qualifying for a marijuana license")

09/2/2020

Attachments: Final Rules  
Concise Explanatory Statement

CR 103 - What persons or entities qualify  
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09/2/2020



# 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 314-55-035 - What persons or entities have to qualify for a marijuana license? The Washington State Liquor and Cannabis Board (Board) has adopted amendments to existing sections of rule regarding qualifications for a marijuana license, and to implement the directives of Engrossed Substitute House Bill (ESHB) 1794 (Chapter 380, Laws of 2019) regarding agreements by licensed marijuana businesses – intellectual property, now codified in RCW 69.50.395. The rule section has been retitled, “Qualifying for a marijuana license.”

**Citation of rules affected by this order:**

New:  
 Repealed: .  
 Amended: WAC 314-55-035  
 Suspended:

**Statutory authority for adoption:** RCW 69.50.342; RCW 69.50.345; RCW 69.50.395.

**Other authority:** ESHB 1794 (Chapter 380, Laws of 2019)

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 20-14-032 on June 24, 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		Amended	1	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	6	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		Amended	7	Repealed	

**Date Adopted:** September 2, 2020

**Name:** Jane Rushford

**Title:** Chair

**Signature:**



**WAC 314-55-035** (~~(What persons or entities have to qualify for a marijuana license?)~~) Qualifying for a marijuana license. A marijuana license must be issued in the name(s) of the true party(ies) of interest. The board may conduct an investigation of any true party of interest who exercises control over the applicant's business operations. This may include financial and criminal background investigations.

(1) **True parties of interest** ((-)). True parties of interest must qualify to be listed on the license, and meet residency requirements consistent with this chapter. For purposes of this title, "true party of interest" means:

<b>((True party of interest</b>	<b>Persons to be qualified</b>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> <li>• All general partners and their spouses.</li> <li>• All limited partners and spouses.</li> </ul>
Limited liability company	<ul style="list-style-type: none"> <li>• All members and their spouses.</li> <li>• All managers and their spouses.</li> </ul>
Privately held corporation	<ul style="list-style-type: none"> <li>• All corporate officers (or persons with equivalent title) and their spouses.</li> <li>• All stockholders and their spouses.</li> </ul>
Publicly held corporation	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of <b>financiers</b> ) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.	<p>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p>

<del>((True party of interest</del>	<del>Persons to be qualified</del>
	<ul style="list-style-type: none"> <li><del>"Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</del></li> <li><del>"Net profit" means gross sales minus cost of goods sold.</del></li> </ul>
<del>Nonprofit corporations</del>	<del>All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.</del>

~~(2) For purposes of this section, "true party of interest" does not mean:~~

~~(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.~~

~~(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.~~

~~(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.~~

~~(3) **Financiers** - The WSLCB will conduct a financial investigation as well as a criminal background of financiers.~~

~~(4) **Persons who exercise control of business** - The WSLCB will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.~~

~~(5) After licensure, a true party of interest, including financiers, must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB must approve these funds prior to investing them into the business.))~~

<u>Entity</u>	<u>True party(ies) of interest</u>
<u>Sole proprietorship</u>	<u>Sole proprietor</u>
<u>General partnership</u>	<u>All partners</u>
<u>Limited partnership, limited liability partnership, or limited liability limited partnership</u>	<u>All general partners</u> <u>All limited partners</u>
<u>Limited liability company (LLC)</u>	<u>All LLC members</u> <u>All LLC managers</u>
<u>Privately held corporation</u>	<u>All corporate officers and directors (or persons with equivalent title)</u> <u>All stockholders</u>

<b>Entity</b>	<b>True party(ies) of interest</b>
<u>Multilevel ownership structures</u>	<u>All persons and entities that make up the ownership structure</u>
<u>Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising control over a licensed business</u>	<u>Any entity(ies) or person(s) with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year</u> <u>Any entity(ies) or person(s) who exercise(s) control over the licensed business</u>
<u>Nonprofit corporations</u>	<u>All individuals and entities having membership rights in accordance with the provisions of the articles of incorporation or bylaws</u>

(2) A married couple may not be a true party of interest in more than five retail marijuana licenses, more than three producer licenses, or more than three processor licenses. A married couple may not be a true party of interest in a marijuana retailer license and a marijuana producer license or a marijuana retailer license and a marijuana processor license.

(3) The following definitions apply to this chapter unless the context clearly indicates otherwise:

(a) "Control" means the power to independently order, or direct the management, managers, or policies of a licensed business.

(b) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the department of financial institutions.

(c) "Gross profit" means sales minus the cost of goods sold.

(d) "Net profit" means profits minus all other expenses of the business.

(e) "Revenue" means the income generated from the sale of goods and services associated with the main operations of business before any costs or expenses are deducted.

(4) For purposes of this chapter, "true party of interest" does not include (this is a nonexclusive list):

(a) A person or entity receiving payment for rent on a fixed basis under a lease or rental agreement. Notwithstanding, if there is a common ownership interest between the applicant or licensee, and the entity that owns the real property, the board may investigate all funds associated with the landlord to determine if a financier relationship exists. The board may also investigate a landlord in situations where a rental payment has been waived or deferred.

(b) A person who receives a bonus or commission based on their sales, so long as the commission does not exceed ten percent of their sales in any given bonus or commission period. Commission-based compensation agreements must be in writing.

(c) A person or entity contracting with the licensee(s) to receive a commission for the sale of the business or real property.

(d) A consultant receiving a flat or hourly rate compensation under a written contractual agreement.

(e) A person with an option to purchase the applied for or licensed business, so long as no money has been paid to the licensee under an option contract or agreement for the purchase or sale of the licensed business, or a business that is applying for a license.

(f) Any business or individual with a contract or agreement for services with a licensed business, such as a branding or staffing company, will not be considered a true party of interest, as long as the licensee retains the right to and controls the business.

(g) A financial institution.

**(5) Notification.**

(a) Except as provided in this subsection (4)(a)(i), (ii), and (iii), after licensure the licensee must continue to disclose the source of all funds to be invested in the licensed business, including all funds obtained from financiers, prior to investing the funds into the licensed business.

(i) Revenues of the licensed marijuana business that are reinvested in the business do not require notification or vetting by the board.

(ii) Proceeds of a revolving loan where such loan has been approved by the board within the three previous years do not need to be vetted by the board, unless the source of the funds has changed or the approved loan amount has increased.

(iii) If the source of funds is an identified true party of interest on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of an application to use such funds. The board will then investigate the source of funds. If the board cannot verify the source of funds after reasonable inquiry, or the board determines that the funds were obtained in a manner in violation of the law, the board may take actions consistent with the provisions of this chapter.

(b) Licensees must receive board approval before making any ownership changes consistent with WAC 314-55-120.

(c) Noncompliance with the requirements of this section may result in action consistent with this chapter.

**(6) Disclosure agreements and intellectual property.**

(a) Licensed marijuana businesses may enter into agreements consistent with the provisions of RCW 69.50.395.

(b) Notwithstanding the foregoing, no producer or processors may enter into an intellectual property agreement with a retailer.

**(7) Financiers.**

(a) Consistent with WAC 314-55-010(11), a financier is any person or entity, other than a financial institution or a government entity, that provides money as a gift, a grant, or loans money to an applicant, business, or both, and expects to be paid back the amount of the loan, with or without reasonable interest.

(b) A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest.

(c) Washington state residency requirements do not apply to financiers who are not also a true party of interest, but all financiers must reside within the United States.

(d) The board will conduct a financial and criminal background investigation on all financiers.



## **Notice of Permanent Rules**

**Regarding WAC 314-55-035 – What persons or entities have to qualify for a Marijuana license? (Retitled “Qualifying for a marijuana license”)**

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of amendments to existing rules regarding WAC 314-55-035 – What persons or entities have to qualify for a marijuana license? (Retitled “Qualifying for a marijuana license”)**

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](mailto:rules@lcb.wa.gov).

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### **Background and reasons for adopting these rules**

In August 2018, LCB filed a robust CR 102 consisting of omnibus rule changes to implement 2017 legislation. Revisions to WAC 314-55-035 were included in the proposal. At the public hearing on October 3, 2018, multiple stakeholders offered feedback, requesting additional, significant revisions to WAC 314-55-035. When the final rule package was presented to the Board in November, 2018, staff excluded WAC 314-55-035 from the adopted rules to allow for additional content development and stakeholder engagement.

In January of 2019, Engrossed Substitute House Bill (ESHB) 1794 was introduced that proposed amendments to RCW 69.50.395 concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property. Since there was potential for the substance of the bill to influence revisions being considered regarding WAC 314-55-035, the project was temporarily paused until the end of the legislative session. The bill was approved by the Governor on May 13, 2019, and became effective on July 28, 2019.

The adopted rules are needed to accomplish the following:

- Modernize the section title, redesigns and reorganizes the section structure;

- Modernize language regarding which entities are considered to be true parties of interest;
- Remove the spousal vetting requirement;
- Expand definitions to include, “control,” “financial institution,” “gross profit,” “net profit,” and “revenue;”
- Clarify and expand upon what persons or entities are not considered to be true party(ies) of interest;
- Describe the circumstances under which licensees must continue to disclose funds that will be invested in a licensed marijuana business;
- Incorporate by reference amendments to RCW 69.50.395 regarding disclosure agreements and intellectual property; and
- Establish a new subsection to distinguish the requirements for financiers from that of true party(ies) of interest.

These adopted rule amendments, in addition to adopted modernizing clarifying revisions, support the overarching agency goal of ensuring the highest level of public safety by continually improving regulations in an effort to reflect the current, dynamic regulatory environment.

**Rulemaking history for this adopted rule:**

**CR 101** – filed October 31, 2018 as WSR #18-22-054;  
**CR 102** – filed June 24, 2020 as WSR #20-14-032.  
 Public hearing held August 5, 2020.

**Public comment received on the rule proposal**

The following comments were received as indicated below, and are presented in their native form, including formatting, text and spelling. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

**1. Email received July 20, 2020:**

From John Kingsbury:

“I wish to comment on the rules proposal for true parties of interest. I am working off [this copy](#) that is in on the Cannabis Observer drive. I hope it is up to date.

Admittedly, beyond being a citizen who wants my state to work well, I am not a stakeholder in the conventional sense of the term. Like many qualifying cannabis patients, I have



more or less given up on, and dropped out of, the regulated system. Still, I think it is appropriate to qualify why I have an interest and why I am addressing these proposed rules changes.

For a few months, I have been collaborating on researching and writing a true party of interest violation complaint. This project has been slow because it is complicated, has required much research, crosses state lines, might be viewed in terms of law enforcement interest, and honestly is often superceded by more urgent projects. I am sure you can relate to all of that.

My point is that, when I read this rulemaking proposal, I am impressed that it seems to get directly at some of the concerns brought up by the project I am working on. Of note would be addressing the rule that married couples may only hold three or five licenses. Thank you for that.

**Investigating landlords.** I was very impressed by this provision "if there is a common ownership interest between the applicant or licensee, and the entity that owns the real property, the board may investigate all funds associated with the landlord to determine if a financier relationship exists. The board may also investigate a landlord in situations where a rental payment has been waived or confirmed ."

I guess what I am saying here is "Nice job! "

**LCB recourse beyond state boundaries.** The project I am working on crosses state lines, as you could predict, and international lines. Those concerns may exceed LCB authority. As you can imagine, I am learning about all sorts of stock offernig rules that I never cared to learn about. But if this rulemaking is about true-parties of interest, and undue influence, and what those entities look like, I hope this rule making will anticipate as much as possible what LCB enforcement of true-party of interest violations look like when they step outside of Washington State boundaries.

**Influence by non-true parties of interest.** I would also suggest that the term "control" be looked at in terms of "influence". To provide an example of how that works in another context that I know about first hand. A developer in Bellevue, who already owned several other properties in Bellevue, wanted to construct a new project. When that developer applied for financing to build that new project from a bank that had no interest in the other developer's properties, one requirement for obtaining financing for the new project from the new bank was that the new bank could control the rents in the developer's other properties even though the bank had no interest in them.

I feel it is to the point to ask the question: If a party owns the real estate that a licensee sits on, as well as the branding that licensee puts on its packages and markets itself as, can that party really not be a true party interest? In a real sense, that is like saying that McDonalds is not a true party of interest in any of its franchises. That branding and real estate owner

does in fact have a strangle hold on that licensee.

Thank you for the opportunity to comment.

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

## 2. **Email received August 5, 2020:**

From Ezra Eickmeyer:

My association, Producers Northwest, has some significant concerns about the CR 102 regarding TPI rules. As written, we believe that it will lead to significantly more TPI investigations. This would mean more workload for LCB and more compliance costs for businesses. Also, I always like to ask a few key questions about any rule or law – What is the public policy need? What good is this doing for our state?

Our main concerns are listed below. We do not believe this rule change should be implemented as-is and may require a re-submission of the CR102.

### **Definition of control –**

By defining “control” as broadly targeting anyone who can direct company policy, but then leaving employees out of the list of exemptions, it appears that the agency would begin TPI investigations into employees in our businesses. This is not workable for us and provides zero public benefit.

Also, “policy” could mean anything from the daily schedule for watering plants to safety protocols, decisions made up and down the organization chart for each company in unique ways. If this is implemented as-is, licensees would not have clear instruction into what employees they would have to disclose to LCB for vetting. Also, what would the policy be regarding whether a licensee has to wait for the completion of a TPI investigation before hiring a new manager? **Unless this is fixed and clarified, the draft rule change is simply not functional.**

### **Financiers – US Resident Restriction**

While this is less critical than our concern listed above, we do not believe it is important to limit financiers to US residents only. Instead, the focus should be on ensuring that LCB can fully acquire the information it needs for its vetting of financiers regardless of their country of residence.

**Note:** Mr. Eickmeyer also provided oral testimony reiterating this written comment at the public hearing.

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

With respect to the definition of control: The benefit of a rule must justify its burden. Here, after many months of exhaustive discussion with industry members and their representatives, the WSLCB opted for a less prescriptive definition to plainly, and broadly describe “control” in this context. This definition closely aligns with other states, and in alignment with industry members, WSLCB prefers to encourage

disclosure rather than imposing prescriptive regulations that limit, rather than encourage, compliance. An overly prescriptive definition of “control” may result in a variety of unintended consequences, including but not limited to disproportionate impact on the smallest marijuana businesses, and result in suboptimal outcomes when applied to this specific industry that continues to rapidly evolve. Prescriptive regulations do not support the goals and objectives of chapter 69.50 RCW, and instead may impose special interest solutions on all that benefit a limited number of licensees.

With respect to financiers: Out of state investment *is* allowed in Washington State, However, out of state *ownership* is not allowed consistent with RCW 69.50.331. The suggested revision would require a legislative action, as opposed to a regulatory amendment.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.

### **3. Email received August 5, 2020:**

From Lukas Hunter:

I appreciate the opportunity to discuss my concern with the current TPI proposed rules.

In looking at this section of rule I think about feasibility of recognizing true parties of interest as defined in this section. Business continue to grow and change very dynamically, much faster than the change request process can accommodate, and far faster than adding a true party of interest to a license can take. I worry with this current definition of control and the requirement to disclose all those who meet the proposed definition of control. We will be creating a bottleneck in licensing, and further a bottleneck in the ability for businesses to grow and adapt to this ever-changing landscape. At this time, I am urging for further exceptions to allow for non-shareholding members or employees of a licensee, to be exempt of being a true party of interest.

From visiting a vast number of licensees across the state, I believe these rules do not allow for business owners to delegate necessary day to day tasks to mid-level managers and senior staff constituting them as a true party of interest. This limits licensees who are growing and cannot afford to keep their thumb on day to day operational issues that can be handled by proven staff members. This becomes another prohibitive issue putting another barrier on Washington cannabis making it less attractive than others in the country, this is not acceptable as we move towards a future of open interstate commerce.

I also look at this definition of control equating to a vetted true party of interest, and think about the tax on the WSLCB to investigate each and every one of these new true parties of interest. With this proposed language the industry will be looking to add mid-level managers and senior staff to the license as a true party of interest. Not as a shareholder, but as a true party of interest to assure they are not in violation of this chapter. I currently am not aware of a mechanism within the WSLCB to accomplish this. I am familiar with a mechanism for liquor licensing to allow non-entity members to be a true party of interest on a license, but for marijuana a new form of licensure will need to take place, along with a tsunami sized wave of change requests that will hit the WSLCB’s door step. This wave of new licensing cases will additionally be met with a WSLCB budget cut of 15% as discussed in yesterday’s Caucus meeting. I fear this perfect storm will further result in delays in the licensing process, and further making it prohibitive for owners to delegate day to day operational tasks and further prohibiting owners to explore entrepreneurial opportunities.

In an effort to mitigate this workload and expense, the industry is not ready to face along with what I predict is a workload the WSLCB is not ready to face. Along with the ebb and flow of employees coming and going from a licensed facility who’s position duties meet the proposed definition of control, I would encourage the WSLCB to consider changing their criteria of control to something along the lines of, “executive level decision making” focusing on decisions that change the course of where a company is going, and eliminating day to day operational decisions that is covered in the current definition, “independently order or direct the management, managers, or policies of a licensed business”.

**Note:** Mr. Hunter also provided oral testimony reiterating this written comment at the public hearing.

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

With respect to the definition of control: The benefit of a rule must justify its burden. Here, after many months of exhaustive discussion with industry members and their representatives, the WSLCB opted for a less prescriptive definition to plainly, and broadly describe “control” in this context. This definition closely aligns with other states, and in alignment with industry members, WSLCB prefers to encourage disclosure rather than imposing prescriptive regulations that limit, rather than encourage, compliance. An overly prescriptive definition of “control” may result in a variety of unintended consequences, including but not limited to disproportionate impact on the smallest marijuana businesses, and result in suboptimal outcomes when applied to this specific industry that continues to rapidly evolve. Prescriptive regulations do not support the goals and objectives of chapter 69.50 RCW, and instead impose special interest solutions on all that benefit a limited number of licensees.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.

#### **4. Email received August 5, 2020:**

From Washington CannaBusiness Association:

The Washington CannaBusiness Association (WACA) represents Washington's licensed and regulated cannabis and hemp businesses. As the oldest trade association for cannabis and hemp businesses in the state we are committed to establishing a safe, fully-regulated system that keeps cannabis out of the hands of children. We value our collaborative relationship with the WSLCB and appreciate the opportunity to work together and to provide feedback on the CR-102 WAC 314-55-035 - what persons or entities have to qualify for a marijuana license. We worked with our membership to discuss and develop input on the conceptual draft for your consideration. Our feedback is in the spirit of modernizing Washington's rules in alignment with a rapidly evolving industry, shaped by increasing acceptance and public understanding of legal, regulated cannabis.

##### **Section 1 - True Parties of Interest**

WACA recommends restoring the row in this chart to account for ownership structures that include publicly held corporations. The entity listed should be publicly held corporations and the corresponding TPI should be, “All corporate officers and directors (or persons with equivalent title) and shareholders holding more than ten percent.” RCW 69.50.339 is explicit that, in the case of shareholders, only the proposed sale of more than 10 percent of the outstanding or issued stock of a corporation must be reported to the WSLCB.

While our state is one of the first to enter regulated adult use cannabis, updated rules should account for various ownership structures to allow Washington to be competitive with expanding markets across the globe. As with other industries in Washington State, publicly held corporations should be allowed to have an ownership interest in cannabis companies. Furthermore, background checks, vetting and the listing of *each* shareholder of a publicly held corporation as a TPI creates an unwieldy and unwarranted procedural burden representing resources that would be more impactful in other areas. WACA also recommends removing the row with “multilevel ownership structures” as this would be captured by the other entities listed in the chart and is therefore unnecessary and repetitive.

##### **Section 2**

WACA recommends striking the first line of this section. Although we recognize the intent, there are already rules in place to address concerns regarding married couples exercising control over more licenses than they are allowed to hold as individuals, including the new definition of “control” included in this ruleset. Because no single person could own more than the legal limit of licenses and would not be able to exercise undue influence or control over their spouse's licenses under existing rules, this section is unnecessary. Enforcement mechanisms already exist to regulate such activity without restricting the opportunities of married persons over non-married persons. Again, in an effort to normalize business practices we recommend striking the first line of this section. If the recommendation to strike the first line of this section is declined, we suggest replacing the language

“five retail licenses” and “three producer processor licenses” with a more general reference to the legal ownership limits set by rule and statute. This would account for any future statutory or regulatory changes to the current ownership limits and would limit necessary revisions in the event of a rule change.

**Section 4(a) - TPI does not include**

The language in Section 4(a) seems out of place. While we agree with clarifying that a landlord or a person receiving payment for a rent is not a TPI, the language goes much further. WACA recommends going back to the original language in 035 that simply states a person receiving payments for rent is not a TPI unless that person exercises control over the business. Licensees already struggle to find rental agreements due to zoning restrictions and liability concerns, this extra level of scrutiny is unnecessary as there are already rules that would allow the WSLCB to intervene should the landlord exert “control” over the business. Finally, the last line of this section related to waived rent should be removed considering all of the recent changes to rental agreements in light of COVID-19.

**Section 5(a) - Notifications**

WACA recommends adding a subsection in Section 5(a) to clarify that reimbursement of incidental expenses incurred by an employee, owner, or manager within the scope of their duties does not require disclosure.

**Section 6(b) - Disclosure agreements and IP**

WACA recommends striking Section 6(b) that prohibits producer or processors from entering into an intellectual property agreement with a retailer. While we understand the apprehension related to undue influence and protecting a vertically integrated system, there is already rule language in [WAC 314-55-018](#) that addresses these types of concerns.

**WSLCB response:** The WSLCB appreciates these comments, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

With respect to Section 1 (adopted WAC 314-55-035(1)): WSLCB removed “All corporate officers and directors (or persons with equivalent title) and shareholders holding more than ten percent” from the table to concentrate the meaning of “true party of interest” on the function, as opposed to the title, or an entity or entities. Removing this specific designation allows the agency to consider position equivalency or legal function rather than concentrating solely on title.

With respect to Section 2 (adopted WAC 314-55-035(2)): The sentence structure was designed to provide clear guidance, and promote consistent rule application regarding the number of licenses and license types in which a married couple are considered true parties of interest. WSLCB finds that removing the first sentence of this section would not support either of these design purposes.

With respect to Section 4(a) (adopted WAC 314-55-035(4)(a)): This specific subsection was added at the request of licensees and industry representatives during the course of the protracted process that resulted in the adopted rules. The subsection was designed to provide clear guidance, and promote consistent rule application regarding who is not considered to be a true party of interest. WSLCB finds that removing this subsection would not support either of these design purposes. As noted in the introduction to the subsection, the list is not exhaustive, allowing the agency some flexibility to adjust as needed in response to rental agreement adjustments or changes that may be related to COVID-19.

With respect to Section 5(a) (adopted WAC 314-55-035(5)(a)): WSLCB does not agree that adding additional specificity, particularly related to “incidental” expenses

when “incidental” is undefined. WSLCB does not currently investigate reimbursement for nominal expenses. Adding an additional sentence will not modify current practice.

With respect to Section 6(b) (adopted WAC 314-55-035(6)(b)): This specific sentence was added at the request of licensees and industry representatives during the course of the protracted process that resulted in the adopted rules, and reflects the intent of ESHB 1794, now codified as RCW 69.50.395. WSLCB does not agree that WAC 314-55-018 fully addresses these concerns.

**Was the comment reflected in the adopted rule?** These comments were not reflected in the final rule.

## **5. Email received August 5, 2020:**

From Jerry Derevyanny:

“I write on behalf of 7Point Holdings, LLC, a Tier 3 producer/processor (#424481), of which I am the owner, regarding WSR #20-14-032. Specifically, I write regarding my concerns that the proposed rules: (1) continue to impermissibly discriminate against out-of-state owners; (2) further disadvantage Washington cannabis business owners by not allowing public company ownership as evidenced by the removal of public company from the table in draft WAC 314-55-035(1); and (3) needlessly hamstringing Washington cannabis businesses.

### ***Discriminating Against Out of State Ownership is Impermissible***

For numerous reasons, Washington’s ban on out of state ownership is impermissible. Not least of these reasons is that the United States Supreme Court recently rejected a residency requirement as it related to liquor stores last year in *Tennessee Wine and Spirits Retailers Association v. Thomas*. Due to the 21st Amendment, states’ powers to regulate commercial goods are at their zenith in the alcohol market– if states cannot discriminate when it comes to liquor, they surely cannot when it comes to cannabis. That cannabis is federally illegal is unimportant in this analysis.

Indeed, when Maine’s cannabis residency requirements were recently challenged, the state declined to “enforce or implement” residency requirements in the future because they were “subject to significant constitutional challenges and [were] not likely to withstand such challenges,” and Maine’s cannabis regulator announced that it intended to affirmatively propose the legislative repeal of the residency requirements in light of their constitutional defects in Maine’s next legislative session. (Source: Maine Office of Marijuana Policy press release, dated May 11, 2020, available at: <https://www.maine.gov/dafs/omp/news-events/news/aump-lawsuit-residency-requirement>).

The LCB should follow Maine’s lead, or at a minimum prepare for the likely day when Washington’s residency requirement is also invalidated by drafting rules which tell people what the ownership rules *would be* if the residency requirements were overturned. Those “backup” rules should be modeled on modern alcohol TPI rules, which the LCB has implemented regularly for years.

### ***Not Allowing Public Company Ownership Hurts Washington Businesses and Benefits No One***

The proposed rules leave no place for public companies in Washington’s cannabis industry, which needlessly excludes a large segment of commercial actors from the market. To the extent public companies could pose a concern to the LCB, the LCB’s vetting and approval process will expose those concerns. But individuals who do not hold enough shares to influence a public company pose no threat to the public. The LCB should include in TPI rules a reasonable framework for public company ownership, such as the vetting of members of the board, corporate officers, and any shareholders who rules. Public company ownership should be on equal footing with other forms of ownership.

Public company ownership has certain significant advantages: (1) significantly more transparency than private companies so shareholders, concerned citizens, public policy experts, etc., have access to significantly more financial and business information; (2) they are subject to regulation and oversight by other significant regulators (e.g., the SEC, the particular exchange they are traded one, etc.) behavior; and (3) while imperfect, the corporate governance system allows the public to petition the company on critical issues such as diversity, environmental issues, and the like, in a way that is just not possible with private entities.”

**WSLCB response:** The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process. The WSLCB looks forward to your continued partnership on future policy and rule development projects.

With respect to out of state ownership and “Public Company Ownership”: Out of state is statutorily prohibited consistent with RCW 69.50.331. The suggested revision would require a legislative action, as opposed to a regulatory amendment.

**Was the comment reflected in the adopted rule?** This comment was not reflected in the final rule.

**Public Hearing, August 5, 2020:**

Two attendees provided comment regarding the rule proposal as noted above.

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

There were no changes to the proposed rules.