



Washington State
Liquor and Cannabis Board

Date: September 1, 2021

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Jeff Kildahl, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Licensing Director
Chandra Brady, Director of Education and Enforcement
Kathy Hoffman, Policy and Rules Manager

Subject: Request for approval of final rules (CR 103) regarding amendments to WAC 314-55-040 – What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?

The Policy and Rules Coordinator requests that the Board adopt the final rules, and approve the CR 103 to establish a threshold review process for reviewing and evaluating the criminal conviction history of cannabis license applicants and renewing licensees.

The Board has been briefed on the rule development background for this rule making project. There were no public comments received. A CR 103 memorandum, CR 103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, or October 2, 2021.

_____ Approve _____ Disapprove _____
David Postman, Chair _____
Date

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

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

Attachments: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

Regarding Amendment to WAC 314-55-040 – What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?

Date: September 1, 2021
Presented by: Jeff Kildahl, Policy and Rules Coordinator

Background

Initiative 502 (I-502) established a legal framework for the Board to review the criminal history of marijuana [cannabis] license applicants, along with broad rulemaking authority to create rules related to criminal history background check standards. The initial rules concerning this subject were initially established in late 2013, and the most recent revision occurred in early 2016.

Socially Equitable Conditions

This rule moves toward creation of socially equitable conditions for individuals who have been disproportionately impacted by marijuana [cannabis] criminalization by revising and more fully describing the background check threshold review process for cannabis license applicants and renewing licensees. Among other things, it redesigns the existing criminal history point system that may have created barriers to entry in the legal cannabis market.

Stakeholder Engagement

A CR 101 was filed on February 17, 2021 and the notice to stakeholders was sent by GovDelivery. The public comment period for the CR 101 ended on March 31, 2021. No comments were received during the public comment period. However, four written comments unrelated to the draft conceptual rules were received after the end of comment period. These comments concerned the future availability of cannabis licenses.

As part of the rule development process, a public Listen and Learn session was planned for May 13, 2021, but was rescheduled and held on June 1, 2021. The session was attended virtually by approximately 25 people. Attendees of the Listen and Learn session shared a small amount of feedback on the draft conceptual rules, and their feedback is collected in the comment table as Attachment A. Feedback received in the Listen and Learn session included the following subjects:

CR 103 Memo

09/01/2021

- The effect of the changes to cannabis license applicant background checks on true parties of interest contained in WAC 314-55-035
- Possible changes to draft conceptual rule language to expand beyond WSP and FBI background checks only
- Possible changes to draft conceptual rule language to state that delegated LCB staff review background check information
- Reordering subsections of the draft conceptual rule related to the criminal history threshold review
- Differences between the threshold review and the existing criminal history review
- Concerns about consideration of active state supervision and active federal supervision status in the threshold review
- Concerns for applicants who are paying monetary sanctions to Washington courts
- Increasing or eliminating the 90 day hold period for applicants with pending criminal convictions, and the basis for the 90 day hold period
- Appeal rights of a threshold review
- The need for fingerprinting each time an applicant submits information for a background check

Rule Necessity

This rule is needed to remove unnecessary barriers to entry in the legal marijuana [cannabis] market by adopting a threshold review process for reviewing and evaluating the criminal conviction history of cannabis license applicants and renewing licensees.

Description of Rule Changes

Amended section. WAC 314-55-040: The adopted rule amends the title of WAC 314-55-040 from “What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?” to “Cannabis applicant or licensee background checks”.

Amended subsection. WAC 314-55-040(1): The existing point system table was updated and relocated to amended subsection WAC 314-55-040(3) described below. Language was revised to describe the purpose of background checks and what background checks include.

Amended subsection. WAC 314-55-040(2): Existing language was updated to remove reference to the point system and administrative closure. The subsection was retitled “Review and evaluation of information produced by background checks,” and describes the purpose of background check information review and evaluation.

Amended subsection. WAC 314-55-040(3): Existing language was amended to remove reference and description of exceptions to the prior point system. A new threshold review table was created, describing conviction type, conviction class, time consideration, and determination for threshold review. Additional language was added describing threshold review for any applicant or renewing licensee under active state or federal supervision.

Amended subsection. WAC 314-55-040(4): Existing language requiring the licensee to report any criminal convictions within fourteen days was removed. The subsection was retitled “Pending criminal charge review and evaluation” and describes review and evaluation criteria the Board will consider.

New subsection. WAC 314-55-040(5): The new subsection is titled “Threshold review evaluation criteria” and describes threshold review criteria the Board will consider.

New subsection. WAC 314-55-040(6): The new subsection is titled “Continued reporting” and describes conviction reporting 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 the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- Post rule adoption materials, including final rule language, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide information and training on request.

Rule Effectiveness Evaluation

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

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- 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.



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 314-55-040 – What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license? The Washington State Liquor and Cannabis Board (Board) has adopted rule amendments that frame the standards and thresholds for criminal history checks for marijuana [cannabis] licensees.

Citation of rules affected by this order:

New: _____

Repealed: _____

Amended: WAC 314-55-040

Suspended: _____

Statutory authority for adoption: RCW 69.50.331; RCW 69.50.342.

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-14-111 on July 7, 2021 (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: Jeff Kildahl

Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-664-1781

Fax: 360-664-3208

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	___	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	<u>1</u>	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	<u>1</u>	Repealed	___

Date Adopted: September 1, 2021

Name: David Postman

Title: Chair

Signature:

Place signature here

WAC 314-55-040 ((What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?)) Cannabis applicant or licensee background checks. ((1) When the WSLCB processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The WSLCB will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

~~(2) If a case is pending for an alleged offense that would earn eight or more points, the WSLCB will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the WSLCB will administratively close the application.~~

~~(3) The WSLCB may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:~~

~~Exception to criminal history point assignment.~~

~~(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.~~

~~(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;~~

~~(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.~~

~~(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.~~

~~(4) Once licensed, marijuana licensees must report any criminal convictions to the WSLCB within fourteen days.)~~ (1) The board conducts a background check of a new applicant or for license renewals to evaluate whether the applicant or licensee qualifies or requalifies

for a license. The background check includes a criminal record check through the Washington state patrol and the Federal Bureau of Investigations database.

(2) **Review and evaluation of information produced by background checks.** The board will review the information produced by background checks to determine whether the applicant or licensee qualifies for a new or renewed license. Information from the background check may not preclude approval, but will be considered in determining the applicant's eligibility for licensure.

(3) The board will conduct a threshold review for the following types of convictions:

Conviction Type	Conviction Class	Time Consideration	Determination
Felonies	<u>Class A and B convictions</u>	<u>10 years</u>	<u>Threshold review if 1 or more</u>
	<u>Class C convictions</u>	<u>7 years</u>	<u>Threshold review if 2 or more</u>
Misdemeanors	<u>Gross misdemeanors and misdemeanors</u>	<u>3 years</u>	<u>Threshold review if 3 or more</u>

(a) Active state supervision and active federal supervision resulting in determination of threshold review.

(b) The board will conduct a threshold review of any license applicant or license renewal if the background check indicates that the applicant or renewing licensee is under active state supervision, active federal supervision, or both.

(4) **Pending criminal charge review and evaluation.** The board will review and evaluate the applicant or renewing licensee's pending criminal charges. Review and evaluation criteria include, but are not limited to:

(a) A determination of whether the convictions of pending charge(s) alone or compiled would put an individual over the conviction allowance above.

(b) The application may be placed on hold for ninety days and if no disposition within ninety days, the application will be withdrawn.

(5) **Threshold review evaluation criteria.** When a background check results in a determination for a threshold review, the board will consider the following criteria:

(a) Time since the conviction, or pending offenses;

(b) Nature and specific circumstances of the offense;

(c) Relationship of the offense or incident to the nature of the work performed;

(d) Number of offenses or incidents;

(e) If criminal, any relevant evidence of rehabilitation, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the individuals conduct and experience since the time of the offense; and

(f) Any other relevant information, including information submitted by the applicant or licensee, or requested by the board.

(6) **Continued reporting.** Cannabis licensees must report any criminal convictions to the board within thirty days. New convictions will be considered upon receipt or at the time of renewal.



Notice of Permanent Rules

Regarding Amendment to WAC 314-55-040 – What criminal history might prevent a marijuana [cannabis] license applicant from receiving or keeping a marijuana [cannabis] license?

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of amendments to WAC 314-55-040.

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 Jeff Kildahl, Policy and Rules Coordinator, at (360) 664-1781 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules.

Initiative 502 (I-502) established a legal framework for the Board to review the criminal history of marijuana [cannabis] license applicants, along with broad rulemaking authority to create rules related to criminal history background check standards. The initial rules concerning this subject were initially established in late 2013, and the most recent revision occurred in early 2016.

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This amended rule moves toward creation of socially equitable conditions for individuals who have been disproportionately impacted by marijuana [cannabis] criminalization by revising and more fully describing the background check threshold review process for cannabis license applicants and renewing licensees. Among other things, it redesigns the existing criminal history point system that may have created barriers to entry in the legal cannabis market.

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- Possible changes to draft conceptual rule language to expand beyond WSP and FBI background checks only.
- Possible changes to draft conceptual rule language to state that delegated LCB staff review background check information.
- Reordering subsections of the draft conceptual rule related to the criminal history threshold review.
- Differences between the threshold review and the existing criminal history review.
- Concerns about consideration of active state supervision and active federal supervision status in the threshold review.
- Concerns for applicants who are paying monetary sanctions to Washington courts.
- Increasing or eliminating the 90-day hold period for applicants with pending criminal convictions, and the basis for the 90-day hold period.
- Appeal rights of a threshold review.
- The need for fingerprinting each time an applicant submits information for a background check.

Rulemaking history for this adopted rule:

CR 101 – filed February 17, 2021 as WSR #21-05-074.

CR 102 – filed May 26, 2021 as WSR #21-14-111.

Public hearing held August 18, 2021.

The effective date of these rules is October 2, 2021.

Public comment received on the rule proposal:

There were no public comments received on the proposed rules.

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

There were no changes to the proposed rules.