



CR 102 Memorandum

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

Date: June 24, 2020

Presented by: Kathy Hoffman, Policy and Rules Manager

Background

In August 2018, LCB 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, House Bill (HB) 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 proposed 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 proposed 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 reference to 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 Section. Title – WAC 314-55-035. Revised title from “What persons or entities qualify for a marijuana license?” to “Qualifying for a marijuana license.”

Amended Section. 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.

New Section. WAC 314-55-035(2) Previous rule required spousal vetting under the premise that any property obtained by either spouse during marriage was considered to be community property. Under that premise, 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.

However, the proposed rule concentrates on the nature of the business relationship and ownership interest as opposed to whether or not one is a spouse. Under that premise, married couples could potentially be considered as true parties of interest after attesting no interest in the license of their spouse, in up to ten retail licenses under WAC 314-55-079(3), six processor licenses under WAC 314-55-077(3) and six producer licenses under WAC 314-55-075(3).

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.

Amended Section. 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 Section. 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.

New Section. 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 Section. 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 HB 1794 are codified. WSLCB did not restate the legislation in rule since its provisions are clear.

New Section. 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.