

Marijuana True Party of Interest
May 20, 2020 Listen and Learn Session Comments

Source	Commenter	WAC Reference	Theme	Comment	Date Received
WebEx Live	David Otto	WAC 314-55-035 (first paragraph)	Control	Add the word demonstrable before control. The board may conduct an investigation of any true party of interest who exercises <i>demonstrable</i> control. Control should be something demonstrable. Suspicion, Innuendo, and Accusation is not helpful in my experience.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Control	“Exercising control”—in my experience there isn’t an analysis of whether there is control, usually it’s just a determination of the type of entity—LLC, etc.	5/20/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(2)	Control	Definition of control working in a larger scale biz; in a bigger biz, you could have middle level managers that start to meet this definition of control but aren’t on the license. Want to take a look at the language to really make sure that the language can work for small businesses up to large-scale businesses. It seems like the intent is to prevent an individual from owning multiple licenses	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(2)	Control	LLC, how do they determine control? Voting power. The definition as its currently written is a little incoherent. This definition needs a lot of development	5/20/2020
WebEx Live	Jeff Andersen	WAC 314-55-035(2)	Control	This doesn’t prevent the managers from managing their team. E.g. in his company, the CEO has control and the shareholders vote	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035(2)	Control	Provided background on how the workgroup spent a lot of time on the definition of control	5/20/2020
WebEx Chat Comment	Casey Craig	WAC 314-55-035(2)	Control	Subjecting midlevel managers (purchasers and the like) to true party of interest might have two positive effects on the industry. It might expose shadow vertical integration or cartel-like behavior, as well as limit the turnover of management which could expose diversion that is being misdirected by frequent staff turnovers.	5/20/2020
WebEx Chat Comment	David Otto	WAC 314-55-035(2)	Control	The "control" definition needs to distinguish between "enterprise control" versus "operational control". The definition as is, conflates the two types of control.	5/20/2020
WebEx Live	Jeff Andersen	WAC 314-55-035 Generally	Control	In reply to David Otto about the control/ “Demonstrably” language. Many different modifiers were considered in the committee but ultimately it became too confusing because those modifiers would have to be defined too. Trying to strike a balance	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035 Generally	Control	With the word “demonstrable,” the rabbit hole was –how do you define that? Would like to hear from David Otto about the definition of demonstrable	5/20/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (first paragraph)	Control	Revise the language added to the first paragraph about the board's authority to conduct investigations of any TPI who exercises control over the applicant's business operations with the following language: "The board may conduct an investigation of any true party of interest <u>either (i) as defined in WAC 314-55-035(1) or (ii) who exercises entity control over the applicant's business operations. The board's investigation is may extend to investigation of the person's include financial and criminal background investigations.</u> "	5/28/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (2)	Cost of goods sold	Add a definition for "cost of goods sold:" "(f) “Cost of goods sold” means the cost of inventory of a licensed business over a particular period of time plus purchases and other costs, minus inventory of that licensed business over the same period of time."	5/28/2020
Email/ Redline	Ryan Lee	WAC 314-55-035 (2)	Demonstrable	Add a definition for "demonstrable:" "(c) "Demonstrable" means the existence of, through clear and convincing evidence, a legally cognizable and/or enforceable agreement, arrangement, or other document that expressly grants actual rights, privileges, or authority to a party, and which agreement, arrangement, or other document can be produced or otherwise identified with sufficient particularity to satisfy the evidentiary standard set forth herein."	5/28/2020

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Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Entities with right to receive revenue, gross profit, or net profit, or exercising control over a licensed business	In the 5th row of the TPI table, revise the entity category to read "Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising who exercise(s) entity control over a licensed business." and define TPI for these entities as follows: "Any entity(ies) or person(s) with a right to receive some or a fixed percentage of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year, <u>where such right arises from a demonstrable agreement whose primary purpose is to transfer such right to receive revenue, gross profit, or net profit from the licensee to the entity.</u> " and "Any entity(ies) or person(s) who exercise(s) <u>entity</u> control over the licensed business."	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Entity control	Remove the definition of "control" and replace with two definitions, one for "entity control" and one for "operational control." (a) "Entity control" means the demonstrable authority to make or otherwise direct the occurrence of fundamental changes to, and strategic decisions of, a licensed business as a result of either (i) a party's ability to exercise voting power, either individually or in concert with other stakeholders, that is equal to or greater than fifty percent (50%), or any such other percentage ownership amount as is required by the entity's governing documents to make or otherwise direct the occurrence of such fundamental changes and strategic decisions, or (ii) a party's ability to override the authority of any manager's and/or employee's exercise of operational control.	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Financial institution	Revise the definition of "financial institution" as follows: "(d) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under authorized to do business in the State of Washington and otherwise subject to the jurisdiction of the department of financial institutions	5/28/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(6)	Financier	Subsection (a)- consider including language allowing for govt entities to provide finances; There could be opportunities for a nonfinancial institution to be able to provide funds to a cannabis licensee/ provide for alternate sources	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(6)	Financier	Provision of Money as a gift or a loan to a business? Seems clear its okay to provide money as a gift or loan to an applicant, but what about a business; again, would like to clarify definitions. If ambiguity exists, decisions or findings should be in favor of the licensee.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(6)	Financier residency	Subsection (c) –says must reside in the United States. Unsure if there is a statutory basis for it. Without a statutory basis, doesn't believe this language is an appropriate inclusion in the rule.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035(6)	Financiers	Revise subsection (6)(b) as follows: "(b) A financier may not receive <u>any of the following items 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: (i) an ownership interest in the licensed business, (ii) entity control of the licensed business, (iii) a share percentage of revenue, gross profits, or net profits from the licensed business, (iv) a profit sharing interest in the licensed business, or (v) 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 of the licensed business.</u> "	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Gross profit	Revise the definition of "gross profit" as follows: "(g) "Gross profit" means <u>revenue over a particular period of time (e.g., daily, monthly, quarterly, or annually)-sales</u> minus the cost of goods sold <u>over the same period of time.</u> "	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Net profit	Revise the definition of "net profit" as follows: "(h) "Net profit" means <u>gross profits over a particular period of time (e.g., daily, monthly, quarterly, or annually)</u> minus all other operating, <u>interest, and tax</u> expenses of the <u>licensed business over the same period of time.</u> "	5/28/2020
WebEx Live	Casey Craig	WAC 314-55-035(2)	Notification obligation	Enforcement officers might be surprised to walk into a facility and see a lot of new expensive equipment/capital. Might help to give notice to the enforcement officer that capital investments have been made from revenue	5/20/2020

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Email/Redline	Ryan Lee	WAC 314-55-035(4)	Notification obligation	Revise the first sentence in subsection (4)(a)(iii) to read as follows: "(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 prior to any notification and vetting by the board. Licensees shall keep an accurate and complete accounting of all funds invested in the licensed business pursuant to this section and report such accounting on or before the final day of the fiscal quarter in which such funds were received. 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.	5/28/2020
WebEx Live	David Otto	WAC 314-55-035(4)	Notification obligation	Vet the money on a quarterly basis, after the money is received; Notification obligation should be restructured and revised in line with business needs; overly burdensome from an operational standpoint.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Operational control	Remove the definition of "control" and replace with two definitions, one for "entity control" and one for "operational control." (b) "Operational control" means the authority to control normal day-to-day operations of a licensee, including but not limited to the authority to make decisions with respect to financial operations, inventory, production, processing, and retail operations, managing employees, and otherwise acting pursuant to the direction of any individual and or entity that possesses entity control.	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Privately held corporation	In the 2nd row of the TPI table applicable to a "privately held corporation," add "directors" i.e. "All corporate officers <u>and directors</u> (or persons with equivalent title) All stockholders")	5/28/2020
WebEx Live	David Otto	WAC 314-55-035(1)	Publicly held corporation	Publicly held corporation—having all the stockholders have to vetted is not practical since those can change frequently—perhaps should be limited to shareholders that have control/ controlling interest	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	Publicly held corporation	In the 3rd row of the TPI table applicable to a "publicly held corporation," revise as follows: "All corporate officers <u>and directors</u> (or persons with equivalent title) All Stockholders <u>who either (i) own, directly or indirectly, at least 10% of all issued and outstanding shares in the corporation or (ii) exercise entity control of the corporation individually or in concert with other stakeholders</u> "	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Residency	Residency restrictions—debate as to whether it's appropriate. Also confusing for clients—do you just have to have residency at outset, or do you need to continue to maintain residency? What is LCB's position about whether there's a continuing residency requirement?	5/20/2020
WebEx Live	Lukas Hunter	WAC 314-55-035(1)	Residency	Concerns about residency requirements? Could these rules incorporate language from ch 69.50 RCW to give room for rules to adapt in the future.	5/20/2020
WebEx Live	Sami Saad	WAC 314-55-035(2)	Residency	The residency requirement should be around 2 years.	5/20/2020
WebEx Live	Jim MacRae	WAC 314-55-035(3)	Retroactivity	Wants to make sure that these rules are not applied retroactively to licensees	5/20/2020
WebEx Live	Mitzi Vaughn	WAC 314-55-035(3)	Retroactivity	(Responding to Jim MacRae) Generally, as a legal concept the rules that apply are those that are in effect at the time of violation	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(4)	Revenue	Be careful with the defined term "revenue." Needs work to tie it in to the way it is used in the notification section.	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (2)	Revenue	Add a definition for "revenue:" "(e) "Revenue" means the cumulative aggregate U.S. dollar amount received by the licensed business for the sale of all goods and services associated with the principal operations of the licensed business over a particular period of time (e.g., daily, monthly, quarterly, or annually) before deducting any costs or expenses over that same period of time."	5/28/2020

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WebEx Chat Comment	David Otto	WAC 314-55-035(2)	Revenue, Gross profit, and Net profit	The definitions of gross and net profit, and revenue must be revised to be consistent with the concept of those terms.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(1)	Spouses	I think it's appropriate from a policy perspective that spouses have been removed	5/20/2020
WebEx Live	Crystal Oliver	WAC 314-55-035(1)	Spouses	Supportive of the removal of the spousal vetting requirements	5/20/2020
WebEx Live	Jim MacRae	WAC 314-55-035(1)	Spouses	Spousal requirements—does the removal of the spousal requirement effectively double the number of licenses that a couple could receive?	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (1)	TPI generally	Revise the first sentence in subsection (1) concerning TPI requirements to read as follows: "True parties of interest must qualify meet all qualifications to be listed on the license, and meet residency requirements as consistent with this chapter, <u>including the applicable residency requirements</u> . For purposes of this title, "true party of interest" means <u>any person(s) or entity(ies) that exercise entity control over a licensed business and the following</u> :"	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not	Add a new subsection (3)(i) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (i) Any person(s) or entity(ies) that have (i) neither an ownership stake in the licensed business, (ii) nor entity control of the licensed business, but still maintain business, legal, and other relationships with the licensee or applicant, including but not limited to, non-marijuana related business relationships, attorney-client relationships, or sharing the same business or mailing address."	5/28/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Branding/Staffing Company	Revise subsection (3)(f) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (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 such business or individual <u>does not also possess entity control over the licensed business</u> ."	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: IP License	Also would be helpful to talk about whether the IP license arrangements are inside or outside the TPI requirements (typically--royalty + measure of control)	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Landlord	Revise subsection (3)(a) as follows "(3) For purposes of this chapter, "true party of interest" does not include: (a) A person or entity receiving <u>entitled to receive</u> payment for rent on a fixed basis under a lease or rental agreement."	5/28/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: Management Company	Unclear under (f) whether a management company comes in operating day to day operations would come in under the TPI requirements	5/20/2020
WebEx Live	David Otto	WAC 314-55-035(3)	What a TPI is not: nonexhaustive list	Section 3 indicates what a TPI is not. Should there be Clarifying information about what a TPI is not? Important to emphasize that this is not an exhaustive list.	5/20/2020
WebEx Live	Emily Gant	WAC 314-55-035(3)	What a TPI is not: Option contract	Subsection (e): would be helpful to clarify about options that there is usually down payment upfront and then a larger payment when the option is exercised	5/20/2020
Email/Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Option contract	Revise subsection (3)(e) as follows "(3) For purposes of this chapter, "true party of interest" does not include: . . . (e) A person with an option to purchase the applied-for or licensed business, so long as no money has been <u>shall be</u> 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, <u>until after the exercise or expiration of the option agreement</u> ."	5/28/2020

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Email/ Redline	Ryan Lee	WAC 314-55-035 (3)	What a TPI is not: Person exercising operational control	Add a new subsection (3)(h) as follows: "(3) For purposes of this chapter, "true party of interest" does not include: . . . (h)Any person(s) exercising operational control over a licensed business, provided such person does not either (i) possess any ownership stake in the licensed business or (ii) entity control over the licensed business."	5/28/2020
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