



CR103 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

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 (CR102) 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

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09/2/2020