



CR103 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
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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:

- 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 (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 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.