



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: July 07, 2021

TIME: 11:50 AM

WSR 21-14-111

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-05-074 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 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) proposes changes to current rules that frame the standards and thresholds for criminal history checks for marijuana [cannabis] licensees.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 18, 2021	10:00 a.m.	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments.	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings .

Date of intended adoption: Not earlier than September 1, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Jeff Kildahl, Policy and Rules Coordinator
Address: 1025 Union Avenue, Olympia, WA 98501
Email: rules@lcb.wa.gov
Fax: 360-704-5027
Other:
By (date) August 18, 2021

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources
Phone: 7-1-1 or 1-800-833-6388

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: anita.bingham@lcb.wa.gov

Other:

By (date) August 4, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to revise the background check review and evaluation standards to remove unnecessary barriers for individuals who have been disproportionately impacted by marijuana [cannabis] criminalization. The proposed rule replaces the existing criminal history point system for determining if a cannabis license applicant or licensee qualifies or requalifies for a license with a threshold review process for reviewing and evaluating conviction information. This proposal also changes 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".

Under the proposed rule, criminal history information from the background check may not preclude approval, but will be considered in determining eligibility for licensure. The Board will conduct a threshold review if the background check indicates one or more class A and B felony convictions within the past ten years, two or more class C felony convictions within seven years, or three misdemeanors or gross misdemeanor convictions within three years. The Board will also conduct a threshold review if the background check indicates the applicant or renewing licensee is under active state supervision, active federal supervision, or both, and will conduct a threshold review if the applicant or renewing licensee has pending criminal charges.

The Board will consider certain criteria in the threshold review, including the time since the conviction or pending offenses, the nature of the specific offense, the nature of the offense or incident to the nature of the work performed, the number of offenses or incidents, evidence of rehabilitation since the time of offense, and any other relevant information. Failure by the applicant or licensee to disclose full criminal history will not be considered in the threshold review, but licensees will be required to report any future criminal convictions to the Board within thirty days.

Reasons supporting proposal: This proposal promotes socially equitable conditions for individuals who have been disproportionately impacted by marijuana [cannabis] criminalization by implementing a criminal history threshold review process for marijuana license applicants and renewing licensees and ending the existing criminal history point system which may negatively affect applicants who have inadvertently failed to disclose full details of their past criminal history.

Statutory authority for adoption: RCW 69.50.331; RCW 69.50.342

Statute being implemented: N/A

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Rules Manager	Katherine Hoffman, Policy and	1025 Union Avenue, Olympia WA, 98501	360-664-1622
Implementation: Regulation Director	Rebecca Smith, Licensing and	1025 Union Avenue, Olympia WA, 98501	360-664-1615

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rulemaking does not qualify as a significant legislative rule or other rule requiring a cost benefit analysis under RCW 34.05.328(5)(c).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
RCW 34.05.310 (4)(c) (Incorporation by reference)
RCW 34.05.310 (4)(d) (Correct or clarify language)
RCW 34.05.310 (4)(e) (Dictated by statute)
RCW 34.05.310 (4)(f) (Set or adjust fees)
RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is not exempt, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under

chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential **administrative** costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores, both medicinal and recreational, 424590 for marijuana processors, 111998 for outdoor marijuana growers, and 111419 for indoor marijuana growers. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects 4 hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
453998	\$200	Marijuana stores, medicinal and recreational	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$3,615.53	\$3,024.31 2018 Dataset pulled from ESD	\$3,615.53 2018 Dataset pulled from DOR
424590	\$200	Marijuana merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79	\$3,684.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR
111998	\$200	Marijuana, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 2018 Dataset pulled from DOR
111419	\$200	Marijuana, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, implementation of these rules are not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: July 7, 2021	Signature: 
Name: David Postman	
Title: Chair	

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:

<u>Conviction Type</u>	<u>Conviction Class</u>	<u>Time Consideration</u>	<u>Determination</u>
<u>Felonies</u>	<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>
<u>Misdemeanors</u>	<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.