



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-083(4)(f) – Security and traceability requirements for cannabis licensees.)

Date: October 11, 2023

Presented by: Cassidy West, Policy and Rules Manager

Background

On August 15, 2023, Anders Taylor of Sweet Leaf Sowers, LLC, submitted a petition for adoption, amendment, or repeal of a state administrative rule to the Washington State Liquor and Cannabis Board (Board). The petition requests that the agency amend WAC 314-55-083(4)(f) to allow cannabis licensees to use a batch tracking system in which plants of the same strain and growth stage are grouped together under a single identifier. The current rules require each plant that is eight inches in height or width to be physically tagged with a unique identifier and tracked individually.

Mr. Taylor proposed the following new rule language:

"(f) All cannabis plants eight or more inches in height or width must be physically tagged and tracked. However, instead of requiring individual unique identifiers for each plant, licensees may utilize a batch tracking system, where plants of the same strain and growth stage are grouped together under a single unique identifier. This approach maintains the integrity of the traceability system while reducing the complexity and administrative burden on licensees."

Mr. Taylor identified his rationale for the proposed rule change as follows:

Simplification: The proposed amendment simplifies the tracking process, making compliance more manageable for licensees.

Cost-Effectiveness: By allowing batch tracking, the proposal reduces costs associated with tagging and tracking individual plants.

Maintaining Safety and Integrity: The amendment maintains the core objective of preventing diversion and promoting public safety by ensuring that cannabis is traceable from seed to sale.

Other Inventories are Batch Tracked: Clones can be tracked using batches. Harvests can also be tracked using batches. Individual plant tracking does nothing except increase complexity of operations.

Lastly, Mr. Taylor provided an introduction and conclusion for his rule petition as follows:

Introduction:

The current traceability requirements under WAC 314-55-083 mandate that all cannabis plants eight or more inches in height or width must be physically tagged and tracked individually.

While the intention of ensuring safety and preventing diversion is commendable, this requirement places an undue burden on licensees without clearly stating the specific purpose of improving public safety or preventing diversion.

Conclusion:

The proposed amendment to WAC 314-55-084 seeks to balance the need for robust traceability with the practical considerations of licensees. By allowing for batch tracking, the amendment streamlines the process without compromising the goals of safety and prevention of diversion.

Issue

Whether the Board should initiate the rulemaking process to consider amending [WAC 314-55-083\(4\)\(f\)](#) to allow the use of a batch tracking system for cannabis plants that are eight inches in height or width.

Batch tracking is a method of inventory management that assigns a unique identifier to a group of items that share the same characteristics. Batch tracking allows inventory to be traced from origin, by location, and through its movement throughout the supply chain, maintaining a chain of custody for inventory. There are different types of batch tracking systems, such as barcode, RFID, QR code, or serial number, that can capture and store the inventory information.

In the cannabis industry, tracking by batch means keeping a record of the quantity of plants and its yield. When plants are harvested, the flowers are combined into lots, at which point each individual plant can no longer be distinguished. It is important to consider whether there is a continued value by requiring licensees to track each plant individually rather than the quantity within a batch.

Analysis

When making a determination for a petition response, the following factors are considered to the extent practicable:

- LCB's statutory authority and obligations;
- Alignment with the Agency's policy goals and priorities;
- The immediacy of the safety, environmental, or security concern raised;
- Availability of LCB resources and priority of the issues raised;
- Level of public interest;
- Whether the problems or issues are already under consideration by the LCB in other rulemaking issues;
- Merits of the petition;
- LCB's relevant past decisions and current policies;
- Social equity and DEIB impacts; and
- Potential impacts related to preventing diversion and promoting public safety.

Accepting the rule petition does not mean the Agency would begin developing rules to allow batch tracking, but rather provides an opportunity for the Agency to assess whether and how a regulation should be revised to ensure the most favorable outcomes.

The proposed rule change is within the LCB’s statutory authority.¹ The petitioner is requesting an amendment to [WAC 314-55-083\(4\)](#) which describes the security and traceability requirements for cannabis licensees. [RCW 69.50.342](#) and [RCW 69.50.345](#) grant the Board broad statutory authority to adopt cannabis rules, including, but not limited to, rules related to traceability requirements for cannabis inventory. Consistent with statute, [WAC 314-55-083\(4\)](#) provides that cannabis plants that are eight inches in height or width must be physically tagged with a unique identifier generated by the traceability system specified by the LCB and tracked individually.

The petitioner’s request is aligned with LCB’s statutory obligations. Consistent with [RCW 69.50.345\(6\)\(c\)](#), LCB must consider economies of scale, and the impact on licensees’ abilities to comply with the regulatory requirements and undercut illegal market practices. [WAC 314-55-083\(4\)](#) provides that all costs related to reporting requirements are borne by the licensees. The petitioner’s states in the rationale that the proposed rule change would reduce the compliance burden for licensees by simplifying the requirements, providing additional flexibility for businesses, and reducing costs associated with tagging and tracking plants individually. Given this, it may be necessary to consider rulemaking on this topic and evaluate whether the current requirements impose an undue burden while not necessarily providing a greater benefit with regards to regulatory outcomes (preventing diversion and promoting public safety) compared with a batch tracking system. Stakeholder input is critical to make this determination, and approving the petition would create the opportunity to gather feedback in the rulemaking process.

Allowing the option to utilize either an individual plant tracking system or batch tracking system would increase operational flexibility for licensees and may reduce the compliance burden by decreasing operating costs. If it is determined that there is little value in individual plant tracking for regulators, there may still be value for the business to continue to collect granular data that can help optimize current and future crops. Providing licensees additional flexibility helps dismantle an existing structure that may have a disproportionate or undesirable impact on new **social equity** licensees.

The petitioner’s request is aligned with the Agency’s policy goals and current priorities. It has been a decade since adult-use cannabis was first legalized in Washington state, and there have been significant advancements in the industry and technology. It may be necessary to review and update the traceability requirements.

The requirement in [WAC 314-55-083\(4\)](#) to individually tag and track cannabis plants once they reach eight inches in height or width became effective on November 21, 2013.² There have been variations in the rule language, including but not limited to, changing “marijuana” to cannabis,” but the individual plant tagging and tracking requirement has not changed.³

- Definition for “marijuana plant” was established in rule in 2016;⁴
- Definition for “immature plant” was established in rule in 2018.⁵

Per the current definition in [WAC 31-55-010](#), a cannabis plant is an immature plant or clone until it is 12 inches in height or diameter. Although clone lots are allowed and a plant is a clone until it is 12 inches in height or diameter, when the clone reaches eight inches in height or diameter, it must be individually tagged and tracked. This discrepancy does not necessarily constitute a contradiction in the requirements. However, it would be prudent to evaluate whether individual plant tagging is still relevant, and, if so, to determine at which phase in the growth cycle it would be appropriate to tag a plant. Both Colorado and Oregon require individual plants to be tagged like in Washington, however, in 2024, Oregon will transition to allowing a batch tracking system, and Colorado is considering a transition to a batch tracking system for cannabis inventory management.

Furthermore, since cannabis was legalized, a variety of reporting and/or traceability vendors and software has been used. To date, there has not been a solution that fully supports the needs of LCB staff and external users. Past products have included:

- Biotrack 2014-2017
- Leaf/MJ Freeway 2017-2021
- Central Cannabis Reporting System (CCRS) 2021-present

CCRS was designed to be an interim solution until a more permanent solution could be developed. Although the current rules were written such that inventory tracking software required must have adequate seed-to-sale capabilities⁶, the LCB CCRS does not track all aspects that are tracked by licensees.

[Policy Statement 21-10](#), effective in December 2021, describes adjustments to the cannabis licensee traceability reporting requirements that support the transition from the Leaf Data Systems to CCRS. The policy statement provides that **weekly reporting** meets the requirement in rule that certain information described in WAC 314-55-083(4)(a) through (p) be kept “**up-to-date**” in a system specified by the LCB. In addition, instead of physically tagging “[a]ll cannabis, useable cannabis, cannabis-infused products, cannabis concentrates, seeds, plant tissue, clone lots, and cannabis waste using a unique identifier **generated by** the traceability system, the unique identifier used must be **reported to** the traceability system since CCRS does not generate unique identifiers. Pursuant to [RCW 34.05.230\(1\)](#), policy statements are used to advise the public of its current opinions, approaches, and likely course of action, however, they are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing policy statements into rule.⁷

Furthermore, LCB is developing a charter for a Traceability Project in which the goal is to clearly define the cannabis regulatory program and provide a vision for the future of cannabis regulation, reporting, and traceability in Washington state for the successful transition to a long-term reporting system that fully supports reporting obligations and traceability needs. The project scope includes engaging with industry members to obtain input on reporting and traceability to ensure the **highest level of public health safety**, provide an **equitable framework for licensees**, **reduce diversion**, and increase tax revenue. Since the Agency is already in the process of reviewing and examining the future of reporting and traceability, the submission of this petition is timely. Accepting the rule

petition would initiate the collaborative rulemaking process to gather relevant internal and external stakeholder feedback necessary for informing the future of reporting and traceability. Additionally, there is a **high level of public interest in addressing the traceability framework**.

The proposed rule change may improve public health and safety outcomes.

The concept of batch tracking is not inconsistent with the existing regulations. The petitioner requests allowing a batch tracking system where plants of the same strain and growth phase are grouped together under a single unique identifier rather than tagging and tracking the plants individually. The current rules already allow groups of plants to be combined and assigned a unique identifier when they are clones, (i.e., clone lots), and then again after harvest. Instead of assigning each individual plant a new unique identifier once it reaches eight inches in height or width and breaking the chain of custody, the original unique identifier assigned to the clone lot would remain throughout harvest and processing, until the lots are packaged for retail sale. Therefore, the base material used in the processing of a concentrate or infused product could be identified by the lot number originally assigned [to the clone lot] as required by [WAC 314-55-083](#).

If the petition is accepted, to ensure the proposed rule change would advance public health and safety, and prevent diversion, at least the following would be required:

- Robust seed-to-sale traceability system that can capture where the plant originated;
- Clearly defined regulatory framework for a batch tracking inventory management system that is compatible with the seed-to-sale traceability system. The regulatory framework must:
 - Identify the specific quantity of plants that may be within a single lot or batch;
 - Identify the characteristics for plants that make up a lot or a batch, including, but not limited to, being planted, and harvested at the same time, having substantially similar conditions through cultivation and processing, and be of the same origin (same mother plant);
 - Require licensees to physically tag lots or batches using a unique identifier generated by the traceability system specified by the LCB; and
 - Require reporting so that there is an adequate chain of custody from seed-to-sale.

Allowing licensees to use a batch tracking system would not substantially affect the existing regulatory framework but could enhance it by reducing the compliance burden for licensees. A regulatory framework that requires seed-to-sale traceability is common in states with medical and adult-use cannabis laws. Washington's underlying seed-to-sale traceability framework is effectively the same as in other states, including those that allow batch tracking (California and Oregon), require individual plant tagging and tracking (Colorado), or allow both (Maine). Although many of these states utilize Metrc as the traceability software, batch tracking inventory management is a standard in many other industries, including food and drugs, both of which have significant impacts to public health and safety.



Other states consulted in preparing the response to this petition that allow batch tagging have not documented increased penalties on licensees related to diversion or adverse public health outcomes that are the direct result of allowing a batch tracking inventory management system, having also implemented robust seed-to-sale traceability systems.

Conclusion

Based on the reasons described above, the Director’s Office staff recommends that the Board approve the petition and initiate rulemaking to consider amending [WAC 314-55-083\(4\)\(f\)](#) to allow a batch tracking system for cannabis plant inventory.

Board Action

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Anders Taylor on August 15, 2023.

<input type="checkbox"/> Accept <input type="checkbox"/> Deny	<i>Not Present</i>	<u>10.11.2023</u>
	David Postman, Chair	Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>10.11.2023</u>
	Ollie Garrett, Board Member	Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>10.11.2023</u>
	Jim Vollendroff, Acting Chair	Date

Attachments

1. Email from Anders Taylor received August 15, 2023, containing rule petition.

¹[RCW 69.50.342](#) identifies the agency’s rulemaking authority regarding cannabis and authorizes the board to adopt rules to effectuate or fix any deficiency with the provisions of chapter 3, Laws of 2013, or adopt rules that are not inconsistent with the spirit of the law when the board deems that it is necessary or advisable.

[RCW 69.50.342\(1\)\(b\)](#) provides that the Board is empowered to adopt rules regarding books and records to be created and maintained by licensees, the reports to be made thereon to the board, and inspection of books and records.

[RCW 69.50.345\(3\)](#) directs the Board to consider security and safety issues for rules adopted to establish procedures and criteria necessary to determine the maximum quantities of cannabis a producer may have on the premises of a licensed location at any one time.

[RCW 69.50.345\(6\)\(c\)](#) provides that the Board must take into consideration economies of scale, and their impact on licensees’ ability to both comply with regulatory requirements and undercut illegal market prices, in rule development.

[WAC 314-55-083\(4\)\(f\)](#) provides the security and traceability requirements for cannabis and states that [a]ll cannabis plants eight or more inches in height or width must be physically tagged with a unique identifier generated by a traceability system specified by the LCB and tracked individually.

² [WSR 13-21-104, filed 10/21/2013 and effective 11/21/2013](#)

³ [WSR 22-14-111, filed on 1/10/2019 and effective on August 1, 2019](#)

⁴ [WSR 16-11-110, filed on May 18, 2016 and effective June 18, 2016](#)

⁵ [WSR 18-22-055, filed 10/31/2018 and effective on 12/1/2018](#)

WAC 314-55-010(14) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

⁶ [WAC 314-55-083\(4\)](#) Traceability: To prevent diversion and to promote public safety, cannabis licensees must track cannabis from seed to sale. Licensees must provide the required information on a system specified by the WSLCB.

⁷ [RCW 34.05.230](#) Interpretive and policy statements. (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.