



Washington State
Liquor and Cannabis Board

Date: March 27, 2020

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Agency Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Jim Morgan, Chief Financial Officer

Subject: **Approval to adopt an emergency rule (CR 103E) regarding WAC 314-55-092 - Failure to pay excise taxes and late payment of excise taxes**

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the State, prohibiting people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

All entities and license types under the authority of the Board have been adversely impacted by the COVID-19 pandemic, and enforcing statutes and rules related to these entities and license types affects the ability of some of these entities to maintain and sustain operations while effectively participating in combating the spread of COVID-19.

The Board has the authority to both assess and waive penalties in rule for marijuana licensees. This emergency rule:

- Provides a waiver, retroactive to February 29, 2020, of penalties for failure to pay or late payment of excise taxes that become due while Governor’s Proclamation 20-13 is in effect;
- Supports the ability of businesses to adjust to the COVID-19 outbreak; and
- Reduces economic hardships suffered by businesses during the temporary suspension of business consistent with Governor’s Proclamation 20-13.

This rule does **not** relieve any WSLCB licensee from its statutory obligation to remit taxes to the WSLCB.

Process

The Agency Policy and Rules Coordinator requests that the Board adopt the emergency rule as presented, and requests approval to file this emergency rule with the Washington State Office of the Code Reviser. A CR 103E Memorandum on this rule was presented at the Board meeting on March 27, 2020, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

March 27, 2020	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
March 27, 2020	Emergency rule becomes effective.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: CR 103E Memorandum



CR 103E Memorandum

WAC 314-55-092 – Failure to pay excise taxes and late payment of excise taxes

Date: March 27, 2020
Presented by: Kathy Hoffman, Agency Policy and Rules
Coordinator

Issue:

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on a number of findings, including but not limited to:

- Guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons; and
- The necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food and beverage service, theater, bowling or other similar activities.

The Board administers licensing, enforcement and education services for marijuana producers, processors, and retailers. Consistent with statute, regulation and administrative provisions, licensees under the administration of the Board are subject to various taxes and fees. Licensees are required to timely report and remit those taxes and fees to the Board consistent with RCW 69.50.535. If the Board determines that a licensee is delinquent in reporting or

remitting any of the required taxes and fees, including any penalties on required taxes, the Board may suspend, or deny renewal or issuance of a license.

All entities and license types under the authority of the Board have been adversely impacted by the COVID-19 pandemic, and enforcing statutes and rules related to these entities and license types affects the ability of some of these entities to maintain and sustain operations while effectively participating in combating the spread of COVID-19.

Reasons why rules are needed:

The Board has the authority to both assess and waive penalties in rule for marijuana licensees. This emergency rule:

- Provides a waiver, retroactive to February 29, 2020, of penalties for failure to pay or late payment of excise taxes that become due while Governor's Proclamation 20-13 is in effect;
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This rule does **not** relieve any WSLCB licensee from its statutory obligation to remit taxes to the WSLCB.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR 101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.



RULE-MAKING ORDER

EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: WAC 314-55-092 – Failure to pay excise taxes and late payment of excise taxes. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule to amend WAC 314-55-092 that provides a waiver of penalties for excise taxes that become due under RCW 69.50.535 while Proclamation 20-13 is in effect.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 314-55-092
 Suspended:

Statutory authority for adoption: RCW 69.50.535; RCW 69.50.342.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the State. Proclamation 20-13 was based on both guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

The Board administers licensing, enforcement and education services for marijuana producers, processors, and retailers. Consistent with statute, regulation and administrative provisions, licensees under the administration of the Board are subject to various taxes and fees. Licensees are required to timely report and remit those taxes and fees to the Board consistent with RCW 69.50.535. If the Board determines that a licensee is delinquent in reporting or remitting any of the required taxes and fees, including any penalties on required taxes, the Board may suspend, or deny renewal or issuance of a license.

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**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date Adopted: March XX, 2020

Name: Jane Rushford

Title: Board Chair

Signature:

Place signature here

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-092 Failure to pay excise taxes and late payment of excise taxes. (1) If a marijuana licensee does not submit its payment(s) to the WSLCB as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on the outstanding balance for any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day. Absent a postmark, the date received at the WSLCB or authorized designee, will be used to assess the penalty of two percent per month on the outstanding balance after the twentieth day of the month following the month of sale.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the WSLCB to suspend or revoke a marijuana license.

(3) Subsections (1) and (2) of this section are waived,
retroactive to February 29, 2020, while Governor's Proclamation 20-13
is in effect.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and
69.50.369. WSR 18-22-055, § 314-55-092, filed 10/31/18, effective
12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-
110, § 314-55-092, filed 5/18/16, effective 6/18/16; WSR 14-10-044, §
314-55-092, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW
69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-
092, filed 10/21/13, effective 11/21/13.]