



Washington State
Liquor and Cannabis Board

Date: January 18, 2023

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Daniel Jacobs, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Toni Hood, Agency Deputy Director
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director
Justin Nordhorn, Policy and External Affairs Director
Kathy Hoffman, Policy and Rules Manager

Subject: **Approval to file a pre-proposal statement of inquiry (CR 101) regarding cloud storage.**

The Washington State Liquor and Cannabis Board is considering amending, repealing, and creating rule sections in Title 314 WAC as necessary to allow cannabis, vapor, tobacco, and liquor licensees to use cloud storage options in lieu of physical, on-premises storage for recordkeeping.

Process

The Policy and Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR 101 Memorandum was presented at the Board meeting on January 18, 2023, and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process is outlined below:

January 18, 2023	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 is filed with the Office of the Code Reviser. Webpage is updated and notice circulated by GovDelivery distribution list. Informal comment period begins.
February 1, 2023	Notice is published in the Washington State Register under WSR 23-03.
February 21, 2023	Informal comment period ends.

May 10, 2023	Board is asked to approve filing proposed rules (CR 102). CR 102 is filed with the Office of the Code Reviser. Webpage is updated and notice circulated by the rules distribution list. Formal comment period begins.
June 7, 2023	Notice is published in the Washington State Register under WSR 23-11.
June 27, 2023	Public hearing is held and formal comment period ends.
July 19, 2023	Board is asked to adopt rules, if no substantive changes are made (CR 103). Concise Explanatory Statement is provided to individuals offering written or oral comment at the public hearing or during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. Webpage is updated and notice circulated by GovDelivery distribution list.
August 19, 2023	Rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

_____ Approve	_____ Disapprove	_____	_____
		David Postman, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Jim Vollendroff, Board Member	Date

Attachments: CR 101 Memorandum.
August 31, 2022 Response to Petition for Rule-Making



CR 101 Memorandum

Re: Cloud Storage.

Date: January 18, 2023
Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

On July 8, 2022, Brooke Davies, on behalf of the Washington Cannabusiness Association, submitted a petition for adoption, amendment, or repeal of a state administrative rule to the Washington State Liquor and Cannabis Board (Board). The petition requested that the Board amend WAC 314-55-083 and 314-55-087 to allow cannabis licensees to use cloud storage options for certain recordkeeping requirements.

On August 31, 2022, the Board accepted the petition. Consistent with RCW 34.05.330(1)(b), the Board agreed to initiate the rulemaking process and begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of allowing cannabis licensees to use cloud storage as a recordkeeping option in lieu of physical, on-site storage.

In the interest of providing consistent recordkeeping requirements for all of the industries that the Board regulates, the scope of the CR 101 preproposal statement of inquiry is drafted to allow the Board to explore this possibility not only for cannabis licensees, but also for vapor, tobacco, and liquor licensees—to the extent allowed by the different recordkeeping statutes for these respective industries.

Reasons Why Rulemaking Is Needed

New rule sections and amendments to, or repeals of, existing rule sections in Title 314 WAC may be necessary to allow cannabis, vapor, tobacco, and liquor licensees to use cloud storage options in lieu of physical, on-premises storage for recordkeeping.

Process

The rulemaking process begins by announcing the Board's intent to consider changes to existing rules, add new rule sections, or both by filing a pre-proposal statement of inquiry (CR 101) form with the Office of the Code Reviser. This

allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing possible rule changes.

At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested person may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity related to this pre-proposal statement of inquiry. The notice will identify the public comment period and where comments can be sent.



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – Request to allow cannabis licensees to use cloud storage options for recordkeeping required by WAC 314-55-083 and 087.

Date: August 31, 2022

Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

On July 8, 2022, Brooke Davies, on behalf of the Washington Cannabusiness Association, submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-55-083 and 314-55-087 to allow cannabis licensees to use cloud storage options for certain recordkeeping requirements.

In the rule petition, Brooke Davies states:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC 314-55-083 and WAC 314-55-087

- I am requesting the following change: Conduct rulemaking and stakeholder engagement in order to update and streamline the record keeping requirements outlined in 314-55-083 and 314-55-087 to allow for cloud storage options
- This change is needed because: The current requirement to keep hard copies in storage devices or paper form physically on premise is cumbersome and costly without benefiting public safety. Additionally cloud storage options have better security features now
- The effect of this rule change will be: An updated set of regulations that allow licensee to utilize cloud storage options will create greater efficiency and cost savings while increasing transparency, security and safety

Issue

Whether the Board should initiate the rulemaking process to consider allowing cannabis licensees the option of using cloud storage in lieu of physical, on-premises storage for recordkeeping required in WAC 314-55-083 and 314-55-087.

Authority

Laws

RCW 69.50.342(1) provides the Board with authority to adopt rules for cannabis licensees related to recordkeeping and security, including “(b) The books and records to be created and maintained by licensees, the reports to be made thereon to the board, and inspection of the books and records;” and “(d) Security requirements for retail outlets and premises

where cannabis is produced or processed, and safety protocols for licensees and their employees.”

Rules

WAC 314-55-087 contains the general recordkeeping requirements for cannabis licensees. Subsection (1) states:

(1) Cannabis licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. **The following records must be kept and maintained on the licensed premises for a five-year period** and must be made available for inspection if requested by an employee of the WSLCB:

WAC 314-55-087(1) (emphasis added). The types of records specified in rule include financial records, employee records, daily pesticide application records, production and processing records, cannabis product records, transportation records, inventory records, quality assurance testing records, records of samples, records of theft, and records of any cannabis products provided free of charge. WAC 314-55-087(1)(a)-(q).

WAC 314-55-083 contains the security and traceability requirements for cannabis licensees, including requirements related to maintaining visitor logs and a surveillance system. Subsection (1) specifies a three-year, on-premises recordkeeping requirement for visitor logs:

(c) **All log records must be maintained on the licensed premises for a period of three years** and are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request.

WAC 314-55-083(1)(c) (emphasis added). Subsection (3) specifies a 45-day, on-premises recordkeeping requirement for the surveillance system:

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system . . . **The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner** to protect from employee tampering or criminal theft. **All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device.**

WAC 314-55-083(3) (emphasis added).

Analysis

The Board has statutory authority to create rules regarding recordkeeping and security requirements for cannabis licensees. RCW 69.50.342(1)(b) and (d). The specific recordkeeping requirements established in rule depend on the type of record at issue.

Cannabis licensees are required to keep and maintain most types of records on the licensed premises for five years. WAC 314-55-087. This five-year, on-premises recordkeeping requirement applies to a list of certain types of records specified in rule, including financial records, employee records, daily pesticide application records, production and processing records, cannabis product records, transportation records, inventory records, quality assurance testing records, records of samples, records of theft, and records of any cannabis products provided free of charge. WAC 314-55-087(1)(a)-(q).

While storing these types of records in electronic or digital format is not prohibited by rule, licensees are required to keep and maintain physical hard copies of these records at the licensed premises and make them available for inspection. For records where the original “source document” is not a physical document, such as electronic bank statements or records generated within an automated data processing (ADP) and/or a point-of-sale (POS) system, both the source document and a physical copy of the record must be maintained. However, the source documents can be “maintained in some other location” than the licensed premises. WAC 314-55-087(3).

Different recordkeeping requirements apply to visitor logs and surveillance system recordings. WAC 314-55-083. For security reasons, cannabis licensees are required to keep and maintain visitor logs “showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.” WAC 314-55-083(1)(b). These visitor log records are required to be maintained on the licensed premises for three years. WAC 314-55-083(1)(c).

Similarly, for security reasons, cannabis licensees are required to “have a complete video surveillance system” that meets certain criteria specified in rule, such as minimum camera resolution, internet protocol (IP) compatibility, camera placement, recording content, display of date and time, etc. WAC 314-55-083(3). The rule specifies that “[t]he surveillance system storage device must be secured on the licensed premises” and “[a]ll surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device.” *Id.*

In this petition, Brooke Davies requests that the Board initiate rulemaking to consider allowing cannabis licensees the option to store records required in WAC 314-55-083 and 314-55-087 in cloud storage,¹ instead of in physical storage at the licensed premises.

¹ “Cloud computing” is commonly defined as “the practice of storing regularly used computer data on multiple servers that can be accessed through the Internet.” *Cloud computing*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/cloud%20computing> (last visited August 5, 2022).

Agency staff find that there are several key issues to consider when evaluating the risks and benefits of allowing cloud storage in lieu of physical, on-premises storage:

- How will access to the records be ensured?
- How will the records be preserved?
- How will the records be secured?
- How will the records be authenticated?

The risks and benefits of allowing cloud storage options in lieu of on-premises storage options may be different for the records required to be stored for five years at the licensed premises under WAC 314-55-087, as compared to the surveillance recordings that must be stored for 45 days and the visitor logs that must be stored for three years at the licensed premises under WAC 314-55-083.

Ensuring access to the records

In theory, cloud storage could make it easier for licensees and LCB staff to find and access records, thereby increasing efficiency and transparency, as Brooke Davies argues in the petition.² However, allowing cloud storage as an option in lieu of physical, on-site storage would also mean that some records that are currently accessible on-site at the licensed premises would only be accessible through a computer or other device with an internet connection. If hard copies of records aren't required to be kept and maintained at the licensed premises, it could make it more difficult for LCB staff to access records during an on-site investigation. For this reason, if cloud storage is allowed as an option in lieu of physical, on-site storage, agency staff find that it will be important to explore development of potential safeguards to mitigate this risk and ensure that licensees provide LCB staff with timely access to any records stored in the cloud.

Preserving the records

While records kept in the cloud might not be vulnerable to the same risks that records kept on-site at the licensed premises face (e.g. degradation due to on-site storage conditions), records kept in the cloud do face physical risks. Cloud storage relies on

Popular cloud storage providers include companies such as Amazon, Google, Dropbox, etc. Dropbox.com defines cloud storage, in part, as “off-site storage that’s maintained by a third party and an alternative to storing data on-premises.” *Frequently asked questions, What is cloud storage?*, Dropbox, <https://www.dropbox.com/features/cloud-storage> (last visited August 5, 2022).

Amazon Web Services defines cloud storage, in part, as “a cloud computing model that stores data on the Internet through a cloud computing provider who manages and operates data storage as a service. . . . Cloud storage is purchased from a third party cloud vendor who owns and operates data storage capacity and delivers it over the Internet in a pay-as-you-go model. These cloud storage vendors manage capacity, security and durability to make data accessible to your applications all around the world.” *What is Cloud Storage?, How Does Cloud Storage Work?*, Amazon Web Services, <https://aws.amazon.com/what-is-cloud-storage/> (last visited August 5, 2022).

² Rule Petition, page 2.

physical computer servers owned and maintained, sometimes in multiple locations, by third-parties.³ Just like any computer server, cloud storage servers can fail, and data stored in the cloud can be lost or damaged. For these reasons, if cloud storage is allowed as an option in lieu of physical, on-site storage, agency staff find that it will be important to explore development of potential procedures for preserving licensee records (e.g. through backup requirements). Additionally, for records where the source or original document is handwritten (which can often be the case for certain types of records created in the course of cannabis licensee operations, such as pesticide application records), agency staff find that it may be beneficial to explore requiring preservation of the original handwritten record.

Securing the records

Compared to physical, on-site storage options, cloud storage options pose different security risks. Some common cloud security challenges include malicious attacks by cybercriminals leading to data leaks, loss, or ransom demands; a lack of visibility of how data is being accessed and by whom; and misconfigurations of cloud storage assets by insiders within the organization leading to accidental data breaches or loss.⁴ For these reasons, if cloud storage is allowed as an option in lieu of physical, on-site storage, agency staff find that it will be important to explore development of potential minimum cloud storage security feature requirements.

Authenticating the records

Due to the nature of cloud storage described above and the ease with which digital documents can be edited, LCB staff and licensees may have more difficulty determining if a record stored in the cloud has been altered, whether intentionally or accidentally, as compared to records that are stored in physical, on-site storage. For these reasons, if cloud storage is allowed as an option in lieu of physical, on-site storage, agency staff find that it will be important to explore development of potential methods for authenticating records to determine that they are unaltered.

Conclusion

Considering the potential risks and benefits associated with the use of cloud storage for recordkeeping, agency staff find that opening up this subject for inquiry and public discussion would be beneficial. Initiating the rulemaking process as requested in the petition would allow the agency to begin collaboratively engaging with stakeholders and any interested members of the public to explore the possibility of allowing licensees to use cloud storage as a recordkeeping option in lieu of physical, on-site storage.

³ See Footnote 1.



⁴ *What is cloud security?*, IBM.com, <https://www.ibm.com/topics/cloud-security#:~:text=Cloud%20security%20is%20a%20collection,as%20part%20of%20their%20infrastructure> (last visited August 8, 2022); *What is cloud security?*, Microsoft.com, <https://www.microsoft.com/en-us/security/business/security-101/what-is-cloud-security> (last visited August 8, 2022).

Recommendation

For the reasons described above, Director’s Office staff recommend that consistent with RCW 34.05.330(1)(b), the Board accept Brooke Davies’ rule petition request, received on July 8, 2022, and initiate rulemaking proceedings in accordance with RCW 34.05.310 and 34.05.320 to consider allowing cannabis licensees the option of using cloud storage in lieu of physical, on-premises storage for recordkeeping required in WAC 314-55-083 and 314-55-087.

Board Action

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Brooke Davies on July 8, 2022.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 David Postman, Chair	<u>8.31.2022</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Ollie Garrett, Board Member	<u>8.31.2022</u> Date
<input type="checkbox"/> Accept <input type="checkbox"/> Deny	<i>Not Present</i> Jim Vollendroff, Board Member	<u>8.31.2022</u> Date

Attachments

- 1. Email from Brooke Davies received July 8, 2022, containing rule petition.
- 2. Laws and Rules cited under the “Authority” section above.