



**Notice of Permanent Rules  
Cannabis Payment Flexibility (aka Cannabis Flexible Payment Terms)**

**Concise Explanatory Statement**

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of a rule amendment that amends [WAC 314-55-115](#) to specify the conditions under which licensees can purchase cannabis from other licensees by mailing checks.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

**Background and reasons for adopting these rules:**

In March 2023, the Liquor and Cannabis Board (LCB) [approved](#) a rulemaking petition to consider amending [WAC 314-55-115\(1\)](#) to allow the mailing of checks up to three after delivery, for transactions where cannabis licensees purchase cannabis from other licensees.

Currently, rules provide that when cannabis licensees buy cannabis from other licensees using a check, it must be provided prior to or at the time of delivery. Other payment methods identified in WAC 314-55-115 allow payment to be initiated up to one business day post-delivery and require payment be complete no later than five business days post-delivery.

Following consultation with the project team, a three-day post-delivery payment window for mailed checks would make mailed checks the outlier when compared to the other identified payment methods in WAC 314-55-115. As such, for stakeholder engagement, the project team decided to draft rule language that would mimic the conditions of other payment methods in rule, rather than create greater flexibility for mailed checks than exists for other methods.

The CR 101 was approved on May 7, 2024 ([WSR #24-11-035](#)) and one comment was received during the informal comment period that ended June 20, 2024. The comment asked about the possible remedy for checks that are paid but have not sufficient funds (NSF).

As part of our inclusive rulemaking process, we surveyed cannabis licensees to gather their perspectives on the proposed payment methods regulations. The survey was open from June 3 through July 8, 2024 soliciting feedback on [draft rule language](#) that was publicly posted on the Laws & Rules webpage days earlier.

The survey captured feedback from various cannabis licensees, with most survey respondents being producers and/or processors. Most of the respondents supported the proposed changes, though some expressed uncertainty or concern. The survey revealed diverse payment practices, with a notable portion of licensees using checks regularly, while others never use them. Issues with Not Sufficient Funds (NSF) checks were not widespread but concerns about potential increases in NSF incidents if the rule changes are implemented were noted.

More detailed results of the survey can be found in the [CR 102 Memorandum](#).

Because the current rule language provides no explanation at all for how payment via check should be done, language was borrowed from the existing descriptions of payment methods, specifically credit/debit cards, electronic fund transfers (EFT) and transactions using a money transmitter.

The requirement for an irrevocable invoice before or at the time of delivery and the record-keeping requirement are borrowed from the other payment methods, described in the table with the CR 103 Memorandum.

The main variation from the existing regulatory framework is due to the unique nature of checks and the possibility of mail for delivery. While the other payment methods require that payment be initiated no later than the first business day, for checks, this means mailing the check.

Similarly, the transaction must be completed no later than five business days following delivery of cannabis for the other payment methods. Here, the analogous point of completion for payment via check would be the depositing of the check, and that is the language used in the proposed rule.

While the comment raised concern about NSF checks, this is already addressed in existing section (6), which states that transactions reported as NSF that are not corrected by the 3:00 pm on the business day following the NSF report are impermissible extensions of credit, and are subject to penalties identified in [WAC 314-55-523](#).

Lastly, to avoid any confusion, an additional section was proposed to define “delivery” as referring to delivery of cannabis in this rule.

Rulemaking history for this adopted rule:

**CR 101** – filed May 8, 2024, as [WSR #24-11-035](#)

**CR 102** – filed July 31, 2024, as [WSR #24-16-063](#)

Public hearing held September 11, 2024

**The effective date of this amended rule is October 26, 2024.**

One public comment was submitted on the rule proposal in the morning before the public hearing:

1. Vicki Christopherson, Executive Director, Washington Cannabusiness Association

September 11, 2024

TO: Rules Coordinator  
Liquor and Cannabis Board

CC:  
Justin Nordhorn  
Will Lukela, Director

FROM:  
Vicki Christophersen  
Executive Director  
Washington CannaBusiness Association ,

The Washington CannaBusiness Association (WACA) represents Washington's licensed and regulated cannabis businesses of all kinds. As the longest established trade association for cannabis businesses in the state, we are committed to establishing a safe, quality-controlled, fully regulated system that works to keep cannabis away from kids while keeping an eye on the horizon for what's next. We appreciate the opportunity to provide feedback on the CR-102 amending WAC 314-55-115 to create more flexible payment terms for cannabis licensees.

Allowing for reasonable net terms for wholesale transactions between cannabis licensees has been a priority for WACA for several years. Allowing retailers to mail a check for cannabis deliveries will help to ensure operational efficiencies that other businesses utilize regularly. However it is also important to ensure that the product is paid for in a timely manner. WACA would suggest that the responsibility of mailing the check on time be the responsibility of the Retailer and not the Producer/Processor. The current draft language requires the mailed check be deposited no later than five business days following the delivery. This is an unreasonable requirement as the Producer/Processor has no control over the mail or whether or not the Retailer mails the check. For that reason we suggest striking that requirement. See below:

Current language:

(c) The check must be sent, delivered, or mailed by the cannabis licensee no later than the first business day following delivery and must be deposited as promptly as is reasonably practical, **and in no event later than five business days following delivery**. Any attempt by a cannabis licensee to delay payment on checks for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

WACA suggestion:

(c) The check must be sent, delivered, or mailed by the cannabis licensee no later than the first business day following delivery and must be deposited as promptly as is reasonably practical, ~~and in no event later than five business days following delivery~~. Any attempt by a cannabis licensee to delay payment on checks for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

Thank you for your consideration,

Sincerely,  
Vicki Christopherson  
WACA Executive Director

**LCB response:** The responsibility for mailing a check on time is already placed on the cannabis purchasing licensee, that is not necessarily a retailer, per the first sentence of WAC 314-55-115(1)(c). The LCB is going to establish a deadline for depositing the check to establish a finite endpoint for the financial transaction. The is necessary to establish when a purchase becomes an impermissible extension of credit.

The records requirement in (1)(b) is being amended to clarify that relevant proof of mailing must be preserved along with other financial records. If there is a delay of mail service resulting in a check not being deposited within five business days after delivery of cannabis, the mailing party will have evidence of their compliance with the rule requirements.

Additionally, consistent with [RCW 34.05.328\(3\)\(d\)](#), the LCB will be conducting a retrospective review a year after the amended rule language becomes effective to determine if the number of corrective actions stemming from WAC 314-55-115 has increased. The results of the retrospective review will be presented during a public meeting of the Board.

**Was the comment reflected in the adopted rule?** Yes, in part. By adding language to the records requirement in (1)(b), mailing parties are ensured that they will preserve evidence of their compliance with the rule requirements in the event of unavoidable delay of mail service.

During the public hearing held September 11, 2024, Amber Vaughn provided the following testimony:

Hello, I'm Amber Vaughn the president of Terpene Transit, I'm also on the board at WACA a trade organization for the cannabis industry. We, as a trade organization support cannabis payment flexibility. We believe it will allow retailer, allowing retailers to mail a check for cannabis deliveries will help to ensure operational efficiencies that other businesses utilize regularly. And furthermore, I do believe you know coming from the transportation sector we're able to see a lot of different dynamics within the industry it will overall improve compliance. And in the event that a invoice amount is changed from the point of order to the point of delivery, sometimes what we experience is that the check denomination or check

amount does not match the new invoice total that was sent. Given the fact that anybody who is a signer for a checking account is considered a TPI there's minimal employees or staff at retail locations permitted to sign checks so often they're left in advance. So what we see is a lot of product then needing to be returned to the point of origin, which given 48 hours can be complicated or even for in house deliveries complicated given they're 24 hours.

Furthermore it could reduce the potential check fraud, limiting access to checks within you know potentially high turnover retail establishments, it will assign the responsibility of that check only to management or long term employees. Furthermore it will reduce potentially cash exchange at the site of retail hopefully minimizing any kind of theft or crime related to cash exchanges. Checks are already currently being mailed under the guise often that they are going to be ACH in the payment and then later mail the payment.

I think what this will do here is set reasonable parameters on the retailers regarding timelines on mail payments and expectations. You know kind of leaves a producer processor in a weird spot when they're told a payments going to be ACH and then later it's mailed and they have no indication of when that's going to arrive.

The one comment we do have, Daniel Jacobs has already addressed this is regarding the deposit timeline. What mail is unpredictable personally we experienced maybe two mail arrivals in the month of December last year at our own organization due to mail strikes and etc. So that's one factor.

The other one is banking for the cannabis industry isn't necessarily accessible. My bank at Terpene Transit is in Seattle we're based in Bellingham. It will just I think reasonable timeline is one thing, setting five days is kind of a tricky a tricky measure. And just really appreciate the opportunity to speak on the CR 102 regarding cannabis payment flexibility, I think it'll be a healthy move for the industry, especially with the amendment to adapt. Thank you.

**LCB Response:** The concerns around mailing delays are being addressed by the changes to the records requirement in (1)(b) to clarify that relevant proof of mailing must be preserved along with other financial records. If there is a delay of mail service resulting in a check not being deposited within five business days after delivery of cannabis, the mailing party will have evidence of their compliance with the rule requirements.

Additionally, consistent with [RCW 34.05.328\(3\)\(d\)](#), the LCB will be conducting a retrospective review a year after the amended rule language becomes effective to determine if the number of corrective actions stemming from WAC 314-55-115 has increased. The results of the retrospective review will be presented during a public meeting of the Board.

**Was the comment reflected in the adopted rule?** Yes, in part. By adding language to the records requirement in (1)(b), mailing parties are ensured that they will preserve evidence of their compliance with the rule requirements in the event of unavoidable delay of mail service.

**Were any changes made between the proposed and final adopted rules?** Yes. The changes identified in the table below were made to the proposed rules filed with the CR 102:

Section	Proposed Rule Language (CR 102)	Final Rule Language (CR 103)	Change Justification
(1)(b)	Both parties must maintain records of transactions and have the records readily available for the LCB review.	Both parties must maintain records of transactions, <u>including relevant proof of mailing</u> , and have the records readily available for the LCB review.	Based on public feedback and testimony received during the public hearing, clarifying that proof of relevant mailing needs to be kept documenting when checks are mailed, and to address any potential delays in mail service.
(8)	[N/A]	All records must be kept and maintained consistent with the requirements of WAC 314-55-087.	Added a reference to existing record requirements to clarify how existing rules affect the amended rule language.