



CR 103 Memorandum

Cannabis Payment Flexibility (aka Cannabis Flexible Payment Terms)

Date: September 25, 2024
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Background

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 a cannabis licensee buys cannabis from other licensees using a check, it must be provided prior to or at the time of delivery. Other payment methods described 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 of cannabis 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).

The CR 102 was approved on July 31, 2024 ([WSR #24-16-063](#)) and one comment was submitted before the public hearing held on September 11, 2024. One person testified at the public hearing held on September 11, 2024, and cited concerns that potential mail delays could result in non-compliance.

In response to these concerns, the records requirement has been clarified to require preserving proof of mailing, which can be used to demonstrate that the check was mailed within the required time frame, and in the event of an unforeseeable delay in mail service, can be provided as evidence of compliance.

Stakeholder Engagement

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](#).

Rule Necessity & Description of Rule Changes

Section	Current Rule Language	Proposed New Language	Rule Necessity
Title	What methods of payment can a cannabis licensee use to purchase cannabis?	Methods of payment for cannabis licensees purchasing cannabis.	Converting format of title from question to statement.
(1)	(1) Checks,	<p>(1) Checks, under the following provisions:</p> <p>(a) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.</p> <p>(b) Both parties must maintain records of transactions and have the records readily available for the LCB review.</p> <p>(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.</p>	<p>The language regarding payment terms for checks is consistent with language outlining payment terms using other methods of payment provided elsewhere in WAC 314-55-115.</p> <p>Consistent with (2)(e), (3)(f), and (5)(e) with the following changes:</p> <ol style="list-style-type: none"> 1. Changing language around payment initiation to “sent, delivered or mailed.” 2. Clarifying that completion of payment in this context is comparable to deposit of check.
(7)	<p style="text-align: center;">New Language</p> <p>As used in this section, “delivery” refers to delivery of cannabis.</p>		To clarify that throughout the rule, “delivery” refers to the delivery of cannabis, as opposed to the delivery of the check if sent via mail. This clarification is needed because of the new reference to delivery of checks.

All	Replaced instances of WSLCB with LCB	Consistent with WSR #24-16-064
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Variance between proposed rule (CR 102) and final rule:

The below changes have been made to the proposed rule language (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.

Rule Implementation (RCW 34.05.328(3)(a))

Informing and Educating Persons Affected by the Rule (RCW 34.05.328(3)(b))

To help inform and educate persons affected by the rule, the LCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB GovDelivery list; and
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.

Promoting and Assisting Voluntary Compliance (RCW 34.05.328(3)(c))

LCB will promote and assist voluntary compliance through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the LCB website.
- LCB will use available and customary resources to distribute materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing LCB Staff

LCB staff responsible for implementing these adopted rules, including the subject matter experts who participated in the project team, will work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The LCB will also consider:

- Provision of internal and external training and education, as needed. potentially including webinars, training, and videos if appropriate.
- Coordinating and centrally locating internal decisions to assure consistency between agency, staff, and industry.

Rule Effectiveness Evaluation (RCW 34.05.328(3)(d))

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule and adjusting training and guidance accordingly.
- Monitoring the number of enforcement actions, including type, resolution, and the outcome. Additionally, 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.
- Monitoring the number of requests for rule language revisions or changes.
- Monitoring the number of requests for rule interpretation, and
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.