



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-115(1)) related mailing checks to purchase cannabis.

Date: March 29, 2023

Presented by: Cassidy West, Policy and Rules Coordinator

Background

On February 6, 2023, Micah Sherman submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petitioner requests that the agency amend WAC 314-55-115(1) to allow checks used as payment for cannabis transactions between licensees be mailed and postmarked within three business days of delivery, including the date of delivery. Under the current rule, payment is required prior to or at the time of delivery.

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

List rule number (WAC), if known: 314-55-115 (1)

I am requesting the following change: Checks, mailed and post marked within 3 business days of delivery, including day of delivery

This change is needed because: Currently checks are not allowed to be mailed and it causes unnecessary logistical issues. With this simple change we can allow a COD system to continue without the check being required to be handed to the delivery driver, who is often a 3rd party.

The effect of this rule change will be: to allow checks to be mailed within a few days of the delivery.

The rule is not clearly or simply stated: _____

Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-55-115(1) to allow checks used as payment for cannabis be mailed and postmarked within three business days of delivery, including the date of delivery.

Authority

Laws

[RCW 69.50.328](#) provides that a producer and processor are prohibited from having a direct or indirect financial interest in a licensed cannabis retailer.

[RCW 69.50.342](#) authorizes the board to adopt rules that are consistent with of the provisions of chapter 3, Laws of 2023, or adopt rules that are consistent with the spirit of the law when the board deems that it is necessary or advisable.

Rules

[WAC 314-55-018\(1\)](#) provides that industry members and/or licensees are prohibited from entering into an agreement, written or unwritten, which causes undue influence over another licensee and/or industry member, and that business transactions made in accordance with usual and common business practices are not subject to this rule.

[WAC 314-55-115](#) provides that cannabis licensees may only use cash, or other form of payment that the board recognizes as cash, and that payment is required prior to or at the time of delivery.

[WAC 314-55-115\(1\)](#) provides that the board recognizes checks as a form of cash payment for purposes of the rule.

[WAC 314-55-115\(4\)](#) provides that in transactions in which prepaid accounts are used, both parties are required to keep accurate accounting records to ensure a cash deposit is not overextended, which is considered to be an extension of credit.

[WAC 314-55-115\(5\)](#) provides that any attempt by a cannabis licensee to delay payment on money transmitter transactions is considered to be an unlawful extension of credit.

[WAC 314-55-115\(6\)](#) provides that any transaction reported as having nonsufficient funds will be considered an extension of credit.

Analysis

Consistent with RCW 69.50.342, the Board has statutory authority to adopt regulations concerning financial transactions between licensees, including the method of payment that licensees are required to use to purchase cannabis from another licensee. The petitioner requests the Board to amend WAC 314-55-115(1) to allow checks used for purchasing cannabis be mailed and postmarked prior to or at the time of delivery.

WAC 314-55-115 provides that cash, or another method of payment that the Board recognizes as a cash payment, must be used in the transaction, and that licensees must pay for cannabis prior to or at the time of delivery. Checks, prepaid accounts, credit/debit cards, electronic funds transfer (EFT) and transactions using a money transmitter are considered to be cash payments for purposes of the rule. Payments made using cash, checks, or prepaid accounts are required prior to or at the time of delivery. However, payments using credit/debit cards, electronic transfer funds (EFT), and money transmitters may be initiated up to one business day following the delivery. If a transaction is reported as having nonsufficient funds, the purchaser must pay the full amount of the transaction to the seller by 3:00 pm on the first business day following the delivery. Until the NSF transaction is paid, the cannabis licensee who received the transaction may not deliver cannabis to the purchaser, and it is the responsibility of the purchaser to not receive additional cannabis from another cannabis licensee.

Any transaction reported as having NSF is considered to be an extension of credit. If a prepaid account is used and a cash deposit is overextended, it is also considered to be an extension of credit (WAC 314-55-115(4)). Furthermore, if a cannabis licensee makes any attempt to delay payment on a money transmitter transaction for any period of time it is considered to be an attempt to purchase products on credit (WAC 314-55-115(5)).

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

Accepting this rule petition may conflict with RCW 69.50.328, which states “Neither a licensed cannabis producer nor a licensed cannabis processor shall have a direct or indirect financial interest in a licensed cannabis retailer.” The agency has defined an extension of credit as direct financial interest WAC 314-55-018. For similar reasons, liquor licenses are required to make payment prior to or at the time of delivery.

Furthermore, WAC 314-55-115 provides alternatives for payment in addition to checks, including cash, credit/debit cards, electronic funds transfer, prepaid accounts and money transmitters.

Enforcement & Education

The topic of direct or indirect financial interests within RCW 69.50.328 are broadly construed. This law establishes the boundaries for the tier system for the cannabis industry. [RCW 69.50.585](#) was created as a carveout to RCW 69.50.328. The types of fairly minor promotions activities listed in RCW 69.50.585 were considered indirect financial interest between the industry tiers.

It is our Cannabis staff's belief that 69.50.585 sought a carveout to tier restrictions, akin to carveouts existing in liquor. The liquor law equivalent to RCW 69.50.585 is RCW 66.28.310. Liquor has a whole host of carveouts in statute, especially after I-1183. To best understand how broadly construed the currently existing cannabis tier restrictions are, I think it's helpful to compare RCW 69.50.328 (cannabis) to RCW 66.28.280, RCW 66.28.290, and RCW 66.28.295. The lack of carveouts in RCW 69.50.328 is glaring, especially considering that the language in the statute was directly informed by liquor law.

Another significant detail is that RCW 66.28.305 specifically calls out money advances (credit) as a violation tier restrictions in liquor. All that to say, we believe that allowing what Micah Sherman is requesting would require a legislative rather than a rule change. He is requesting payment privileges that exceed those allowed under liquor law – RCW 66.28.270.

Finance

The finance division did not identify any impacts.

Information Technology/Infrastructure

The IT division did not identify any impacts.

Public Health/Prevention

The Public Health/Prevention division did not identify any impact or specific comments, except to reiterate the concern about undue influence and the potential for that impact how certain products are marketed and sold onsite.

Department of Health

The requested rule revision would not impact Department of Health operations, rules or standards.

Labor & Industries

The requested rule revision would not impact Department of Labor & Industries operations, rules, or standards

Intergovernmental

Tribes

The requested rule revision would not impact tribal government.

DEIB, Social Equity

Providing additional flexibility for cannabis licensees to conduct business transactions in accordance with usual and common business practices supports the agency's overarching goal of reducing or eliminating barriers or existing disparities in the application and operationalization of the current rule. While this policy shift may provide current licensees with some additional flexibility, it also helps to dismantle an existing structure that may have a disproportionate or undesirable impact on new social equity licensees.

Petition Response Options

Option 1: Deny the petition.

- Risk: The logistical issues related to mailing checks in advance of the delivery that were cited by the petitioner will not be mitigated. Additionally, cannabis businesses will not have the flexibility to conduct business operations that are consistent with usual and common business practices.
- Benefit: Maintain the status quo.

Option 2: Accept the petition and agree to amend WAC-314-55-115(1) and allow checks for purchasing cannabis be mailed and postmarked within three business days of delivery, including the date of delivery.

- Risk: It is possible that even if the Board approves the petition and the agency enters rule inquiry, that no rule change will occur, or change will occur that may not necessarily align with the requested rule change. This can occur for a variety of reasons, including but not limited to stakeholder feedback during rule workshops and feedback received on the CR 101 if filed.
- Benefit: Cannabis businesses will have additional flexibility to conduct business in a manner that is consistent with common and usual business practices, which supports the agency's overarching social equity goal.

Board Action

After considering the various options identified by Director's Office staff, the Board accepts/denies the petition for rulemaking received from Micah Sherman on February 6, 2023.

Accept Deny



David Postman, Chair

3.29.2023
Date

Accept Deny

Not Present

Ollie Garrett, Board Member

3.29.2023
Date

Accept Deny



Jim Vollendroff, Board Member

3.29.2023
Date

Attachments

1. Email from Micah Sherman received February 6, 2023, containing rule petition.

