



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: July 31, 2024

TIME: 10:58 AM

WSR 24-16-063

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 24-11-035 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Title 314 WAC. WAC 314-55-115 - What method of payment can a cannabis licensee use to purchase cannabis?

The proposed rule language amends WAC 314-55-115 to allow cannabis licensees to purchase cannabis from other licensees by mailing checks under the same conditions applicable to other payment methods identified in WAC 314-55-115. The check must be sent no later than one business day post delivery of cannabis, both parties must retain records, the sale must be initiated by an irrevocable invoice, and the check must be deposited no later than five business days post delivery of cannabis.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 11, 2024	10:00 AM	All public Board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the Boardroom will be staffed during a meeting, Board Members and agency participants may continue to appear virtually	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings

Date of intended adoption: No earlier than September 25, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name Daniel Jacobs, Rules & Policy Coordinator
Address PO Box 48030, Olympia WA 98504-3080

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources
Phone 360 664 1739

Email rules@lcb.wa.gov

Fax 360-704-5027

Other

Beginning (date and time) July 31, 2024, 12:00 PM

By (date and time) September 11, 2024, 12:00 PM

Fax 360 664 9689

TTY 7-1-1 or 1-800-833-6388

Email anita.bingham@lcb.wa.gov

Other

By (date) September 4, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking is in response to a petition the Liquor and Cannabis Board (LCB) accepted in March 2023 requesting to amend WAC 314-55-115 to allow cannabis licensees to purchase cannabis from other licensees using checks mailed up to three days after delivery of cannabis.

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 below.

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, a clarifying section defines “delivery” to refer to delivery of cannabis in this rule.

Reasons supporting proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the table below, describing the proposed changes to WAC 314-55-115:

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,	(1) Checks, under the following provisions:	The language below is copied almost verbatim from other parts of WAC 314-55-115:
		(a) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.	Consistent with (2)(b), (3)(c), and (5)(b).
		(b) Both parties must maintain records of transactions and have the records readily available for the LCB review.	Consistent with (2)(d), (3)(e), and (5)(d).
		(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.	Consistent with (2)(e), (3)(f), and (5)(e) with the following changes: <ul 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 analogized to deposit of check.
(7)		New Language	This is being added to clarify that throughout the rule, “delivery”

	As used in this section, "delivery" refers to delivery of cannabis.	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.
Throughout	Replaced instances of WSLCB with LCB	Consistent with WSR #24-11-037

Statutory authority for adoption: RCW 69.50.342, RCW 69.50.345

Statute being implemented: None

Is rule necessary because of a:

- Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting Coordinator	Daniel Jacobs, Rules & Policy	1025 Union Avenue, Olympia WA, 98504	360-480-1238
Implementation Licensing	Becky Smith, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1753
Enforcement Enforcement & Education	Chandra Wax, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1726

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

No: Please explain: The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The LCB is not a listed agency under RCW 34.05.328(5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328(5)(a)(ii).

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

Using NAICS code 111419 for cannabis grown under cover, the US Census North American Industry Classification System (NAICS) describes this code for "This U.S. industry comprises establishments primarily engaged in growing food crops (except mushrooms) under glass or protective cover." The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111419>, identifies cannabis grown under cover as an example of a business that uses this code.

Using NAICS code 111918 for cannabis grown in an open field, the US Census North American Industry Classification System (NAICS) describes this code for "This U.S. industry comprises establishments primarily engaged in one of the following: (1) growing crops (except oilseeds and/or grains; vegetables and/or melons; fruits and/or tree nuts; greenhouse, nursery, and/or floriculture products; tobacco; cotton; sugarcane; hay; sugar beets; or peanuts); (2) growing a combination of crops (except a combination of oilseed(s) and grain(s); and a combination of fruit(s) and tree nut(s)) with no one crop or family of crops accounting for one-half of the establishment's agricultural production (i.e., value of crops for market); or (3) gathering tea or maple sap." The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111918> identifies cannabis grown in an open field as an example of a business that uses this code.

Using NAICS code 424590 for cannabis merchant wholesalers, the US Census NAICS describes this code for “This industry comprises establishments primarily engaged in the merchant wholesale distribution of farm products (except grain and field beans, livestock, raw milk, live poultry, and fresh fruits and vegetables).” The US Census NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=424590> identifies cannabis merchant wholesalers, as an example of a business that uses this code.

Using NAICS code 459991 for cannabis retailers, the US Census NAICS describes this code for “This U.S. industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies.” The US Census NAICS code description at <https://www.census.gov/naics/?input=marijuana&year=2022&details=459991> identifies marijuana stores, medical or recreational, as an example of a business that uses this code.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a very generous estimate of \$500.00 for every cannabis licensee to familiarize themselves with the new record-keeping requirements for paying for cannabis using a check.

Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll.

According to Department of Revenue data from 2023, the total gross business income for NAICS code 459991 was \$647,617,610 for 493 businesses. That produces an average annual gross business income of \$1,313,625.98. Three-tenths of one percent of \$1,313,625.98 is \$3,940.877, rounding up to \$3,940.88.

The remainder of the date is provided by reference to the minor-cost threshold calculator provided by the Office of Regulatory Innovation & Assistance available at https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor-Cost-Threshold-Calculator.xlsx

2022 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
111419	\$500.00	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$3,259.51	\$3,259.51 2021 Dataset pulled from ESD	\$3,195.50 2021 Dataset pulled from DOR
111998	\$500.00	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$11,775.64	\$11,775.64 2021 Dataset pulled from ESD	\$2,882.31 2021 Dataset pulled from DOR
424590	\$500.00	Cannabis merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$8,809.55	\$3,948.77 2021 Dataset pulled from ESD	\$8,809.55 2021 Dataset pulled from DOR
459991	\$500.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,940.88	Unavailable*	\$3,940.88 2023 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for any of the potential NAICS codes applicable to cannabis licensees. Therefore, implementation of this amended rule is not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

DOR – Washington State Department of Revenue.
ESD – Employment Security Department Washington State

DOR data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2023Q4,2023Q3,2023Q2,2023Q1,&Code1=450000&Code2=460000&Sumbly=n6&SicNaics=2&Format=HTML>

* - Average annual payroll data was unavailable due to confidentiality with other state agency data.
 Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

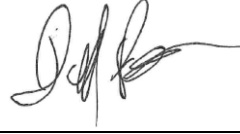
Name Daniel Jacobs, Rules & Policy Coordinator
Address PO Box 43080, Olympia WA 98504-3080
Phone 360-480-1238
Fax 360 704 5027
TTY
Email rules@lcb.wa.gov
Other

Date: July 31, 2024

Name: David Postman

Title: Chair

Signature:



WAC 314-55-115 ((What)) Methods of payment ((can-a)) for cannabis licensees ((use to purchase)) purchasing cannabis((?)). A cannabis licensee must pay cash for cannabis prior to or at the time of delivery. The ((WSLCB)) LCB will recognize the following forms of payment as cash payment for the purpose of this section.

(1) **Checks**, under the following provisions:

(a) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(b) Both parties must maintain records of transactions and have the records readily available for the LCB review.

(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.

(2) **Credit/debit cards**, under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both licensees, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for the ((WSLCB)) LCB review.

(e) The credit or debit card charge must be initiated by the cannabis licensee no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT)**, under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the licensees, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the cannabis licensee must enter into a written agreement specifying the terms and conditions for EFT as payment for cannabis.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for the ((WSLCB)) LCB review.

(f) The electronic funds transfer must be initiated by the cannabis licensee no later than the first business day following delivery and must be paid 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 EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

(5) **Transactions using a money transmitter,** under the following provisions:

(a) The money transmitter must be licensed by and in good standing with the Washington state department of financial institutions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective costs associated with the money transmitter service.

(d) Both parties must maintain records of transactions and have the records readily available for the ((WSLCB)) LCB to review.

(e) The funds transfer through the money transmitter must be initiated by the cannabis licensee no later than the first business day following delivery and must be paid 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 money transmitter transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(6) Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit. If a transaction is reported as NSF:

(a) The purchaser must pay the full amount of the transaction to the seller by 3:00 p.m. on the first business day following receipt of the NSF report.

(b) Until the NSF transaction is paid:

(i) The cannabis licensee who received the NSF transaction will not deliver any cannabis to the purchaser; and

(ii) It is the responsibility of the purchaser to not receive additional cannabis from any other cannabis licensee.

(7) As used in this section, "delivery" refers to delivery of cannabis.