



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 16-12-001 ; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject)

WAC 314-42-110, Brief adjudicative proceedings; and

WAC 314-55-089, What are the tax and reporting requirements for marijuana licensees?

Hearing location(s):

Washington State Liquor and Cannabis Board
Board Room
3000 Pacific Ave SE
Olympia, WA 98504

Date: August 24, 2016 Time: 10:00 am

Submit written comments to:

Name: Joanna Eide, Policy and Rules Coordinator
Address: PO Box 43080
Olympia, WA 98504
e-mail rules@lcb.wa.gov
fax (360)664-9689 by (date) August 24, 2016

Assistance for persons with disabilities: Contact

Joanna Eide by August 17, 2016

TTY () _____ or (360) 664-1622

Date of intended adoption: on or after September 7, 2016

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Amendments are proposed to WAC 314-55-089 to add provisions to require marijuana excise tax payments by electronic payment, check, cashier's check, or money order. The changes also provide provisions on when payments are deemed received. A waiver process is also established to allow those to apply for a waiver from the payment requirements based on good cause. If a licensee fails to apply for a waiver or is denied a waiver, they may be assessed a ten percent penalty should the licensee continue to tender marijuana excise tax payments in cash. If a licensee is denied a waiver, they have the right to appeal the decision under the Administrative Procedures Act, chapter 34.05 RCW. WAC 314-55-110 is amended to allow appeals of waiver denials to proceed as brief adjudicative proceedings as allowed under RCW 34.05.482 through 34.05.494.

Reasons supporting proposal: Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the Legislature in the 2016 Supplemental Budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. The LCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedures Act (Chapter 34.05 RCW). These rule amendments and payment requirements will promote efficiency and public safety by decreasing the amount of cash payments transported to the WSLCB for payment of marijuana excise taxes.

Statutory authority for adoption: RCW 69.50.342, 69.50.345, 69.50.535, and SL 2016 c 36 (2ESHB 2376)

Statute being implemented: RCW 69.50.342, 69.50.345, 69.50.535, and SL 2016 c 36 (2ESHB 2376)

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **July 12, 2016**

TIME: **1:06 PM**

WSR 16-15-036

DATE
July 13, 2016

NAME (type or print)
Jane Rushford

SIGNATURE

TITLE
Chair

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

- Private
 Public
 Governmental

Name of agency personnel responsible for:

| Name | Office Location | Phone |
|---|--|----------------|
| Drafting..... Joanna Eide, Policy and Rules Coord | 3000 Pacific Ave SE, Olympia, WA 98504 | (360) 664-1622 |
| Implementation.... WSLCB Budget and Finance | 3000 Pacific Ave SE, Olympia, WA 98504 | (360) 664-1622 |
| Enforcement..... WSLCB Budget and Finance | 3000 Pacific Ave SE, Olympia, WA 98504 | (360) 664-1622 |

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide, Policy and Rules Coordinator

Address:

3000 Pacific Ave SE

Olympia, WA 98504

phone (360) 664-1622

fax (360) 664-9689

e-mail Joanna.Eide@lcb.wa.gov

No. Explain why no statement was prepared.

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 () _____

e-mail _____

No: Please explain: A cost-benefit analysis was not required under RCW 34.05.328.



Date: July 13, 2015

To: Jane Rushford, Board Chair
Ruthann Kurose, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Agency Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

**Subject: Small Business Economic Impact Statement
Marijuana Excise Tax Electronic Payment Rules**

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed amendments to WAC 314-55-089. Because the amendments to WAC 314-42-110, Brief adjudicative proceedings, do not impose new requirements on marijuana businesses and instead address how an administrative proceeding will occur should a person appeal the denial or a waiver, this SBEIS does not address the proposed changes to that rule.

WAC 314-55-089, What are the tax and reporting requirements for marijuana licensees?

1. Description of reporting, record keeping and other compliance requirements of the proposed rule:

Licensed marijuana retailers (retailer) must pay monthly excise taxes to the Washington State Liquor and Cannabis Board pursuant to RCW 69.50.535. This rule making involves proposed new language in WAC 314-55-089 to require payments of the marijuana excise tax by electronic payment or electronic funds transfer (EFT), check, cashier's check, or money order unless a retailer applies for a waiver to continue paying excise taxes in cash. A waiver will be granted for good cause shown. "Good cause" means the inability of a licensee to comply with the payment requirements of this section because:

- (a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the electronic payment requirement and cannot obtain a cashier's check or money order; or



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(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the payment mechanisms provided in the rule.

If a retailer does not apply for a waiver or is denied a waiver and continues to pay the monthly marijuana excise tax in cash, a ten percent penalty may be imposed.

The excise tax electronic payment requirements in the proposed rule, including the ten percent penalty, are similar to requirements in the Washington State Department of Revenue's (DOR) laws, rules, and procedures. DOR also collects tax payments from marijuana licensees under similar conditions.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

The electronic payment and check requirements do carry with them a requirement that retailers hold a bank or credit union account. The cashier's check or money order payment options do not necessarily require the retailer to hold an account at a financial institution.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:

The costs of compliance will depend on decisions made by retailers. If retailers choose to obtain an account at a financial institution due to the new requirements, costs may or may not be higher than those retailers who do not choose to obtain a bank account and pay excise taxes by other means. Payment of the excise tax may be made by electronic payment, check, cashier's check, or money order. While an account with a financial institution is likely required to pay excise taxes by electronic payment or check, an account is not necessarily required to make payment by a cashier's check or money order. Also, because each bank or credit union has differing fees and each business is different as far as size, volume of transactions, and business practices, costs will vary from retailer to retailer. These costs are mitigated by the option for a retailer to apply for a waiver to continue paying the marijuana excise tax in cash for good cause shown.

No additional equipment or supplies are required by the proposed new rule language. There may be increased administrative costs should a retailer choose to open an account at a financial institution if they had not done so previously, such as transportation costs for deposits, etc. However, this would be a decision up to the retailer as other payment options are available that do not necessarily require a bank account.



4. Will compliance with the rules cause businesses to lose sales or revenue?

The new requirements will not impact sales or revenue generated from those sales. Where the new requirements may impact revenue is by increased costs for holding a bank account should they choose to go that route, which would reduce retailer profit margins if changes are not made to absorb the costs. Again, payment of the excise tax may be done by electronic payment, check, cashier's check, or money order, and a bank account is not necessarily required to make payment by a cashier's check or money order.

5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- a. **Cost per employee;**
- b. **Cost per hour of labor; or**
- c. **Cost per one hundred dollars of sales**

Virtually all marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to the WSLCB, though the WSLCB does collect data on collection on the value of marijuana at retail and wholesale and sales information. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. Sales and excise tax payments data can assist with estimating profits, however, each business is different and costs are not known so there is not enough information for the WSLCB to determine profit margins. The total amount of sales by retailers from July 1, 2014, through June 30, 2015, (fiscal year 2015) including excise taxes was \$44.9 million. The total amount of sales by retailers from July 1, 2015, to June 30, 2016, (fiscal year 2016) including excise taxes was \$972.7 million, with excise taxes making up \$185.7 million of that amount. As of July 5, 2016, 267 retail stores are reporting sales. While the WSLCB appreciates that each retailer is unique and varies in size, the costs of maintaining an account and making electronic payments compared to the sales figures, coupled with the alternative payment options, waiver opportunity, and risks to retailer and public safety, suggests that the costs are reasonable.

The WSLCB has received information from retailers that aids in giving examples of costs associated with electronic payment, which is most associated with option c above, "Cost per one hundred dollars of sales." Some have responded that it would cost approximately \$200 per month to maintain an account, and another retailer stated that it would cost over \$500 in fees to make an approximately \$175,000 excise tax payment in electronic funds transfer.



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Each financial institution varies as far as application costs for obtaining a bank account and there is little data openly available for these figures. This is especially true since marijuana businesses are unique. While banking resources are not as available to marijuana businesses on the same level as other small businesses, there are resources available and the WSCLB continues to work for more options. Many financial institutions charge monthly fees, and may also charge fees for large transfers of funds. Examples of financial institution fees for banking services are included below (fees may be higher for marijuana licensees).

Numerica Credit Union <https://www.numericacu.com/>

- Application Fee: Unknown
- Monthly Fee: \$10 per month or meet minimum daily balance (\$5,000 - \$10,000 avg. daily balance)
- Deposit/Withdrawal limits: 500 items; additional items subject to fee
- Cashier's Check Fee: \$2.00 each
- Money Order Fee: \$2.00 each

Salal Credit Union <https://www.salalcu.org/>

- Application Fee: Unknown
- Monthly Fee: \$11-\$19 per month
- Deposit/Withdrawal Limits: 100 items; additional items subject to fee
- Cashier's Check Fee: \$5.00 each
- Money Order Fee: \$3.00

Timberland Bank <https://www.timberlandbank.com/>

- Application Fee: Unknown
- Monthly Fee: \$8.00
- Deposit/Withdrawal Limit: Unknown; (Deposit fee: \$0.15/\$0.06 per item)
- Cashier Check Fee: \$5.00
- Money Order Fee: \$3.00

Twin City Bank <http://www.twincitybank.com/>*

- Application Fee: Unknown
- Monthly Fee: \$10
- Deposit/Withdrawal Limit: 150 deposit/50 checks; additional items subject to fee
- Cashier Check Fee: \$5.00
- Money Order Fee: \$4.00



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*High Volume Checking for Business: If your business requires a particularly high volume of account activity or has other unusual requirements such as handling large amounts of coin or currency, Twin City Bank offers individual account analysis. Account activity is measured, valued and compared to the value of the collected funds on deposit. A service fee is generated only if collected funds value does not offset account activity costs. **

O Bee Credit Union <https://www.obee.com/Home>**

- Application Fee: \$750 (Additional \$350 per LCB license number)
- Monthly Fee: \$200
- Deposit/Withdrawal Limit: Unknown
- Cashier Check Fee: \$2.00
- Money Order Fee: Unknown

**These fees are specific to Marijuana Licensees.

The WSLCB is also looking into other electronic payment options, including what is already available for licensees and companies such as PayQwick LLC <http://www.payqwick.com/>, and will continue to assess fees associated with maintaining accounts and electronic payments as the rulemaking process continues.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

The WSLCB sought to reduce costs on licensees through proactive communication with retailers and relationship building with financial institutions. The WSLCB continues to work with financial institutions to increase the availability of banking options for marijuana licensees in general. Understanding the challenges associated with obtaining banking services for some retailers, the WSLCB established a waiver process similar to the Department of Revenue's that can be applied for to continue making payments in cash for good cause shown.

The additional costs associated with complying with the new requirements are also minimized on the group of retailers as a whole as many of them are already making excise tax payments through means other than cash. Additionally, the WSLCB has been conducting outreach efforts to encourage non cash payments. The number of cash payments have decreased 22.4% from January 2016 to June 2016. In January, the WSLCB had 71 retailers pay excise taxes in cash compared to 58 in June. The WSLCB has also seen an increase in electronic payments, receiving 140 electronic excise tax payments in June 2016 as compared to 82 in January 2016.



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Requiring the payment of excise taxes through means other than cash payment is directly aimed at reducing safety risks to marijuana retailers. Discouraging retailers from keeping large amounts of cash on-site, rather than in a bank account, is a security risk and carries public safety risks as well. Increased costs on businesses to reduce these risks are necessary and comparatively reasonable to the risks involved.

7. A description of how the agency will involve small businesses in the development of the rule:

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process. Since the WSLCB already imposed the requirement through emergency rules that became effective July 1, 2016, marijuana businesses are already aware of the requirements and have commented on the proposed changes.

8. A list of industries that will be required to comply with the rule:

All licensed marijuana retailers will be required to comply with these rules.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

It is unlikely that the changes in this proposal will result in the loss of jobs, but this is dependent on many factors, including internal decisions made by businesses which cannot be foreseen by the WSLCB.

WAC 314-42-110 Brief adjudicative proceedings. The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

- (1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;
- (2) Liquor license denials per WAC 314-07-065(2);
- (3) Liquor license denials per WAC 314-07-040;
- (4) Special occasion license application denials per WAC 314-07-040;
- (5) Special occasion license application denials per WAC 314-07-065(7);
- (6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;
- (7) MAST provider denials or revocations per WAC 314-17-070;
- (8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;
- (9) One-time event denials for private clubs per WAC 314-40-080;
- (10) Banquet permit denials per WAC 314-18-030;
- (11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);
- (12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);
- (13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;
- (14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;
- (15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;
- (16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055;
- (17) Tobacco license denials per WAC 314-33-005;
- (18) Marijuana license denials per WAC 314-55-050(2);
- (19) Marijuana license denials per WAC 314-55-050(4);
- (20) Marijuana license denials per WAC 314-55-050(8);
- (21) Marijuana license denials per WAC 314-55-050(10);
- (22) Marijuana license suspensions per WAC 314-55-050(11);
- (23) Marijuana license denials per WAC 314-55-050(12); ((and))
- (24) Marijuana license denials per WAC 314-55-050(13); and
- (25) Marijuana excise tax payment waiver denials per WAC 314-55-089.

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

- (a) On a form or electronic system designated by the WSLCB;
- (b) Filed every month, including months with no activity or payment due;
- (c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;
- (d) Filed separately for each marijuana license held; and
- (e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

(5) Payment methods: Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).